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IN THE SUPREME COURT OF THE UNITED STATES

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

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Washington, D.C.

Tuesday, January 9, 2018

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:08 a.m.

APPEARANCES:

MATTHEW A. FITZGERALD, Richmond, Virginia; on behalf of the Petitioner.

TREVOR S. COX, Acting Solicitor General of Virginia, Richmond, Virginia; on behalf of the Respondent.

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1 P R O C E E D I N G S

2 (11:08 a.m.)

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

6 Mr. Fitzgerald.

7 ORAL ARGUMENT OF MATTHEW A. FITZGERALD

8 ON BEHALF OF THE PETITIONER

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

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

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

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

24 So the rule we ask this Court to adopt  
25 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 the 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 Does your argument hinge 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:   So he goes, gets a  
13                  warrant and they throw it all down the sink --

14                  MR. FITZGERALD:   Well, this --

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

19                  MR. FITZGERALD:   If --

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

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

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

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

8 MR. FITZGERALD: It's -- it's  
9 particularly important to that hypothetical  
10 that there's someone wandering around inside,  
11 because the introduction to the person is  
12 important.

13 JUSTICE BREYER: Okay. Fine. Fine.  
14 He has reason to think there's somebody in the  
15 house.

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

18 JUSTICE BREYER: Or no --

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

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

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

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

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

18              MR. FITZGERALD: It is not a case  
19       about exigent circumstance.

20              JUSTICE BREYER: But you just told me  
21       I'm wrong.

22              MR. FITZGERALD: This is not an  
23       exigency case. And the Supreme Court of  
24       Virginia specifically said that.

25              JUSTICE BREYER: No, no, I know that.

1     What I'm trying to get at is I suddenly thought  
2     I don't understand this case because you said  
3     the circumstance is the same without a tarp.  
4     That's what confused me.

5                 MR. FITZGERALD:  So the --

6                 JUSTICE BREYER:  That's why I asked  
7     the question.

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

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

21                So there's no obvious exigency here so  
22    much --

23                JUSTICE KAGAN:  Mr. Fitzgerald -- I'm  
24    sorry, did you --

25                MR. FITZGERALD:  There's no obvious



1 exigency here and that would be an issue for  
2 remand in this case.

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

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

17 MR. FITZGERALD: Yes.

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

24 So how far do we say: Look, what  
25 Jardines said or what we've said in other cases

1 is we have to treat the curtilage exactly as we  
2 would the home, even though you can actually  
3 see the motorcycle on the curtilage.

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

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

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

15 JUSTICE ALITO: But the --

16 JUSTICE GINSBURG: Isn't it a problem  
17 whose -- whose curtilage it is? Here we're  
18 told that there was a close relationship  
19 between the defendant and the homeowner. But  
20 suppose there weren't that close relationship.  
21 Suppose it was a brand new girlfriend and he  
22 never stayed overnight, he was hopeful, but he  
23 hadn't.

24 (Laughter.)

25 JUSTICE GINSBURG: And it's the same

1 -- parked the same way.

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

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

20 JUSTICE ALITO: Did -- coming back to  
21 Justice -- to the question, did we say in  
22 Jardines that the curtilage is to be treated  
23 the same as the house for all Fourth Amendment  
24 purposes? I thought the issue in Jardines was  
25 whether -- was whether officers who did not

1 have probable cause were permitted to walk up  
2 to the front of the house, at which point they  
3 acquired probable cause.

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

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

22 JUSTICE SOTOMAYOR: Counsel, we permit  
23 the police to seize items in plain view in a  
24 home. They get a search warrant for the home.  
25 They see an item that they have probable cause

1 to believe is incriminating evidence. They can  
2 seize it.

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

9 In Jardines, you couldn't seize the  
10 incriminating evidence wafting from the house  
11 because you didn't have a right to be in the  
12 curtilage.

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

20 I -- that's why I thought that Justice  
21 Breyer was asking whether the search of the  
22 tarp was part of this because was this in plain  
23 view, in essence? As I understood it, they  
24 weren't sure it was the same motorcycle. They  
25 thought the wheel was the same, but I'm not

1       sure why they needed that if they knew the  
2       motorcycle was stolen, or did they not know yet  
3       that it was stolen? I don't remember now.

4               MR. FITZGERALD: The record is  
5       unclear. And we would not -- we -- we don't  
6       believe that the officer thought the motorcycle  
7       was stolen. He was looking for the motorcycle  
8       that he had --

9               JUSTICE SOTOMAYOR: But how do you  
10      address the way I'm looking at this, which is  
11      the police are standing there, they see  
12      something and have probable cause to believe  
13      that it's incriminating evidence. How is that  
14      different than being inside the home with a  
15      warrant?

16              And, again, does -- I'm not sure I see  
17      the difference, although the tarp is a  
18      difference because they are lifting -- they're  
19      searching something else besides the  
20      motorcycle.

21              MR. FITZGERALD: So, Your Honor, this  
22      is not a plain view case, because in Horton  
23      versus California, the Court said, in order for  
24      plain view to apply to allow the seizure of the  
25      thing, the officer must have a right of access

1 to the thing itself.

2 So there's no right of access.

3 There's no implied license to go into the  
4 curtilage to look for evidence that you have  
5 seen. And so seeing the motorcycle from the  
6 street in this case is just like seeing the  
7 motorcycle or seeing drugs through the window  
8 of a house.

9 JUSTICE ALITO: Do you dispute the  
10 fact that they had probable cause to believe  
11 that the thing that they saw covered by the  
12 tarp was the motorcycle they were looking for?

13 MR. FITZGERALD: We do not dispute  
14 that.

15 JUSTICE ALITO: Okay.

16 MR. FITZGERALD: And so, ultimately,  
17 here this is a fairly straightforward case, I  
18 think. There -- the motorcycle is five feet --

19 JUSTICE BREYER: But you -- you don't  
20 dispute -- in other words, you -- in your view,  
21 you agree that the policeman standing on the  
22 sidewalk knows that that item covered by -- or  
23 at least has probable cause to it -- covered by  
24 the tarp is the possibly stolen motorcycle?  
25 You agree with that?

1           MR. FITZGERALD: He -- he has probable  
2           cause to believe that is the motorcycle that  
3           eluded him in traffic, that he was looking for.  
4           Of course, there could be other things under  
5           the tarp as well as the motorcycle.

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

8           MR. FITZGERALD: Well, he wanted to  
9           lift the tarp to be sure.

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

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

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

19          (Laughter.)

20          JUSTICE BREYER: Now, if that had  
21          given him access, he could have just grabbed  
22          the whole thing, tarp and all. Is your view --  
23          I'm just saying do you agree -- I thought from  
24          what you just said -- I was surprised, but I  
25          thought that now you do agree that is the case.



1 He could just grab the whole thing.

2 MR. FITZGERALD: Well --

3 JUSTICE BREYER: Do you agree with  
4 that or don't you agree with it?

5 MR. FITZGERALD: No, Your Honor. So  
6 he is --

7 JUSTICE BREYER: You don't agree with  
8 it? Okay.

9 MR. FITZGERALD: He is investigating  
10 the -- the crime of eluding him in traffic.  
11 Ultimately, that is a crime committed by the  
12 driver.

13 JUSTICE GINSBURG: Which is different  
14 from a stolen vehicle. I think we've gotten a  
15 little confused about that. The police were  
16 looking for him because he eluded them by  
17 speeding away.

18 The evidence of the theft comes when  
19 they see the -- the number after they lift the  
20 tarp.

21 MR. FITZGERALD: Yes, Your Honor. And  
22 now, there is some disagreement in the record  
23 about that, but the officer testified he went  
24 to the house solely to look for the motorcycle  
25 that had eluded him. He was asked was the

1 motorcycle -- did you think the motorcycle was  
2 contraband? And he said no. So he was looking  
3 into the eluding, and when he ran the VIN  
4 number, he found that it was stolen.

5 JUSTICE SOTOMAYOR: Ahh, so --

6 MR. FITZGERALD: So --

7 JUSTICE SOTOMAYOR: -- he didn't know  
8 this was stolen property yet? The VIN number  
9 gave -- this is like Jardines. The VIN number  
10 gave him that information?

11 MR. FITZGERALD: That is what he  
12 stated, yes.

13 JUSTICE ALITO: No, that's not  
14 what Jardines --

15 CHIEF JUSTICE ROBERTS: But he could  
16 see under -- he could see under the tarp,  
17 right, some identifying characteristics in the  
18 extension of the wheel that allowed it to go  
19 140 miles an hour and the color scheme and all  
20 that?

21 MR. FITZGERALD: Well, you couldn't --  
22 you couldn't see the color scheme, but you  
23 could see the -- the basis for the probable  
24 cause is he has the Facebook picture that  
25 shows --

1 CHIEF JUSTICE ROBERTS: Yeah. Okay.

2 MR. FITZGERALD: -- the motorcycle not  
3 under a tarp. And then he gets to the house,  
4 and it's under a cover, but it's in the same  
5 spot, it's the same ID. The extension would be  
6 there as a matter of interest.

7 CHIEF JUSTICE ROBERTS: This would be  
8 --

9 JUSTICE SOTOMAYOR: But it's probable  
10 cause to arrest the driver. It's not probable  
11 cause to arrest the motorcycle. It's the  
12 driver that he was --

13 MR. FITZGERALD: So --

14 JUSTICE SOTOMAYOR: -- charging with  
15 elusive driving or whatever, dangerous driving.

16 MR. FITZGERALD: It is a police  
17 investigation in which he's ultimately trying  
18 to find the driver, first by verifying that  
19 he's found the motorcycle.

20 CHIEF JUSTICE ROBERTS: You can't --  
21 you can't seize -- on this basis of the same  
22 probable cause, you can't seize the motorcycle,  
23 putting aside the curtilage question? You have  
24 probable cause to believe that this person was  
25 driving that type of motorcycle.

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

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

6 CHIEF JUSTICE ROBERTS: No, I know the  
7 curtilage --

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

10 CHIEF JUSTICE ROBERTS: Yes, but maybe  
11 -- and maybe this is the same question Justice  
12 Breyer was asking, but let's say the motorcycle  
13 was on the -- covered with a tarp on the side  
14 -- not the sidewalk, the little path to go to  
15 the door, in other words, a place where he did  
16 have a license to go, right? He said I'm just  
17 going to go knock and talk. And it's right  
18 there. Would he have --

19 MR. FITZGERALD: No.

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

22 MR. FITZGERALD: No, that -- that is  
23 outside the implied license of his ability to  
24 go and knock and talk at the door of that  
25 residence, Your Honor. So he can't -- he can't

1 stop to perform additional searches or  
2 seizures along the way.

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

8 MR. FITZGERALD: No, you have -- you  
9 have the right to use your eyes, but you don't  
10 have the right to go beyond what a reasonably  
11 respectful person approaching the door would  
12 do. And stopping to examine or seize a  
13 motorcycle would be outside of that implied  
14 license.

15 Now, of course, here the motorcycle is  
16 not even on the path to the front door. He's  
17 not going to the front door. He testified he  
18 was not knocking and talking. He walked up  
19 solely to take the cover off to see if this was  
20 the motorcycle that he had probable cause to  
21 think that it was.

22 JUSTICE ALITO: He had probable cause  
23 you -- I thought you admitted he had probable  
24 cause to believe that the thing covered by the  
25 tarp was the motorcycle that he -- had eluded

1 him by driving 140 miles an hour.

2 MR. FITZGERALD: Yes.

3 JUSTICE ALITO: Right?

4 MR. FITZGERALD: Yes.

5 JUSTICE ALITO: So he has probable  
6 cause to search that motorcycle, to find the --  
7 the vehicle identification number, which will  
8 tell him the owner of the motorcycle, which  
9 will help him arrest the person who committed  
10 this crime, right?

11 MR. FITZGERALD: Yes.

12 JUSTICE ALITO: So the case comes down  
13 to this: If the motorcycle were parked on the  
14 street or maybe further down the driveway, and,  
15 therefore, not in the curtilage, they wouldn't  
16 need a warrant. They could search it. But  
17 because it was parked a few feet further away,  
18 although in a spot that's visible from the  
19 street, they could search it in the first  
20 instance because of the risk that the  
21 motorcycle will be taken away, but in the  
22 second instance, moved a few feet further up  
23 the driveway, still visible from the street,  
24 can't be -- they can't search it because of the  
25 additional invasion of privacy that is involved

1 in walking those few feet up the driveway?

2 MR. FITZGERALD: Yes, Your Honor --

3 JUSTICE ALITO: That's what the case  
4 comes down to?

5 MR. FITZGERALD: Yes. The protections  
6 of the -- the curtilage of the home, which the  
7 curtilage, again, is protected as part of the  
8 home itself. And for good reason.

9 Officers are prevented from going into  
10 the curtilage of a home to prevent them from  
11 being, say, in the backyard where there might  
12 be a parking area where people are parking, to  
13 avoid them -- keep them from going into garages  
14 and things like that. The curtilage --

15 JUSTICE KENNEDY: Did the police have  
16 an interest in seizing or securing this  
17 motorcycle as soon as possible?

18 MR. FITZGERALD: No, Your Honor.  
19 There -- there's no exigent circumstance in  
20 this case.

21 JUSTICE KENNEDY: The police could  
22 leave it sit there for a couple days and just  
23 get around to it? Isn't this a -- A, a  
24 dangerous item and it was used for a dangerous  
25 purpose; and it's the instrumentality and

1 evidence of a crime?

2 MR. FITZGERALD: Your Honor, it's  
3 exactly the same --

4 JUSTICE KENNEDY: And it's movable?

5 MR. FITZGERALD: It's exactly the same  
6 as if he had seen something readily movable  
7 like drugs through the window of a house. He  
8 would have to get a warrant for that. And it's  
9 the same here.

10 And there -- there are 49 other states  
11 and the federal government. The federal  
12 government has just been here and said the home  
13 is the core of the Fourth Amendment. No other  
14 state is saying this would be --

15 JUSTICE KENNEDY: It's the same as if  
16 the car was -- it's the same as if the car --  
17 there were a car but the car were under repair,  
18 all the tires were off the car and the hood was  
19 up and the engine was taken out? The same, no  
20 difference?

21 MR. FITZGERALD: Well, Your Honor,  
22 this Court has not -- you know, readily mobile  
23 can include a car that's wrecked. I mean, at  
24 some point, maybe it becomes, but readily  
25 mobile is not something that's examined on a



1 case-by-case basis for a vehicle.

2 JUSTICE KENNEDY: So you think that's  
3 irrelevant, its mobility and its -- and its --  
4 the ease of moving it is irrelevant to this  
5 case? That's what you want us to say?

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

9 JUSTICE KENNEDY: You want to say that  
10 mobility is irrelevant to this case?

11 MR. FITZGERALD: Yes, I will say that.  
12 If I may reserve the balance of my  
13 time.

14 CHIEF JUSTICE ROBERTS: Thank you,  
15 counsel.

16 Mr. Cox.

17 ORAL ARGUMENT OF TREVOR S. COX

18 ON BEHALF OF THE RESPONDENT

19 MR. COX: Mr. Chief Justice, and may  
20 it please the Court:

21 Officer Rhodes's search of the  
22 motorcycle should be upheld for three reasons.  
23 First, the search occurred outside the firm,  
24 bright line of the house where the  
25 justifications for the automobile exception

1 fully apply.

2 Second, Officer Rhodes had probable  
3 cause before he ever stepped foot on the  
4 property driveway.

5 JUSTICE SOTOMAYOR: In your brief, you  
6 seem to say that you're not -- you don't seem  
7 to say -- you say you're not taking a position  
8 on whether an officer can break into a garage  
9 or walk into a garage that's closed but not  
10 locked.

11 So you -- you seem to be suggesting  
12 that the mobility of the automobile, wherever  
13 it is, permits the police to enter. Is that --  
14 by force or without force.

15 MR. COX: This Court has never said  
16 that the mobility changes depending on where it  
17 is. To resolve this case --

18 JUSTICE SOTOMAYOR: Is that a yes to  
19 my question? Are you -- are -- because that  
20 seemed to be what the Virginia -- what the  
21 court below is saying, which is the -- where  
22 the item is located is irrelevant. If it's an  
23 automobile, whether in a garage or the  
24 motorcycle parked inside the living room --  
25 some people park their bikes inside,

1 actually -- doesn't matter where it is, that  
2 that gives the police the right to enter and  
3 search.

4 MR. COX: The Supreme Court of  
5 Virginia did not impose that restriction. And  
6 this Court has never done that either.

7 We think that it would make sense if  
8 the Court were to draw a line here, although  
9 it's not necessary. If it were to draw a line,  
10 it would make sense to draw it at the firm --

11 JUSTICE SOTOMAYOR: Well, you're  
12 saying it's not necessary because the facts  
13 don't support it, but does the logic of their  
14 holding and your position require that outcome?  
15 What -- what -- how do we -- and do we  
16 basically say, contrary to our rule, that the  
17 curtilage is not part of your home? We know it  
18 is. That's what we've said in case after case.

19 So we -- do we say now the curtilage  
20 is not part of the home for purposes of  
21 automobiles? And then how do I fit in the  
22 line?

23 MR. COX: Sure. There are a couple  
24 things baked in, and let me try to answer them  
25 in turn.

1           We don't -- we don't read Jardines and  
2           the other court cases like Oliver as saying  
3           that the curtilage and the home should be  
4           treated the same for all purposes. For  
5           determining one's reasonable expectations of  
6           privacy, you might treat the curtilage and the  
7           home the same. And that's what Jardines seemed  
8           to suggest, but it cited to Oliver, you know,  
9           one of the curtilage cases.

10           And then, in Footnote 11 of Oliver,  
11           they say, we do not say that the curtilage and  
12           the home should be treated the same for all  
13           purposes.

14           So while it might be true for  
15           determining the reasonable expectations of  
16           privacy, it's not binding on -- on courts to  
17           say what's reasonable and what's not, based on  
18           whether it's the curtilage or the home.

19           Now, the Supreme Court of Virginia, as  
20           I said, did not place a restriction on the  
21           automobile exception applying in one place  
22           versus another because this Court hasn't --  
23           hasn't done that.

24           If the Court were to draw the line --  
25           and -- and I recognize that you're trying to

1     decide a lot of cases here, not just this one  
2     -- that would be a good place to do it because  
3     that is the firm bright line that the Court has  
4     recognized in a lot of other cases as well.

5             JUSTICE GORSUCH:  So under that rule,  
6     though, police could, as I understand your  
7     position, search for cars in garages, closed  
8     garages, carports, anywhere on a property no  
9     matter how closely attached or even if firmly  
10    attached to the house?

11            MR. COX:  No, not everywhere on -- on  
12    the premises, Your Honor.

13            JUSTICE GORSUCH:  Not in the house but  
14    on the curtilage.

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

17            JUSTICE GORSUCH:  Okay.  But if we say  
18    that's curtilage, which a lot of cases in the  
19    past, at least, have suggested, and we deem a  
20    barn, a garage curtilage, then the police can  
21    without a warrant search for a car there under  
22    your rule, right?

23            MR. COX:  If it's not part of the  
24    dwelling.  If it is part of the dwelling, then,  
25    no, they could not search it.

1 JUSTICE GORSUCH: Not many people live  
2 in their garage. Some people do, some people  
3 do, and in barns, but usually they're reserved  
4 for cars and for animals.

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

7 MR. COX: Garages are commonly used --

8 JUSTICE GORSUCH: Correct?

9 MR. COX: -- Your Honor, for a lot of  
10 residential purposes. They might have storage  
11 out there, an extra refrigerator. Somebody  
12 might be living out there, if a teenager gets  
13 too rambunctious, put them out in the garage.

14 (Laughter.)

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

18 MR. COX: Yes.

19 JUSTICE BREYER: Okay? The basics  
20 question is a weird hypothetical, but I'm using  
21 a weird hypothetical for illustration.

22 The mad art burglar has just stolen  
23 The Thinker, Rodin's Thinker from the local  
24 museum. It weighs 2,000 pounds. And with his  
25 confederates, he's put it in his new glass

1 house. And the policeman stopping on the  
2 sidewalk looks in the window and sees: My God,  
3 there it is, the thing he's just stolen.

4 I thought the law is that that  
5 policeman cannot go into the house until he  
6 gets a warrant.

7 MR. COX: Yes.

8 JUSTICE BREYER: When he should --  
9 that's the law.

10 MR. COX: That's my understanding,  
11 Your Honor, yes.

12 JUSTICE BREYER: He told the  
13 confederates, they're not going to -- The  
14 Thinker is not going to escape, it weighs 2,000  
15 pounds, okay?

16 MR. COX: Unless there are some other  
17 exigent circumstances justifying it --

18 JUSTICE BREYER: Okay. All right.  
19 Fine.

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

22 JUSTICE BREYER: So, fine. Okay.  
23 Now, the other Hornbook principle is it's not  
24 The Thinker, it's a wisp, a wispy bit of very  
25 suspicious drug smoke.

1           And there, if, soon as the smoker,  
2           whom he sees in the window or he believes he's  
3           off on the side, as soon as he gets an  
4           inclination there's a policeman around, I'll  
5           tell you where all that drug is going to be,  
6           right down the sink, okay?

7           In that case, he doesn't need a  
8           warrant, because there's exigent circumstance.  
9           Is that right?

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

11          JUSTICE BREYER: All right.

12          MR. COX: If the destruction is  
13          imminent, then it might not --

14          JUSTICE BREYER: And what we don't  
15          have in this case is we do not have the exigent  
16          circumstance. By definition, you all have  
17          ruled that out. Is that correct?

18          MR. COX: I think you do have exigent  
19          circumstances.

20          JUSTICE BREYER: Well, you might have  
21          it, but that's not in front of us. That's not  
22          why we took the case. That's not what this is  
23          about. Right?

24          MR. COX: There is a categorical  
25          exigency to automobiles.



1 JUSTICE BREYER: But now -- wait,  
2 there are two differences between my example.  
3 One, it's curtilage, not house. And, two, it  
4 is a movable thing, like a police -- like a --  
5 like a car, okay.

6 So the question is it's -- and,  
7 moreover, the policeman didn't know with any  
8 certainty -- he certainly suspected, maybe had  
9 probable cause -- but he didn't know that's the  
10 right motorcycle.

11 Now, if all those things are true  
12 hypothetically, it's as if, though it's the  
13 curtilage, he saw in the middle of the driveway  
14 a box, and he thought inside that box there  
15 might be a motorcycle or drugs or something.

16 And can he go up without a warrant and  
17 without there being exigent circumstances to  
18 open the box to look to see if inside there are  
19 drugs or a motorcycle? I thought that was this  
20 case.

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

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

25 JUSTICE BREYER: If it's a big box and

1 carries a motorcycle, like a tarp, you can say  
2 yes -- you want to say yes, okay, and I would  
3 just wonder why? Why?

4 MR. COX: Well, the court -- the court  
5 has --

6 JUSTICE BREYER: I mean, it's on the  
7 driveway. It's in part of his house. I know  
8 that the motorcycle is movable, but there is no  
9 exigent circumstance.

10 He is search -- wants to look into the  
11 box, open the tarp. Why? Does the Fourth  
12 Amendment permit that? Okay. That's a long,  
13 long question. I just needed the basics, and  
14 now I've got to my point, and now I'd like to  
15 hear your answer.

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

19 My understanding is that there was a  
20 virtual certainty here that this was the same  
21 motorcycle under the tarp. So there was not  
22 any uncertainty about what was under the box,  
23 as it were.

24 The Court, to the second part, the  
25 Court has also treated other closed containers

1 differently than vehicles. In the Ross case,  
2 in Acavedo, they have said containers are  
3 different than automobiles because the -- the  
4 movability of them is just far greater than the  
5 movability of other items.

6 And there was a debate, there were  
7 some predecessors of yours on the Court who  
8 wanted to suggest that closed containers should  
9 be treated the same. There were a couple  
10 Justices in Coolidge who thought that was the  
11 case. They ended up in the dissent in Ross and  
12 -- and certainly in -- in the minority in  
13 Acevedo.

14 JUSTICE KAGAN: Mr. Cox, can --

15 CHIEF JUSTICE ROBERTS: I thought your  
16 point was that -- that you understood on the  
17 automobile exception for it to have -- include  
18 a categorical exigency aspect.

19 In other words, while it's not the  
20 case that you see the guy, you know, revving up  
21 the motorcycle about to take off, which would  
22 be an exigent circumstance, but you think  
23 because -- you want to extend or apply the  
24 automobile exception to stationary vehicles on  
25 -- on -- within the curtilage because you think

1 all the guy has to do is he sees the police  
2 officer, he runs out of the house, starts it up  
3 and goes away.

4 MR. COX: Yes, Your Honor. I think  
5 that's one of the least controversial points in  
6 this case is that because this Court has  
7 repeatedly held that a car doesn't actually  
8 have to be moving or with somebody there with a  
9 key, ready to jump on it.

10 JUSTICE SOTOMAYOR: Well, then that --  
11 that goes back to my basic question, which is  
12 how do I differentiate the -- the car in the  
13 garage if -- if -- if -- or the car through a  
14 window that you can see?

15 You would say that exigent  
16 circumstance -- that's what Virginia Court  
17 appeared to say, that it created an absolute  
18 rule. The police can break into anything, go  
19 anywhere where they see the car, whether they  
20 at that place legitimately or not.

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

24 JUSTICE SOTOMAYOR: And that's the  
25 rule you want us to uphold?

1           MR. COX: It -- it could. I mean, you  
2 could just apply -- apply that rule to this  
3 case and not make any new law, if you wanted  
4 to.

5           JUSTICE GORSUCH: Well, and then we  
6 should just go ahead and do the same thing for  
7 drugs and papers too, because -- and Entek, we  
8 can overrule Entek while we're at it, going all  
9 the way back to the founding because, you know,  
10 we can see somebody, they have a fireplace,  
11 they have a chimney, they could destroy the  
12 papers that we see through the window or the  
13 drugs. We know that they have indoor plumbing.

14           And so they can be readily destroyed  
15 too? What's the difference between the  
16 destruction of drugs and papers in a home and a  
17 car in -- in the garage?

18           MR. COX: So this gets to Justice  
19 Sotomayor's question as well. There is a  
20 little bit less mobility inside the garage.  
21 There is also more expectation of privacy in  
22 the garage.

23           JUSTICE SOTOMAYOR: It is a second.  
24 The difference between opening a garage door  
25 and just walking out and getting into a car is

1 de minimis.

2 MR. COX: Right. Well --

3 JUSTICE SOTOMAYOR: You can -- you  
4 can -- you know, it happens just as quickly.

5 MR. COX: Right. And what I just said  
6 isn't totally satisfactory because, in McNeil,  
7 you said you don't really look at the policy  
8 justifications behind a categorical exigency.

9 JUSTICE SOTOMAYOR: So if it -- if it  
10 -- if the distinction -- and there is no real  
11 distinction -- why, as Justice Gorsuch  
12 suggested, you're asking us to expand the  
13 automobile exception dramatically and to  
14 basically make an all-time exception forever?

15 Even if the driver -- even if the  
16 police know that the driver of this car is away  
17 on vacation and won't be returning for two  
18 weeks, even if they know that, they're not  
19 required to go to a magistrate and get a  
20 warrant?

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

24 JUSTICE GORSUCH: Well, counsel, when  
25 I -- when I look at the automobile exception's

1 history and go back to Carroll, it was actually  
2 an originalist opinion that looked at cars and  
3 -- and analogized them to ships and vessels,  
4 going all the way back to 1790. And so that's  
5 different than homes or curtilage. And -- and  
6 -- and cars are like vessels on the open sea or  
7 in port.

8           It never suggested that you can go  
9 look for one in a home. That was never the  
10 basis. It was you can search something that is  
11 on the open seas or in a -- in a harbor or on  
12 the streets, not that you can go into a home to  
13 find one. That seems to me categorically -- a  
14 category mistake that you're making in your  
15 argument. Can you help me with that?

16           MR. COX: Right. Well, I wouldn't --  
17 I wouldn't say it's a mistake in my argument.  
18 It would be a mistake maybe in the Supreme  
19 Court's jurisprudence not to have limited it to  
20 that extent previously, but --

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

23           MR. COX: Yes.

24           JUSTICE GORSUCH: So I'm not sure it's  
25 fair to point it, the arrow, in this direction.

1           MR. COX: Well, Carroll did involve a  
2 -- a car that was on the street, but there have  
3 been many cases since then in the 90 years  
4 since Carroll where it's been applied when the  
5 car is totally immobile and not on the open  
6 road. And so it has been a trajectory of the  
7 -- the vehicle exception ever --

8           JUSTICE KAGAN: Mr. Cox.

9           MR. COX: -- ever since then. Yes.

10          JUSTICE KAGAN: I mean, one of the  
11 things you're saying is that we basically  
12 should give -- we shouldn't pay attention to  
13 the fact that this was on the curtilage, and  
14 you said earlier -- to a different question,  
15 you said, well, you're committed by Jardines to  
16 treat the curtilage as the home for purposes of  
17 expectation of privacy, but for other purposes,  
18 you can make a distinction between the two.

19                 And I'd like to know more about that.  
20 For what other purposes can you make a  
21 distinction between the two? And why can you  
22 make a distinction between the two for those  
23 purposes when you can't make a distinction  
24 between the two for this fundamental question  
25 of where you have an expectation of privacy?



1           MR. COX: Sure. Well, certainly,  
2 Oliver opened the door to that -- that  
3 argument, that we're -- the Court said we're  
4 not saying it's the same for all purposes.

5           And one example that we cited in our  
6 brief was the difference between Santana and  
7 Payton, where you can have a warrantless arrest  
8 outside the house, right, even if it's on the  
9 front steps, but you can't have one inside  
10 because there's -- it's just beyond the pale.  
11 It's beyond the threshold, beyond the firm,  
12 bright line that this Court has -- has drawn.

13           Another example --

14           JUSTICE KAGAN: I'm sorry. You're --  
15 I just want to get the answer to my question,  
16 which is for what purposes would you treat the  
17 curtilage differently from the home and why  
18 there but not for the -- for the reasonable  
19 expectation of privacy question? So, for what  
20 purposes first and then why?

21           MR. COX: So, you know, you cannot  
22 search inside the house without a warrant  
23 unless there are exigent circumstances or if  
24 there's consent. And that's a line that this  
25 Court has drawn. And the automobile exception

1 is also a -- a categorical rule. And so we  
2 find them in -- in friction. And so the Court  
3 has to decide what's reasonable --

4 JUSTICE KAGAN: It's -- Mr. Cox, this  
5 really is a simple question. For what purposes  
6 would you say that the curtilage is not the  
7 house?

8 MR. COX: For purposes of when you  
9 have probable cause to search and a warrant --  
10 a warrant exception applies, then you don't  
11 treat them the same.

12 JUSTICE KAGAN: And -- and why is that  
13 -- why would you treat -- why would you not  
14 treat them the same for purposes of when you  
15 need a warrant if you do treat them the same  
16 for deciding whether there's a reasonable  
17 expectation of privacy in them?

18 MR. COX: Well, the -- that Court said  
19 in Ross that when the automobile exception  
20 applies, you are -- you're committed to the  
21 same search with the same scope as you would be  
22 if you had a warrant. So the only thing that's  
23 different is having a warrant.

24 And so as long as the investigating  
25 officer sticks to that as the officer did here,

1 you're not going outside the scope of a  
2 warrant.

3 JUSTICE KAGAN: You see, I don't know.  
4 Just -- when I read Jardines, here's what I  
5 take it to say: I take it to say the home is  
6 the most sacrosanct of places. And, actually,  
7 we don't think that the home stops at the door;  
8 we think that there are some areas like the  
9 porch and like the driveway or whatever, and we  
10 can argue about exactly what those areas are,  
11 but there are some areas which are just as  
12 sacrosanct as your living room. That's what I  
13 take Jardines to say.

14 And in that case, I think you lose  
15 here.

16 MR. COX: If -- if that's the case, we  
17 have a much -- much harder case to make, but I  
18 don't think -- I don't read Jardines as  
19 overruling Santana. I don't read Jardines as  
20 creating a knock-and-announce rule at the  
21 curtilage.

22 JUSTICE GINSBURG: Can -- can you  
23 remind me what you said about the enclosed  
24 garage with the door? Would that be treated  
25 like the home?

1 MR. COX: Yes.

2 JUSTICE GINSBURG: Now, that there is  
3 a real problem because you're making a  
4 distinction between people who can buy houses  
5 with garages and people who are less well  
6 heeled and only have a port or a patio for the  
7 car instead of a garage. So that distinction  
8 seems to me really troublesome, between garage  
9 and carport.

10 MR. COX: I guess what I would say is  
11 that the Fourth Amendment protects the same  
12 quality of privacy, but maybe not the same  
13 quantity of privacy for everyone. I mean, even  
14 the Dunn factors realizes that -- the Dunn  
15 factors incorporate that. If you have enough  
16 money to -- to build a huge wall, then that's  
17 going to -- that's going to impact the -- the  
18 analysis of whether that area is -- is  
19 protected or not.

20 JUSTICE ALITO: We've heard about  
21 garages.

22 CHIEF JUSTICE ROBERTS: I don't know  
23 why you're -- I'm not sure why you are  
24 arguing -- if I understand your answers to --  
25 to Justice Kagan, you seem to say, okay, let's

1 say the -- the probable cause is based on the  
2 -- the fact that you know that the drugs are  
3 in -- you know, foot-by-foot orange boxes and  
4 you see from -- in the carport, you know,  
5 foot-by-foot orange boxes.

6 And you -- you seem to be treating  
7 that the same as the situation when you have  
8 the motorcycle or an automobile, but I thought  
9 part of your argument was that the automobiles  
10 were inherently different because somebody  
11 could just jump on the motorcycle and ride  
12 away, while they wouldn't have the same  
13 mobility issues with respect to the box, the  
14 orange boxes.

15 Now, are you arguing -- do you -- does  
16 your argument extend to immobile items in the  
17 carport because it's curtilage rather than the  
18 house, or is it limited to the mobility that's  
19 characterized the automobile exception?

20 MR. COX: Yes. The automobile  
21 exception is just that. It's an exception on  
22 very circumscribed terms --

23 CHIEF JUSTICE ROBERTS: And then the  
24 problem with that, of course, is, we've said,  
25 the curtilage is like the house and -- maybe

1 you would. I mean, if you have an automobile  
2 in the house, which is not, you know, Jay  
3 Leno's house, right, where he's got dozens of  
4 rare cars or -- or the Porsche in Ferris  
5 Bueller. I mean, are you saying that you --  
6 you don't --

7 (Laughter.)

8 CHIEF JUSTICE ROBERTS: -- you don't  
9 -- you can just go in because it's mobile and  
10 they got it in there somehow; they can get it  
11 out? So you don't recognize a distinction  
12 between the curtilage and the house for the  
13 purposes of the vehicles that are mobile?

14 MR. COX: The Court has laid down a  
15 categorical exception. If you were to draw a  
16 line, we think the most sensible place to do it  
17 would be the bright line of the house because  
18 it is used in other Fourth Amendment  
19 jurisprudence.

20 It doesn't need to reach that here.  
21 There are arguments that the mobility stays the  
22 same and the other justifications for the  
23 automobile exception stay the same, whether  
24 it's inside the house or outside the house, but  
25 if you need to draw a line, that is a sensible

1 place to do it, not at the curtilage.

2 JUSTICE SOTOMAYOR: I'm sorry. I --

3 JUSTICE ALITO: But, Mr. Cox, you know  
4 the -- the Fourth Amendment says the people  
5 have the right to be secure in their homes,  
6 papers, persons, and effects. So in the  
7 curtilage -- the curtilage issue goes to the  
8 question of whether it is a search of the home.  
9 If it's not in the curtilage -- curtilage, then  
10 it's not a search of the home, the Fourth  
11 Amendment doesn't apply.

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

20 And so you have to grapple with the  
21 real privacy interests that are involved in the  
22 case versus the other considerations; namely,  
23 the mobility of the automobile. And that, I  
24 understand your argument to be, is why it's  
25 reasonable to draw a distinction between an

1 enclosed place like the house or garage and an  
2 open place like a driveway, even if it  
3 technically falls within the curtilage.

4 MR. COX: That -- that's correct. And  
5 the search that occurred here was very  
6 reasonable. It was limited in scope --

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

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

23 But that's not the analysis the court  
24 made.

25 MR. COX: That's true. The Court of



1 Appeals of Virginia did decide it on exigency  
2 grounds because Mr. Collins had been alerted to  
3 the police's interest in this vehicle.

4 JUSTICE SOTOMAYOR: It didn't reach  
5 exigency. It said only the automobile  
6 exception permits the search of any car, no  
7 matter where it is in the home.

8 MR. COX: The Supreme Court of  
9 Virginia had found that. But the Court of  
10 Appeals of Virginia below them had decided on  
11 exigency grounds. The supreme court --

12 JUSTICE SOTOMAYOR: Yes, but the --  
13 the supreme court --

14 MR. COX: That's right. And they  
15 didn't --

16 JUSTICE SOTOMAYOR: -- which is the  
17 court we're reviewing --

18 MR. COX: That's right. And they  
19 didn't make -- they didn't make its own  
20 exigency analysis. That is another ground on  
21 which we win. We would rather win on the  
22 categorical exception, but we clearly think  
23 that there are exigent circumstances here  
24 beyond the categorical exigency in the  
25 automobile exception that --

1                   JUSTICE GINSBURG: That would be a  
2 question for remand because it wasn't reached  
3 by the Virginia Supreme Court.

4                   MR. COX: We would -- we would be  
5 confident if it were remanded that we would  
6 prevail on that, yes, Your Honor.

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

15                   And --

16                   JUSTICE GINSBURG: You say if there is  
17 probable cause to get a warrant, then you don't  
18 need a warrant, and that's the automobile  
19 exception.

20                   Is there any other exception like that  
21 where the test of whether you need -- if you  
22 have probable cause, forget it, forget the  
23 warrant, that probable cause alone is enough?

24                   MR. COX: Well, I think under plain  
25 view you'd have to have some -- some probable

1 cause to believe that what you were say --  
2 seeing was contraband or otherwise evidence of  
3 crime. So I think that there is some analysis  
4 that has to go into knowing that it's --

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

10 MR. COX: I -- I think --

11 JUSTICE KENNEDY: I -- I thought they  
12 relied upon the fact that it was in plain view  
13 with -- with the tarp on it.

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

19 JUSTICE KENNEDY: But --

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

22 JUSTICE KENNEDY: But it was in plain  
23 view?

24 MR. COX: It was.

25 JUSTICE KENNEDY: It's not as if there

1 was a closed garage and they went and opened  
2 the garage?

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

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

11 MR. COX: We submit that there was --  
12 there was one search.

13 JUSTICE KAGAN: The search of the  
14 motorcycle?

15 MR. COX: That's right.

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

22 MR. COX: We look at it as one search  
23 because it's the object of the search that you  
24 are entitled to search, whether it's under a  
25 warrant or under a warrant exception. And you

1 look at it by -- you know, it's not a separate  
2 search for each access point that you -- that  
3 you go to.

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

9 So we see it as one search for that  
10 reason.

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

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

23 And I'll say that, to go back to  
24 Justice Gorsuch's questions about the original  
25 understanding of this, all along the

1 justifications for the vehicle exception have  
2 been based in the contradistinction between  
3 vehicles and houses or dwellings.

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

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

14 Unless there are further questions,  
15 thank you.

16 CHIEF JUSTICE ROBERTS: Thank you, Mr.  
17 Cox.

18 Mr. Fitzgerald, four minutes  
19 remaining.

20 REBUTTAL ARGUMENT OF MATTHEW A. FITZGERALD  
21 ON BEHALF OF THE PETITIONER

22 MR. FITZGERALD: Thank you. Just a  
23 few points in rebuttal here.

24 So the curtilage is protected as part  
25 of the home. And if we look back, historically

1 speaking, the automobile exception is born at a  
2 traffic stop in the 1920s.

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

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

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

21 And it should not be that searching  
22 for an automobile, or what might be in an  
23 automobile, would get police around a house  
24 like that, around to the back door, where there  
25 might be, I mean, in this case, the side door,

1 a sliding door, where if you're standing where  
2 this motorcycle is, you can see directly into  
3 the side door of the house and you can see this  
4 just a little bit at the petition appendix page  
5 112.

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

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

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

20 CHIEF JUSTICE ROBERTS: Thank you,  
21 counsel. The case is submitted.

22 (Whereupon, at 12:03 p.m., the case  
23 was submitted.)

24

25



## Official - Subject to Final Review

<b>1</b>	<b>allow</b> <sup>[1]</sup> 21:24 <b>allowed</b> <sup>[1]</sup> 25:18 <b>almost</b> <sup>[2]</sup> 6:22 10:10 <b>alone</b> <sup>[2]</sup> 3:15 57:23 <b>already</b> <sup>[1]</sup> 7:18 <b>although</b> <sup>[3]</sup> 21:17 29:18 34:8 <b>Amendment</b> <sup>[15]</sup> 3:20 5:9,20 9:3 11:12 17:7 18:4,23 31:13 41:12 51:11 53:18 54:4,11,14 <b>analogized</b> <sup>[1]</sup> 46:3 <b>analysis</b> <sup>[4]</sup> 51:18 55:23 56:20 58:3 <b>animals</b> <sup>[1]</sup> 37:4 <b>another</b> <sup>[4]</sup> 35:22 48:13 56:20 60:7 <b>answer</b> <sup>[5]</sup> 27:2 34:24 41:15,16 48:15 <b>answers</b> <sup>[1]</sup> 51:24 <b>App</b> <sup>[1]</sup> 57:10 <b>Appeals</b> <sup>[2]</sup> 56:1,10 <b>APPEARANCES</b> <sup>[1]</sup> 1:17 <b>appeared</b> <sup>[1]</sup> 43:17 <b>appendix</b> <sup>[1]</sup> 63:4 <b>applied</b> <sup>[1]</sup> 47:4 <b>applies</b> <sup>[3]</sup> 5:20 49:10,20 <b>apply</b> <sup>[12]</sup> 3:25 9:17,21 21:24 33:1 42:23 44:2,2 54:11 60:21 62:10 63:16 <b>applying</b> <sup>[1]</sup> 35:21 <b>approaching</b> <sup>[1]</sup> 28:11 <b>area</b> <sup>[5]</sup> 6:4 12:21 30:12 51:18 63:6 <b>areas</b> <sup>[3]</sup> 50:8,10,11 <b>arguably</b> <sup>[1]</sup> 5:3 <b>argue</b> <sup>[1]</sup> 50:10 <b>arguing</b> <sup>[3]</sup> 8:16 51:24 52:15 <b>argument</b> <sup>[22]</sup> 1:14 2:2,5,8 3:4,7, 14 5:17 8:20,24 11:7 32:17 46:15, 17 48:3 52:9,16 54:24 55:16 61: 20 62:14,15 <b>arguments</b> <sup>[1]</sup> 53:21 <b>around</b> <sup>[8]</sup> 13:4,10 19:12 30:23 39: 4 62:18,23,24 <b>arrest</b> <sup>[4]</sup> 26:10,11 29:9 48:7 <b>arrived</b> <sup>[1]</sup> 15:9 <b>arrow</b> <sup>[1]</sup> 46:25 <b>art</b> <sup>[1]</sup> 37:22 <b>aside</b> <sup>[2]</sup> 26:23 27:9 <b>aspect</b> <sup>[1]</sup> 42:18 <b>assume</b> <sup>[2]</sup> 10:23 11:4 <b>assuming</b> <sup>[1]</sup> 59:5 <b>assumption</b> <sup>[2]</sup> 20:5,5 <b>attached</b> <sup>[2]</sup> 36:9,10 <b>attention</b> <sup>[1]</sup> 47:12 <b>AUSTIN</b> <sup>[1]</sup> 1:3 <b>authorize</b> <sup>[2]</sup> 4:17 5:15 <b>authorizes</b> <sup>[1]</sup> 4:16 <b>automobile</b> <sup>[34]</sup> 3:13,25 7:6 9:21 32:25 33:12,23 35:21 42:17,24 45: 13,25 48:25 49:19 52:8,19,20 53: 1,23 54:23 55:12,15 56:5,25 57: 18 60:17,18,21 62:1,3,5,8,22,23 <b>automobiles</b> <sup>[4]</sup> 34:21 39:25 42:3 52:9	<b>Avenue</b> <sup>[1]</sup> 5:13 <b>avoid</b> <sup>[1]</sup> 30:13 <b>away</b> <sup>[8]</sup> 14:5,11 24:17 29:17,21 43:3 45:16 52:12 <hr/> <b>B</b> <hr/> <b>back</b> <sup>[12]</sup> 12:16 16:3 18:20 43:11, 23 44:9 46:1,4 55:21 60:23 61:25 62:24 <b>backup</b> <sup>[1]</sup> 62:15 <b>backyard</b> <sup>[1]</sup> 30:11 <b>baked</b> <sup>[1]</sup> 34:24 <b>balance</b> <sup>[3]</sup> 6:18 7:1 32:12 <b>balancing</b> <sup>[3]</sup> 6:16 54:16 55:10 <b>barn</b> <sup>[1]</sup> 36:20 <b>barns</b> <sup>[1]</sup> 37:3 <b>based</b> <sup>[8]</sup> 5:17 6:7 19:6,20 35:17 52:1 61:2 62:11 <b>basic</b> <sup>[1]</sup> 43:11 <b>basically</b> <sup>[4]</sup> 34:16 45:14 47:11 55: 9 <b>basics</b> <sup>[3]</sup> 37:17,19 41:13 <b>basis</b> <sup>[5]</sup> 25:23 26:21 32:1 46:10 62:7 <b>become</b> <sup>[1]</sup> 62:5 <b>becomes</b> <sup>[1]</sup> 31:24 <b>behalf</b> <sup>[8]</sup> 1:18,21 2:4,7,10 3:8 32: 18 61:21 <b>behind</b> <sup>[2]</sup> 45:8 62:18 <b>believe</b> <sup>[10]</sup> 4:4 20:1 21:6,12 22:10 23:2 26:24 28:24 57:12 58:1 <b>believes</b> <sup>[2]</sup> 15:19 39:2 <b>below</b> <sup>[5]</sup> 8:16 33:21 55:8,16 56: 10 <b>besides</b> <sup>[1]</sup> 21:19 <b>better</b> <sup>[2]</sup> 12:21 16:13 <b>between</b> <sup>[14]</sup> 17:19 40:2 44:15,24 47:18,21,22,24 48:6 51:4,8 53:12 54:25 61:2 <b>beyond</b> <sup>[8]</sup> 19:10 28:10 48:10,11, 11 54:12 56:24 60:16 <b>big</b> <sup>[2]</sup> 13:2 40:25 <b>bikes</b> <sup>[1]</sup> 33:25 <b>binding</b> <sup>[1]</sup> 35:16 <b>bit</b> <sup>[4]</sup> 38:24 44:20 62:20 63:4 <b>block</b> <sup>[1]</sup> 28:7 <b>born</b> <sup>[1]</sup> 62:1 <b>both</b> <sup>[1]</sup> 63:9 <b>box</b> <sup>[8]</sup> 40:14,14,18,23,25 41:11,22 52:13 <b>boxes</b> <sup>[3]</sup> 52:3,5,14 <b>brand</b> <sup>[1]</sup> 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