



# POLICE / PROSECUTOR UPDATE

Issue No. 156

November 2004

A recent case contained an excellent discussion of the **search and seizure** concept of curtilage and the extent to which it restricts police conduct.

The **curtilage** of a dwelling is that area immediately surrounding the dwelling in which society recognizes a legitimate expectation of privacy and thus, Fourth Amendment protection. Four factors are important in determining the extent of the curtilage: (1) the proximity of the area claimed to be curtilage to the home; (2) whether the area is included within an enclosure surrounding the home (curtilage originally appears to have meant the areas within a fence surrounding a dwelling but is now used without regard to whether what is usually termed the "yard" is fenced or not); (3) the nature of the uses to which the area is put; and (4) the steps taken by the resident to protect the area from observation by people passing by.

Outbuildings on the grounds surrounding a dwelling are within the curtilage of the dwelling and are protected from intrusion. This is an important point to remember. The proper inquiry is whether there is a reasonable expectation of privacy in the *area* that is considered the curtilage as opposed to each individual structure or item in the area. Constitutional protection of the curtilage is not lost just because a structure or container in the area is not one typically considered "private."

When police enter onto private property in order to conduct an investigation or for some other legitimate purpose and restrict their entry to places that other visitors would be expected to go, such as walkways, driveways, or porches, any observation made from these locations are permissible under the Fourth Amendment. Also, an individual does not have a reasonable expectation of privacy with regard to things or activities within a residence that may be observed by persons using their senses from places open to a visitor's entry.

This means that if police utilize normal means of access to and egress from the house for some legitimate purpose (such as to make inquiries of an occupant), it is not a search for the police to see or hear or smell from their vantage point what is happening inside the house. However, it must be remembered that this implied invitation applies only to access routes reasonable under the circumstances.

The circumstances determining which portions of a property may reasonably be viewed as open to visitors are determined on a case-by-case basis but must include consideration of the features of the property itself, such as the existence of walkways and fences or other obstructions to access or viewing, the location of primary residential entryways, as well as the nature or purpose of the visitor's call.

Common sense tells us that under normal circumstances, uninvited visitors coming to a residence to speak with the owner or occupant are expected to come to the residence's most direct, obvious, and prominent entryway, which in most cases is the front door. Also, again under most circumstances, uninvited visitors are expected to leave by the same route when their business is concluded or after knocking on the door and getting no response.

Finally, the nature of the reason for the visit can affect the extent of the property open by implication. For example, persons coming to the property for truly pressing or emergency reasons can reasonably be expected to seek out residents through areas other than the front door.

Trimble v. State, \_\_ N.E.2d \_\_ (Ind.App. 10/20/04).