

Curbside Cannabis & Curtilage Concerns: Third Circuit Draws the Driveway Line in *United States v. Moses*

Description

The United States Court of Appeals for the Third Circuit recently released a ruling in *United States v. Moses*, a case that considers whether a driveway is part of a home's curtilage and therefore protected against warrantless searches. In April 2020, Ronell Moses was driving toward his home in Pittsburgh when Officer Hess observed the vehicle, smelling burnt marijuana. He also noted that the car had heavily tinted windows, making it difficult to see inside. Because the window tint appeared to violate the vehicle code and there was suspicion Moses had been smoking while driving, Officer Hess followed the vehicle without activating his lights or siren. Moses made no evasive maneuvers, continuing straight home and turning into his property. At that point, Officer Hess activated his lights. Moses pulled into a driveway about 70 feet long and parked in the middle of it. Officer Hess parked near the bottom of the driveway, close to the street but still within the property's entrance.

Without stepping onto the porch or approaching the front door, Hess walked about halfway up the driveway, stopping roughly 30 to 40 feet from the residence. While still in the driver's seat, Moses provided his driver's license and a state-issued medical marijuana card. During the encounter, Officer Hess allegedly noticed a burning marijuana cigarette in the car's ashtray. When asked, Moses admitted to having more marijuana and handed over a bag of it. After searching Moses and finding no additional contraband or weapons, Officer Hess asked for consent to search the car. Moses declined. Nevertheless, due to the smell of burnt marijuana, Hess conducted a warrantless search of the vehicle and discovered a loaded firearm in the center console. The firearm was later found to be stolen, leading to Moses's arrest and indictment for being a felon in possession of a firearm.

At the district court, Moses moved to suppress the evidence found during the search, arguing that Officer Hess had entered the curtilage—an area protected by the Fourth Amendment—without a warrant or valid exception. The district court ruled against Moses, finding the search justified. Moses appealed to the Third Circuit, contending that the search occurred within the protected curtilage of his home rather than in an unprotected portion of the driveway.

United States Court of Appeals for the Third Circuit

On appeal to the Third Circuit, the Court ultimately affirmed the conviction, highlighting that not every part of a residential property qualifies as curtilage, especially when it remains open, unenclosed, and used for access. In writing this opinion, the Court reiterated the relevant principles established by the Supreme Court of the United States, in the 2013 case of *Florida v. Jardines*, which held that Fourth Amendment protections apply to both the interior of the home and its curtilage, the area immediately surrounding the home and intimately tied to its daily activities. However, whether an area is curtilage is a fact-specific question determined by a balancing test. The Supreme Court laid out four factors of the balancing test in *United States v. Dunn* to help courts decide whether a certain area meets the definition of curtilage. The factors include: (1) how close the area is to the home; (2) whether it is included within an enclosure surrounding the home; (3) the nature of the area's use; and (4) any steps the resident has taken to shield the area from public view. These factors recognize that not every

part of a residential lot receives Fourth Amendment protections, especially if they are open and readily accessible or visible to the public.

The Court in this case applied the *Dunn* factors, and in doing so, acknowledged that the driveway's proximity to Moses's home weighed slightly in his favor because the car was parked on private residential property. However, the court found that the three remaining *Dunn* factors tipped heavily in favor of the government.

Specifically, the court heavily considered that Officer Hess never approached Moses's house itself and stayed the significant distance of between 30 to 40 feet from the residence. Further, the portion of the driveway where the car was parked and where Officer Hess made contact was not within an enclosure or barrier that grouped it with the house, such as a fence or wall. Additionally, there was no indication that the area was used for anything uniquely private or home-centered, as opposed to being a space for vehicles to enter, exit, and park.

Moreover, the court found that Moses and his family had not taken any significant steps to shield the driveway from public view or access. Although Moses's family testified to the use of landscaping to create privacy, the court disagreed. Instead, they found that photographic evidence did not show any fencing, shrubbery, gates, or signs that marked the area as off-limits to visitors or signaled an expectation of privacy. The driveway was open and visible to the street, a common feature of many homes that allows for public approach, including by law enforcement officers engaging with residents for legitimate reasons.

Since only proximity favored Moses and the remaining *Dunn* factors did not, the court therefore concluded that Officer Hess did not enter protected curtilage. Rather, the driveway he walked up to approach Moses was not protected by the Fourth Amendment. Therefore, the subsequent search was justified since it was prompted by the visible, olfactory, and admitted presence of marijuana in a state where recreational marijuana use remained illegal in 2020. Accordingly, the evidence was not subject to suppression. Thus, the Third Circuit affirmed the conviction.

Key Takeaways

Moses establishes that a driveway does not automatically receive Fourth Amendment protections simply because it is on residential property. The area must meet each of the *Dunn* factors to be deemed as curtilage. Therefore, police officers may lawfully walk partway up an unenclosed, open driveway to make contact with residents or investigate reasonable suspicions stemming from observed traffic violations or possible criminal activity. In practical terms, law enforcement officers should always pay careful attention to how a space is laid out, whether it is physically separated from public areas, how the resident is using the space, and whether any privacy measures are apparent. Make sure to keep detailed records and use body-worn cameras to document the scene. Every case will ultimately depend on these facts and their careful analysis under established legal standards.

***United States v. Moses*, 142 F.4th 126 (3d Cir. 2025)**

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