



POLICE / PROSECUTOR UPDATE

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First, we'll take a quick look at the "breaking" component of the **breaking and entering** element of the crime of Burglary. What follows is the law taken from cases of the Indiana Supreme Court or Court of Appeals.

Some physical movement of a structural impediment is necessary to support a finding of a breaking. A breaking is proved by showing that even the slightest force was used to gain unauthorized entry to a building or structure. Opening an unlocked door, raising an unlocked window, or pushing a door that is slightly ajar constitutes a breaking.

When access is accomplished by threatening an occupant with force, a breaking has occurred.

A fence surrounding a business, whose purpose is clearly for protecting property within its confines and is an integral part of a closed compound, is a structure within the meaning of the burglary statute. A person commits a breaking when he either climbs over the fence, squeezes through its sections, or cuts through the fence.

In a similar case, a construction company's property was enclosed on three sides by a fence, leaving the fourth side completely open. The defendant entered the property on this fourth, open side. He apparently merely walked onto the property. There was no evidence that he climbed over or used even the slightest force to gain entry. He did not "break" and enter the property. It didn't matter that upon gaining entry to the property, the defendant began picking up items, and dropping them through a hole in the fence. What matters for purposes of the burglary statute is how the defendant *entered* the property, not how he *exited* the property.

A recent case dealt with the Fourth and Fifth Amendment considerations involved in a **weapons inquiry made during a traffic stop**.

A police officer stopped the vehicle the defendant was driving because the taillights were not working. The officer asked the defendant for a driver's license or Indiana ID card. The defendant said he did not have one. The officer also asked the passenger in the vehicle if he had identification, and the passenger shook his head "no." The defendant then began speaking to the passenger in Spanish. The officer asked the defendant if he had any weapons in the car. The defendant told him there was a gun in the compartment of the driver's side door. The defendant and the passenger were handcuffed and seated on the curb. The officer then retrieved a handgun from the door. After determining the defendant did not have a gun permit, the officer placed him under arrest and read him his *Miranda* rights.

The defendant contended his statement advising the officer where the gun was located should be suppressed because the officer did not advise him of his *Miranda* rights before asking about weapons. However, *Miranda* warnings are required only prior to *custodial* interrogation. And a person detained for a traffic stop is ordinarily not "in custody." This was a conventional traffic stop, and no *custody means Miranda* warnings were not required.

The defendant also argued that his Fourth Amendment rights were violated because the officer acted unreasonably by asking him about weapons. However, the Fourth Amendment does not prohibit police from asking about the presence of weapons during a routine traffic stop. If the inquiry does not materially extend the duration of the stop, the question is justified by police safety concerns. *Delatorre v. State*, __ N.E.2d __, (Ind. App. 2009).