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A recent federal Court of Appeals case offers a look at the authority a 911 call can bestow on police. By the time the 911 dispatcher picked up the phone to answer a call, the connection had been broken. The dispatcher called back, but no one answered. Police were alerted, and three officers soon arrived at the house from which the call had been made. They entered without permission and questioned the occupants, including the husband and his wife. They learned that during a heated argument the husband had bumped the wife, who then dialed 911. The wife said she was not hurt and asked the police to leave, but they refused. The husband was arrested for domestic battery. The wife refused to cooperate, and the criminal case was dismissed. The husband filed a civil rights lawsuit against the police and county.

The husband alleged the police violated his rights by entering the house without permission and refusing to leave as soon as the wife asked them to go. The court disagreed. A 911 call provides probable cause for entry, if a call back goes unanswered. The 911 line is supposed to be used for emergencies only. A lack of an answer on the return of an incomplete emergency call implies that the caller is unable to pick up the phone – because of injury, illness, or a threat of violence. Any of these possibilities supplies both probable cause and an exigent circumstance that dispenses with the need for a warrant. There are of course other possibilities. Perhaps a child dialed 911 by mistake, or perhaps the ringer had been set on silent. Probable cause just means a good reason to act. It does not mean certainty.

Although the wife asked the police to leave, officers who have probable cause don't have to cancel an investigation on request. The Fourth Amendment does not contain a "least-restrictive-alternative" rule. Nor did the wife's statement that she was unharmed establish that there was no need for further inquiry. Hanson v. Dane County, 608 F.3d 335 (7th Cir. 2010).

A recent Indiana Court of Appeals opinion upheld the use of investigatory subpoenas in suspected child solicitation cases over the internet. A detective used the Yahoo! Internet instant messaging (IM) service, posing as a fourteen-year-old girl. Without going into the details, the detective had several IM messages of a sexual nature with the defendant at a particular user name. The detective then caused to be issued to Yahoo! a subpoena seeking the account information for that user name. Each computer attached to the internet has an internet protocol address, or IP address, which identifies its location to the internet network. Yahoo!'s return on the subpoena indicated that whoever logged into the user name in question did so from a computer with a particular IP address. The detective then caused another subpoena to be issued to an internet service provider (ISP), seeking the account information connected with the IP address in question. In response to this subpoena, the ISP provided the subscriber information associated with that IP address as the defendant at a particular street address. The detective then obtained a search warrant.

The defendant argued that there should be a privacy interest in the subscriber information of an individual's internet account. There is not. Our Supreme Court has recognized that a prosecutor can secure information from a third party, such as an ISP, by issuance of a subpoena duces tecum that is (1) relevant in purpose; (2) sufficiently limited in scope, and (3) specific enough that compliance will not be unreasonably burdensome.

In short, there is no privacy interest in internet subscriber information, and it can be obtained through a properly issued third-party investigatory subpoena. Rader v. State, ___ N.E.2d ___ (Ind. App. August 24, 2010).