

[J-7-2017][M.O. – Donohue, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 72 MAP 2016
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court dated 11/23/15, reconsideration
	:	denied 2/2/16 at No. 596 MDA 2014
v.	:	which affirmed/reversed/remanded the
	:	order of the Court of Common Pleas of
	:	Luzerne County, Criminal Division,
DANIEL F. LOUGHNANE,	:	dated 3/17/14 at No. CP-40-CR-
	:	0000046-2013
	:	
Appellant	:	ARGUED: March 7, 2017

CONCURRING AND DISSENTING OPINION

CHIEF JUSTICE SAYLOR

DECIDED: November 22, 2017

I agree with the majority that the Superior Court erred in applying a bright-line rule that driveways are not curtilage. However, I am also unable to support the use of this case as a vehicle to implement a *per se* invalidation of the automobile exception relative to private driveways.

Initially, I note that both parties to this appeal appear to recognize the significance of the curtilage threshold. See, e.g., Brief for Appellant at 14, 31-38; Brief for Appellee at 9. Furthermore, I differ with the majority's assessment that the justifications for the vehicle exception are inapposite to driveways, albeit that I acknowledge they may be diminished to a degree. In terms of the privacy dynamic, I also find it to be significant that the Supreme Court of the United States has held that even a trespass onto private property outside the curtilage of a residence violates no

expectation of privacy recognized under the Fourth Amendment. See *Oliver v. United States*, 466 U.S. 170, 183-84, 104 S. Ct. 1735, 1744 (1984). Notably, the issue of whether the automobile exception extends to curtilage appears to be ripe for determination by the Supreme Court of the United States. See *Collins v. Virginia*, ___ U.S. ___, ___ S. Ct. ___, 2017 WL 736341 (Sep. 28, 2017) (granting certiorari in a matter in which the petitioner has framed the issue as “whether the automobile exception permits police to enter private, residential property (specifically, the curtilage of the home), and to search vehicles there without a warrant”).

In the present circumstances, I support the decision to vacate and remand for the Superior Court to consider the argument that the Commonwealth had presented to it on its own terms, but I find it unnecessary to consider a *per se* rule pertaining to driveways.