



# POLICE / PROSECUTOR UPDATE

Issue No. 125

April 2002

The first issue we will examine requires looking at the January 2001 issue of the PPU. One of the cases discussed there involved a determination of what constitutes a "dwelling" for purposes of the law criminalizing **Carrying a Handgun Without a License**.

Police were dispatched to the defendant's apartment building to investigate a domestic disturbance involving a male and a female, with the male wearing a tan shirt and dark pants and possibly armed. Upon arrival at the apartment building, the officer walked into the building, entering the common hallway. He then heard yelling coming from the defendant's apartment. While the officer was waiting for a backup, the apartment door flew open, and the defendant, who matched the description given the officer, came out of the apartment and took "two or three steps" into the common hallway area. The officer stopped him and patted him down in the hallway, finding a loaded handgun in the defendant's pants pocket. The defendant was convicted of carrying a handgun without a license.

The Court of Appeals reversed the conviction, observing that people treat "the area immediately outside of his or her apartment home as his or her curtilage," which is really just an extension of the dwelling. Thus, the court held that the area *immediately* outside a person's apartment is part of that person's dwelling.

The State appealed the ruling to the Indiana Supreme Court, who held that the Court of Appeals was wrong and affirmed the defendant's conviction. The doctrine of curtilage does not apply. The statute prohibiting carrying a handgun without a license designates a person's dwelling as an exception, but not the curtilage. A dwelling is a person's "home or place of lodging." Thus, "dwelling" does *not* include the common areas serving a person's apartment, such as common halls, entryways, elevators, parking garages, and common facilities provided for tenant laundry, mail, and other conveniences.

Robertson v. State, \_\_\_ N.E.2d \_\_\_ (Ind. 3/27/02).

A second case involves the "**public safety**" exception to the *Miranda* warnings requirement. Indiana case law recognizes this exception in situations where police officers ask questions *reasonably* prompted by a concern for *public* safety (such as the location of a gun in a public place). Our Supreme Court recently decided that this exception is not limited only to concerns about the safety of the *general* public.

The facts of the case are lengthy but basically the defendant went to the home of his ex-girlfriend and severely beat her. He then went outside and shot and killed the victim's roommate, who was mowing the lawn. The defendant returned to the house, told the victim to get cleaned up, and then went back outside, at which point the victim called 911. She told the dispatcher that she had been beaten and that someone had been killed, then hung up when the defendant came back inside. When police officers arrived shortly thereafter, the victim ran outside toward the officers. The officers had been dispatched to investigate a female requesting assistance and a possible murder. When they arrived, they saw the female running from the house covered with blood. The defendant was ordered from the house and handcuffed. Believing there was another victim, the defendant was asked if anyone else was in the house and the whereabouts of the other victim. The defendant said "She's over by the lawnmower." He was then *Mirandized*. He sought to suppress all his statements given both before and after the *Miranda* warnings.

The Supreme Court did note that the public safety exception generally applies when officers "have an immediate concern for the safety of the *general public* in that an armed weapon remained undiscovered." Here, the concern was not for the general public's safety but for that of another possible victim. The longer it took police to locate her, the longer she would go without potentially life-saving medical attention. Therefore, attending to the victim's safety was more urgent than informing the defendant of his *Miranda* rights.

In conclusion, questioning for the limited purpose of locating or aiding a possible victim falls within the "public safety exception" to *Miranda*.

Bailey v. State, 763 N.E.2d 998 (Ind. 2002).

This is a publication of the Clark County Prosecuting Attorney, covering various topics of interest to law enforcement officers. It is directed solely toward issues of evidence, criminal law and procedure. Please consult your city, town, or county attorney for legal advice relating to civil liability. Please direct any suggestions you may have for future issues to Steve Stewart at 285-6264.