14-23 - Legal Standing Upon the Curtilage of Residences

Los Angeles County Sheriff's Department

NEWSLETTER

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LEGAL STANDING UPON THE CURTILAGE OF RESIDENCES

The curtilage of a home can generally be described as the areas immediately surrounding the main structure, i.e. yards, porch, driveway, carport, sheds, etc. As law enforcement officers, we often enter such areas to make contact with persons at the home, conduct investigations, or to apprehend suspects. The courts have held, however, that under certain circumstances, the mere presence of a peace officer in the curtilage of a home could constitute a warrantless search, in violation of the Fourth Amendment.

How do you know if your presence, as a peace officer, has crossed the line into an "intrusion" that could constitute an illegal search? It helps to think of what the homeowner/resident would expect from the general public.

Generally, residents of a home expect limited access to their home by the public, such as neighbors, delivery persons, visitors, etc. That access is generally expected to be via obvious, direct paths to the front door. The expected activity, does *not* include conduct intended to "search," but rather simple efforts taken just to "contact" the resident. For example, taking a "round about" path to the front door in order to see as much of the property as possible, such as entering the side yard through a closed gate, and walking across a back porch into the carport and then around to the front door, is very different than simply walking up the driveway to the front door. If it would seem odd if a neighbor did it, it is probably not permissible for the police to do it.

The U.S. Supreme Court recently held, in *Florida v. Jardines*, 133 S. Ct. 1409 (2013), that a K-9 sniff on a front porch was a "search" that required either a warrant or an exception to the warrant requirement, and in so doing, discussed the concept of "limited public access" to the home and its curtilage.

If entry is made onto the curtilage of a home for the purpose of obtaining *information* (i.e., to see, smell, record activity on the property) – by any means other than permissible "knock and talk" contact – the entry must be justified by a warrant, consent, probation/parole requirements, or exigent circumstances.

A good example is provided by *People v. Camacho*, 23 Cal. 4th 824 (2000), wherein officers were dispatched to a home regarding a complaint of loud noise at approximately 11:00 p.m. Instead of walking up to the front door, one of the officers walked into the side yard and looked through a window that was open a few inches. The officer observed Camacho packaging cocaine. The court found the entry into the side yard was an unlawful "search," noting that "most persons . . . . would be surprised, indeed startled, to look out their bedroom window at such an hour to find police officers standing in their yard looking back at them."

Certain areas, by their very nature, have a greater expectation of privacy. For instance, back yards almost always have a much higher privacy expectation than front yards. They are often fenced, usually not readily visible to the public, normally do not have direct routes to the front door, and are commonly the location of family activities resembling the "intimate" household activities that are afforded greater protection under the Fourth Amendment.

Similarly, side yards and carport areas will generally have a higher expectation of privacy than front yards and driveways, because they are seldom part of a normal route to the front door.

Each property is different, however, and courts will consider all the circumstances present to determine if an entry onto the curtilage was reasonable under the Fourth Amendment. Some factors to consider when you are entering the curtilage of a home under non-emergent circumstances are:

- Am I here for a call for service? (If so, the nature of the call should direct what type of approach/inquiry you should make.)
- Did I take a normal path to the front door?
- Did I obtain consent from someone at the location to enter specific areas?
- Is there a gate, fence, or foliage preventing a clear path onto the property or toward the home?
- Did I have to overcome obstacles to be in a position to see, hear, or smell something not obvious from public view? (For example, did you have to jump a fence, open a closed gate, stand on a retainer wall, go through foliage, etc.)
- Am I using tools to enhance my "search" from the curtilage to discover sights, smells, or sounds that would not otherwise be apparent to the "naked eye?" (Such as a narco dog, night vision or thermal imaging goggles.)

Again, every case is different, and there are many factors, such as accessibility and visibility, that will affect your legal standing within the curtilage of a home. Generally speaking, if you're not at a location for a call or an exigency, consider obtaining a warrant for the home in question. "Snooping" around the curtilage could ruin your legal standing to investigate further. As a skilled observer, you may have already seen enough or know enough about the location at that moment to obtain a warrant.

Questions regarding the contents of this newsletter may be directed to Field Operations Support Services. foss@lasd.org

References

United States Supreme Court Cases: *Oliver v. US* (1984) 466 US 170, 180;

US v. Dunn (1987) 480 US 294, 301

Alameda County District Attorney's Office Publication titled *Police Trespassing*

http://le.alcoda.org/publications/point_of_view/files/police_trespassing.pdf