2019 IL App (1st) 16-1255-U

THIRD DIVISION
February 27, 2019

No. 1-16-1255

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellee,	)	of Cook County, Illinois,
	)	Criminal Division.
v.	)	
	)	No. 12 CR 5159
EDWARD BROWN,	)	
	)	The Honorable
Defendant-Appellant.	)	Timothy Joseph Joyce,
	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in denying the defendant's motion to suppress evidence, where the officer's actions in retrieving an unidentified item, which later proved to be a baggie containing 0.3 grams of cocaine from the vestibule of the defendant's family-owned and occupied four-flat, constituted a warrantless search. The officer's pursuit of the defendant into the vestibule was improper because, even though the officer may have had reasonable suspicion to detain the defendant, he lacked probable cause to arrest him, and the seizure of the contraband was not justified under either the "hot pursuit" or "plain view" doctrines.

¶ 2 Following a bench trial in the circuit court of Cook County, the defendant, Edward Brown, was convicted of one count of possession of a controlled substance (720 ILCS 570/402(c) (West 2012)) and sentenced to two years' probation. The defendant's conviction was based upon

evidence obtained during the search of a vestibule in a family-owned four-flat, in which the defendant resided. On appeal, the defendant contends that the trial court erred when it denied his motion to quash arrest and suppress this evidence where the police lacked a warrant to enter the vestibule, and where their entry was not justified either by probable cause or exigent circumstances. For the reasons that follow, we reverse.

¶ 3 I. BACKGROUND

¶ 4 In March 2012, the defendant was charged with one count of possession of a controlled substance (a Class 4 felony), in violation of section 402(c) of the Illinois Controlled Substances Act (720 ILCS 570/402(c) (West 2012)).

¶ 5 The defendant filed a motion to quash arrest and suppress evidence, arguing that the police entered his *apartment* without a warrant or probable cause, and obtained the contraband as a result of that search. The trial court held a hearing on that motion, at which the following relevant evidence was adduced.

¶ 6 The defendant testified that he resides with his grandmother at 4023 West Fifth Avenue in Chicago. He explained that this is a residential apartment building, owned by his grandmother, and that he resides in one of the apartments on the first floor with his mother and siblings. The defendant described the building as a two-story four-flat, with two units on each floor. According to the defendant, the front door of the apartment building opens up into a vestibule, which has a staircase about five or ten feet from the front door (with five or six stairs). These stairs lead directly onto the first floor. At the top of that staircase, a hallway leads to two apartments, one immediately adjacent to the stairs, and another one further down the hallway, next to which is an additional staircase proceeding to the second floor. The defendant stated that his apartment was the one further from the front staircase, on the left side of the hallway. He

explained that the apartment entrance was about 15 feet away from the front staircase, and no more than 30 feet from the main door. According to the defendant, the apartment itself contained two bedrooms and one bathroom. The defendant stated that there was no buzzer system or key for the building's front door, but that there was a lock.

¶ 7 The defendant averred that about 7 p.m. on February 14, 2012, he was inside his apartment with his mother, brother, girlfriend, daughter and nephews, watching television. He had been in the apartment for about 20 to 30 minutes, when four police officers, at least one of whom he was familiar with from a prior case, kicked down the apartment door, accused him of having run away from the police, and then forcibly removed him from the apartment and into the hallway. The officers searched the apartment, the building and the defendant's person, both while he was inside the apartment and when they removed him into the hallway. The defendant stated that about 20 minutes later, the officers placed him inside a squad car and took him to the police station. According to the defendant, the officers did not recover any narcotics from his person, and he was not aware of any drugs in the building so did not know where the drugs later alleged to have been discovered inside the building could have been found. The defendant further admitted that while the police searched him, they were also involved in "wrestling" his younger brother inside the apartment, and therefore called for backup. In his estimate at some point about 15 to 20 officers were on the scene.

¶ 8 Chicago police officer Babicz next testified that at about 7 p.m. on February 14, 2012, together with his partner, Officer Melcars, he was inside his unmarked police car, patrolling the 4000 block of West Fifth Avenue. The officer testified that because this was a "high narcotics area," when he observed the defendant standing, loitering, on the sidewalk in front of the residential building located at 4023 West Fifth Avenue, he decided to curb his vehicle, and

approach the defendant to conduct a "field interview." Officer Babicz acknowledged that he "may have" had prior contact with the defendant, but could not remember whether at that time, he knew that the defendant lived at that address.

¶ 9 Officer Babicz parked his vehicle in front of 4023 West Fifth Avenue. The officer acknowledged that in doing so, he had to drive and then park in the opposite direction of traffic. The officer testified that as he exited his vehicle, intending to approach the defendant, the defendant fled into the building, and he ran after him.

¶ 10 Officer Babicz testified that the defendant ran through an open and unlocked door into the vestibule. The officer was able to enter the building after the defendant by "bumping" the still open door with his shoulder, at which point, he observed the defendant drop "something" on the ground of the vestibule. Together with his partner, Officer Babicz then placed the defendant under arrest. Officer Babicz subsequently recovered the items dropped by the defendant and identified them as three Ziploc bags containing suspect crack cocaine. Officer Babicz further testified that he never went into the defendant's apartment, and that he could not recall whether there was any incident with the defendant's brother inside that apartment that required additional force and a call for backup. He acknowledged, however, that he was "sure" this was possible.

¶ 11 On cross-examination, Officer Babicz acknowledged that he never announced his office to the defendant because the defendant fled before he could do so. He also acknowledged that on the evening in question he was not in uniform, but rather in plain clothes, but explained that he had a police badge affixed to his vest, as well as the insignia "POLICE" on his back.

¶ 12 On cross-examination, Officer Babicz further stated that he could not recall from where on

his person the defendant retrieved the item he then dropped onto the ground of the vestibule. The officer further could not recall which hand the defendant used in either retrieving or dropping that item.

¶ 13 Officer Babicz also acknowledged on cross-examination that in his police report, he noted that the defendant had been arrested "in his residence," and not in the hallway of a building, where his residence was located.

¶ 14 The defendant's on-again-off-again girlfriend, and the mother of their child, Latoya Garrett, next testified that at 7 p.m. on February 14, 2012, she was with the defendant at his apartment getting ready to go out for Valentine's Day. Garret explained that the apartment was located inside a four-unit building, which she described as "a family building," owned by the defendant's grandmother. The defendant's mother, brother, and three children (two nephews and the defendant's and Garrett's daughter) were also present in the apartment.

¶ 15 After some time, Garrett and the defendant walked out of the apartment with the defendant's mother, who followed them down the stairs to the building door, which she was going to lock behind them. Garret described the building door as wooden, with glass windows. When the defendant and Garrett opened the door, they noticed an unmarked "vice" police vehicle nearby and several plain clothes police officers searching someone on the hood of their car. Garrett and the defendant closed the building door and walked back to the apartment because they "did not want to be harassed." According to Garrett, once inside the apartment, they proceeded to the back dining room where the defendant's brother and children had been watching television. Garret testified that almost as soon as they entered the apartment, the police officers kicked in the building door and then entered the apartment attempting to remove the defendant. When the defendant's mother would not let the police take the defendant, an altercation between the

defendant's brother and the police ensued, and the officers called for backup. The police officers ultimately escorted the defendant outside.

¶ 16 On cross-examination, Garrett acknowledged that she did not know whether any of the police officers searched either the apartment or the building, because she remained in the dining room the entire time.

¶ 17 The defendant's mother, Jennella Brown, next testified that she has lived at 4023 West Fifth Avenue since the 1990s. Brown stated that her family has owned the building since the 1970s and that her mother currently owns it. Brown averred that the four-flat building consisted of two side-by-side apartments on each floor. She stated that she lives on the first floor, east unit with her six children, including the defendant, and that "families occupy each apartment in the building, but mainly by you know, my mom being in that one and I being in that one, when we—in the daytime we mostly be at, [my apartment.]" Brown acknowledged that the defendant sometimes stayed at the apartment and at other times stayed with his girlfriend. She could not recall if the defendant had keys to the building or the apartment on the day in question, but asserted that he had access to "any apartment in the building" because his grandmother owned it.

¶ 18 On Valentine's Day, 2012, Brown was in her apartment with the defendant, the defendant's brother Edwin, the defendant's girlfriend Garrett, and her grandchildren. Brown was going to babysit the defendant's daughter so that he could take Garrett out. Brown escorted the defendant and his girlfriend to the building's front door in order to lock it behind them. She asserted that she always locked the apartment building's front door from the inside, explaining, "we don't leave our front doors open on the west side of Chicago, no." Once there, they observed an altercation in the street, involving the police and someone that the police officers had detained. According to Brown, the defendant and his girlfriend decided to return to the apartment and wait

for the altercation to finish before proceeding on their date. As they were all walking back into the apartment, Brown heard pounding, "boom boom boom." She was frightened because she did not know whether it was a robbery or someone was shooting, or trying to break down the building door. The three of them quickly proceeded into the apartment. Seconds later, three or four men, whom she soon realized were plain clothes police officers burst into the apartment attempting to pull the defendant outside. Brown kept asking the police "What [was] going on?" "What did [the defendant] do?" and "What you [*sic*] pulling him for?" and attempted to shield her son, because she knew he could not have done anything wrong since he had been with her inside the apartment. The police instructed her to sit down and called for backup.

¶ 19 Brown acknowledged that the defendant's brother was angry because the police burst into their house unannounced and he talked back to the police, so they "wanted to jar him around," but that they ultimately did not arrest him.

¶ 20 On cross-examination, Brown also admitted that she did not observe any officers searching the apartment.

¶ 21 Based on the evidence presented at the motion to suppress hearing, particularly the fact that neither Garrett nor Brown testified that they observed any officers searching the defendant's apartment, the trial court held that there was no evidence of a search inside the residence, and therefore no fourth amendment violation. Accordingly, the court denied the defendant's motion.

¶ 22 The defendant proceeded with a bench trial. The parties stipulated to the admission of the testimony heard at the motion to suppress hearing. In addition, the parties stipulated that if called to testify Illinois State police forensic chemist, Francis Maneison, would state that he tested the contents of the three Ziploc bags retrieved by Officer Babicz, and that the results of those tests established that the bags contained a total of 0.3 grams of cocaine. After the parties

rested, the defense moved for a motion to acquit and a motion for a directed finding, both of which were denied. After the parties proceeded with closing arguments, the trial court found the defendant guilty. In doing so, the court noted that the case "turn[ed] on the credibility of Officer Babicz, as well as [the defendant], Ms. Garrett and *** Brown." The court found the testimony of Officer Babicz to be more credible. As the court explained:

> "The court is required to make credibility determinations in resolving these disputes in the nature of the testimony. In this circumstance the credibility determination favors Officer Babicz. If I did not believe his testimony, I would have to conclude that it was beyond serendipitous, beyond horrible bad luck on [the defendant's] part that three bags of cocaine happen to be found right in the hallway outside the front door of the premises that he *** lived in. If I would have to conclude that if the three bags of cocaine weren't there, the three bags of cocaine were somewhere inside this apartment where there were four adults, [the defendant], his brother Edwin, his mother and his girlfriend *** and numerous children and that by circumstances and serendipity again police just happened to find those very small three bags inside the apartment without having to do much, if any, searching. Neither of those scenarios sounds at all realistic to the court."

¶ 23 The defendant was subsequently sentenced to two years' probation. He now appeals his conviction.

¶ 24 III. ANALYSIS

¶ 25 On appeal, the defendant contends that the trial court erred when it denied his motion to suppress evidence. In doing so, the defendant abandons the theory presented at his suppression hearing (namely, that the police kicked their way into his apartment to find him with drugs) and instead argues that his fourth amendment rights were violated when the police made a

warrantless entry into the vestibule of his family-owned apartment building without probable cause or exigent circumstances. Citing to the United States Supreme Court decision in *Florida v. Jardines*, 569 U.S. 1 (2013), the defendant contends that when Officer Babicz followed him into the vestibule and retrieved the drugs, he physically intruded into a constitutionally protected area (*i.e.*, the curtilage of the defendant's home) for the sole purpose of conducting a search, thereby exceeding the societal norms of acceptable behavior. In the alternative, the defendant argues that regardless of whether the vestibule was a protected area, under *Katz v. United States*, 389 U.S. 347 (1967) he had a reasonable expectation of privacy in that area, so that any intrusion therein constituted a violation of his fourth amendment rights.

¶ 26 While the State initially points out that the defendant never raised either argument in his motion to suppress evidence, it ultimately concedes that our supreme court has declined to find forfeiture under such circumstances (*People v. Cregan*, 2014 IL 113600, ¶¶ 16, 20) and that the record before us is detailed enough to permit our review of the issues.

¶ 27 With respect to the merits, the State argues that: (1) the vestibule where the drugs were recovered was not a constitutionally protected area under the test articulated in *Jardines*: (2) the defendant had no expectation of privacy in the vestibule under *Katz*; and (3) Officer Babicz was permitted to be inside the vestibule pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968) because he had a reasonable articulable suspicion that a crime was being committed. In the alternative, the State contends that even if the search was improper, the evidence should not be suppressed because the officer acted in good-faith reliance on binding precedent when he seized the drugs. For the reasons that follow, we disagree with the State.

¶ 28 In reviewing a trial court's ruling on a motion to suppress evidence, we apply the two-

part standard of review adopted by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). See *People v. Gaytan*, 2015 IL 16223, ¶ 18; *People v. Grant*, 2013 IL 112734, ¶ 12. In doing so, we accord great deference to the trial court's factual findings, and will reverse those findings only if they are against the manifest weight of the evidence. *People v. Hackett*, 2012 IL 111781, ¶18. Nonetheless, we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id*. In doing so, we are free to make our own assessments of the legal issues, based upon the findings of fact, and to draw our own conclusions. *Id*. Furthermore, on a motion to suppress evidence, the defendant has the burden of producing evidence and proving the search and seizure were unlawful. *People v. Woodrome*, 2013 IL App (4th) 130142, ¶ 16. "[O]nce the defendant makes a *prima facie* showing of an illegal search and seizure, the burden shifts to the State to produce evidence justifying the intrusion." (Internal quotation marks omitted.) *Id*.

¶ 29 "The physical entry of the home is the chief evil against which the wording of the fourth amendment is directed." *People v. Wear*, 229 Ill. 2d 545, 562 (2008). The fourth amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Similarly, article I, section 6 of the Illinois Constitution states that the "people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches [and] seizures." Ill. Const. 1970, art. I, § 6; *People v. Martin*, 2017 IL App (1st) 143225, ¶ l8; *People v. Pitman*, 211 Ill. 2d 502, 513 (2004). Accordingly, "it is a basic principle of the fourth amendment" that absent exigent circumstances or consent, "searches and seizures inside a home without a warrant are presumptively unreasonable." *Wear*, 229 Ill. 2d at 562 (citing *Payton v. New York*, 445 U.S. 573, 586 (1980)); see also *Groh v. Ramirez*, 540 U.S. 551, 559 (2004). "This is because, ' "[t]o be

arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present." [Citation.]' " *Wear*, 229 Ill. 2d at 562-63 (quoting *Payton*, 445 U.S. at 588–89); see also *People v. Foskey*, 136 Ill. 2d 66, 75 (1990) (requiring probable cause and exigent circumstances before an officer may make a warrantless arrest inside a home); see also *People v. Johnson*, 237 Ill. 2d 81, 89 (2010) ("Reasonableness under the fourth amendment generally requires a warrant supported by probable cause.")

¶ 30 Because the defendant here contends that the seizure of the drugs from the vestibule of the family-owned four-flat in which he resided was improper under both the trespass-to-property test articulated in *Jardines*, and the expectation of privacy test articulated in *Katz*, we begin by summarizing each framework.

¶ 31 In *Katz*, 389 U.S. 347, the United States Supreme Court explained that the fourth amendment "protects people, not places," and that accordingly, the capacity to claim the protection of the fourth amendment depends upon whether the person who claims the protection has a legitimate expectation of privacy in the invaded place. *Id*. To make a claim under *Katz*, a person must have: (1) exhibited an actual (subjective) expectation of privacy in the place searched or thing seized; and (2) this expectation must be one that society is willing to recognize as " 'reasonable.' " *Id*. at 361 (Harlan, J., concurring); see also *California v. Ciraolo*, 476 U.S. 207, 211 (1986) (adopting *Katz*). "The question of whether one has a legitimate expectation of privacy such that he can claim the protection of the fourth amendment is to be answered in light of the totality of the circumstances of the particular case." *People v. Rosenberg*, 213 Ill. 2d 69, 78 (2004).

¶ 32 Applying *Katz*, for years, Illinois courts have found that there is no reasonable expectation of

privacy in common areas of apartment buildings that are accessible to others. See *People v. Smith*, 152 Ill. 2d 229, 245 (1992) (no reasonable expectation of privacy in a conversation that occurred in an apartment building's unlocked common area that was shared by other tenants, the landlord, their social guests, and other invitees); *People v. Carodine*, 374 Ill. App. 3d 16, 23 (2007) (the defendant had no reasonable expectation of privacy in the dryer vent of his three-unit apartment building where dryer vent was in a common area that was accessible to the landlord and other members of the general public); *People v. Lyles*, 332 Ill. App. 3d 1, 7 (2002) (stating that a tenant has no reasonable expectation of privacy in common areas of an apartment building that are accessible to other tenants and their invitees).

¶ 33 Six years ago, in *Jardines*, 569 U.S. at 3, however, the United States Supreme Court changed the landscape of fourth amendment analysis and held that the *Katz* expectation of privacy test was not the only way to analyze fourth amendment claims. In that case, the Court considered whether using a drug-sniffing dog on a homeowner's porch to investigate the contents of a home was a "search" within the meaning of the fourth amendment. The Court emphasized that the fourth amendment establishes "a simple baseline," namely that when " 'the Government obtains information by physically intruding on persons, houses, papers, or effects, 'a "search" within the original meaning of the Fourth Amendment' has 'undoubtedly occurred.' " *Jardines*, 569 U.S. at 5, quoting (quoting *United States v. Jones*, 565 U.S. 400, 406, n. 3 (2012)). The Court in *Jardines* recognized that its decision in *Katz* held that "property rights 'are not the sole measure of Fourth Amendment violations' " but then explained that "[al]though *Katz* may add to the baseline, it does not subtract anything from the Amendment's protections 'when the Government does engage in [a] physical intrusion of a constitutionally protected area.' " (Emphasis in original.) *Id.* at 5.

¶ 34 The Court then proceeded with a two-step analysis. It first considered whether the officers' investigation took place within a constitutionally protected area. *Id*. at 5-8. The Court stated that the area " 'immediately surrounding and associated with the home,' " known as curtilage, was " 'part of the home itself for Fourth Amendment purposes.' " *Id*. at 6. The Court then assessed whether the officers' investigation "was accomplished through an unlicensed physical intrusion." *Id*. at 7. According to the Court " 'a license may be implied from the habits of the country,' notwithstanding the 'strict rule of the English common law as to entry upon a close.' " *Id*. at 8. Accordingly, the Court recognized that a police officer without a warrant "may approach a home and knock, precisely because that is 'no more than any private citizen might do.' " *Id*. The Court, however, found that there is no customary invitation for police to introduce "a trained police dog to explore the area around the home in hopes of discovering incriminating evidence." *Id*. at 9. Accordingly, when the police physically intruded on the defendant's property to gather evidence without a warrant or consent, they had conducted a "search" without a license in violation of the fourth amendment. *Id*. at 10. In coming to this conclusion, the Court made clear that its holding was based on the trespass to the defendant's curtilage, and not any violation of the defendant's privacy interests. *Id*. at 10-12. The Court also made clear that the type of tool used in the search was of no concern, because "when the government uses a physical intrusion to explore details of the home (including its curtilage), the antiquity of the tools that they bring along is irrelevant." *Id*. at 11.

¶ 35 The Illinois Supreme Court has twice applied *Jardines* in the context of multi-unit buildings. First, in *People v. Burns*, 2016 IL 118973, ¶ 16, the court held the warrantless use of a drug-detection dog in a locked 12-unit apartment building violated the defendant's fourth amendment rights. The dog sniff occurred outside the defendant's apartment door. *Burns*, 2016 IL 118973, ¶

7. The State in *Burns* suggested that *Jardines* did not apply to leased apartments or condominiums because there is no legitimate expectation of privacy in the common areas of multi-unit dwellings. *Id*. ¶ 32. Disagreeing with the State, the court noted that the entrances to the apartment building were locked and the common areas were not open to the general public. *Id*. ¶ 33. The court also found that the landing to the defendant's apartment was curtilage, noting that the landing was directly in front of the apartment and a clearly marked area within a locked building with limited use and restricted access. *Id*. ¶¶ 35, 39. The court stated that the police conduct in that case "certainly exceeded the scope of the license to approach [the] defendant's apartment door," as the officers entered a locked building in the middle of the night and remained in the building for more than a very short period of time. *Id*. ¶ 43.

¶ 36 Subsequently, in *People v. Bonilla*, 2018 IL 122484, ¶¶ 23-32, our supreme court considered whether the fact that a multi-unit building is *unlocked* at the time the police access it to approach the defendant's apartment with drug-sniffing dogs, would change the *Jardines* analysis. The court unequivocally found that it would not. *Id*. The court explained that "the fourth amendment does not differentiate as to type of home involved," and that "it would just be unfair to say you can't come up on a person who lives in a single family residence and sniff his door but you can go into someone's hallway and sniff their door if they happen to live in an apartment." (Internal quotation marks omitted.) *Id*. ¶¶ 25-26. The court further noted that to reach the opposite conclusion would be to draw a distinction with an unfair difference, because it would imply that those who live in apartments have less property based fourth amendment protection not only outside of, but also "*within* their homes" than those who live in detached housing. (Emphasis in original.) *Id*. ¶ 27 (quoting *Burns*, 2016 IL 118973, ¶ 96).

¶ 37 In coming to this conclusion, the court expressed a clear concern with unfairly apportioning

fourth amendment protection based upon financial circumstances. *Id.* ¶ 31. Citing to the recent United States Supreme Court decision in *Collins v. Virginia*, 584 U.S.__, 138 S. Ct. 1663, 1675 (2018), which declined to extend the automobile exception to permit a warrantless search of a motorcycle parked on a partially enclosed driveway abutting the defendant's house, our supreme court noted that the rationale had been that permitting such an exception would "automatically *** grant constitutional rights to those persons with the financial means to afford residences with garages in which to store their vehicles, but deprive those persons without such resources of any individualized consideration as to whether the areas in which they store their vehicles qualify as curtilage." (Internal quotation marks omitted.) *Id.* ¶ 31. As our supreme court noted, the United States Supreme Court found such a result untenable. *Id.* ¶ 31.

¶ 38 The Seventh Circuit has made similar comments in the context of multi-unit buildings, stressing that "a strict apartment versus single-family house distinction" could prove troubling because it would apportion fourth amendment protections "on grounds that correlate with income, race, and ethnicity." *United States v. Whitaker*, 820 F.3d 849, 854 (7th Cir. 2016). In doing so, the Seventh Circuit cited to specific data establishing that a smaller percentage of African-Americans and Hispanics live in one-unit detached houses than whites and that the percentage of households that live in one-unit, detached houses rises with income. *Whitaker*, 820 F. 3d at 854.

¶ 39 Despite such concerns, thus far our supreme court has applied *Jardines* only to dog-sniffing cases. Accordingly, the specific contours of *Jardines* remain unsettled.

¶ 40 With these principles in mind, we turn to the facts of this case. The State and the defendant dispute how to characterize 4023 West Fifth Avenue. The State asserts that this is a multi-unit apartment building, so that the vestibule, which is not immediately in front of the defendant's

apartment, is neither curtilage, nor an area in which the defendant had a reasonable expectation of privacy. The defendant, on the other hand, argues that the building is a family home, and that as such the vestibule was both a constitutionally protected area, and one in which he had an expectation of privacy. For the reasons that shall be explained in detail below, we agree with the defendant.

¶ 41 In deciding this issue, we find the decision in *People v. Martin*, 2017 IL App (1st) 143255, which applied *Jardines* to a seizure of narcotics that did not involve the use of drug-sniffing dogs, to be instructive. In *Martin*, the defendant was convicted of possession of a controlled substance. *Martin*, 2017 IL App (1st) 143255, ¶ 1. On appeal, the defendant argued that the trial court had erroneously denied his motion to suppress the evidence seized during a warrantless search. *Id*. At the hearing on the defendant's motion to suppress, an officer testified that while conducting a narcotics surveillance mission, he observed a man approach the defendant and make a gesture that the defendant acknowledged. *Id*. ¶ 4. The officer testified that the defendant then entered the main doorframe of an apartment building, where the door was slightly ajar. *Id*. The officer observed the defendant stand on the immediate threshold, reach into the door inside of the doorframe, retrieve a blue plastic bag, manipulate it, and then retrieve a smaller unknown item from the blue bag. *Id*. The defendant then placed the bag on top of the door and returned to the man who approached him, where the defendant received money and gave the man an unknown item. *Id*. The officer also observed the defendant give the money to an unknown man who was standing outside the defendant's apartment building. *Id*. At that point, the officer ceased his surveillance and approached the man who received the unknown item from the defendant. *Id*. ¶ 5. The man told the officer that he had only received "one blow" from the defendant and freely gave the officer a red-tinted Ziploc bag containing a white powdery

substance. *Id*. The surveilling officer and another officer went to the defendant's apartment building, arrested the defendant, and recovered the blue bag from inside the doorframe. *Id*. The surveilling officer had indicated to the other officer where the blue bag could be found and the other officer "reached above the doorframe on the inside of the door and recovered the blue bag." *Id*.

¶ 42 At the suppression hearing, the defendant's mother testified she owned the two-flat building and lived on the first floor, while no one lived on the second. *Id.* ¶ 3. She also stated that the defendant occasionally stayed with her and had stayed overnight the previous evening. *Id*. The defendant's mother testified that the building was her home and denied that anyone could walk in. She had a "no trespassing" sign in the window, and stated that the space between the outer and interior doors was private. Although the front door was slightly ajar at the time the police entered the building, she also stated that she locks the front door with a key. *Id*.

¶ 43 Based on this evidence, the court in *Martin* concluded that the building "was not a typical multi-unit building where numerous tenants and members of the public were expected to enter. Rather, it was viewed as the family home." *Id*. ¶ 26. After determining that the property was a single family home, the court in *Martin* applied *Jardines* to the facts of that case. *Id*. ¶¶ 28-29. The court first used the four factors articulated *United States v. Dunn*, 480 U.S. 294, 301 (1987)[1] to find that the area above the inside doorframe of the outer door was a "constitutionally protected area," and then held that the officer's intrusion into that area was improper under the fourth amendment. *Id*. ¶¶ 28-29. In coming to that conclusion, the court in *Martin* found

[1] In *Dunn*, 480 U.S. 294, 301 (1987), the Supreme Court listed four factors to consider when defining the extent of a home's curtilage: (1) the proximity of the area claimed to be curtilage to the home; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps taken by the resident to protect the area from observation by passersby. As the Court in *Dunn* explained, these factors are "useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration—whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Id*.

irrelevant the fact that at the time of the search the building's front door was open. *Id.* ¶ 29. As the court noted: "A private citizen would not think that he could breach the open door of a home and investigate its contents." *Id.* " '[W]hen the government uses a physical intrusion to explore details of the home *** the antiquity of the tools that they bring along is irrelevant." [*Jardines*, 569 U.S. at 11]. Further, any physical invasion of the home's structure by even a fraction of an inch is too much. [*Kyllo v. United States*, 533 U.S. 27, 37 (2001)]." *Id.* ¶ 30.

¶ 44 Applying *Martin* to the facts of this case, we similarly hold that the building from which Officer Babicz retrieved the narcotics was a family home. The defendant, his mother and his girlfriend all testified that the building is a family building owned by the defendant's grandmother. The defendant's mother explained that her family has owned the building since the 1970s and that her mother is the current owner. She described the two-floor building as consisting of two-side-by-side apartments on each floor, and further stated that "families occupy each apartment in the building, but mainly by you know, my mom being in that one and I being in that one, when we—in the daytime we mostly be at, [my apartment.]" The defendant's mother also testified that the defendant had access to all the apartments in the building because his grandmother owned it. In addition, all three of the defendant's witnesses testified that the building's front door had a lock. The defendant's mother averred that she always locked the front door from inside, and that thus, no one could just walk into the vestibule. Officer Babicz's testimony did not contradict any of these statements. In fact, he admitted that he was able to enter the building in pursuit of the defendant only because the door had not yet closed behind the defendant, and because he "bumped it" with his shoulder. Moreover, the officer himself acknowledged that in his police report he had noted that the defendant had been arrested "in his residence," and not inside a hallway of a multi-unit building in which he resided. Under these

uncontroverted facts, just as in *Martin*, we are compelled to conclude that the building at issue should be treated as a family home. *Martin*, 2017 IL App (1st) 143255, ¶ 26.

¶ 45 The State asserts that *Martin* is distinguishable because it involved a duplex, with a non-occupied second floor, and a "no trespass" sign in the window, and instead urges us to apply *United States v. Villegas*, 495 F. 3d 761 (2007) to the facts of this case. In *Villegas*, the Seventh Circuit considered whether under *Katz*, the defendant had a reasonable expectation of privacy in the common hallway of his duplex which was owned by his sister. The first floor of the unit was occupied by a couple that was unrelated to the defendant and his sister. *Id*. at 764. In finding that the defendant did not have a reasonable expectation of privacy in the hallway, the court noted that the defendant did not "present any evidence that suggests that he and his sister were related to [the couple] such that the duplex in its entirety should be considered a single dwelling." *Id*. at 768.

¶ 46 We first note that *Villegas* was decided before *Jardines*, *Burns* and *Bonilla*, and that it is a decision of the federal court of appeals, by which we are not bound. See *People v. Radojcic*, 2013 IL 114197, ¶ 36; *People v. Haywood*, 407 Ill. App. 3d 540, 546 (2011); *Citibank, N.A. v. McGladrey and Pullen, LLP*, 2011 IL App (1st) 102427, ¶ 21. More importantly, contrary to the State's assertion, as already articulated above, unlike the defendant in *Villegas*, the defendant here presented at least some evidence that the building was family owned and occupied, as well as that it was always locked from the inside. The State did not offer any evidence to rebut this testimony or to establish that the building was not in fact entirely family occupied. Accordingly, we find *Martin*, which was decided by this court after *Jardines* and *Burns*, to be controlling.

¶ 47 In coming to this decision, we again reiterate that since *Martin*, our supreme court has

refused to apportion different levels of fourth amendment protection on the basis of the type of abode involved in the search (*i.e.*, an apartment building versus detached housing). See *Bonilla*, 2018 IL 122484, ¶ 27 (" 'Were this court to hold that an apartment uniformly lacks fourth amendment curtilage, we would additionally hold that those who live in apartments have less property-based fourth amendment protection within their homes than those who live in detached housing.' [*Burns*, 2016 IL 118973, ¶ 96 (Garman, J., specially concurring)]"); see also *Collins*, 584 U.S.__, 138 S. Ct. at 1675 (declining to extend the automobile exception to permit a warrantless search of a motorcycle parked on a partially enclosed driveway of abutting a house, which the court considered the home's curtilage, because such a rule "automatically would grant constitutional rights to those persons with the finical means to afford residences with garages in which to store their vehicles, but deprive those persons without such resources of any individualized consideration as to whether the areas in which they store their vehicles qualify as curtilage."); see also *Whitaker*, 820 F. 2d at 853 ("a strict apartment versus single-family house distinction is troubling because it would apportion Fourth Amendment protections on grounds that correlate with income, race and ethnicity.") As such, we believe that under the facts presented here, just as in *Martin*, it is more appropriate to consider the four-flat building in which the defendant was arrested a family home.

¶ 48 Having concluded that the building here was a family dwelling we must next determine whether the investigation took place in a constitutionally protected area, and if so, whether the officer's action was accomplished through an unlicensed physical intrusion. *Jardines*, 569 U.S. at 5-8.

¶ 49 It is axiomatic that fourth amendment protections provided to an individuals' home extend to

the home's curtilage. *Burns*, 2016 IL 118973, ¶ 34. When determining whether an area constitutes curtilage, a court considers several factors: "(1) the proximity of the area claimed to be the home's curtilage; (2) whether the area is included within an enclosure surrounding the home"; (3) "the nature of the uses to which the area is put"; and (4) "the steps taken by the resident to protect the area from observation by people passing by." *Id*. (quoting *Dunn*, 480 U.S. at 301 (1987)

¶ 50 Again, applying *Martin*, to the facts of this case, we see no difference between the area above the inside door frame of an outer door in *Martin*, and the vestibule in the instant case. The evidence here established that there was a lock on the inside of the building's front door and that the defendant's mother invariably locked that door to prevent anyone uninvited coming inside. In addition, the vestibule was inside the building and no more than 15 feet away from the apartment in which the defendant resided. In addition, the front door was at least partially covered since it was made of wood and windows. As such, just as in *Martin*, the area here was "akin to a porch, which is a 'classic exemplar' " of curtilage. *Martin*, 2017 IL App (1st) 143255, ¶ 28.

¶ 51 Further applying *Martin*, we also conclude that Officer Babicz's retrieval of the narcotics from the vestibule was accomplished through an unlicensed intrusion. The officer physically intruded into the front door and vestibule for the sole purpose of performing a search. To get into the vestibule, Officer Babicz used his shoulder to barge through the front door right before it closed. His entry into the building was not only not peaceful, but also unwelcomed. As already noted above, the defendant's mother testified that she invariably locked the door from inside, so that presumably visitors could not enter the vestibule uninvited. As such, there is no doubt that Officer Babicz "exceeded what a private citizen was permitted to do at the front door" of the building. *Martin*, 2017 IL App (1st) 143255, ¶ 30.

¶ 52 The State nonetheless asserts that the physical intrusion into the building was permissible because the officer was in the process of performing a valid investigatory stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), as codified by section 107-14 of the Illinois Criminal Code of 1968 (Criminal Code) (725 ILCS 5/107-14 (West 2014)). In *Terry*, the Supreme Court held that an officer may, within the parameters of the fourth amendment, conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion that the person has committed or is about to commit a crime, and such suspicion amounts to more than a mere "hunch." *Terry*, 392 U.S. at 27; see also *People v. Surles*, 2011 IL App (1st) 100068, ¶ 21; *People v. Gherna*, 203 Ill. 2d 165, 177 (2003). The officer "must be able to point to specific and articulable facts which, taken together with rational inferences therefrom, reasonably warrant that intrusion." *People v. Thomas*, 198 Ill. 2d 103, 109 (2001). "Under *Terry*, the reasonableness of police action taken during an investigative detention involves a dual inquiry: (1) whether the officer's action was justified at its inception; and (2) whether the officer's action was reasonably related in scope to the circumstances which justified the interference in the first place." *People v. Baldwin*, 388 Ill. App. 3d 1028, 1031-32 (2009) (quoting *Terry*, 392 U.S. 1); *People v. Moss*, 217 Ill. 2d 511, 527. "In judging the officer's conduct, we apply an objective standard and consider whether under the totality of circumstances, "the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate?' " (internal citations omitted.) *People v. Timmsen*, 2016 IL 118181, ¶ 9; see also *United States v. Sokolow*, 490 U.S. 1, 8 (1989).

¶ 53 Moreover, just as an officer must have reasonable, articulable suspicion to justify a stop, an individual has the right to avoid an encounter with the police in the absence of reasonable suspicion. *Timmsen*, 2016 IL 118181, ¶ 10. Our supreme court has made clear that where an

officer, without reasonable suspicion or probable cause, approaches an individual, the individual " 'has a right to ignore the police and go about his business.' " *Id*. (quoting *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000)); see also *Florida v. Royer*, 460 U.S. 491, 497-98 (1983). Furthermore, "an individual's refusal to cooperate, without more, does not amount to reasonable suspicion." *Timmsen*, 2016 IL 118181, ¶ 10 (citing *Wardlow*, 528 U.S. at 125; *Royer*, 460 U.S. at 498).

¶ 54 Contrary to the State's position, the undisputed testimony of Officer Babicz at trial, demonstrates that there was no reasonable suspicion to justify a stop under *Terry*. Officer Babicz testified that all he observed was the defendant "loitering" on the sidewalk of a "high narcotics area," and admitted that when he curbed his vehicle he only intended to conduct a "field interview." Officer Babicz acknowledged that he did not see the defendant conduct any hand-to-hand narcotics transactions, did not recall if anyone stood near the defendant and had no specific reason to approach the defendant prior to his routine patrol assignment. The officer also never testified that he believed the defendant was armed and dangerous. Accordingly, at this time, the officer had no justifiable reason to conduct a *Terry* stop, much less to pursue the defendant into his home. *Terry*, 392 U.S. at 27 (an officer's suspicion must amount to more than an "inchoate and unparticularized suspicion or 'hunch' " of criminal activity).

¶ 55 In addition, contrary to the State's position, the defendant's retreat into his home did not give Officer Babicz reasonable suspicion because there was no evidence that the defendant knew that the individual pursuing him was a police officer. Officer Babicz testified that on the night in question he was in plain clothes and driving in an unmarked police car. While the officer averred that he was wearing a police badge on his vest, and that the words "police" were written on his back, he never testified that either was visible to the defendant. Moreover, Officer Babicz admitted that he never announced his office because the defendant fled as soon as he began

exiting his vehicle. Accordingly, there was nothing unreasonable about the defendant's flight and retreat into his home after observing an unknown vehicle drive in the opposite side of traffic, pull up in front of his home, and a stranger exit to pursue him, in an area known for drugs.

¶ 56 In this respect, we find the State's reliance on *Wardlow*, 528 U.S. 119 (2000) inapposite. In that case, four police cars converged on a public street known for heavy narcotics trafficking. *Wardlow*, 528 U.S. at 121. The uniformed officers, who were participating in a special narcotics operation, expected to see several buyers and lookouts in the area. *Id*. One of the uniformed officers saw the defendant standing near a building holding an opaque bag, and when the defendant saw the officer, and made eye-contact with him, he fled. *Id*. The officer chased the defendant through a gangway and down an alley, before he caught him in a public street, where he conducted a pat down search, discovering a weapon. *Id*.

¶ 57 The Illinois Supreme Court suppressed the weapon, but the United States Supreme Court reversed. *Id*. In doing so, the Court clarified that *Terry* applied because the encounter was "brief" and occurred "on a public street." *Id*. at 123. The Court then held that the officer had reasonable suspicion given the entire context of the encounter, including: (1) the fact that the officers were participating in an investigation during which they expected to encounter drug dealers, buyers, and lookouts; (2) the fact that once they arrived in the high-crime area they saw the defendant holding a bag; and (3) the defendant's flight after having made eye contact with the uniformed officer. *Id*. at 124-26.

¶ 58 While it is true that *Wardlow* stands for the proposition that in certain circumstances, flight from the police in a high crime area, is sufficient for a *Terry* stop (*Wardlow*, 528 U.S. at 125), we find the facts of *Wardlow* distinguishable from the facts of this case. Unlike the officers in *Wardlow*, Officer Babicz and his partner were not engaged in a specific investigation during

which they expected to encounter drug buyers, lookouts and traffickers. Instead, Officer Babicz testified that they were on routine patrol in the neighborhood. Moreover, unlike the officer in *Wardlow*, Officer Babicz was not in uniform, never announced his office, and never testified that he made eye-contact with the defendant before the defendant fled. In addition, unlike the defendant in *Wardlow*, who carried an "opaque bag," the defendant here was not holding anything when Officer Babicz made his decision to pursue.

¶ 59 Nonetheless, even if we were to agree with the State and hold that under *Wardlow*, Officer Babicz had reasonable suspicion to conduct a *Terry* stop, the defendant's retreat into his residence when the officer pursued him did not constitute probable cause and the officer was therefore not justified in effectuating a warrantless entry.

¶ 60 In this respect, we find the decision in *In re D.W.*, 341 Ill. App. 3d 517 (2003) instructive. In that case, a police officer had received a citizen tip that someone was selling drugs in front of the building located at 2629 South Calumet. *D.W.*, 341 Ill. App. 3d at 520. The citizen's description of the seller and his name matched someone that the officer knew form the neighborhood. *Id*. Within an hour, the uniformed officer and his partner proceeded to the address, where they observed a group of people standing around, including an individual who matched the suspect. *Id*. The officer drove up to the building, exited his vehicle and motioned to the respondent that the police needed to speak to him. *Id*. The respondent turned and fled into the building and up the stairs. *Id*. The officer chased the respondent up the stairs and into the apartment, which "was slightly ajar," and he could "push open." *Id*. The officer observed the respondent removing a large plastic bag from his jacket and attempting to conceal it, and which the officer believed contained cocaine. *Id*. at 521. The officer took control of the respondent and his partner recovered the bag. *Id*.

¶ 61 In reversing the trial court's denial of the respondent's motion to suppress, the appellate court rejected the argument that the warrantless entry into the respondent's residence was justified by the defendant's flight. *Id*. at 526-27. The court held that while the officer may have had reasonable suspicion under *Wardlow* and *Terry* to stop and frisk the respondent, that reasonable suspicion, without more, was insufficient to permit entry into the respondent's residence. *Id*. at 525. The information known to the officer, who did not observe any drug transactions did not rise to the level of probable cause to permit entry into the defendant's residence. *Id*. at 524, 528. As the court explained: "While we do not believe that the respondent's flight constituted probable cause to arrest [citations], it did give reason for the officer to seek to stop respondent and investigate his suspicious actions. The significant difference here is that the respondent ran into his home." *Id*. at 526.

¶ 62 Since we have already determined that the four-flat building in which the defendant resided should be treated as a family home, we see no difference between Officer Babicz's warrantless entry into the vestibule and the officer's entry into the respondent's apartment *in D.W.* In that respect, we see no merit in the State's position that at the time of the pursuit, Officer Babicz could not have known that the building was family-owned. The officer himself admitted at trial that in his police report he wrote that the defendant was seized "in his residence" and that this occurred inside the vestibule. Conversely, the police report nowhere stated that the arrest occurred in the hallway of the defendant's multi-unit building.

¶ 63 Under these facts, the State prudently concedes that Officer Babicz did not have probable cause to enter the building, but argues that once the officer observed the defendant drop the drugs in the vestibule, he had probable cause to arrest the defendant and subsequently seize those

drugs, under both the "hot pursuit" and "plain error" doctrines. For the reasons that follow, we disagree.

¶ 64 Under the "hot pursuit" doctrine, the police may enter a private residence without a warrant to effectuate the arrest of a fleeing suspect, where the arrest has been set in motion in a "public place." *People v. Smock*, 2018 IL App (5th) 140449, ¶ 26 (*United States v. Santana*, 427 U.S. 38, 42 (1976)). However, the officers must have probable cause to know that a crime is being committed *before* they enter the home in such pursuit. See *D.W.*, 341 Ill. App. 3d at 527-28; see also *Santana*, 427 U.S. at 39-40 (officers had probable cause to arrest the defendant before approaching her home to arrest her, and before her retreat inside); *Wear*, 229 Ill. 2d 565-66 (officer who witnessed the defendant's car swearing and violating several traffic laws, and then pursued the defendant all the way to his home, had probable cause to arrest the defendant before the defendant retreated into his home).

¶ 65 In the present case, Officer Babicz did not know what, if any crime was being committed as he chased the defendant into the building. In fact, he testified that when he stopped his vehicle to approach the defendant, he was only intending to conduct a "field interview." At best, upon the defendant's flight, Officer Babicz had an articulable suspicion of some unidentified crime, but certainly no probable cause to arrest the defendant. Officer Babicz did not become aware of the defendant dropping anything until after his entry into the vestibule. Moreover, even at that point, the officer could not identify the item being dropped, nor describe its shape, size, or what he believed it to be. It was not until after the seizure of the dropped item that the officer discovered it contained three baggies with suspect narcotics. "We cannot reason backward from the result to justify an illegal search." *D.W.*, 341 Ill. App. 3d at 527-28.

¶ 66 We similarly reject the State's attempt to justify the search under the plain view doctrine.

This doctrine "supplements a prior valid reason for being present and permits the warrantless seizure of evidence in plain view because it does not constitute a general, intrusive invasion of a person's privacy." *Martin*, 2017 IL App (1st) 143225, ¶ 31 (citing *People v. Hassan*, 253 Ill. App. 3d 558, 569 (1993)). For the doctrine to apply three requirements must be met: (1) the officers must be lawfully in a position from which they view the object; (2) the incriminating character of the object must be immediately apparent; and (3) the officer must have a lawful right of access to the object. *People v. Jones*, 215 Ill. 2d 261, 271-72 (2005). "[I]f the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object, *i.e.*, if the incriminating character of the object is not immediately apparent, the plain view doctrine cannot justify the seizure." *Id*. at 272. Here, there is no doubt that the incriminating nature of the item that Officer Babicz observed the defendant dropping was not immediately apparent. The officer himself testified that he only observed the defendant drop "something" onto the ground. The officer provided no testimony as to the shape or nature of the item, and he could not recall from where and with which hand the defendant had dropped it. It was only after Officer Babicz recovered the item that the he realized that it contained three Ziploc baggies with suspect narcotics. Because the nature of the object was not immediately apparent, the plain view doctrine does not justify the seizure. See *Martin*, 2017 IL App (1st) 143225, ¶ 31 (holding that because the police could not identify the item that the defendant retrieved from the blue bag inside the doorframe until the bag was recovered, the police lacked probable cause to believe that the object in plain view was contraband).

¶ 67 Next, the State contends that even if the fourth amendment was violated, the recovered evidence should not be suppressed because the officers acted in good-faith reliance on binding precedent when they seized the drugs. The State argues that the officers conducted the search in

objectively reasonable reliance on First District precedent set forth in *Carodine*, 374 Ill. App. 3d 16 (2007), and *Lyles*, 332 Ill. App. 3d 1 (2002), which, as noted above, held that under *Katz*, common areas in multi-unit buildings open to other tenants and invitees, are not constitutionally protected under the fourth amendment. For the reasons that follow, we disagree.

¶ 68 The Supreme Court created the exclusionary rule as a general deterrent to future fourth amendment violations. *Martin*, 2017 IL App (1st) 143225, ¶ 38; see also *Arizona v. Evans*, 514 U.S. 1, 10 (1995). Despite the exclusionary rule's relationship to the fourth amendment, however, there is no constitutional right to have the fruits of an illegal search or seizure suppressed at trial. *Id*. (citing *Davis v. United States*, 564 U.S. 229, 236 (2011)). Exclusion is a last resort, and the exclusionary rule applies when the deterrent benefits outweigh its heavy costs. *People v. LeFlore*, 2015 IL 116799, ¶ 23. Where the particular circumstances show that police acted with an objectively reasonable good-faith belief that their conduct was lawful, or when their conduct involved only simple, isolated negligence, there is no illicit conduct to deter. (Internal quotation marks omitted.) *Id*. ¶ 24. One instance where evidence is not excluded despite a fourth amendment violation is when the police conduct a search in objectively reasonable reliance on binding appellate precedent. *Davis*, 564 U.S. at 249-50; see also *LeFlore*, 2015 IL 116799, ¶ 29 (applying *Davis*). Under this analysis, an officer's subjective awareness of the law is irrelevant. *People v. Harrison*, 2016 IL App (5th) 150048, ¶ 26.

¶ 69 In the present case, we decline to apply the good-faith exception. As already explained above, *Carodine* and *Lyles* involved the common areas of multi-unit apartment buildings that were accessible to others. See *Carodine*, 374 Ill. App. 3d at 23; *Lyles*, 332 Ill. App. 3d at 7. Therefore, the State's contention rests on the assumption that 4023 West Fifth Avenue was also a multi-unit apartment building and that the area searched was accessible to others. As we have

already explained in detail, however, the evidence at the suppression hearing established that the building was a family home. Accordingly, *Carodine* and *Lyles* do not apply, and the State cannot rely on them to excuse the officer's warrantless search. See *Martin*, 2017 IL App (1st) 143225, ¶¶ 38-38 (declining to apply the good-faith exception to the officer's conduct in searching the interior area above the outer building door where the evidence at the suppression hearing established that the multi-unit building was being used as a single-family home); *People v. Bravo*, 2015 IL App (1st) 130145, ¶ 20 (good-faith exception did not apply where prosecutor did not present evidence that would excuse conduct based on alleged precedent).

¶ 70 With no basis for avoiding the exclusionary rule, we find that the evidence in this case should have been suppressed. Moreover, without the suppressed evidence of the narcotics, the State cannot prove that the defendant possessed the narcotics and his conviction must be reversed outright. See *People v. Sims*, 2014 IL App (1st) 121306, ¶ 19; *People v. Rhinehart*, 2011 IL App (1st) 100683, ¶ 20.

¶ 71 For the aforementioned reasons, we reverse the judgment of the circuit court.

¶ 72 Reversed.