Georgia State University
ScholarWorks @ Georgia State University

College of Law Library Student-Authored Works | Law Library

12-1-2007

Search Warrants - What makes up Curtilage?

Cal Leipold
Georgia State University College of Law

Follow this and additional works at: http://scholarworks.gsu.edu/col_lib_student

Part of the Law Commons

Recommended Citation
Leipold, Cal, "Search Warrants - What makes up Curtilage?" (2007). *College of Law Library Student-Authored Works.* Paper 16.
http://scholarworks.gsu.edu/col_lib_student/16

This Article was created by a Georgia State University College of Law student for the Advanced Legal Research class. It has been preserved in its original form, and may no longer reflect the current law. It has been uploaded to the Digital Archive @ GSU in a free and open access format for historical purposes. For more information, please contact scholarworks@gsu.edu.

Research Guides

Search Warrants - What makes up Curtilage?

Guide Information

Last Updated:	Oct 29, 2010
Guide URL:	http://libguides.law.gsu.edu/searchwarrantsandcurtilage
Description:	Cal Leipold - Fall 2007 - Constitutional; Criminal Law
Tags:	constitutional_law, criminal_law
RSS:	Subscribe to Updates via RSS

Guide Index

Home
Primary Sources
Secondary Sources
Computerized Research
Conclusion

Home

Scope

This research guide is primarily concerned with the concept of curtilage. Curtilage is a common law concept that is generally understood to consist of the area around the home. The Supreme Court in Oliver v. United States clarified earlier cases and stated that, "an individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home." Courts generally grant people a right of privacy within the curtilage of their home, but there are exceptions to this principle. This annotation is concerned with the cases and resources that help courts define curtilage in the context of the Fourth Amendment. The question of whether a search falls outside the curtilage or is within the curtilage can determine whether the search is upheld or the evidence is suppressed. This annotation also contains cases where a search was within the curtilage but where the owner had no right to privacy.

Purpose

This research guide was developed for Professor Nancy Johnson's Advanced Legal Research class at Georgia State College of Law. it is a collection of cases and resources dealing with curtilage. Curtilage is a common law concept that includes the area around a dwelling. This annotation is designed to give users a guide to finding important cases and resources to determine whether a search was within the curtilage of a dwelling.

About the Author

Cal Leipold is a Third Year Law Student at Georgia State College of Law. He is pursuing a career in the Army JAG Corps after graduation. Cal created this guide for Professor Nancy Johnson's Advanced Legal Research Class in Fall 2007.

Disclaimer

Nothing in this guide should be understood as offering legal advice. Do not rely on the author's interpretation of cases and secondary sources. This guide is not comprehensive and is merely a compellation of what the author thought was the most important resources on the topic of curtilage. This guide was last updated in November 2007. Remember to Sheperdize all cases to ensure that they are still good law before relying on them.

Bibliographies on this Web site were prepared for educational purposes by law students as part of Nancy P. Johnson's Advanced Legal Research course. The Law Library does not guarantee the accuracy, completeness, or usefulness of any information provided. Thorough legal research requires a researcher to update materials from date of publication; please note the semester and year the bibliography was prepared.

Back to Top

Primary Sources

Constitutions

i. U.S. Const. amend. IV

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

ii. GA Const. Art. I Sec 1.

"Paragraph XIII. Searches, seizures, and warrants. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause supported by oath or affirmation particularly describing the place or places to be searched and the persons or things to be seized."

Supreme Court Cases

i. Hester v U.S., 265 U.S. 57 (1924).

This case sets forth the open fields doctrine. Searches conducted in open fields are not protected by the Fourth Amendment. Open fields were not 'effects' under the wording of the amendment.

ii. Oliver v. U.S., 466 U.S. 170 (1984).

In Oliver, the Supreme Court defined curtilage as "the area around the home to which the activity of home life extends." This is the fundamental case for modern curtilage law.

iii. United States v. Dunn, 480 U.S. 294, 300 (1987)

Dunn sets out a four factor test for looking at curtilage. The four factors considered by the Dunn Court were, "(1) the proximity of the area to the home; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps taken to protect the area from observation by people passing by." This test is used by state courts, including GA in determining whether a search is within the curtilage of a home.

iv. California v. Ciraolo, 476 U.S. 207 (1986).

The defendant was growing marijuana within the curtilage of his home. He surrounded his home with a high fence, and the marijuana was not visible from outside. Police officers received a tip about the drugs, obtained a plane, and flew over the house at 1,000 ft. They were able to observe the drug, obtained a warrant, and arrested Ciraolo. The Supreme Court upheld the warrant based on the officers observations from the plane. The officer was within a public airspace and the plants were visible with the naked eye. v.

v. California v. Greenwood, 486 U.S. 35 (1988).

Officers received a tip that the defendant was using narcotics. They searched his trash and found evidence to support the tip. They obtained a warrant, searched the home, and found narcotics. The Supreme Court held that the garbage on the curb was not within the curtilage of the home and therefore was subject to a warrantless search.

vi. Kyllo v. U.S., 533 U.S. 27 (2001)

In this case, the government used a thermal imager to determine the level of heat emanating from a garage attached to the defendant's house. Because of the high levels of heat detected, the officers were granted a search warrant which discovered drugs. Justice Scalia found that the use of the thermal imager was a search under the 4th amendment.

Georgia Cases

The topic of curtilage is a common one in Georgia cases. There have been over 250 cases decided in the state of Georgia that mention curtilage in some capacity. The following are some major Georgia cases on the topic of curtilage. This is by no means an exhaustive list, but is only meant to provide the user with a starting point for some of the numerous cases on this topic and the subtopics addressed within them.

i. Norman v. State, 134 Ga.App. 767 (1975).

Police officers searched a van 200 feet from the defendant's house and found illegal liquor. The court ruled that the search was within the curtilage and that the evidence had to be excluded. This case provides a good definition of curtilage that has been cited approvingly by many other Georgia courts.

ii. Espinoza v. State, 265 Ga. 171 (1995).

This case deals with a curtilage issue concerning apartments. The question of where the curtilage of one apartment ends and the curtilage of another begins can be a difficult question. The court here focuses on the expectation of privacy of the renter of the duplex and the location in which the contraband was found to determine that the renter had a reasonable expectation of privacy.

iv. State v. Pando, 284 Ga.App. 70 (2007).

Restates the concept that officers are prevented from entering a defendant's home or curtilage without a warrant unless they can show exigent circumstances.

v. State v. Gray, 285 Ga.App. 124 (2007).

The Court of Appeals upheld a trial court's granting of a motion to suppress. In this case, the evidence recovered was only visible once the officers entered the curtilage of the home without a warrant and without consent.

vi. Williams v. State, 249 Ga.App. 119 (2001).

The court upheld the denial of a search warrant. The defendant was convicted of possession of cocaine with intent to distribute. The court held that the officers use of a flashlight to search the yard did not violate the defendant's rights. Even though the items were within the curtilage, the defendant took no steps to prevent them from being viewed by the public. Since the items were in plain view, the search was upheld.

vii. Brooks v. State, 237 Ga.App. 546 (1999).

Officers executed a search warrant on a mobile home and also searched a truck located near the door of the mobile home. Inside the truck, the officers found a gallon bag full of marijuana in the truck. The court held that since the truck was within the curtilage of the mobile home, the search was legal under the warrant.

Back to Top

Secondary Sources

Legal Encyclopedias

i. Corpus Juris Secundum

79 C.J.S. Searches § 34
Curtilage generally.

79 C.J.S. Searches § 35
Open fields generally.

79 C.J.S. Searches § 36
This section discusses open fields and curtilage.

79 C.J.S. Searches § 82
Covers aerial surveillance and searches via the air.

ii. American Jurisprudence, Second Edition

68 Am. Jur. 2d Searches and Seizures § 12
Warrantless Searches and Seizure.

68 Am. Jur. 2d Searches and Seizures § 24
Searches of trash or garbage.

68 Am. Jur. 2d Searches and Seizures § 25
Effect of location on the search of trash

68 Am. Jur. 2d Searches and Seizures § 59
Open Fields

68 Am. Jur. 2d Searches and Seizures § 66
Curtilage. This article provides a number of good research resources.

68 Am. Jur. 2d Searches and Seizures § 67
Factors in determining where the curtilage ends.

68 Am. Jur. 2d Searches and Seizures § 68
Exceptions to privacy expectations within the curtilage.

68 Am. Jur. 2d Searches and Seizures § 108
Ariel Searches

Law Review Articles

The following are some selected law review articles on curtilage. There are literally hundreds of articles that deal with curtilage in some form available on Westlaw or Lexis.

i. Eric Dean Bender, *The Fourth Amendment in the Age of Aerial Surveillance: Curtains for the Curtilage?,* 60 NYULR 725 (1985)

This article came out shortly after the Supreme Court decision in Oliver v. United States. It looks at the historical underpinings of curtilage in the United States. After examining the history of the concept, it looks at the evolution of the doctrine. Finally, the author examines the impact on warrantless searches conducted by airplane. The author proposes an approach for courts to deal with cases where aerial observation is conducted without a warrant.

ii. Carrie Leonetti, *Open Fields in the Inner City: Application of the Curtilage Doctrine to Urban and Suburban Areas*, Geo. Mason U. Civ. Rts. L.J. 297 (2005).

This article provides a brief history of curtilage and looks at the development of the concept. It goes on to examine the four factors put forth in the United States v. Dunn. The author argues that these factors focus primarily on rural areas and examines what courts should do to protect privacy rights and offer fourth amendment protections in an urban setting. The author argues that when curtilage is properly applied, it protects property rights in both an urban and a rural setting.

iii. Orin S. Kerr, *The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution*, 102 MILR 801 (2004).

This article is an extensive piece on the Fourth Amendment. It addresses the development of the Fourth Amendment and how the Supreme Court has treated it. In addition to a discussion of curtilage, the article contains an extensive discussion of wiretapping law.

iv. Thomas K. Clancy, *What is a 'Search' within the meaning of the Fourth Amendment?*, 70 ALBLR 1 (2006).

v. April A. Otterberg, *GPS Tracking Technology: The case for revisiting Knotts and shifting the Supreme Court's theory of the public space under the Fourth Amendment*, 46 BCLR 661 (2005).

This article looks at GPS technology and its potential impact on searches. This can be an interesting area of the law when the GPS technology is within the cartilage of the

defendant's house.

vi. Brendan Peters, *Fourth Amendment Yard Work: Curtilage's Mow-line Rule*, 56 STNLR 943 (2004).

This article provides an extensive discussion of curtilage. It provides a good explanation of the historical underpinnings of curtilage. It also examines curtilage in light of Kyllo

vii. Lee C. Milstein, *Fortress of Solitude or Lair of Malevolence? Rethinking the Desirability of Bright-Line Protection of the Home*, 78 NYULR 1789 (2003). This article examines the protections given to the home under the Fourth Amendment in light of Kyllo.

American Law Reports

i. Rachel A. Campbell, *Search Warrant as Authorizing Search of Structures on Property Other Than Main House or Other Building, or Location Other than Designated Portion of Building*, 104 A.L.R.5th 165 (2007).

"This annotation collects and analyzes the state and federal cases discussing whether, under a search warrant neither expressly permitting nor expressly forbidding the search of structures other than the main building on the property, a search of a particular outbuilding or structure was authorized by the warrant. Also included are cases examining whether a search warrant for a particular apartment, office, or portion of a building authorizes the search of other areas within that building."

ii. Kimberly J. Winbush, *Searches and seizures: reasonable expectation of privacy in contents of garbage or trash receptacle*, 62 A.L.R.5th 1 (2007).

This ALR article deals with warrantless searches of garbage or trash containers. A key question is about whether the trash is within the curtilage. It includes cases that found the searches to be within the curtilage and invalidated the search and cases that upheld the
search.

iii. Mei Fung So, *Search and seizure: reasonable expectation of privacy in driveways*, 60 A.L.R.5th 1 (2007).

This ALR article deals with driveways and whether a person has a reasonable expectation of privacy in their driveway. It also examines cases where the police were within the cartilage but the owner had no expectation of privacy.

Other

i. Looseleafs

William E. Ringel, *Searches and Seizures, Arrests and Confessions* (2007).

Specifically see: *§ 8:17. Entry onto premises involving no invasion of privacy—Open fields; Curtilage concept*.

This book is an excellent resource for questions about the Fourth Amendment. It is a looseleaf book that is also available on Westlaw. The book contains detailed pieces on every facet of Fourth Amendment law, and the curtlige section also provides a good collection of cases.

ii. Books

The following books are available in the Georgia State Law Library and provide resources on curtilage.

Louis Fisher and David Gray Adle, *American constitutional law*, (Carolina Academic Press 2007) Call Number: KF4549.F57 2007.
A general book on constitutional law including the Fourth Amendment.

James A. Adams, *Prosecutor's manual for arrest, search, and seizure*, (LexisNexis 2004) Call Number: KF 9625 .A214 2004.
This book has a lot of information for determining whether an arrest is valid or not. It also has a good section on curtilage and searches using technology.

Bruce D. Quick, *Law of arrest, search, and seizure : an examination of the Fourth, Fifth, and Sixth Amendments to the United States Constitution*, (North Dakota Attorney General's Office, Criminal Justice Training and Statistics Division 1987) Call Number: KF9625.Z9 Q53 1987.
This book provides good information regarding the 4th Amendment. Remember to update any law you find in this book because the law on curtilage has changed in the last 20 years.

Back to Top

Computerized Research

Westlaw

Westlaw provides users with access to a massive number of electronic databases and collections of legal documents, cases, statutes, etc. While this service is expensive, it is a great resource if you can afford it. Westlaw has the best selection of treatises dealing with the Fourth Amendment.

Some helpful Westlaw key numbers for researching searches and seizures are as follows:

West's Key Number Digest, Criminal Law K394.4(8)
West's Key Number Digest, Searches and Seizures K3.7
West's Key Number Digest, Searches and Seizures K3.8(2)
West's Key Number Digest, Searches and Seizures K27
West's Key Number Digest, Searches and Seizures K26
West's Key Number Digest, Searches and Seizures K48

a. Westlaw Online Treatises

The following are a brief selection of the Treatises or databases available on Westlaw that provide good resources on curtilage and the 4th Amendment generally. The name in parenthesis is the name of the database on Westlaw.

I. Search Warrant Law Deskbook(SRCHWARLAW(
Look at section § 14:6. Neighboring areas for a discussion of curtilage. This database also provides some checklists for prosecutors and defense attorneys. Search 'curtilage'.

II. Search and Seizure: A Treatise on the Fourth Amendment (SEARCHSZR)
This is an online treatist on search and seizure. It provides an extensive number of cases and a lengthy discussion on curtilage. Search 'curtiage'.

III. Warrantless Search Law Deskbook (WARLESSRC)
This resources is similar to the Search Warrant Law Deskbook, but provides guidance for searches conducted without a warrant. This is a good resource because warrantless searches often enter the curtilage of a dwelling.

Lexis

Like Westlaw, Lexis provides a collection of online databases and legal documents. It also contains Shepards, a resource used for ensuring that the law is still accepted and has not been overturned.

A large number of GA cases can be found by searching 'curtilage /s search'

Other

iii. Loislaw

Loislaw is another online database and document service. However, it is much cheaper than Leixs or West. The downside of Loislaw is that the amount of information is substantially smaller than either Lexis or West.

iv. LexisOne

LexisOne is a free service provided by Lexis. It offers some cases for free. However, LexisOne does not allow the user to Sheperdize cases. Also, because the content is free it is extremely limited. Users must register in order to use LexisOne.

v. Casemaker

Casemaker is a free service for members of the GA Bar. It is an electronic database of cases. Unlike Lexis and West, it does not have headnotes or good search functionality.

vi. The FBI Bulletin

Page 25 of the linked bulletin provides an excellent discussion of curtilage from the viewpoint of a law enforcement officer.

Back to Top

Conclusion

Conclusion

In order to determine what makes up the curtilage of a dwelling, most courts rely on the Dunn found in the Supreme Court section above. Determining curtilage is often a fact intensive question, and the answer often validates or invalidates a search by law enforcement officers.

Back to Top

Powered by Springshare; All rights reserved. Report a tech support issue.