**WISCONSIN SUPREME COURT**
**THURSDAY, OCTOBER 2, 2014**
**1:30 p.m.**

*This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a Milwaukee County Circuit Court decision, Judge David L. Borowski, presiding.*

2011AP2956-CR State v. Scull

The general issue in this case is whether the trial court erred in denying defendant Gary Monroe Scull's motion to suppress evidence found by police after they brought a drug-sniffing dog to the front door of his residence without a warrant or probable cause.

More specifically, the Wisconsin Supreme Court examines whether the good faith exception to the exclusionary rule applies because the police obtained a search warrant in good faith –although based, in part, on the prior illegal search with the drug dog.

The Wisconsin Supreme Court considers the case in light of a U.S. Supreme Court decision reached after the trial court denied Scull's motion to suppress, and after Scull filed his notice of appeal. The U.S. Supreme Court ruled that "[t]he government's use of trained police dogs to investigate the home and its immediate surroundings is a 'search' within the meaning of the Fourth Amendment." *See* Florida v. Jardines, 569 U.S. ___, 133 S. Ct. 1409, 1417-18 (March 26, 2013). Thus, under Jardines, the police undisputedly violated Scull's Fourth Amendment rights when they brought a drug-sniffing dog to the front door of his residence without a warrant or probable cause. However, at the time the court commissioner signed the search warrant in this case, there was no Wisconsin or U.S. Supreme Court precedent directly addressing whether a drug sniff outside a defendant's residence was a Fourth Amendment search.

Some background: In the summer of 2010, police followed up on a confidential informant's tip that Scull was distributing cocaine base in the city of Milwaukee. Relying on the information from the confidential informant about Scull's vehicle and home address, a police detective took a trained drug-sniffing dog to Scull's residence. The dog alerted. Based on information from the informant and the dog's alert, police applied for and obtained a search warrant for Scull's residence, where police found drugs and drug-trafficking paraphernalia.

After seeking unsuccessfully to suppress evidence, Scull pled guilty to one count of possession with intent to deliver more than 40 grams of cocaine and to one count of keeping a drug house. The trial court sentenced him to 11 years of imprisonment on the two counts.

Scull appealed, unsuccessfully. Because the parties agreed that, under Jardines, the search warrant for Scull's home was invalid, the only question for the Court of Appeals was whether the subsequently discovered drug evidence was admissible through the good faith exception to the exclusionary rule. The Court of Appeals noted that, under the good faith exception, the exclusionary rule does not apply when the officers conducting an illegal search acted in the objectively reasonable belief that their conduct did not violate the Fourth Amendment. The Court of Appeals ruled that the good faith exception to the exclusionary rule applies because: (1) the process used in obtaining the search warrant included a significant investigation and a review by

a knowledgeable government attorney; and (2) prior to Jardines, dog-sniff searches of the type presented in this case had been held lawful in many jurisdictions.

Scull contends that the only piece of evidence in the search warrant affidavit linking drugs to Scull's home was the alert from the drug-sniffing dog – a dog which, per Jardines, was sniffing around on Scull's property unconstitutionally.