

Drawing the Line at the Fence: Eighth Circuit Analyzes Plain View, Exigency, and Curtilage in *United States v. McGhee*

Description

In *United States v. McGhee*, No. 23-3674 (8th Cir. 2025), the United States Court of Appeals for the Eighth Circuit considered the boundaries of the Fourth Amendment regarding the distinction between curtilage and an open field. In this case, the Court examined whether law enforcement officers could use their plain view observations of private property as justification to enter and obtain a search warrant.

Factual Background

In July 2021, Jaylyn McGhee and his six-year-old were shot at while sitting in a parked car. McGhee's child sustained gunshot wounds, so McGhee took him to the hospital. Police officers, unaware of whether anyone had sustained injuries, responded to the 9-1-1 calls. At the scene, they found "eight shell casings, a bag of suspected narcotics that was later identified as heroin and fentanyl, and a loose \$5 and \$1 bill on the street outside McGhee's house." When police approached the house, one officer noticed a door on the side and, for safety reasons, observed the fenced side yard from the front yard. The area was accessible as the fence had been left open, so the side yard, door, deck, and stairs could all be seen. While observing the side yard, the officer noticed that the deck had "several spots of blood spatter as well as an unknown white or brown powdery substance," which the officer assumed to be narcotics.

Due to the belief that there was an injured shooting victim in the backyard or house, the officer entered the side yard. Concerned that there might be an injured victim in the yard or house, the officer considered entering the area under exigent circumstances. After communicating with a detective at the hospital and confirming the blood was from McGhee's son, the officer decided against a warrantless entry and instead applied for a search warrant, detailing his observations in the application. The search warrant was issued. During the search, officers discovered cocaine base, heroin, and fentanyl. They also found a trail of blood leading into McGhee's bedroom, where they discovered two firearms. McGhee was charged with possession with intent to distribute narcotics and as a felon in possession of firearms.

At district court, McGhee moved to suppress the guns and narcotics found in his house, arguing that the search warrant application was based on illegally obtained evidence in violation of his Fourth Amendment rights. The district court rejected this argument. McGhee then appealed to the Eighth Circuit Court of Appeals, once again challenging the validity of the search warrant based on illegally obtained evidence, claiming the application was based on a violation of his Fourth Amendment rights.

United States Court of Appeals for the Eighth Circuit

The Court upheld the district court's decision to deny McGhee's motion to suppress, finding that the officers' initial observations of the side yard from the front yard were lawful, as the area was in plain

view and there was an exigent circumstance that justified their further entry. McGhee argued that both the front and fenced side yards were part of the curtilage of his home. Therefore, the viewing of the blood spatter and powdery substance occurred on the curtilage in violation of the Fourth Amendment since no exigent circumstance existed to justify a warrantless search.

First, the Court examined whether the officers entered the curtilage of McGhee's home. The Court cited *United States v. Dunn*, a case where the Supreme Court outlined four factors to help determine curtilage. The *Dunn* factors include: (1) how close the area claimed to be curtilage is to the home; (2) whether the area is included within an enclosure surrounding the home; (3) how the area is used; and (4) what steps the resident took to protect the area from passersby's observations. Applying the *Dunn* factors in this case, the front yard was not curtilage in the Court's assessment. It was unfenced and had a paved route for visitors, exposing it to public view. Therefore, it was deemed an open field for Fourth Amendment purposes. The side yard, however, was directly next to McGhee's house. It was also fenced off, and there were trees and a back fence that further protected the area from observation. Lastly, the area contained items suggesting family use. As such, the side yard met the standard of curtilage.

Next, the Court analyzed whether the officer's observation of the deck from the front yard constituted a Fourth Amendment violation. Since the fence to the side yard was left open, the deck, blood spatters, and powdery substance were readily visible from the front yard—an open field. Observations made from this lawful vantage point are permissible under the plain view doctrine. Thus, there was no violation of McGhee's rights by observing the evidence in plain sight. The Court then considered the exigent circumstances exception. Referring to *United States v. Chipps*, law enforcement is exempt from the warrant requirement in situations where immediate action is necessary, such as the risk of someone's life being in danger.

Here, the Court concluded that the discovery of shell casings and a visible blood trail reasonably led police to believe someone might need emergency aid, initially satisfying the circumstances necessary to justify an exigent entry. Since the officers did not conduct a warrantless search, the properly applied-for warrant was issued based on lawfully observed evidence. Therefore, the Court concluded that this rendered the subsequent search lawful and its fruits constitutional.

Ultimately, the Eighth Circuit upheld the district court's refusal to suppress the evidence, holding that the initial observations of the side yard from the front yard were permissible and concluding that the exigent circumstances justified entering the side yard given the possible medical emergency.

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