

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

RYAN AUSTIN COLLINS,)
)
) Petitioner,)
)
) v.) No. 16-1027
)
) VIRGINIA,)
)
) Respondent.)
)

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P R O C E E D I N G S

(11:08 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 16-1027, Collins versus Virginia.

Mr. Fitzgerald.

ORAL ARGUMENT OF MATTHEW A. FITZGERALD

ON BEHALF OF THE PETITIONER

MR. FITZGERALD: Thank you, Mr. Chief Justice, and may it please the Court:

The warrant requirement for the home and curtilage cannot be overthrown by the automobile exception.

Under the Commonwealth's argument, on probable cause alone, an officer may search a vehicle anywhere that he finds it and may go anywhere that he needs to in order to access that vehicle.

That rule cannot survive foundational Fourth Amendment principles. Searches of the home and curtilage without a warrant are presumptively unreasonable, as this Court has often recognized.

So the rule we ask this Court to adopt is that the automobile exception does not apply

1 to a vehicle found in the curtilage of the
2 home.

3 JUSTICE GINSBURG: Suppose the -- the
4 police have probable cause to believe that the
5 vehicle is stolen and they even get a warrant
6 to inspect the vehicle. But the vehicle is
7 parked in this port.

8 Do they need -- do they need a warrant
9 to go get the car for which they have a
10 warrant?

11 MR. FITZGERALD: Well, Your Honor, the
12 -- the warrant would specify the place to be
13 searched for the car. And so, commonly, a
14 warrant would say, for instance, the dwelling
15 and curtilage to look for this motorcycle. So
16 the warrant that authorizes the search of the
17 motorcycle would, by its terms, authorize the
18 intrusion into the curtilage to look for --

19 JUSTICE ALITO: But what if it didn't?
20 So they have a warrant here, let's say, to
21 search for -- they have probable cause to
22 search this thing covered by a -- a tarp. They
23 have a warrant to search this motorcycle
24 because it's been involved in criminal
25 activity. They want to get the vehicle

1 identification number from it. And they see
2 it. Let's say it's parked two feet from the
3 curb. But arguably -- or it's parked where it
4 is here, maybe in the curtilage, maybe not in
5 the curtilage.

6 The -- that warrant would be
7 insufficient?

8 MR. FITZGERALD: Well, Your Honor, the
9 Fourth Amendment, by its terms, requires a
10 warrant to specify the place to be searched.
11 So if they've seen the motorcycle in that spot
12 and they get a warrant, the warrant would say
13 this house on Dellmead Avenue, may have
14 included the picture, and it would, by its
15 terms, authorize the access to that.

16 JUSTICE ALITO: And this is my
17 question about your argument based on the
18 curtilage. We -- we ask whether a search
19 within or outside the curtilage in order to
20 determine whether the Fourth Amendment applies
21 at all.

22 But that's not really the question
23 here because there is probable cause, and there
24 is the motor vehicle exception to the warrant
25 requirement. So the issue is not whether there

1 was a search. Yes, there was a search. And,
2 yes, you know, if it -- if it was the
3 curtilage, then there was -- there -- there was
4 an intrusion on the protected area.

5 But the warrant -- the motor vehicle
6 exception to the warrant requirement, I take
7 it, is based on two things. One is the -- the
8 risk that the vehicle is going to be moved
9 during the time when the warrant is sought and,
10 second, is a consideration on the other side of
11 the risk that if there's not a warrant, the
12 police will be wrong about probable cause and
13 the degree of intrusion on property, on
14 legitimate property interests that occur in
15 that situation.

16 It's a balancing. It's not a
17 consideration of whether it's on the curtilage
18 or not. And it's hard to see why the balance
19 is any different here than it would be if this
20 motorcycle had been parked on the street. The
21 -- the risk that it will be moved seems to be
22 almost exactly the same. And what -- what is
23 the additional invasion of privacy? The
24 invasion of privacy that's involved in walking
25 a few feet up a driveway, and the home is not

1 even Mr. Byrd's home. Why does the balance
2 come out different here?

3 MR. FITZGERALD: Well, Your Honor, so
4 here's -- here's the way that I think about
5 that: If you're looking at the terms that
6 support the automobile exception, you have
7 ready mobility and you have the lessened
8 expectation of privacy.

9 But the curtilage and the home are
10 essentially more important concerns than that.
11 So, for instance, if I had a fistful of cocaine
12 and I'm out in public, cocaine is extremely
13 readily mobile. There's nothing that is easier
14 to dispose of than a fistful of cocaine. If
15 I've got a sink, it can be gone in seconds. So
16 it's extremely readily mobile. Nor in the
17 cocaine itself is there any expectation of
18 privacy. It's illegal to possess it already.

19 But if I'm standing in, say, my living
20 room or in my garage with a fistful of cocaine,
21 the Court would require a warrant for the
22 police to come to that address and look for
23 that and get me. So --

24 JUSTICE ALITO: Yeah -- no, I think
25 the privacy interests would be quite different

1 if this was in the house or if it was in the
2 garage, but this is not in either of those
3 places. It's in a spot that's visible from the
4 street, right?

5 MR. FITZGERALD: It's visible from the
6 street from directly at the end of the
7 driveway, yes, Your Honor. It -- it is
8 obscured from any distance in either direction
9 by the brick walls that surround where this
10 motorcycle was on three sides, one side being
11 the house.

12 So the motorcycle here is five feet
13 from the side of the house. And -- and to the
14 extent that curtilage is at issue, curtilage
15 has been waived by the Commonwealth by not
16 arguing it below. And this is a clear case for
17 curtilage, given the distance from the house.
18 So --

19 JUSTICE SOTOMAYOR: How much does your
20 argument depend on us viewing this as two
21 things: One, a trespass on private property,
22 the curtilage, and then a search within that
23 private space?

24 Is your argument hinged on that
25 distinction?

1 MR. FITZGERALD: Well, I think we make
2 that distinction because it's important just to
3 make sense of the Fourth Amendment to think
4 about it step-by-step. And there are two
5 searches here.

6 The first is the intrusion into the
7 curtilage under Jardines, which is clearly a
8 search outside of any implied license, and the
9 second is the removal of the cover from the
10 motorcycle, which is similar to opening a
11 container to find a vehicle inside or perhaps
12 opening the door to a car or removing a cover
13 from a car.

14 JUSTICE ALITO: So if this motorcycle
15 were parked on the street and it was covered by
16 a tarp, you would say that the motor vehicle
17 exception doesn't apply because it's covered by
18 a tarp?

19 MR. FITZGERALD: No, Your Honor. If
20 it were parked on the street, then the
21 automobile exception would apply.

22 JUSTICE ALITO: So what's the
23 relevance of the tarp?

24 MR. FITZGERALD: The relevance of the
25 tarp is essentially that there is a -- there is

1 some expectation of privacy in a tarp,
2 particularly placed within the curtilage of the
3 home. So the location of the motorcycle is
4 very important here.

5 JUSTICE SOTOMAYOR: So what difference
6 does it make that the tarp was there?

7 MR. FITZGERALD: The tarp perhaps
8 makes it particularly clear that the officer
9 was undergoing a search, not just, say, walking
10 where he could have said, oh, this is almost on
11 the way --

12 JUSTICE SOTOMAYOR: Counsel, let's
13 change the hypothetical. Is there still a
14 violation under your theory of law if the
15 motorcycle was in plain view in the curtilage
16 and he just walked on to the curtilage and what
17 -- I don't know where the VIN is on the
18 motorcycle, by the way. I don't -- you know,
19 in a car, it's within the car, not outside the
20 car, so you --

21 MR. FITZGERALD: Right.

22 JUSTICE SOTOMAYOR: -- have to open
23 the car door. But let's assume that you have
24 to move something on the motorcycle. I don't
25 know. Do you?

1 MR. FITZGERALD: I don't think you
2 would have to move something on the motorcycle.
3 And so --

4 JUSTICE SOTOMAYOR: Let's just assume
5 that. No -- no top on it.

6 MR. FITZGERALD: So if there --

7 JUSTICE SOTOMAYOR: Does your argument
8 still stand?

9 MR. FITZGERALD: Yes, Your Honor. So
10 if the motorcycle is where the motorcycle is in
11 this case but there is no cover on it, there is
12 a Fourth Amendment violation, and that is --

13 JUSTICE BREYER: Well, why? Because,
14 I mean, suppose the policeman is standing on
15 the sidewalk. He -- the window of the house is
16 quite close, and there inside he sees a huge
17 pile of cocaine. Okay?

18 I thought, but perhaps I've got it
19 mixed up, I thought that seeing something that
20 is an illegal substance that can be easily
21 disposed of in about three seconds would, in
22 fact, justify, create an exigent circumstance
23 under which the policeman could enter? Am I
24 wrong about that?

25 MR. FITZGERALD: Close, Your Honor.

1 So if --

2 JUSTICE BREYER: What is the law
3 there?

4 MR. FITZGERALD: If an officer
5 standing on the sidewalk looks into the window
6 of a house and sees a pile of drugs through the
7 window --

8 JUSTICE BREYER: Yeah.

9 MR. FITZGERALD: -- that creates
10 probable cause that would permit the officer to
11 get a warrant to go into the house.

12 JUSTICE BREYER: Well, so he goes,
13 gets a warrant, and they throw it all down the
14 sink --

15 MR. FITZGERALD: Well, this --

16 JUSTICE BREYER: -- and, of course,
17 there is nothing by the time he comes back. I
18 mean, I thought that was an example of an
19 exigent circumstance --

20 MR. FITZGERALD: If --

21 JUSTICE BREYER: -- but you know the
22 area of this law better than I do, I -- I
23 guess, and that isn't so.

24 MR. FITZGERALD: So it's not
25 impossible that there would be an exigent

1 circumstance there.

2 JUSTICE BREYER: Well, no, I've given
3 you the facts. The facts are there's a big
4 pile of cocaine right there and there's
5 somebody wandering around inside.

6 And -- and can't he -- I don't know,
7 what is an exigent circumstance if it isn't
8 that?

9 MR. FITZGERALD: It's -- it's
10 particularly important to that hypothetical
11 that there's someone wandering around inside --

12 JUSTICE BREYER: Okay. Fine. Fine.

13 MR. FITZGERALD: -- because the
14 introduction of the person is important --

15 JUSTICE BREYER: He has reason to
16 think there's somebody in the house.

17 MR. FITZGERALD: Right. So it's
18 certainly possible that --

19 JUSTICE BREYER: Or no --

20 MR. FITZGERALD: -- an exigency could
21 be created, if there's a person who's wandering
22 --

23 JUSTICE BREYER: All right. So that
24 -- yeah, if that's an exigent circumstance, and
25 you happen to see -- now changing the situation

1 -- you happen to see a motorcycle which is a
2 rather unusual shape and happens to look
3 identically like the one that you know was just
4 stolen, you can't go and -- go look at it? You
5 have to get a warrant? Of course, they drive
6 away in the meantime, but, nonetheless, you --
7 you're there by yourself, no other policemen.
8 It's in the window, okay, just like the
9 cocaine, or it's in the driveway. Why can't
10 you?

11 MR. FITZGERALD: So just to be clear,
12 in this case, the Supreme Court of Virginia
13 steered away from exigency and said, no, we're
14 not going --

15 JUSTICE BREYER: I know that. That's
16 why I thought the tarp made a difference. And
17 that's why I thought this was a case about a
18 tarp, oddly enough, and not a case about
19 whether you have an exigent circumstance.

20 MR. FITZGERALD: It -- it is not a
21 case about exigent circumstance.

22 JUSTICE BREYER: But you just told me
23 I'm wrong.

24 MR. FITZGERALD: This is not an
25 exigency case. And the Supreme Court of

1 Virginia specifically said that.

2 JUSTICE BREYER: No, no, I know that.
3 What I'm trying to get at is I suddenly
4 thought: I don't understand this case because
5 you said the circumstance is the same without a
6 tarp. That's what confused me.

7 MR. FITZGERALD: So the --

8 JUSTICE BREYER: That's why I asked
9 the question.

10 MR. FITZGERALD: So the officer
11 testified that when he arrived at the property,
12 there was no one home. And the exigency, the
13 relevant exigency, were there one here, would
14 be imminent destruction of evidence.

15 And he testified that no one was
16 there. The motorcycle is under a tarp. He has
17 a picture or a cover -- he has a picture of the
18 motorcycle in exactly the same place from
19 Facebook, which he knows -- which he must know
20 was taken at least a few hours earlier because
21 he's been with the person who he believes owns
22 the motorcycle in the meantime.

23 So there's no obvious exigency here so
24 much --

25 JUSTICE KAGAN: Mr. Fitzgerald -- I'm

1 sorry, did you --

2 MR. FITZGERALD: There -- there's no
3 obvious exigency here and that would be an
4 issue for remand in this case.

5 JUSTICE KAGAN: Can I go back to the
6 exchange that you had with Justice Alito? When
7 you gave your hypothetical about the drugs and
8 he said, well, that would be different, it
9 would be -- it's very different in a home, but
10 here you have the motorcycle parked out in the
11 open, on the driveway in this enclosure, where
12 you can see it from the street.

13 And I guess this is the question I
14 want to ask you. If -- if there is that
15 difference, like in a home you better have a
16 warrant. But here it's out on the street but
17 in the curtilage, in the curtilage, and that's
18 established.

19 MR. FITZGERALD: Yes.

20 JUSTICE KAGAN: You know, it's not --
21 it's not disputed here. How far are we
22 committed by Jardines to treat the curtilage
23 exactly as we would the home? That seems to me
24 to be important given the, I think, the -- the
25 things that you and Justice Alito agreed on.

1 So how far do we say: Look, what
2 Jardines said or what we've said in other cases
3 is we have to treat the curtilage exactly as we
4 would the home, even though you can actually
5 see the motorcycle on the curtilage.

6 MR. FITZGERALD: Yes, Your Honor. So,
7 in Jardines, the Court said "the curtilage is
8 protected as part of the home itself for Fourth
9 Amendment purposes."

10 And -- and even though the Court in
11 Jardines -- and at the time, the Court was
12 quoting Oliver, the 1984 case that recognized
13 open fields and said the same thing.

14 And the idea that curtilage is
15 protected as part of the home itself is -- is
16 important, and I think --

17 JUSTICE GINSBURG: Isn't it a problem
18 --

19 JUSTICE ALITO: But the --

20 JUSTICE GINSBURG: -- whose -- whose
21 curtilage it is? Here we're told that there
22 was a close relationship between the defendant
23 and the homeowner. But suppose there weren't
24 that close relationship. Suppose it was a
25 brand new girlfriend and he never stayed

1 overnight, he was hopeful, but he hadn't.

2 (Laughter.)

3 JUSTICE GINSBURG: And it's the same
4 -- parked the same way.

5 MR. FITZGERALD: So -- so you may,
6 Your Honor, be -- it sounds like you are
7 describing a difficult case of Fourth Amendment
8 standing or right to object. This Court has
9 very clearly said in Minnesota versus Olson
10 that the overnight guest has the right to
11 object. And that's the status in this case at
12 minimum. I mean, really it's his family. It's
13 the mother of his child, his child who lives
14 there and she is the lessee. He spends several
15 nights a week there.

16 On the other end of the spectrum,
17 Minnesota versus Carter, being in a place for a
18 couple of hours just to do business would not
19 create a right to object. So to the extent
20 that connection to the property -- connection
21 to the curtilage would be treated the same way
22 as connection to the house.

23 JUSTICE ALITO: Did -- coming back to
24 Justice -- to the -- to the question, did we
25 say in Jardines that the curtilage is to be

1 treated the same as the house for all Fourth
2 Amendment purposes? I thought the issue in
3 Jardines was whether -- was whether officers
4 who did not have probable cause were permitted
5 to walk up to the front of the house, at which
6 point they acquired probable cause.

7 MR. FITZGERALD: Well, yes, Your
8 Honor. So Jardines identified a search and it
9 identified a search of the home based on
10 actions taken exclusively in the curtilage of
11 the home. And it -- the majority essentially
12 said, as I read it, that the officers acted
13 beyond the scope of the implied license when
14 they brought a drug dog and they spent a few
15 minutes in the curtilage sniffing around.
16 That's not what there would be an implied
17 license to do, which essentially is just a
18 knock and talk.

19 And so it's a search of the curtilage.
20 And the Court stopped there, this Court stopped
21 there, but, of course, it was affirming the
22 Florida Supreme Court, which had thrown out the
23 search for lack of a warrant based on the
24 protection of the curtilage.

25 JUSTICE SOTOMAYOR: Counsel, we permit

1 the police to seize items in plain view in a
2 home. They get a search warrant for the home.
3 They see an item that they have probable cause
4 to believe is incriminating evidence. They can
5 seize it.

6 Justice Breyer said exigent
7 circumstances permit the police to seize items.
8 I think the assumption -- or not the assumption
9 -- the premise of all of those cases is that
10 the police are there legitimately. If you have
11 a warrant, you are permitted to be there.

12 In Jardines, you could -- couldn't
13 seize the incriminating evidence wafting from
14 the house because you didn't have a right to be
15 in the curtilage.

16 And so isn't there a difference when
17 you are in the street, as these police officers
18 were, they have a right to be on the street,
19 they have a right to look at whatever is
20 visible, and they could see the motorcycle from
21 there? So is this a plain view case? Is this
22 a exigent circumstance case?

23 I -- that's why I thought that Justice
24 Breyer was asking whether the search of the
25 tarp was part of this because was this in plain

1 view, in essence? As -- as I understood it,
2 they weren't sure it was the same motorcycle.
3 They thought the wheel was the same, but I'm
4 not sure why they -- they needed that if they
5 knew the motorcycle was stolen, or did they not
6 know yet that it was stolen? I don't remember
7 now.

8 MR. FITZGERALD: The -- the record is
9 unclear. And we would not -- we -- we don't
10 believe that the officer thought the motorcycle
11 was stolen. He was looking for the motorcycle
12 that he had --

13 JUSTICE SOTOMAYOR: But how do you --

14 MR. FITZGERALD: -- but -- but it's --

15 JUSTICE SOTOMAYOR: -- address the way
16 I'm looking at this, which is --

17 MR. FITZGERALD: It's --

18 JUSTICE SOTOMAYOR: -- the police are
19 standing there, they see something and have
20 probable cause to believe that it's
21 incriminating evidence. How is that different
22 than being inside the home with a warrant?

23 And -- and, again, does -- I'm not
24 sure I see the difference, although the tarp is
25 a difference because they are lifting --

1 they're searching something else besides the
2 motorcycle.

3 MR. FITZGERALD: So, Your Honor, this
4 is not a plain view case, because in Horton
5 versus California, the Court said, in order for
6 plain view to apply to allow the seizure of the
7 thing, the officer must have a right of access
8 to the thing itself.

9 So there's no right of access.
10 There's no implied license to go into the
11 curtilage to look for evidence that you have
12 seen. And so seeing the motorcycle from the
13 street in this case is just like seeing the
14 motorcycle or seeing drugs through the window
15 of a house.

16 JUSTICE ALITO: Do you dispute the
17 fact that they had probable cause to believe
18 that the thing that they saw covered by the
19 tarp was the motorcycle they were looking for?

20 MR. FITZGERALD: We do not dispute
21 that.

22 JUSTICE ALITO: Okay.

23 MR. FITZGERALD: And so, ultimately,
24 here this is a fairly straightforward case, I
25 think. There -- the motorcycle is five feet --

1 JUSTICE BREYER: But you -- you don't
2 dispute -- in other words, you -- in your view,
3 you agree that the policeman standing on the
4 sidewalk knows that that item covered by -- or
5 at least has probable cause to it -- covered by
6 the tarp is the possibly stolen motorcycle?
7 You agree with that?

8 MR. FITZGERALD: He -- he has probable
9 cause to believe that is the motorcycle that
10 eluded him in traffic, that he was looking for.
11 Of course, there could be other things under
12 the tarp as well as the motorcycle.

13 JUSTICE BREYER: So he didn't really
14 have to lift the tarp at all?

15 MR. FITZGERALD: Well, he wanted to
16 lift the tarp to be sure.

17 JUSTICE BREYER: So that's his
18 decision; he didn't have to. I mean, in -- in
19 your view, he could have just grabbed the whole
20 thing, tarp and all, if he'd had access?

21 MR. FITZGERALD: Well, he didn't have
22 access. And I think it would be --

23 JUSTICE BREYER: No, I know that, but
24 I'm saying if he'd had access to it. If they'd
25 said please come to my curtilage. All right?

1 (Laughter.)

2 JUSTICE BREYER: Now, if that had
3 given him access, he could have just grabbed
4 the whole thing, tarp and all. Is your view --
5 I'm just saying do you agree -- you -- I
6 thought from what you just said -- I -- I was
7 surprised, but I thought that now you do agree
8 that that is the case. He could just grab the
9 whole thing.

10 MR. FITZGERALD: Well --

11 JUSTICE BREYER: Do you agree with
12 that or don't you agree with that?

13 MR. FITZGERALD: No, Your Honor. So
14 he is --

15 JUSTICE BREYER: You don't agree with
16 that? Okay. Okay.

17 MR. FITZGERALD: He is investigating
18 the -- the crime of eluding him in traffic.
19 Ultimately, that is a crime committed by the
20 driver.

21 JUSTICE GINSBURG: Which is different
22 from a stolen vehicle. I think we've gotten a
23 little confused about that. The police were
24 looking for him because he eluded them by
25 speeding away.

1 The evidence of the theft comes when
2 they see the -- the number after they lift the
3 tarp.

4 MR. FITZGERALD: Yes, Your Honor. And
5 now, there is some disagreement in the record
6 about that, but the officer testified he went
7 to the house solely to look for the motorcycle
8 that had eluded him. He was asked was the
9 motorcycle -- did you think the motorcycle was
10 contraband? And he said no. So he was looking
11 into the eluding, and when he ran the VIN
12 number, he found that it was stolen.

13 JUSTICE SOTOMAYOR: Ahh, so --

14 CHIEF JUSTICE ROBERTS: So --

15 JUSTICE SOTOMAYOR: -- he didn't know
16 this was stolen property yet? The VIN number
17 gave -- this is like Jardines. The VIN number
18 gave him that information?

19 MR. FITZGERALD: That is what he
20 stated, yes.

21 JUSTICE ALITO: No, it's not like
22 Jardines --

23 CHIEF JUSTICE ROBERTS: But you could
24 see under -- you could see under the tarp,
25 right, some identifying characteristics in the

1 extension of the wheel that allowed it to go
2 140 miles an hour and the color scheme and all
3 that?

4 MR. FITZGERALD: Well, you couldn't --
5 you couldn't see the color scheme, but you
6 could see the -- the basis for the probable
7 cause is he has the Facebook picture that
8 shows --

9 CHIEF JUSTICE ROBERTS: Yeah. Okay.

10 MR. FITZGERALD: -- the motorcycle not
11 under a tarp. And then he gets to the house,
12 and it's under a cover, but it's in the same
13 spot, it's the same ID. The extension of the
14 wheel is a matter of interest.

15 CHIEF JUSTICE ROBERTS: This would be
16 --

17 JUSTICE SOTOMAYOR: But it's probable
18 cause to arrest the driver. It's not probable
19 cause to arrest the motorcycle. It's the
20 driver that he was --

21 MR. FITZGERALD: So --

22 JUSTICE SOTOMAYOR: -- charging with
23 elusive driving or whatever, dangerous driving.

24 MR. FITZGERALD: It is a police
25 investigation in which he's ultimately trying

1 to find the driver, first by verifying that
2 he's found the motorcycle.

3 CHIEF JUSTICE ROBERTS: You can't --
4 you can't seize -- on this basis of the same
5 probable cause, you can't seize the motorcycle,
6 putting aside the curtilage question? You have
7 probable cause to believe that this person was
8 driving that type of motorcycle.

9 I -- it's an honest question. I don't
10 know the answer. Don't you have probable cause
11 to then seize the instrumentality of the crime?

12 MR. FITZGERALD: I think that you do,
13 Your Honor, but the curtilage -- it's --

14 CHIEF JUSTICE ROBERTS: No, I know the
15 curtilage --

16 MR. FITZGERALD: I guess we can't
17 really set that aside, but -- but --

18 CHIEF JUSTICE ROBERTS: Yes, but maybe
19 -- and maybe this is the same question Justice
20 Breyer was asking, but let's say the motorcycle
21 was on the -- covered with a tarp on the side
22 -- not the sidewalk, the little path to go to
23 the door, in other words, a place where he did
24 have a license to go, right? He said I'm just
25 going to go knock and talk. And it's right

1 there. Would he have --

2 MR. FITZGERALD: No.

3 CHIEF JUSTICE ROBERTS: Would he -- he
4 couldn't seize that, even with probable cause?

5 MR. FITZGERALD: No, that -- that is
6 outside the implied license of his ability to
7 go and knock and talk at the door of that
8 residence, Your Honor. So he can't -- he can't
9 stop to perform additional searches or
10 seizures along the way.

11 CHIEF JUSTICE ROBERTS: It's not an
12 additional search. In other words, you have a
13 license to go to the door and knock, but you
14 can't look at anything in the way. You -- you
15 sort of have to block it off.

16 MR. FITZGERALD: No, you have -- you
17 have the right to use your eyes, but you don't
18 have the right to go beyond what a reasonably
19 respectful person approaching the door would
20 do. And stopping to examine or seize a
21 motorcycle would be outside of that implied
22 license.

23 Now, of course, here the motorcycle is
24 not even on the path to the front door. He's
25 not going to the front door. He testified he

1 was not knocking and talking. He walked up
2 solely to take the cover off to see if this was
3 the motorcycle that he had probable cause to
4 think that it was.

5 JUSTICE ALITO: He had probable cause
6 -- you -- I thought you admitted he had
7 probable cause to believe that the thing
8 covered by the tarp was the motorcycle that he
9 -- had eluded him by driving 140 miles an hour.

10 MR. FITZGERALD: Yes.

11 JUSTICE ALITO: Right?

12 MR. FITZGERALD: Yes.

13 JUSTICE ALITO: So he has probable
14 cause to search that motorcycle, to find the --
15 the vehicle identification number, which will
16 tell him the owner of the motorcycle, which
17 will help him arrest the person who committed
18 this crime, right?

19 MR. FITZGERALD: Yes.

20 JUSTICE ALITO: So the case comes down
21 to this: If the motorcycle were parked on the
22 street or maybe further down the driveway, and,
23 therefore, not in the curtilage, they wouldn't
24 need a warrant. They could search it. But
25 because it was parked a few feet further away,

1 although in a spot that's visible from the
2 street, they could search it in the first
3 instance because of the risk that the
4 motorcycle will be taken away, but in the
5 second instance, moved a few feet further up
6 the driveway, still visible from the street,
7 can't be -- they can't search it because of the
8 additional invasion of privacy that is involved
9 in walking those few feet up the driveway?

10 MR. FITZGERALD: Yes, Your Honor --

11 JUSTICE ALITO: That's what the case
12 comes down to?

13 MR. FITZGERALD: Yes. The protections
14 of the -- the curtilage of the home, which the
15 curtilage, again, is protected as part of the
16 home itself. And for good reason.

17 Officers are prevented from going into
18 the curtilage of a home to prevent them from
19 being, say, in the backyard where there might
20 be a parking area where people are parking, to
21 avoid them -- keep them from going into garages
22 and things like that. The curtilage --

23 JUSTICE KENNEDY: Did the police have
24 an interest in seizing or securing this
25 motorcycle as soon as possible?

1 MR. FITZGERALD: No, Your Honor.
2 There -- there's no exigent circumstance in
3 this case.

4 JUSTICE KENNEDY: The police could
5 leave it sit there for a couple days and just
6 get around to it? Isn't this a -- A, a
7 dangerous item and it was used for a dangerous
8 purpose; and it's the instrumentality and
9 evidence of a crime?

10 MR. FITZGERALD: Your Honor, it's
11 exactly the same --

12 JUSTICE KENNEDY: And it's movable?

13 MR. FITZGERALD: It's exactly the same
14 as if he had seen something readily movable
15 like drugs through the window of a house. He
16 would have to get a warrant for that. And it's
17 the same here.

18 And there -- there are 49 other states
19 and the federal government. The federal
20 government has just been here and said the home
21 is the core of the Fourth Amendment.

22 JUSTICE KENNEDY: It's the same as if
23 the car was --

24 MR. FITZGERALD: No other state is
25 saying this would be --

1 JUSTICE KENNEDY: -- it's the same as
2 if the car -- there were a car but the car were
3 under repair, all the tires were off the car
4 and the hood was up and the engine was taken
5 out? The same, no difference?

6 MR. FITZGERALD: Well, Your Honor,
7 this Court has not -- you know, readily mobile
8 can include a car that's wrecked. I mean, at
9 some point, maybe it becomes, but readily
10 mobile is not something that's examined on a
11 case-by-case basis for a vehicle.

12 JUSTICE KENNEDY: So you think that's
13 irrelevant, its mobility and its -- and its --
14 the ease of moving it is irrelevant to this
15 case? That's what you want us to say?

16 MR. FITZGERALD: It is -- it is not
17 any more readily mobile than things that
18 require a warrant, such as illegal drugs.

19 JUSTICE KENNEDY: You want to say that
20 mobility is irrelevant to this case?

21 MR. FITZGERALD: Yes, I will say that.
22 If I may reserve the balance of my
23 time.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Mr. Cox.

2 ORAL ARGUMENT OF TREVOR S. COX

3 ON BEHALF OF THE RESPONDENT

4 MR. COX: Mr. Chief Justice, and may
5 it please the Court:

6 Officer Rhodes's search of the
7 motorcycle should be upheld for three reasons.
8 First, the search occurred outside the firm,
9 bright-line of the house where the
10 justifications for the automobile exception
11 fully apply.

12 Second, Officer Rhodes had probable
13 cause before he ever stepped foot on the
14 driveway.

15 JUSTICE SOTOMAYOR: In your brief, you
16 seem to say that you're not -- you don't seem
17 to say -- you say you're not taking a position
18 on whether an officer can break into a garage
19 or walk into a garage that's closed but not
20 locked.

21 So you -- you seem to be suggesting
22 that the mobility of the automobile, wherever
23 it is, permits the police to enter. Is that --
24 by force or without force.

25 MR. COX: This -- this Court has never

1 said that the mobility changes depending on
2 where it is. To resolve this case --

3 JUSTICE SOTOMAYOR: Is that a yes to
4 my question? Are you -- are -- because that
5 seemed to be what the Virginia -- what the
6 court below is saying, which is the -- where
7 the item is located is irrelevant. If it's an
8 automobile, whether in a garage or the
9 motorcycle parked inside the living room --
10 some people park their bikes inside,
11 actually -- doesn't matter where it is, that
12 that gives the police the right to enter and
13 search.

14 MR. COX: The Supreme Court of
15 Virginia did not impose that restriction. And
16 this Court has never done that either.

17 We think that it would make sense if
18 the Court were to draw a line here, although
19 it's not necessary. If it were to draw a line,
20 it would make sense to draw it at the firm --

21 JUSTICE SOTOMAYOR: Well, you're
22 saying it's not necessary because the facts
23 don't support it, but does the logic of their
24 holding and your position require that outcome?
25 What -- what -- how do we -- and do we

1 basically say, contrary to our rule, that the
2 curtilage is not part of your home? We know it
3 is. That's what we've said in case after case.

4 So we -- do we say now the curtilage
5 is not part of the home for purposes of
6 automobiles? And then how do I fit in the
7 line?

8 MR. COX: Sure. There are a couple
9 things baked in, and let me try to answer them
10 in turn.

11 JUSTICE SOTOMAYOR: All right.

12 MR. COX: We don't -- we don't read
13 Jardines and the other court cases like Oliver
14 as saying that the curtilage and the home
15 should be treated the same for all purposes.
16 For determining one's reasonable expectations
17 of privacy, you might treat the curtilage and
18 the home the same. And that's what Jardines
19 seemed to suggest, but it cited to Oliver, you
20 know, one of the curtilage cases.

21 And then, in Footnote 11 of Oliver,
22 they say, we do not say that the curtilage and
23 the home should be treated the same for all
24 purposes.

25 So while it might be true for

1 determining the reasonable expectations of
2 privacy, it's not binding on -- on courts to
3 say what's reasonable and what's not, based on
4 whether it's the curtilage or the home.

5 Now, the Supreme Court of Virginia, as
6 I said, did not place a restriction on the
7 automobile exception applying in one -- one
8 place versus another because this Court
9 hasn't -- hasn't done that.

10 If the Court were to draw the line --
11 and -- and I recognize that you're trying to
12 decide a lot of cases here, not just this one
13 -- that would be a good place to do it because
14 that is the firm bright-line that the Court has
15 recognized in a lot of other cases as well.

16 JUSTICE GORSUCH: So under that rule,
17 though, police could, as I understand your
18 position, search for cars in garages, closed
19 garages, carports, anywhere on a property, no
20 matter how closely attached, or even if firmly
21 attached to the house?

22 MR. COX: No, not everywhere on -- on
23 the premises, Your Honor. A -- the garage --

24 JUSTICE GORSUCH: Not in the house but
25 on the curtilage.

1 MR. COX: Not in a house, but a garage
2 is often considered part of the house.

3 JUSTICE GORSUCH: Okay. But if we say
4 that's curtilage, which a lot of cases in the
5 past, at least, have suggested, and we deem a
6 barn, a garage, curtilage, then the police can
7 without a warrant search for a car there under
8 your rule, right?

9 MR. COX: If it's not part of the
10 dwelling. If it is part of the dwelling, then,
11 no, they could not search it.

12 JUSTICE GORSUCH: Not many people live
13 in their garage. Some people do, some people
14 do, and in barns, but usually they're reserved
15 for cars and for animals.

16 And you're suggesting that in those
17 places the police can search without a warrant.

18 MR. COX: Garages are commonly used --

19 JUSTICE GORSUCH: Correct?

20 MR. COX: -- Your Honor, for a lot of
21 residential purposes. They might have storage
22 out there, an extra refrigerator. Somebody
23 might be living out there, if the teenager gets
24 too rambunctious, put them out in the garage.

25 (Laughter.)

1 JUSTICE BREYER: So -- so look, I want
2 to ask you two questions, and the first is just
3 to be sure I have the basics right.

4 MR. COX: Yes.

5 JUSTICE BREYER: Okay? The basics
6 question is a weird hypothetical, but I'm using
7 a weird hypothetical for illustration.

8 The mad art burglar has just stolen
9 The Thinker, Rodin's Thinker from the local
10 museum. It weighs 2,000 pounds. And with his
11 confederates, he's put it in his new glass
12 house. And the policeman stopping on the
13 sidewalk looks in the window and sees: My God,
14 there it is, the thing he's just stolen.

15 I thought the law is that that
16 policeman cannot go into the house until he
17 gets a warrant.

18 MR. COX: Yes.

19 JUSTICE BREYER: When he should --
20 that's the law.

21 MR. COX: That's my understanding,
22 Your Honor, yes.

23 JUSTICE BREYER: He told the
24 confederates, they're not going to -- The
25 Thinker is not going to escape, it weighs 2,000

1 pounds, okay?

2 MR. COX: Unless there was some other
3 exigent circumstance to justify it --

4 JUSTICE BREYER: Okay. All right.
5 Fine.

6 MR. COX: -- but under your
7 hypothetical, I don't see any.

8 JUSTICE BREYER: Okay. So, fine.
9 Okay. Now, the other Hornbook principle is
10 it's not The Thinker, it's a wisp, a wispy bit
11 of very suspicious drug smoke.

12 (Laughter.)

13 JUSTICE BREYER: And there, if, soon
14 as the smoker, whom he sees in the window or he
15 believes he's off on the side, as soon as he
16 gets an inclination there's a policeman around,
17 I'll tell you where all that drug is going to
18 be, right down the sink, okay?

19 In that case, he doesn't need a
20 warrant, because there's exigent circumstance.
21 Is that right?

22 MR. COX: That -- that's right.

23 JUSTICE BREYER: All right.

24 MR. COX: If the destruction is
25 imminent, then it might not --

1 JUSTICE BREYER: And what we don't
2 have in this case is we do not have the exigent
3 circumstance. By definition, you all have
4 ruled that out. Is that correct?

5 MR. COX: I think you do have exigent
6 circumstances.

7 JUSTICE BREYER: Well, you might have
8 it, but that's not in front of us. That's not
9 why we took the case. That's not what this is
10 about. Right?

11 MR. COX: There is a categorical
12 exigency to automobiles.

13 JUSTICE BREYER: But now -- wait,
14 there are two differences between my example.
15 One, it's curtilage, not house. And, two, it
16 is a movable thing, like a police -- like a --
17 like a car, okay.

18 So the question is it's -- and,
19 moreover, the policeman didn't know with any
20 certainty -- he certainly suspected, maybe had
21 probable cause -- but he didn't know that's the
22 right motorcycle.

23 Now, if all those things are true
24 hypothetically, it's as if, though it's the
25 curtilage, he saw in the middle of the driveway

1 a box, and he thought inside that box there
2 might be a motorcycle or drugs or something.

3 And can he go up without a warrant and
4 without there being exigent circumstances to
5 open the box to look to see if inside there are
6 drugs or a motorcycle? I thought that was this
7 case.

8 And even though -- and I think you
9 want to say, yes, he can, if it's a motorcycle,
10 but not if it's a box.

11 MR. COX: I -- I -- I think that's --

12 JUSTICE BREYER: If it's a big box and
13 carries a motorcycle --

14 MR. COX: Right.

15 JUSTICE BREYER: -- like a tarp, you
16 can say yes -- you want to say yes, okay, and I
17 would just wonder why? Why?

18 MR. COX: Well, the court -- the court
19 has --

20 JUSTICE BREYER: I mean, it's on the
21 driveway. It's in part of his house. I know
22 that the motorcycle is movable, but there is no
23 exigent circumstance.

24 He is search -- wants to look -- look
25 into the box, open the tarp. Why? Does the

1 Fourth Amendment permit that? Okay. That's a
2 long, long question. I just needed the basics,
3 and now I've got to my point, and now I'd like
4 to hear your answer.

5 MR. COX: I'll -- I'll try to answer,
6 and I'm sure you'll correct me if I misstate
7 what the hypothetical says.

8 My understanding is that there was a
9 virtual certainty here that this was the same
10 motorcycle under the tarp. So there was not
11 any uncertainty about what was under the box,
12 as it were.

13 The Court, to the second part, the
14 Court has also treated other closed containers
15 differently than vehicles. In the Ross case,
16 in Acevedo, they have said containers are
17 different than automobiles because of the --
18 the movability of them is just far greater than
19 the movability of other items.

20 And there was a debate, there were
21 some predecessors of yours on the Court who
22 wanted to suggest that closed containers should
23 be treated the same. There were a couple
24 justices in Coolidge who thought that was the
25 case. They ended up in the dissent in Ross and

1 -- and certainly in -- in the minority in
2 Acevedo.

3 JUSTICE KAGAN: Mr. Cox, can --

4 CHIEF JUSTICE ROBERTS: I thought your
5 point was that -- that you understood on the
6 automobile exception for it to have -- include
7 a categorical exigency aspect.

8 In other words, while it's not the
9 case that you see the guy, you know, revving up
10 the motorcycle about to take off, which would
11 be an exigent circumstance, but you think
12 because -- you want to extend or apply the
13 automobile exception to stationary vehicles on
14 -- on -- within the curtilage because you think
15 all the guy has to do is he sees the police
16 officer, he runs out of the house, starts it up
17 and goes away.

18 MR. COX: Yes, Your -- Your Honor. I
19 think that's one of the least controversial
20 points in this case is that because this Court
21 has repeatedly held that a car doesn't actually
22 have to be moving or with somebody there with a
23 key, ready to jump on it.

24 JUSTICE SOTOMAYOR: Well, then that --
25 that goes back to my basic question, which is

1 how do I differentiate the -- the car in the
2 garage if -- if -- if -- or the car through a
3 window that you can see?

4 You would say that exigent
5 circumstance -- that's what Virginia Court
6 appeared to say, that it created an absolute
7 rule. The police can break into anything, go
8 anywhere where they see the car, whether
9 they're at that place legitimately or not.

10 MR. COX: Yes. This -- this Court has
11 treated it as an absolute rule. They've never
12 carved -- carved back on that.

13 JUSTICE SOTOMAYOR: And that's the
14 rule you want us to uphold?

15 MR. COX: It -- it could. I mean, you
16 could just apply -- apply that rule to this
17 case --

18 JUSTICE GORSUCH: Well, and --

19 MR. COX: -- and not make any new law,
20 if you wanted to.

21 JUSTICE GORSUCH: -- and then we
22 should just go ahead and do the same thing for
23 drugs and papers too, because -- and Entek, we
24 can overrule Entek while we're at it, going all
25 the way back to the founding because, you know,

1 we can see somebody, they have a fireplace,
2 they have a chimney, they could destroy the
3 papers that we see through the window or the
4 drugs. We know that they have indoor plumbing.

5 And so they can be readily destroyed
6 too. What's the difference between the
7 destruction of drugs and papers in a home and a
8 car in -- in the garage?

9 MR. COX: So this gets to Justice
10 Sotomayor's question as well. There is a
11 little bit less mobility inside the garage.
12 There's also more expectation of privacy in a
13 garage. Those are the two --

14 JUSTICE SOTOMAYOR: It's a second.
15 The difference between opening a garage door
16 and just walking out and getting into a car is
17 de minimis.

18 MR. COX: Right. Well --

19 JUSTICE SOTOMAYOR: You can -- you
20 can -- you know, it happens just as quickly.

21 MR. COX: Right. And what I just said
22 isn't totally satisfactory because, in McNeely,
23 you said you don't really look at the policy
24 justifications behind a categorical exigency.

25 JUSTICE SOTOMAYOR: So if it -- if it

1 -- if the distinction -- and there is no real
2 distinction -- why, as Justice Gorsuch
3 suggested, you're asking us to expand the
4 automobile exception dramatically and to
5 basically make an all-time exception forever?

6 Even if the driver -- even if the
7 police know that the driver of this car is away
8 on vacation and won't be returning for two
9 weeks, even if they know that, they're not
10 required to go to a magistrate and get a
11 warrant?

12 MR. COX: Your Honor, that's been this
13 Court's law for decades. And I wouldn't see it
14 as -- as expanding it as --

15 JUSTICE GORSUCH: Well, counsel, when
16 I -- when I look at the automobile exception's
17 history and go back to Carroll, it was actually
18 an originalist opinion that looked at cars and
19 -- and analogized them to ships and vessels,
20 going all the way back to 1790. And so that's
21 different than homes or curtilage. And -- and
22 -- and cars are like vessels on the open sea or
23 in port.

24 It never suggested that you can go
25 look for one in a home. That was never the

1 basis. It was: You can search something that
2 is on the open seas or in a -- in a harbor or
3 on the streets, not that you can go into a home
4 to find one. That seems to me categorically --
5 a category mistake that you're making in your
6 argument. Can you help me with that?

7 MR. COX: Right. Well, I wouldn't --
8 I wouldn't say it's a mistake in my argument.
9 It would be a mistake maybe in the Supreme
10 Court's jurisprudence not to have limited it to
11 that extent previously, but --

12 JUSTICE GORSUCH: Well, I just cited
13 the Supreme Court's jurisprudence in Carroll.

14 MR. COX: Yes.

15 JUSTICE GORSUCH: So I'm not sure it's
16 fair to point it, the arrow, in this direction,
17 counsel.

18 MR. COX: Well, Carroll did involve a
19 -- a car that was on the street, but there have
20 been many cases since then in the 90 years
21 since Carroll where it's been applied when the
22 car is totally immobile and not on the open
23 road. And so it has been a trajectory of the
24 -- the vehicle exception ever --

25 JUSTICE KAGAN: Mr. Cox.

1 MR. COX: -- ever since then. Yes?

2 JUSTICE KAGAN: I mean, one of the
3 things you're saying is that we basically
4 should give -- we shouldn't pay attention to
5 the fact that this was on the curtilage, and
6 you said earlier -- to a different question,
7 you said, well, you're committed by Jardines to
8 treat the curtilage as the home for purposes of
9 expectation of privacy, but for other purposes,
10 you can make a distinction between the two.

11 And I'd like to know more about that.
12 For what other purposes can you make a
13 distinction between the two? And why can you
14 make a distinction between the two for those
15 purposes when you can't make a distinction
16 between the two for this fundamental question
17 of where you have an expectation of privacy?

18 MR. COX: Sure. Well, certainly,
19 Oliver opened the door to that -- that
20 argument, that we're -- the Court said we're
21 not saying it's the same for all purposes.

22 And one example that we cited in our
23 brief was the difference between Santana and
24 Payton, where you can have a warrantless arrest
25 outside the house, right, even if it's on the

1 front steps, but you can't have one inside
2 because there's -- it's just beyond the pale.
3 It's beyond the threshold, beyond the firm,
4 bright-line that this Court has -- has drawn.

5 Another example --

6 JUSTICE KAGAN: I'm sorry. You're --
7 I just want to get the answer to my question,
8 which is: For what purposes would you treat
9 the curtilage differently from the home and why
10 there but not for the -- for the reasonable
11 expectation of privacy question? So, for what
12 purposes first, and then why?

13 MR. COX: So, you know, you cannot
14 search inside the house without a warrant
15 unless there are exigent circumstances or if
16 there's consent. And that's a line that this
17 Court has drawn. And the automobile exception
18 is also a -- a categorical rule. And so we
19 find them in -- in -- in friction. And so the
20 Court has to decide what's reasonable --

21 JUSTICE KAGAN: It -- it's just -- Mr.
22 Cox, it's really a simple question. For what
23 purposes would you say that the curtilage is
24 not the house?

25 MR. COX: For purposes of when you

1 have probable cause to search and a warrant --
2 a warrant exception applies, then you don't
3 treat them the same.

4 JUSTICE KAGAN: And -- and why is that
5 -- why would you treat -- why would you not
6 treat them the same for purposes of when you
7 need a warrant if you do treat them the same
8 for deciding whether there's a reasonable
9 expectation of privacy in them?

10 MR. COX: Well, the -- the Court said
11 in Ross that when the automobile exception
12 applies, you are -- you're committed to the
13 same search with the same scope as you would be
14 if you had a warrant. So the only thing that's
15 different is having a warrant.

16 And so, as long as the investigating
17 officer sticks to that, as the officer did
18 here, you're not going outside the scope of a
19 warrant.

20 JUSTICE KAGAN: You see, I don't know.
21 Just -- when I read Jardines, here's what I
22 take it to say: I take it to say the home is
23 the most sacrosanct of places. And, actually,
24 we don't think that the home stops at the door;
25 we think that there are some areas like the

1 porch and like the driveway or whatever, and we
2 can argue about exactly what those areas are,
3 but there are some areas which are just as
4 sacrosanct as your living room. That's what I
5 take Jardines to say.

6 And in that case, I think you lose
7 here.

8 MR. COX: If -- if that's the case, we
9 have a much -- much harder case to make, but I
10 don't think -- I don't read Jardines as
11 overruling Santana. I don't read Jardines as
12 creating a knock-and-announce rule at the
13 curtilage.

14 JUSTICE GINSBURG: Can -- can you
15 remind me what you said about the enclosed
16 garage with the door? Would that be treated
17 like the home?

18 MR. COX: Yes.

19 JUSTICE GINSBURG: Now, that there is
20 a real problem because you're making a
21 distinction between people who can buy houses
22 with garages and people who are less well
23 heeled and only have a port or a patio for the
24 car instead of a garage. So that distinction
25 seems to me really troublesome, between garage

1 and carport.

2 MR. COX: I guess what I would say is
3 that the Fourth Amendment protects the same
4 quality of privacy but maybe not the same
5 quantity of privacy for everyone. I mean, even
6 the Dunn factors realizes that -- the Dunn
7 factors incorporate that. If you have enough
8 money to -- to build a -- a huge wall, then
9 that's going to -- that's going to impact the
10 -- the analysis of whether that area is -- is
11 protected or not.

12 JUSTICE ALITO: I mean, they're --

13 CHIEF JUSTICE ROBERTS: I don't know
14 why you're --

15 JUSTICE ALITO: -- garages.

16 CHIEF JUSTICE ROBERTS: I'm not sure
17 why you are arguing -- if I understand your
18 answers to -- to Justice Kagan, you seem to
19 say, okay, let's say the -- the probable cause
20 is based on the -- the fact that you know that
21 the drugs are in -- you know, foot-by-foot
22 orange boxes and you see from -- in the
23 carport, you know, foot-by-foot orange boxes.

24 And you -- you seem to be treating
25 that the same as the situation when you have

1 the motorcycle or an automobile, but I thought
2 part of your argument was that the automobiles
3 were inherently different because somebody
4 could just jump on the motorcycle and ride
5 away, while they wouldn't have the same
6 mobility issues with respect to the box, the
7 orange boxes.

8 Now, are you arguing -- do you -- does
9 your argument extend to immobile items in the
10 carport because it's curtilage rather than the
11 house, or is it limited to the mobility that's
12 characterized the automobile exception?

13 MR. COX: Yes. The automobile
14 exception is just that. It's an exception on
15 very circumscribed terms --

16 CHIEF JUSTICE ROBERTS: And then the
17 problem with that, of course, is, we've said,
18 the curtilage is like the house and -- maybe
19 you would. I mean, if you have an automobile
20 in the house, which is not, you know, Jay
21 Leno's house, right, where he's got dozens of
22 rare cars or -- or the Porsche in Ferris
23 Bueller. I mean, you -- you're saying that you
24 -- you don't --

25 (Laughter.)

1 CHIEF JUSTICE ROBERTS: -- you don't
2 -- you can just go in because it's mobile and
3 they got it in there somehow; they can get it
4 out? So you don't recognize a distinction
5 between the curtilage and the house for the
6 purposes of the vehicles that are mobile?

7 MR. COX: The Court has laid down a
8 categorical exception. If you were to draw a
9 line, we think the most sensible place to do it
10 would be the bright-line of the house because
11 it is used in other Fourth Amendment
12 jurisprudence.

13 It doesn't need to reach that here.
14 There are arguments that the mobility stays the
15 same and the other justifications for the
16 automobile exception stay the same, whether
17 it's inside the house or outside the house, but
18 if you need to draw a line, that is a sensible
19 place to do it, not at the curtilage.

20 JUSTICE SOTOMAYOR: I'm sorry. I -- I
21 --

22 JUSTICE ALITO: But, Mr. Cox, you know
23 the -- the Fourth Amendment says the people
24 have the right to be secure in their homes,
25 papers, persons, and effects. So in the

1 curtilage -- the curtilage issue goes to the
2 question of whether it is a search of the home.
3 If it's not in the curtilage -- curtilage, then
4 it's not a search of the home, the Fourth
5 Amendment doesn't apply.

6 But once you get beyond that, it is a
7 search of the home, the ultimate Fourth
8 Amendment question is always: Is it a
9 reasonable search? And that's where we are
10 here. Is it reasonable? It's a balancing of
11 interests. That's what reasonableness meant in
12 -- at the end of the 18th century; it's what it
13 means today.

14 And so you have to grapple with the
15 real privacy interests that are involved in the
16 case versus the other considerations; namely,
17 the mobility of the automobile. And that, I
18 understand your argument to be, is why it's
19 reasonable to draw a distinction between an
20 enclosed place like the house or garage and an
21 open place like a driveway, even if it
22 technically falls within the curtilage.

23 MR. COX: That -- that's correct.

24 JUSTICE BREYER: A porch is --

25 MR. COX: And the search that occurred

1 here was very reasonable. It was limited in
2 scope --

3 JUSTICE SOTOMAYOR: You see the
4 problem I have is that the court below didn't
5 do this. It basically said -- the absolute
6 rule, not a balancing test. It said you can
7 search any place where a car is, because that's
8 what the automobile exception permits.

9 But that's a very broad statement that
10 would permit the search of the garage or the
11 automobile inside the house. You have a very
12 strong argument and so would the court below if
13 it had said: Given the nature of this driver's
14 reckless elusion of the police previously,
15 exigent circumstances existed in this case, all
16 right? Or -- or something like we don't know
17 where the owner is and he could come back
18 immediately and get the car.

19 But that's not the analysis the court
20 made.

21 MR. COX: That's true. The Court of
22 Appeals of Virginia did decide it on exigency
23 grounds because Mr. Collins had been alerted to
24 the police's interest in this vehicle.

25 JUSTICE SOTOMAYOR: It didn't reach

1 exigency. It said only the automobile
2 exception permits the search of any car, no
3 matter where it is in the home.

4 MR. COX: The Supreme Court of
5 Virginia had found that. But the Court of
6 Appeals of Virginia below them had decided on
7 exigency grounds. The supreme court --

8 JUSTICE SOTOMAYOR: Yes, but the --
9 the supreme court --

10 MR. COX: That's right. And they
11 didn't make --

12 JUSTICE SOTOMAYOR: -- which is the
13 court we're reviewing --

14 MR. COX: -- they didn't make its own
15 exigency analysis. That is another ground on
16 which we win. We'd rather win on the
17 categorical exception, but we -- we clearly
18 think that there are exigent circumstances here
19 beyond the categorical exigency in the
20 automobile exception that --

21 JUSTICE GINSBURG: Well, that would be
22 a question for remand because it wasn't reached
23 by the Virginia Supreme Court.

24 MR. COX: We would -- we would be
25 confident if -- if it were remanded that we

1 would prevail on that, yes, Your Honor.

2 Officer Rhodes had probable cause
3 before he ever stepped foot on the driveway to
4 know that this vehicle was stolen. The Supreme
5 Court of Virginia in its opinion, Pet. App 15,
6 said that Officer Rhodes had probable cause to
7 believe it was stolen and there was testimony
8 in the record by Officer Rhodes to support the
9 fact that he did know it was stolen.

10 And --

11 JUSTICE GINSBURG: You say if there's
12 probable cause to get a warrant, then you don't
13 need a warrant, and that's the automobile
14 exception.

15 Are there -- is there any other
16 exception like that where the test of whether
17 you need -- if you have probable cause, forget
18 it, forget the warrant, that probable cause
19 alone is enough?

20 MR. COX: Well, I think under a plain
21 view you'd have to have some -- some probable
22 cause to believe that what you were say --
23 seeing was contraband or otherwise evidence of
24 crime. So I think there -- there is some
25 analysis that has to go into knowing that it's

1 --

2 JUSTICE KENNEDY: Well, the -- the
3 fact that this motorcycle was in plain view,
4 subject to the tarp being on it, was a factor
5 in the decision by the Supreme Court of the
6 State of Virginia, was it not?

7 MR. COX: I -- I think --

8 JUSTICE KENNEDY: I -- I thought they
9 -- I thought they relied upon the fact that it
10 was in plain view with -- with the tarp on it.

11 MR. COX: I think that that is
12 mentioned, but I think the probable cause that
13 he -- that existed was formed, at least in
14 part, by the comparison of the photograph on
15 the Facebook page and when Officer Rhodes
16 walked up --

17 JUSTICE KENNEDY: But --

18 MR. COX: -- stood at the end of the
19 driveway and could see the same thing.

20 JUSTICE KENNEDY: But it was in plain
21 view?

22 MR. COX: It was.

23 JUSTICE KENNEDY: It's not as if there
24 was a closed garage and they went and opened
25 the garage?

1 MR. COX: That's right. And he
2 wouldn't -- he wouldn't be able to go up to the
3 edge of the garage, assuming there was
4 curtilage out there, and look in to see if it
5 was in there. The probable cause was formed
6 before he ever stepped foot on the driveway.

7 JUSTICE KAGAN: Mr. Cox, was there one
8 search here or were there two searches here?

9 MR. COX: We submit that there was --
10 there was one search.

11 JUSTICE KAGAN: The search of the
12 motorcycle?

13 MR. COX: That's right.

14 JUSTICE KAGAN: But why is that? Why
15 isn't there the search of the motorcycle -- but
16 there's really the search of the curtilage; it
17 happened to be for the motorcycle, but it's the
18 search of the curtilage, it's a different
19 search entirely.

20 MR. COX: We -- we look at it as one
21 search because it's the object of the search
22 that you are entitled to search, whether it's
23 under a warrant or under a warrant exception.
24 And you look at it by -- you know, it's not a
25 separate search for each access point that you

1 -- you go to.

2 You wouldn't have gotten two warrants
3 if you had gone to a magistrate. You wouldn't
4 get a warrant to search the motorcycle and then
5 another warrant to actually cross the driveway
6 to get there.

7 So we see it as -- as one search for
8 that reason.

9 JUSTICE KAGAN: Well, does -- does
10 that mean you, without a warrant, that you
11 always have access to a place if there's a
12 reason that you can seize something that you
13 might find within the place?

14 MR. COX: I'm hesitant to speak beyond
15 the automobile exception, but I think the
16 automobile exception would give you that, that
17 ability, unless there was some other rule that
18 prevented you from doing it, such as a rule
19 that the automobile exception doesn't apply in
20 the house.

21 And I'll say that, to go back to
22 Justice Gorsuch's questions about the original
23 understanding of this, all along the
24 justifications for the vehicle exception have
25 been based in the contradistinction between

1 vehicles and houses or dwellings.

2 At first it was the difference in
3 mobility, but then later in -- in cases like
4 Cady and Cardwell and Carney, they also speak
5 of the reduced expectations of privacy that you
6 have in a vehicle as compared to a fixed
7 dwelling or a building.

8 So, if the Court were to draw a line,
9 it would -- it would certainly have some --
10 some healthy pedigree in the Court's previous
11 decisions.

12 Unless there are further questions,
13 thank you.

14 CHIEF JUSTICE ROBERTS: Thank you, Mr.
15 Cox.

16 Mr. Fitzgerald, four minutes
17 remaining.

18 REBUTTAL ARGUMENT OF MATTHEW A. FITZGERALD
19 ON BEHALF OF THE PETITIONER

20 MR. FITZGERALD: Thank you. Just a
21 few points in rebuttal here.

22 So the curtilage is protected as part
23 of the home. And if we look back, historically
24 speaking, the automobile exception is born at a
25 traffic stop in the 1920s.

1 The automobile exception, as it is
2 created, makes sense in that context. But the
3 automobile exception has grown. It's become a
4 categorical exception. We no longer look for
5 exigency on a case-by-case basis. And now the
6 automobile exception is literally knocking at
7 the door of the house.

8 And the question is whether to apply
9 this exception, created based on exigent
10 circumstances in 1925, to a search of the
11 curtilage of a home.

12 And now, on the state's argument,
13 even -- even their backup argument, even what
14 they give up, there easily could have been
15 probable cause to think that this motorcycle
16 was at this residence if it were around behind
17 the house, if the driveway went just a little
18 bit farther.

19 And it should not be that searching
20 for an automobile, or what might be in an
21 automobile, would get police around a house
22 like that, around to the back door, where there
23 might be, I mean, in this case, the side door,
24 a sliding door, where if you're standing where
25 this motorcycle is, you can see directly into

1 the side door of the house and you can see this
2 just a little bit at the petition appendix page
3 112.

4 The curtilage is an area that is
5 intimately linked to the home. This Court said
6 in *Jardines*, as well as in *Ciraolo*, it's
7 intimately linked to the home, both physically
8 and psychologically, and it's where
9 expectations of privacy are most heightened.

10 We submit that the clear, bright-line
11 rule for officers, which is that when they go
12 to a known address to look for contraband, even
13 readily-mobile contraband, they bring a warrant
14 with them, should apply when they're going to a
15 known address to look for a vehicle as well.

16 And if there are no further questions,
17 respectfully I ask this Court to reverse.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel. The case is submitted.

20 (Whereupon, at 12:03 p.m., the case
21 was submitted.)

22

23

24

25

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1	allowed ^[1] 26:1 almost ^[2] 6:22 10:10 alone ^[2] 3:15 58:19 already ^[1] 7:18 although ^[3] 21:24 30:1 34:18 Amendment ^[15] 3:20 5:9,20 9:3 11:12 17:9 18:7 19:2 31:21 42:1 52:3 54:11,23 55:5,8 analogized ^[1] 46:19 analysis ^[4] 52:10 56:19 57:15 58:25 animals ^[1] 37:15 another ^[4] 36:8 49:5 57:15 61:5 answer ^[5] 27:10 35:9 42:4,5 49:7 answers ^[1] 52:18 App ^[1] 58:5 Appeals ^[2] 56:22 57:6 APPEARANCES ^[1] 1:17 appeared ^[1] 44:6 appendix ^[1] 64:2 applied ^[1] 47:21 applies ^[3] 5:20 50:2,12 apply ^[12] 3:25 9:17,21 22:6 33:11 43:12 44:16,16 55:5 61:19 63:8 64:14 applying ^[1] 36:7 approaching ^[1] 28:19 area ^[5] 6:4 12:22 30:20 52:10 64:4 areas ^[3] 50:25 51:2,3 arguably ^[1] 5:3 argue ^[1] 51:2 arguing ^[3] 8:16 52:17 53:8 argument ^[22] 1:14 2:2,5,8 3:4,7,14 5:17 8:20,24 11:7 33:2 47:6,8 48:20 53:2,9 55:18 56:12 62:18 63:12,13 arguments ^[1] 54:14 around ^[8] 13:5,11 19:15 31:6 39:16 63:16,21,22 arrest ^[4] 26:18,19 29:17 48:24 arrived ^[1] 15:11 arrow ^[1] 47:16 art ^[1] 38:8 aside ^[2] 27:6,17 aspect ^[1] 43:7 assume ^[2] 10:23 11:4 assuming ^[1] 60:3 assumption ^[2] 20:8,8 attached ^[2] 36:20,21 attention ^[1] 48:4 AUSTIN ^[1] 1:3 authorize ^[2] 4:17 5:15 authorizes ^[1] 4:16 automobile ^[34] 3:13,25 7:6 9:21 33:10,22 34:8 36:7 43:6,13 46:4,16 49:17 50:11 53:1,12,13,19 54:16 55:17 56:8,11 57:1,20 58:13 61:15,16,19 62:24 63:1,3,6,20,21 automobiles ^[4] 35:6 40:12 42:17 53:2 Avenue ^[1] 5:13	avoid ^[1] 30:21 away ^[8] 14:6,13 24:25 29:25 30:4 43:17 46:7 53:5	B	back ^[12] 12:17 16:5 18:23 43:25 44:12,25 46:17,20 56:17 61:21 62:23 63:22 backup ^[1] 63:13 backyard ^[1] 30:19 baked ^[1] 35:9 balance ^[3] 6:18 7:1 32:22 balancing ^[3] 6:16 55:10 56:6 barn ^[1] 37:6 barns ^[1] 37:14 based ^[8] 5:17 6:7 19:9,23 36:3 52:20 61:25 63:9 basic ^[1] 43:25 basically ^[4] 35:1 46:5 48:3 56:5 basics ^[3] 38:3,5 42:2 basis ^[5] 26:6 27:4 32:11 47:1 63:5 become ^[1] 63:3 becomes ^[1] 32:9 behalf ^[8] 1:18,21 2:4,7,10 3:8 33:3 62:19 behind ^[2] 45:24 63:16 believe ^[10] 4:4 20:4 21:10,20 22:17 23:9 27:7 29:7 58:7,22 believes ^[2] 15:21 39:15 below ^[5] 8:16 34:6 56:4,12 57:6 besides ^[1] 22:1 better ^[2] 12:22 16:15 between ^[14] 17:22 40:14 45:6,15 48:10,13,14,16,23 51:21,25 54:5 55:19 61:25 beyond ^[8] 19:13 28:18 49:2,3,3 55:6 57:19 61:14 big ^[2] 13:3 41:12 bikes ^[1] 34:10 binding ^[1] 36:2 bit ^[4] 39:10 45:11 63:18 64:2 block ^[1] 28:15 born ^[1] 62:24 both ^[1] 64:7 box ^[8] 41:1,1,5,10,12,25 42:11 53:6 boxes ^[3] 52:22,23 53:7 brand ^[1] 17:25 break ^[2] 33:18 44:7 BREYER ^[40] 11:13 12:2,8,12,16,21 13:2,12,15,19,23 14:15,22 15:2,8 20:6,24 23:1,13,17,23 24:2,11,15 27:20 38:1,5,19,23 39:4,8,13,23 40:1,7,13 41:12,15,20 55:24 brick ^[1] 8:9 brief ^[2] 33:15 48:23 bright-line ^[5] 33:9 36:14 49:4 54:10 64:10 bring ^[1] 64:13 broad ^[1] 56:9 brought ^[1] 19:14 Bueller ^[1] 53:23	build ^[1] 52:8 building ^[1] 62:7 burglar ^[1] 38:8 business ^[1] 18:18 buy ^[1] 51:21 Byrd's ^[1] 7:1	C	Cady ^[1] 62:4 California ^[1] 22:5 came ^[1] 1:13 cannot ^[4] 3:12,19 38:16 49:13 car ^[29] 4:9,13 9:12,13 10:19,19,20,23 31:23 32:2,2,3,8 37:7 40:17 43:21 44:1,2,8 45:8,16 46:7 47:19,22 51:24 56:7,18 57:2 Cardwell ^[1] 62:4 Carney ^[1] 62:4 carport ^[3] 52:1,23 53:10 carports ^[1] 36:19 carries ^[1] 41:13 Carroll ^[4] 46:17 47:13,18,21 cars ^[5] 36:18 37:15 46:18,22 53:22 Carter ^[1] 18:17 carved ^[2] 44:12,12 Case ^[44] 3:4 8:16 11:11 14:12,17,18,21,25 15:4 16:4 17:12 18:7,11 20:21,22 22:4,13,24 24:8 29:20 30:11 31:3 32:15,20 34:2 35:3,3 39:19 40:2,9 41:7 42:15,25 43:9,20 44:17 51:6,8,9 55:16 56:15 63:23 64:19,20 case-by-case ^[2] 32:11 63:5 cases ^[9] 17:2 20:9 35:13,20 36:12,15 37:4 47:20 62:3 categorical ^[8] 40:11 43:7 45:24 49:18 54:8 57:17,19 63:4 categorically ^[1] 47:4 category ^[1] 47:5 cause ^[37] 3:15 4:4,21 5:23 6:12 12:10 19:4,6 20:3 21:20 22:17 23:5,9 26:7,18,19 27:5,7,10 28:4 29:3,5,7,14 33:13 40:21 50:1 52:19 58:2,6,12,17,18,22 59:12 60:5 63:15 century ^[1] 55:12 certainly ^[5] 13:18 40:20 43:1 48:18 62:9 certainty ^[2] 40:20 42:9 change ^[1] 10:13 changes ^[1] 34:1 changing ^[1] 13:25 characteristics ^[1] 25:25 characterized ^[1] 53:12 charging ^[1] 26:22 CHIEF ^[20] 3:3,9 25:14,23 26:9,15 27:3,14,18 28:3,11 32:24 33:4 43:4 52:13,16 53:16 54:1 62:14 64:18 child ^[2] 18:13,13 chimney ^[1] 45:2 Ciraolo ^[1] 64:6				
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