



## LEGAL UPDATE

### DRIVEWAY WAS NOT WITHIN CURTILAGE OF HOME

Commonwealth v. Wittey, 492 Mass. 161 (2023).

#### RELEVANT FACTS

The victim's body was discovered by a friend in his home on the morning of February 9, 2016. Officers on scene noticed tire impressions that were preserved in the newly fallen snow under one of the cars in the driveway. The tire tread impressions were photographed by police.

The investigation led officers to the defendant. A State trooper went to the defendant's home to speak to him. There was a Toyota Yaris and a Toyota Sienna in the driveway.

"The defendant's residence is set back from a long driveway. A visitor approaching the front door of the home would have to walk up the driveway to get there, traveling along a walkway toward the front steps leading up to the main entrance to the home. From the street, there was an unobstructed view of the Sienna; there was no gate around the driveway, no fence around the property, and no 'no trespassing' signs posted around the property."

The trooper got within five to ten feet of the vehicles when he walked to the front door of the home. Police spoke to the defendant in his home and he agreed to go to the police station. Another State trooper responded to the defendant's home later that day to speak to a witness and to observe the Sienna. The trooper pulled into the driveway and saw the Sienna and the Yaris. Both cars were parked toward the end of the driveway closest to the house.

The trooper looked at the Sienna's tires and noticed unique rain channels on the tread pattern which appeared similar to the tread marks left at the victim's driveway. It was dark when the

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trooper observed the tires, so they must have been illuminated; however, the trooper could not recall whether he used his flashlight. While outside the vehicle, the trooper also looked inside the Sienna and saw an open case of Beck's, a sleeping bag, and another bag. These observations were included in search warrant affidavits for the defendant's home and the Toyota Sienna.

Upon execution of the warrants, police took impressions of the Sienna's tires. Various places within the car tested positive for blood. Ballistic evidence, evidence retrieved from the GPS found in the Sienna, and evidence found in the defendant's home linked him to the death of the victim.

The defendant filed a motion to suppress and argued that the trooper's observations made of the Sienna were an unconstitutional search because the driveway was within the curtilage of the defendant's home.

#### DISCUSSION

An area will be considered to be within the home's curtilage and offered the same constitutional protections as the home if it is "so intimately tied to the home itself" that it should be treated as part of the home. There is no bright line rule with respect to what constitutes the curtilage of a home. Each case must be determined based upon its own facts and circumstances.

United States v. Dunn, 480 U.S. 294 (1987) set forth four factors the court can consider when determining 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
4. the steps taken by the resident to protect the area from observation.

A driveway is a semiprivate area. A possessor's reasonable expectation of privacy in a driveway will generally depend on the nature of activities that occur on the driveway and whether it is visible from the street.

The defendant's home was set back from a long driveway. Both the home and driveway are flanked by trees, as the home is in a wooded area. Despite the area, the Sienna was visible from the street. There was no gate or fence around the driveway. There was a two-car garage attached to the home; however, the Sienna was parked in the driveway within five to ten feet of the walkway that visitors used to access the front door.

Based upon the facts of this case, the court found that the driveway was not within the curtilage of the home. Therefore, the observations the trooper made of the tire treads and inside the vehicle were not the result of a search. The court also found that the fact that the trooper may have used a flashlight to illuminate the area did not transform his actions into a search.

The motion to suppress was properly denied.

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