To Be Argued By:
GUY ARCIDIACONO
Time Requested: 10 Minutes

COURT OF APPEALS
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff-Appellant,

- against -

TYRONE GORDON,

Defendant-Respondent.

----------x

APL-2019-00084

App. Div. Case No. 2019-00084

Suffolk Co. Ind. No. 1964-15

BRIEF OF APPELLANT

TIMOTHY D. SINI
District Attorney of Suffolk County
Attorney for Appellant
Criminal Courts Building
200 Center Drive
Riverhead, New York 11901
(631) 852-2500

GUY ARCIDIACONO
Assistant District Attorney(s)
Of Counsel
guy.arcidiacono@suffolkcountyny.gov

Dated: Riverhead, New York
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APL 2019-00084

A.D. Case No. 2016-98976

Suffolk Co. Ind. No. 1964-15

STATEMENT PURSUANT TO CPLR §5531

1. The Indictment Number in the court below is 1964-15.

2. The full names of the parties are the People of the State of New York against Tyrone Gordon; there is no change in the parties.

3. The action was commenced in the Supreme Court, Suffolk County, New York.

4. Tyrone Gordon was arraigned on Indictment 1964-15 on September 30, 2015. On June 23, 2016, a Decision and Order (Cohen, J.) was entered, in which the court suppressed evidence that was the subject of counts 5, 6, 7, 8, and 9 of the indictment.

5. In Indictment 1964-15, Tyrone Gordon was charged with:

   - Count 1, Criminal Sale of a Controlled Substance in the Third Degree (PL §220.39[1]);
   - Count 2, Criminal Possession of a Controlled Substance in the Third Degree (PL §220.16[1]);
   - Count 3, Criminal Sale of a Controlled Substance in the Third Degree (PL §220.39[1]);

- Count 4, Criminal Possession of a Controlled Substance in the Third Degree (PL §220.16[1]);
- Count 5, Criminal Possession of a Controlled Substance in the Third Degree (PL §220.16[1]);
- Count 6, Criminal Possession of a Controlled Substance in the Third Degree (PL §220.16[1]);
- Count 7, Criminal Possession of a Weapon in the Second Degree (PL §265.03[3]);
- Count 8, Criminal Possession of a Weapon in the Third Degree (PL §265.02[1]); and
- Count 9, Criminally Using Drug Paraphernalia in the Second Degree (PL §220.50[3]).

6. On June 23, 2016, a Decision and Order (Cohen, J.) was entered, in which the court suppressed evidence that was the subject of counts 5, 6, 7, 8, and 9 of the indictment.

7. The People appealed, pursuant to the provisions of CPL §§450.20(1) and 450.50 from Judge Cohen's Order. By Decision and Order dated February 6, 2019, the Appellate Division, Second Department affirmed the lower court's order suppressing physical evidence.

8. The People sought leave to appeal to the Court of Appeals from the Second Department's ruling. Honorable Rowan D. Wilson granted leave by Certificate Granting Leave, dated April 22, 2019.

9. Pursuant to 22 NYCRR 500.14 (a)(1) this appeal is prosecuted on the original record.

COURT OF APPEALS
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff-Appellant,

App. Div. Case No. 2019-00084

- against -

TYRONE GORDON,

Suffolk Co. Ind. No. 1964-15

Defendant-Respondent.

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PRELIMINARY STATEMENT

This is a People's Appeal from a Decision and Order of the Supreme Court, Suffolk County (Cohen, J.), dated June 23, 2016, by which evidence supporting counts five through nine of Indictment 1964-15 was suppressed. The court suppressed physical evidence seized by police from two vehicles during the execution of a search warrant. Without that evidence the People could not proceed with the prosecution of those counts of the indictment. Following its suppression order, on August 16, 2016, the court severed counts one through four of the indictment from those counts that were based on the suppressed evidence.

The Appellate Division affirmed the trial court's suppression order by Decision and Order of February 6, 2019. The Appellate Division reasoned that the warrant did not particularize a search of the vehicles, and that the warrant

application did not establish probable cause for the vehicle search. This Court granted the People leave to appeal by Certificate dated April 22, 2019. There are no co-defendants in this case.

QUESTION PRESENTED

Did the warrant in this case allowing the search of the "entire premises," include vehicles parked within the curtilage?

Under the circumstances here, the warrant to search the "entire premises" allowed the police to search cars located on the curtilage, both on the driveway, and in the backyard.

In New York the curtilage of a house has always been considered part of the house. When a search warrant is issued for a place or premises, the police may search anywhere the subject matter of the warrant could be found, including closed containers within the home. A vehicle parked within the curtilage is a closed container within the area considered part of the home. The term "premises" – which is the broadest designation of an allowable search permitted in CPL §690.15 – should, at a minimum, refer to a house and its curtilage, and should include containers such as vehicles parked within the curtilage.

STATEMENT OF FACTS

The Hearing Court Suppresses Evidence

On August 28, 2015, a detective with the Suffolk County Police Department submitted an application for a search warrant. In his affidavit in support of the application, the detective recited how two controlled narcotics buys were made from defendant who operated from a house at [redacted]. The police had also conducted surveillance at [redacted] and saw several cars stop at that address, saw defendant come from the house and go to the various cars, and then saw defendant return to the house. Based upon the controlled narcotics buys and surveillance, the detective submitted that there was probable cause to search defendant and the "entire premises located at [redacted] The premises are described in both the warrant application and search warrant. There is no mention of any car in either document (A25-A26; A27-A34).[1]

The search warrant was executed and the house and two cars at [redacted] were searched. One of the vehicles searched was a dark colored 2000 Chevrolet sedan located in the backyard of [redacted] behind two fences.

[1] Page numbers preceded by "A" refer to the People's Appendix. The search warrant and search warrant application are attached as an exhibit to defendant's Omnibus Motion, dated April 19, 2016, which is included in the trial court record, as well as Appellant's Appendix (A25-A26; A27-A34).

The vehicle was not registered, and has been described as "nonfunctional" by defense counsel (A.102). The police recovered a loaded handgun from the vehicle's engine block. Narcotics and drug paraphernalia were seized from the other vehicle, a Nissan, which was in the driveway (A12).

Defendant was arrested and during September 2015, Indictment 1964-15 was returned. Counts one through four related to the two controlled narcotics transactions. Counts five through nine related to narcotics, narcotics paraphernalia and a weapon seized from the two cars at [redacted] After defendant was arraigned on the indictment, he moved, on April 19, 2016, for omnibus relief. Defendant's second claim for relief was that evidence was seized without a valid search warrant (Defendant's motion, ¶17-31) (A13-A17).

Specifically, defendant maintained that a Chevrolet sedan located in the backyard and a Nissan parked in the driveway, both at [redacted] were not mentioned in the search warrant or search warrant application and were, therefore, beyond the scope of the warrant (Defendant's motion, ¶18-21)(A11-A12). Defendant then argued that he had standing to contest the search of each vehicle (Defendant's motion ¶22-33)(A13-A17) and that state decisional authority did not permit the search of vehicles when the warrant referred only to the entire premises at a certain address or place (Defendant's motion ¶24-31)(A14-A16).

In response to defendant's motion, on May 9, 2016, the People argued that the search warrant included the authority to search vehicles located on the premises, that the vehicles were located within the curtilage and are considered part of the curtilage, and the search of the vehicles was within the scope of the warrant (People's response, p. 3-10)(A47-A54). The People did not contest defendant's standing with regard to either car.

On June 23, 2016, the motion court published its decision and held that the search warrant for the "entire premises" did not include cars (either belonging to or used by defendant) located on the premises. The court found that *People v. Sciacca*, 45 N.Y.2d 122, 128 (1978), controlled, and noted that until that decision was clarified or overruled by the Court of Appeals, the search of a vehicle located on a premises needed to be separately delineated with particularized probable cause. As the Court stated:

> Having standing, the defendant argues that the search warrant did not include search of the two vehicles. The People claim that "entire premises" allows search of any vehicle located on the premises. The Court of Appeals has stated, "It is clear that a warrant to search a building does not include authority to search vehicles at the premises." *People v. Sciacca*, 45 N.Y.2d 122, 128. This does appear to currently be a minority view. See e.g. *U.S. v Johnson*, 640 F.3d 843; *State v. Gosch*, 157 Idaho 803; *Comm. v. Signorine*, 404 Mass. 400. Furthermore, the Third Department held that a search warrant for a garage did include a vehicle therein. *People v. Powers*, 173 A.D.2d 886. However, until clarified or overruled, the

> Court of Appeals holding in *Sciacca* requires that a search of a vehicle should be separately delineated with particularized probable cause. See *People v. Dumper*, 28 N.Y.2d 296. Furthermore, *United States v Kyles*, 40 F.3d 519, 526 (3d Cir. 1994); cited by the People indicates that allows places to be searched if "the places in which the officers have probable cause to believe those objects may be found." In other words, if there was probable cause to believe that fruits of a crime would be found in the vehicles, then the People's position is valid. However, a review of the affidavit for the warrant does not establish that the vehicles had any involvement with the crime nor is there any specific statements made about the vehicles. "Probable cause must be shown in each instance." *People v. Rainey*, 14 N.Y.2d 35, 37. Decision and Order, June 23, 2016, p. 2 (A62).

Alternatively, the court found the Chevrolet to be the equivalent of a shed, which would also need separate delineation in the warrant process. The result of the court's decision was that the contraband that is both the evidence and the subject of charges five through nine of the indictment has been suppressed.

The Appellate Division Affirms Suppression Ruling

The People appealed to the Appellate Division, Second Department, arguing that we were unable to proceed on those five charges because of the motion court's decision. However, the Appellate Division affirmed the trial court's suppression order, reasoning that the warrant did not particularize a search of the vehicle, and that the warrant application did not establish probable cause for the vehicle search.

ARGUMENT

THE HEARING COURT DECISION SHOULD BE REVERSED BECAUSE THE TERM 'ENTIRE PREMISES' INCLUDES VEHICLES PARKED WITHIN THE CURTILAGE OF THE PROPERTY THAT IS OWNED OR CONTROLLED BY THE TARGET OF THE WARRANT.

The issue before this Court is narrow: does the phrase "entire premises" in a search warrant designate all searchable areas within the curtilage or is it the equivalent of residence, house, dwelling, or some other limiting designation. Here, the warrant allowed a search of the "entire premises" which should have allowed the search of any vehicles within the curtilage of the property. The use of the phrase "entire premises" in the context of this warrant, the specific requests made in the warrant application, and the physical layout of defendant's property, were sufficient to permit the police to search closed containers on the curtilage. In this case, this included two cars: a non-functional Chevy in the back yard and the Nissan in the driveway. The trial court erroneously suppressed the evidence found in those cars.

There is no dispute that the police had probable cause to conduct a search and that the warrant was properly obtained. Additionally, there is, we believe, no dispute that the cars that were searched either belonged to or were possessed by defendant. In other words, the police searched the house and cars associated with

the target of the investigation, both places where narcotics could be hidden. Furthermore, CPL §690.15(1) designates place or premises as a valid subject of a search warrant. Thus, the term "premises" includes all lesser designations of location. Too, the Fourth Amendment protects people, not places, and the warrant here was directed at defendant and the places he might hide drugs. The warrant sufficiently protected his rights even though it permitted a search of his cars parked on his property. Had the warrant permitted a search of the "house" at 133 Norfleet certainly a search of the vehicles would not have been permitted.

The courts' decisions here fail to consider that a building or house is not the same thing as the entire premises. And, the distinction between building (or other specific structure) and "entire premises" is a determinative one.

A. New York decisional authority does not eliminate the inclusion of vehicles from fitting within the description "entire premises."

New York decisional authority has not defined "premises" to preclude a search of vehicles at the location in question. In *People v. Sciacca*, 45 N.Y.2d 122 (1978) cited by the hearing court and the Appellate Division, the Court held that a warrant to search a vehicle (van) did not include authority to enter a garage to obtain access to the vehicle. *Id.* at 127. The *Sciacca* Court cited *People v. Hansen*, 38 N.Y.2d 17 (1975), *abrogated by People v. Ponder*, 54 N.Y.2d 160 (1981) [abrogating automatic standing] and *People v. Dumper*, 28 N.Y.2d 296 (1971), for

the proposition that a warrant to search a *building* does not include authority to search vehicles at the *premises*. The court then reasoned that the inverse was also true; the authority to search a vehicle did not include the authority to enter a structure to obtain access to the vehicle. *Sciacca*, 45 N.Y.2d at 127. Furthermore, the Court noted that the search of the vehicle would have been permitted if there was no invasion of an area where there was a justifiable expectation of privacy. *Id.* at 127.

In *Hansen*, however, the warrant specified both a particular residence and vehicle to search, but there was no probable cause to search the vehicle. The *Hansen* court determined that the parts of a warrant are severable where two targets are directly described; standing would then also be particular to each part of the warrant. *Hansen*, 38 N.Y.2d at 20–21. This dichotomy exists because – as is discussed later – the right against unreasonable searches and seizures is personal. In *Dumper*, the Court decided both that the affidavit to support the search of a cottage was insufficient and that a warrant to search the premises did not permit the search of a car that was driven onto the property *during* the execution of the warrant. *Dumper*, 28 N.Y.2d at 299.

The *Dumper* case (cited by *Sciacca*) did not address the propriety of the search of a vehicle *already at* the premises. Furthermore, the Court observed that "[s]ince a warrant must describe the premises to be searched, and this warrant did

not include the automobile, *which was not on the premises when the police came with the warrant* but which was driven into the driveway while police were there, it did not justify search of the car" (citation omitted). *Id.* The Court's holding, however, does not support a finding that a search warrant for the "entire premises" must delineate everything that can be searched.

The holding in this case, in fact, is at odds with the weight of authority elsewhere on the issue. The prevailing view is that parked vehicles *may* be considered part of the curtilage of a dwelling—and as such searched under an "entire premises" warrant. See, e.g., *United States v. Gottschalk*, 915 F.2d 1459, 1461 (10th Cir. 1990) (warrant for premises "generally includes any vehicles located within its curtilage); *United States v Percival*, 750 F.2d 600, 612 (7th Cir. 1985) (search warrant authorizing search of particular described premises may permit search of vehicles owned or controlled by owner of, and found on, the premises). The search executed in this case was no different than if the police opened a locked storage box found in the backyard.

In *People v. Rainey*, 14 N.Y.2d 35 (1964), a search warrant authorized the search of the entire premises of a designated building at a designated location in Buffalo. The court held that the warrant did not particularly describe the place to be searched because the magistrate issuing the warrant was not told that the entire premises included two separate apartments. *Id.* at 36. Indeed, the error in *Rainey*

was not that the defendant's apartment was searched but that an innocent third party's apartment was also subject to the search. If the warrant had been directed at only the defendant's apartment, or if the magistrate had been informed about the second apartment (and since there was a separate occupant, separate probable cause was established), the warrant could have been sustained. *Id.* at 38. Each apartment, of course, represented its own entire premises as each lacked any curtilage element. "In all these differing situations the validity of the search warrant depends on whether the showing, at the time of issuance, satisfies fundamental requirements for the existence of probable cause and whether description of the premises to be searched and the person or things to be seized satisfy basic requirements." *Id.* at 38–39.

By contrast, *People v. Velez, 138* A.D.3d 1041 (2d Dept.), *lv denied, 28* N.Y.3d 938 (2016) (cited by both the hearing court and the Second Department) also does not preclude the result argued here. In *Velez*, the court held that the defendant's trial counsel was ineffective because counsel did not move to suppress evidence obtained after a search of the defendant's house, yard, and shed. The warrant authorized the search of the residence and yard, but there was no mention of the shed. Since the warrant was specific as to the scope of the allowed search, any additional search was unauthorized. *Id.* at 1042. The *Velez* decision does not address the issue here because the definition of residence does not include the

"entire premises." Indeed, "[t]he authority to search is limited to the place described in the warrant and does not include additional or different places." *Keiningham v. United States*, 287 F.2d 126, 129 (D.C. Cir. 1960).

Decisional authority does not address the analysis urged here. State decisional authority has not defined "entire premises" to preclude the search of vehicles on the premises when both the home and vehicle are owned or possessed by the target of the search warrant. This conclusion is consistent with the direction that the Fourth Amendment protects people, not places. *Katz v. United States*, 389 U.S. 347 (1967). And, it is consistent with statutory authority. Furthermore, the phrase "entire premises" conveys, in a plain way, that the search could include the building, the curtilage, and any containers within the curtilage.

B. New York statutory authority supports the conclusion that the phrase "entire premises" permitted the search of containers within the curtilage, including vehicles.

According to CPL §690.15, there are three proper subjects of a search warrant: a place or premises [690.15(1)]; a vehicle [690.15(2)]; and a person [690.15(3)]. Focusing on subdivision (1) and giving the words their ordinary meaning, we know that a place can be any destination that can be adequately described. A premise is more specific, as it generally means a house or building along with its grounds. *Blacks Law Dictionary*, 1199 [7th ed., 1999]. Every other description such as house, building, or residence is, therefore, a subset of the all-

inclusive term premises. A search warrant for the "entire premises" should reasonably be found to authorize a search of vehicles found thereon. See *U.S. v. Griffin*, 827 F.2d 1108, 1114–15 (7th Cir. 1987) ("The warrant expressly authorizes a search of 'the premises.' According to Black's Law Dictionary, [5th ed. 1979], premises means '[l]ands and tenements; an estate including land and buildings thereon.' *Id.* at 1062–63. See also The American Heritage Dictionary 978 [2d ed. 1982] [premises: "Land and the buildings upon it']").

General words used in a statute are not limited if there is nothing to indicate a contrary context. Statutes Law §114 [McKinney]. Words of ordinary import are given their usual meaning. Statutes Law §232 [McKinney]. Dictionary definitions – such as *Black's* – may be useful as guideposts in determining the meaning of words used in statutes. Statutes Law §234 [McKinney]. And, the meaning of words susceptible to multiple significations is determined by context. Statutes Law §235 [McKinney]. Here, the broadest phrase – "entire premises" - defines a building and all objects within its curtilage. All other terms are included within the greater term,

C. "Premises" encompasses the concept of curtilage, and the area subject to an authorized search.

Both the Federal and State Constitutions protect the privacy interests of people, not places. In *Katz v. United States*, 389 U.S. 347 (1967), the Supreme

Court refocused analysis of the Fourth Amendment away from trespass and property concepts towards the protection of a person's privacy. *Id.* at 351. The Court stated that, "the Fourth Amendment protects people, not places." *Id.* And, Justice Harlan, concurring, iterated the widely used explanation of the rule that a person must have exhibited an actual (subjective) expectation of privacy and that expectation of privacy is one that society considers reasonable. *Id.* at 361. A person's reasonable expectation of privacy is – at least within the confines of the curtilage of a home – the touchstone for Fourth Amendment analysis. *Oliver v United States*, 466 U.S. 170 (1984) (open fields enjoy no Fourth Amendment protection); *Katz v United States*, *supra.* Likewise, article 1, §12 of the State Constitution protects, not places, but a person's reasonable expectation of privacy; the state formulation of the rule provides greater protection than that afforded under federal law. *People v. Scott*, 79 N.Y.2d 474, 488–90 (1992). It is beyond dispute that defendant possessed a reasonable expectation of privacy in his house and possessions.

Consistent with this conceptualization of Fourth Amendment protection is the concept that the curtilage of a house is considered part of that house and is, therefore, entitled to the same expectation of privacy as that house. *People v. Morris*, 126 A.D.3d 813, 814 (2d Dept.), *lv denied,* 25 N.Y.3d 1168 (2015); *People v. Theodore*, 114 A.D.3d 814, 816–17 (2d Dept.), *lv. denied,* 23 N.Y.3d

968 (2014), and *cert denied sub nom. New York v. Theodore*, 135 S. Ct. 946 (2015). As the court explained in *Theodore,* 114 A.D.3d at 816,

> ...The curtilage of the home – the area immediately surrounding and associated with the home or the area that is related to the intimate activities of the home – is part of the home itself (*see Florida v. Jardines,* ___ U.S. ___, 133 S.Ct. at 1414; *Oliver v. United States*, 466 U.S. at 178, 180, 104 S.Ct. 1735; *People v. Reynolds,* 71 N.Y.2d at 559; *People v. Reilly,* 195 A.D.2d 95, 98). The determination of whether an area falls within the home's curtilage may be made by reference to four factors: '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' (*United States v. Dunn,* 490 U.S. 294, 301).

Id., 114 A.D.3d at 816; see, *People v. Caputo,* 155 A.D.3d 648 (2d Dept. 2017); *People v. Avinger,* 140 A.D.3d 895 (2d Dept. 2016).

In other words, a person's interest in the privacy of their home extends to the curtilage of the home. And, we maintain, a warrant to search for a specific evidence of criminality – here heroin, drug paraphernalia, and records associated with an illegal narcotics business – at defendant's residence includes the curtilage of that place. Defendant's privacy interests are no better protected elaborating that the curtilage within his residence includes every object within the curtilage in the warrant or warrant application. The protections afforded defendant are the same

in either formulation; listing every object within the curtilage would be a return to legal formalism eschewed over 50 years ago.

Furthermore, because the warrant permitted a search for specific items that could be found both in the house and in defendant's cars parked within the curtilage, this would not constitute either a general warrant or a general exploratory search.

> "By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the (particularity) requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the framers intended to prohibit." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987) [footnote omitted].

The purpose of both the federal and state warrant requirement is to protect a person's right to privacy. Here, there was probable cause to believe that defendant was selling drugs that he stored somewhere within the premises. His personal right to privacy was neither further protected nor further diminished if the entire premises includes the curtilage of his typical suburban home. *People v. Avinger*, 140 A.D.3d 895, 897 (2d Dept. 2016) (curtilage is part of home itself); *Theodore*, 114 A.D.3d at 816–17.

Additionally, since the curtilage is part and parcel with the house or entire residence, it is irrelevant whether a car is parked in a garage or on the driveway; in

either case it would be the equivalent of a closed container within the confines of the premises. *People v. Powers*, 173 A.D.2d 886 (3d Dept. 1991) (search warrant of house permitted search of car in garage because it was equivalent of closed container within house). Here, the two cars in question were parked within the curtilage, which is considered part of the home, and the cars would, therefore, be no different than any other closed container within the home. The term "premises" should, therefore, at a minimum include the house and its curtilage.

1. The police properly searched the Chevrolet.

The Second Department's decision is in conflict with *Powers*, which upheld a search (pursuant to a warrant) of an unregistered Mazda vehicle found inside the garage. The police recovered a sawed-off shotgun from the trunk. The Third Department, relying in part on *United States v. Ross*, 456 U.S. 798 (1982), reasoned that "inasmuch as the trunk of the garaged Mazda served as a container in the fixed premises (the garage), which was authorized to be searched under the warrant, its search was proper." *Powers,* 173 A.D.2d at 889. Here also, of course, there was a search of a non-functioning car in the backyard, one that was little more than a container and thus subject to search under a search warrant for premises. *Cf. Powers; United States v. Evans*, 92 F.3d 540, 543–44 (7th Cir. 1996) ("It seems to us that a car parked in a garage is just another interior container, like a closet or a desk"). Moreover, this Court has never held that a

search warrant for an entire premises does not include containers found within its curtilage. Clearly, here, an inoperable, unregistered car found in a backyard behind two fences is not a vehicle, but rather is no more than a container, subject to being searched as any other container would be.

2. The police properly searched the Nissan in the front driveway.

We maintain that in this case, defendant's driveway was part of the curtilage, and therefore part of the "entire premises" subject to a search. Here, the Nissan was in the driveway. The drug sales were described in the warrant application as being conducted across the street after defendant came out of the house. The warrant application spelled out in intricate detail what the police were searching for and described defendant's conduct giving rise to probable cause. Under these circumstances, the Nissan in the driveway was a likely place where defendant could store drugs, drug paraphernalia, and everything else enumerated in the warrant. Common sense would also allow that the car could be used to transport the contraband to defendant's residence. The Nissan, too, was in this context a closed container.

3. The warrant and the warrant application adequately established probable cause to search the two vehicles.

The Appellate Division erroneously adopted the trial court's conclusion that the warrant application did not permit search of the vehicles because it did not

specifically refer to the vehicles, or establish that the vehicles had any involvement with the crime. However, the warrant noted, *inter alia*, that there was probable cause to search for concealed items. Based upon the illicit activity described in the warrant application, the police had probable cause to search any area of the premises that could be used to transport or store drugs as well as accompanying drug trade paraphernalia, despite no specific mention of these cars. To hold otherwise abandons a common sense reading of the law, the warrant, and its application. By suppressing the evidence recovered from the cars the trial court erred as a matter of law.

D. Federal decisional authority allows the search of vehicles that are parked at the premises and that are also possessed or controlled by the target of the search.

In federal cases a warrant authorizing the search of a premises includes the authority to search vehicles on those premises - whether or not the vehicles are specifically described in the warrant. *United States v. Griffin*, 827 F.2d 1108 (7th Cir. 1987). The prevailing view is that parked vehicles may be considered part of the curtilage of a dwelling. See, e.g., *United States v. Sykes*, 304 Fed Appx. 10, 12 N1 (2d Cir. 2008); *United States v Gottschalk*, 915 F.2d 1459, 1461 (10th Cir. 1990) (warrant for premises "generally includes any vehicles located within its curtilage); *United States v. Percival*, 750 F.2d 600, 612 (7th Cir. 1985) (search warrant authorizing search of particular described premises may permit the search

of vehicles owned or controlled by owner of, and found on, premises). The courts in these cases reason that, "there is no place for technical requirements of elaborate specificity once exacted under common law pleadings. It is enough if the dissipation is such that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended." *United States v. Napoli*, 530 F.2d 1198, 2000 (5th Cir. 1976); see also, *United States v. Asselin,* 775 F.2d 445 (1st Cir. 1985) (police properly interpreted "premises" to include disabled car next to residence carport). The federal courts reason that a search of a house includes cars owned by the target of the search because:

- contraband is movable;
- the object of the search is specified so it is not a general search;
- a car is not different from any other object (a briefcase or handbag for example) that can easily be removed;
- the car must be owned or controlled by the owner of the premises; and
- premises includes all property where the object of the search is likely to be found and is consistent with the concept of curtilage. See *United States v. Pennington*, 287 F.3d 739, 744-46 (8th Cir. 2002); *United States v. Griffin*, 827 F.2d at 1113-15; *United States v. Napoli*, 530 F.2d at 1200-01.

Other states have also permitted the search of inoperable vehicles within the curtilage. See, e.g., *Kearney v. Commonwealth,* 4 Va. App. 202, 355 S.E.2d 897 (1987), *appeal refused*, 366 S.E.2d 712 (Va. 1988) (inoperable truck in backyard

within curtilage of dwelling, subject to search by warrant authorizing search of "the dwelling, including curtilage").

Here, the motion court did not specifically address curtilage. Defendant, however, asserted in his Omnibus Motion that he owned the Chevrolet that was in his backyard and that he possessed the Nissan that was in his driveway. He attached pictures of both cars as they were located on his property and he wrote that the Chevrolet was in his backyard behind two fences. Defendant's Omnibus Motion, Affirmation in Support, ¶17-21 (A11-A12), and Exhibits B (A35-A36) and C (A37-A38). The People maintained that the cars were within the curtilage of [redacted] People's Affidavit in Opposition, p. 6-7 (A50-A51). Based on the representations made in the motion paperwork, the hearing court found that:

> The defendant argues that the search of both vehicles, in which he claims privacy interests, exceeded the scope of the search warrant. The People argue that "entire premises" should encompass the description articulated in the search warrant including a carport, driveway, and a chain link fence. The chain link fence, as it encircles the backyard, would, a fortiori, include the vehicle located therein. Decision and Order, June 23, 2016, p. 1.

Based on the assertions in the motion papers and the findings of the lower court, the People maintain that both the Chevrolet and Nissan were within the curtilage of [redacted] That curtilage is a part of the house. The warrant authorizing the search of the entire premises authorized the search of both

vehicles, owned or possessed by defendant, that were on defendant's property at the start of the search of which he was the target.

CONCLUSION

Defendant's cars, parked within the curtilage of his house, were nothing more than additional containers that were used to hide defendant's nefarious narcotics transactions. A search of the entire premises – as was allowed by the warrant – protected defendant's privacy interest rather than protecting a list of places that would be protected. Too, premises is the broadest term used within CPL §690.15, which indicates that it includes all lesser formulations or subsets of premises. Under statutory authority, federal decisional authority, and state decisional authority, defendant's privacy interests were protected, and the search of his cars was, therefore, legal.

DATED: Riverhead, New York
July 31, 2019

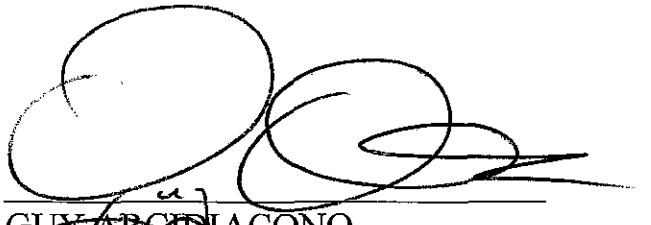
Respectfully submitted,

TIMOTHY D. SINI
District Attorney of Suffolk County
Attorney for Respondent

BY: _____
GUY ARCIDIACONO
Assistant District Attorney
Of Counsel
Criminal Courts Building
200 Center Drive
Riverhead, New York 11901
(631) 852-2500

Printing Specifications Statement Pursuant to 22 N.Y.C.R.R. §1250.8(j)

GUY ARCIDIACONO, an attorney duly admitted to practice in the courts of this State and of counsel to TIMOTHY D. SINI, District Attorney of Suffolk County, attorney of record for Respondent, in this case, certifies that the within brief is double spaced, and uses 14 and 12 point Times New Roman font for text and footnotes respectively. According to the word count function of Microsoft Word 2010, which was used to prepare it, the brief contains 5,586 words, not including the table of contents, table of citations, proof of service, printing specifications statement, or any authorized addendum.



GUY ARCIDIACONO
Assistant District Attorney

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS:
COUNTY OF SUFFOLK)

DANIELLE GALLAGHER, being duly sworn, deposes and says:

That on the 31st day of July, 2019, I served a copy of the within APPELLANT'S BRIEF upon the defendant, TYRONE GORDON, by Express Mail, through their attorney, JONATHAN MANLEY, ESQ., by depositing a true copy of same enclosed in a postpaid wrapper in the official depository maintained and controlled by the United States Postal Service, at Criminal Courts Building, 200 Center Drive, Riverhead, New York 11901, directed to said defendant's attorney at 1200 Veterans Memorial Highway, Suite 360, Hauppauge, New York 11788, the address designated by the attorney or the place where they then kept an office.

A copy of the APPELLANT'S BRIEF was also served to defense counsel via email at JManleyLaw@yahoo.com.

Deponent is over the age of eighteen (18) years.

Danielle Gallagher
DANIELLE GALLAGHER

Sworn to before me this
31st day of July, 2019.

Thomas C. Costello
Notary Public

THOMAS C. COSTELLO
Notary Public, State of New York
Registration #02CO5036155
Qualified In Suffolk County
Commission Expires Nov. 21, 2022