



POLICE / PROSECUTOR UPDATE

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Possession of a Handgun Without a License

Indiana's statute permits a person to carry a handgun without a license "in his dwelling, on his property or fixed place of business." What constitutes the "dwelling" of an apartment resident?. A police officer was dispatched to an apartment complex to investigate a domestic disturbance. When he arrived, he entered the common hallway and went upstairs. At that time, the defendant stepped two or three steps outside his apartment into the common hallway. The officer patted him down and found a handgun in his pocket. He did not have a license for the handgun.

The defendant contended that the hallway outside of his apartment was part of his dwelling. The State argued that even if the common hallway was not a public place, it was not a dwelling because the defendant did not eat, sleep, or live there. The Court of Appeals held that in Indiana, common areas, enclosed hallways, and stairway areas of an apartment building are not public places. Whether such areas are considered part of a dwelling requires a look at a couple of legal definitions.

A "dwelling" is "a building, structure, or other enclosed space, permanent or temporary, movable or fixed, that is a person's home or place of lodging." A home's "curtilage" is the area or ground immediately surrounding the home. The curtilage is really just an extension of the dwelling itself. In the Court of Appeals' view, simply because a person lives in an apartment does not mean that the person does not at times occupy the space immediately outside of the apartment home. They may hang decorations on outside doors and place doormats outside the door. Thus, one who lives in an apartment also treats the area immediately outside the apartment as his or her curtilage. The court held that the area *immediately* outside of a person's apartment is a part of that person's dwelling. The defendant's conviction was reversed.

Robertson v. State, __ N.E.2d __ (Ind. App. 12/19/00)

Investigatory Stop of Vehicle - Anonymous Tip

In the March, 2000, issue of the PPU, one of the cases examined held in essence that a tip from a concerned citizen that a driver "may be intoxicated" and describing the vehicle would give a police officer reasonable suspicion to make an investigatory stop of the vehicle. The PPU editorialized that the case "probably pushes the envelope to the limit" so far as lawfulness of an investigatory stop goes. Last month, a panel of the Court of Appeals stated that a vehicle description, without more, does *not* demonstrate the reliability of an anonymous tip sufficient to support an investigatory stop.

For our purposes, the facts reveal that an anonymous informant contacted law enforcement about a possible drunk driver. He described the make and color of the vehicle and the direction and route of travel and also provided the license plate number of the vehicle. Neither the identity nor the reliability of the informant was known or subsequently determined. An officer stationed himself at the roadside. When the vehicle passed him, he began to follow it. After about 1/2 mile, the officer verified the vehicle's license plate number matched that reported by the informant. Although the officer did *not* observe evidence of drunken or erratic driving, he stopped the vehicle.

In anonymous tip cases, where by definition the reliability of the tipster is unknown, what is important is the informant's ability to predict a defendant's *future behavior*. There is reason to believe that the informant is honest and also well-informed, enough to justify the stop. The tip must be reliable in its *assertion of illegality*, not just its ability to identify a specific person or vehicle, reducing the chance of a prankster or a person acting in bad faith. In conclusion, the court held that an anonymous tip, *absent* any independent indicia of reliability or any officer-observed confirmation of the informant's prediction of the defendant's future behavior, is not enough to permit police to detain a person and subject him or her to an investigatory stop.

Washington v. State, __ N.E.2d __ (Ind. App., 12/19/00).