

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

GLENN EDWARDS,
Defendant.

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CRIMINAL ACTION

NO. 14-223-01

MOTION TO SUPPRESS PHYSICAL EVIDENCE
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

RUFE, J.

MAY 29, 2015

Defendant Glenn Edwards is charged with distribution of a controlled substance and possession of a controlled substance with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), possession of a firearm in furtherance of a drug-trafficking crime in violation of 18 U.S.C. § 924(c), and possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g). Defendant has filed a Motion to Suppress the drugs and guns that form the basis of the indictment, claiming that the police discovered the evidence in the course of unlawful searches. Upon consideration of Defendant's Motion to Suppress, the Government's response thereto, the evidence, testimony, and oral argument presented at an evidentiary hearing on the Motion on May 7, 2015, and upon further review of the hearing transcripts, the Court now enters its findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Defendant's home is located on Tyson Avenue in Northeast Philadelphia. At the rear of the property, a house door and a garage door open out onto a short, paved driveway that leads to

a common driveway shared by the houses on the block. The houses on either side of Defendant's property have fences that separate them from Defendant's property.¹

2. Photographs admitted at the suppression hearing show a large brown garbage bin and a blue garbage or recycling bin in Defendant's driveway, along a neighbor's side fence and several feet from where the individual driveway intersects the common driveway.²

3. Philadelphia police officer Michael Williams conducted three separate "trash pulls" in the early morning hours of July 11, 2013, July 25, 2013, and August 15, 2013, in which he removed trash bags from behind Defendant's home.

4. Each of the trash pulls occurred on a day on which employees of the Department of Streets of the City of Philadelphia were scheduled to collect garbage from along the common driveway behind Defendant's home.

5. Officer Williams testified that the trash bags he pulled were tightly knotted and were located on the common driveway, near the edge of Defendant's driveway.³

6. Officer Williams testified that inside the trash bags were small plastic bags containing marijuana residue.

7. Defendant testified at the suppression hearing that his garbage was never moved to the location testified to by Officer Williams until approximately 7:30 a.m. on the day of collection,

¹ The Court infers that the fences belong to the adjoining properties, not to Defendant's, because they are of different heights and lengths. One of the properties also has a gate separating the property from the common driveway; it is not possible to tell from the photographs whether the other property also has a gate.

² The fence along which the bins are placed also stops short of where Defendant's driveway and the neighbor's driveway meet the common driveway; by contrast, the fence on the other side of Defendant's property appears to extend farther out (and that fence is also several feet higher than the other fence).

³ Tr. 4/9/15 at 46.

and that the trash therefore must have been located on Plaintiff's driveway, several feet from the spot to which Officer Williams testified.⁴

8. Several months before the trash pulls, on February 14, 2013, a cooperating individual had purchased marijuana from the target of an investigation at a location on Baynton Street in Philadelphia. The target then was observed meeting with Defendant.

9. On July 19, 2013, the target was arrested and implicated Defendant in dealing large amounts of marijuana and in possessing a firearm.

10. Defendant was arrested on August 16, 2013, and a search warrant (No. 167716) was authorized and issued by a judicial officer of the Philadelphia Court of Common Pleas for the Tyson Avenue residence.

11. The information included in the warrant included a description of evidence from the trash bags, the controlled buy in February, and statements made by the target after his arrest.

II. DISCUSSION

Mr. Edwards has moved to suppress the drugs and guns. He contends that the warrantless search of his trash violated his rights to be secure in his property, and because the evidence located in his house was discovered pursuant to a search warrant issued on the basis of that illegal search, it was "fruit of the poisonous tree," requiring suppression.⁵

Because the challenged search of the trash bags was warrantless, the Government bears the burden of proving its version of the facts by a preponderance of the evidence.⁶ The Fourth

⁴ Tr. 5/7/15 at 12.

⁵ *Segura v. United States*, 468 U.S. 796, 804 (1984) (internal quotation omitted).

⁶ *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995) ("As a general rule, the burden of proof is on the defendant who seeks to suppress evidence. *See United States v. Acosta*, 965 F.2d 1248, 1256 n. 9 (3d Cir. 1992). . . . However, once the defendant has established a basis for his motion, *i.e.*, the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable. *See United States v. McKneely*, 6 F.3d 1447, 1453 (10th Cir. 1993)."). *Accord* Wright et al., 3A Fed. Prac. & Proc. Crim. § 689

Amendment does not prohibit “the warrantless search and seizure of garbage left for collection outside the curtilage of a home,”⁷ provided that the garbage is “readily accessible to the public.”⁸

In this case, the parties have presented conflicting testimony as to the location of the trash bags. The Court only need resolve this conflict if the place where Defendant located the trash bags (the area where the bins are positioned in Government Exhibit 1) was protected under the Fourth Amendment from warrantless searches; in other words, if the area was part of the curtilage of the home.

At the “very core” of the Fourth Amendment is the right of a person within her own home to “be free from unreasonable governmental intrusion.”⁹ This protection extends to “the area ‘immediately surrounding and associated with the home’ – what our cases call the curtilage – as ‘part of the home itself for Fourth Amendment purposes.’”¹⁰ The following factors are relevant to the determination of curtilage: “the proximity of the area claimed to be curtilage to the home; whether the area is included within an enclosure surrounding the home; the nature of the uses to which the area is put; and the steps taken by the resident to protect the area from observation by people passing by.”¹¹ The determination of curtilage is a question of fact.¹²

Courts have held that the curtilage determination “has no talismanic significance in concluding whether the government has violated the Fourth Amendment by rummaging through

(4th ed.) (“If the police searched without a warrant, the government carries the burden to bring the case within one of the exceptions to the warrant requirement.”). *United States v. Matlock*, 415 U.S. 164, 177 (1974) (holding that the burden of proof is a preponderance of the evidence).

⁷ *United States v. Deaner*, 1 F.3d 192, 196 (3d Cir. 1993) (internal citation omitted).

⁸ *California v. Greenwood*, 486 U.S. 35 (1988).

⁹ *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013) (internal quotation omitted).

¹⁰ *Id.* (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)).

¹¹ *United States v. Dunn*, 480 U.S. 294, 301 (1987).

¹² *Dunn*, 480 U.S. at 300; *United States v. Benish*, 4 F.3d 20, 23-24 (3d Cir. 1993).

someone's garbage."¹³ However, the Court must determine whether this reasoning survives the Supreme Court's decision in *Florida v. Jardines*.¹⁴ In *Jardines*, decided several months before the trash pulls in this case, the Court held that the police violated the Fourth Amendment by bringing a dog onto the front porch of a residence to detect the odor of drugs without first obtaining a warrant. The Court held that the property rights enshrined in the Fourth Amendment "would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity. . . ." ¹⁵ The police may take advantage of an implicit license that is granted to any visitor; for example, "to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave."¹⁶ In other words, "a police officer not armed with a warrant may approach a home and knock, precisely because that is 'no more than any private citizen might do.'"¹⁷ The Court specifically declined to decide whether "the officers' investigation of Jardines' home violated his expectation of privacy" because "[o]ne virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy. That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred."¹⁸

It does not appear that any courts since the decision in *Jardines* have reached a holding on whether police may conduct a warrantless search of trash located within the curtilage of a

¹³ *United States v. Segura-Baltazar*, 448 F.3d 1281, 1287 n.1 (11th Cir. 2006). *Accord United States v. Comeaux*, 955 F.2d 586, 589 (8th Cir. 1992).

¹⁴ 133 S. Ct. 1409 (2013).

¹⁵ *Id.* at 1414.

¹⁶ *Id.* at 1415.

¹⁷ *Id.* at 1416 (internal quotation omitted).

¹⁸ *Id.* at 1417 (citing *Katz v. United States*, 389 U.S. 347 (1967)).

property. The Fourth Circuit has written in dicta that “[u]nder *Jardines*, if [the police officers] breached the curtilage of [the] apartment when they conducted the trash pull, it would be fairly clear that their actions in opening the trash can’s lid and taking the two trash bags would implicate the protections of the Fourth Amendment. For surely if bringing a drug-sniffing dog onto a home’s front porch is beyond the scope of the implied license that invites a visitor to the front door, so too is rummaging through a trash can located within the home’s curtilage.”¹⁹ In another case, the Eighth Circuit cited previous circuit law for the proposition that “there is no reasonable expectation of privacy in the contents of a garbage can that is readily accessible to the public, even when the receptacle is located within the curtilage of a residence,”²⁰ but acknowledged the possibility that *Jardines* might undermine this holding; a question it did not have to decide.²¹ Upon careful consideration of *Jardines*, the Court agrees with the Fourth Circuit and concludes as a matter of law that the warrantless searches of the trash bags were not permissible if they occurred on the curtilage of Defendant’s home. The Court also concludes as a matter of fact that the searches did not occur on the curtilage.

Based upon the testimony at the hearings and the photographs admitted into evidence, the Court determines that at least some of the area in the rear of the house is curtilage. Defendant’s driveway is close to the house; although Defendant’s home does not have a fence of its own, the neighboring fences effectively demarcate Defendant’s property, and the driveway leads directly (and only) to Defendant’s garage. A reasonable person passing by would not consider the individual driveway a public area but instead as part of Defendant’s home. In the absence of a rear gate such as the one on the neighboring property, it is not clear exactly where the curtilage

¹⁹ *United States v. Jackson*, 728 F.3d 367, 373 (4th Cir. 2013).

²⁰ *Anderson v. United States*, 762 F.3d 787, 793 (8th Cir. 2014) (citing *Comeaux*, 955 F.2d at 589).

²¹ *Id.*

ends;²² however, the area where Officer Williams testified the seized garbage bags were located on the nights in question (the area designated by an “X” on Government Exhibit 1), where the individual driveway meets the common driveway, is not part of the curtilage. The Court accepts Officer Williams’s testimony as to the location of the bags, and the officer was entitled to seize and search the bags, which were abandoned as trash, without a warrant.

III. CONCLUSIONS OF LAW

1. Officer Williams’s search of the trash bags did not violate the Fourth Amendment’s prohibition on unreasonable searches.

2. The subsequent seizure of evidence by Philadelphia police pursuant to the search warrant was lawful.

IV. CONCLUSION

For the foregoing reasons, Defendant’s Motion to Suppress will be denied. An appropriate Order follows.

²² A property’s curtilage is not necessarily co-extensive with the property lines. For example, the area outside the neighbor’s gate, even if part of that property, likely would not be considered an area intimately associated with the home so as to constitute part of the curtilage of that property.

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ORDER

AND NOW, this 29th day of May 2015, upon consideration of Defendant's Motion to Suppress and the opposition thereto, and after suppression hearings held on April 9, 2015 and May 7, 2015, and for the reasons set forth in the Court's Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the Motion is **DENIED**.

It is so **ORDERED**.

BY THE COURT:

/s/Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.