



# POLICE / PROSECUTOR UPDATE

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A recent interesting residential entry case will also apply to burglaries. It has been clear from years of case law that breaking and entering an attached garage is recognized as breaking and entering into a "dwelling" for purposes of the burglary statute. In this residential entry case, the defendant had the owner's permission to enter the attached garage of the dwelling to retrieve his belongings. While in the garage, the defendant kicked in the locked kitchen door and entered the residence. He argued that he did not commit residential entry because an attached garage is considered part of the dwelling, and he had permission to enter the garage.

The Indiana Court of Appeals acknowledged that case law recognizes entry into an attached garage as entry into a dwelling for purposes of the burglary statute. However, after reviewing case law from other states, the court concluded that where there is an *evident boundary*, for example, a door that locks and was locked at time of the incident, the area is not only a part of the whole dwelling but also a separate structure. Here there was a clear demarcation (a locked door) between the kitchen and the garage. Thus, the locked kitchen in the residence constituted a separate structure, and the defendant's unlawful entry into the kitchen constituted the offense of residential entry.

The court cautioned that it was not relaxing the requirements for a conviction of residential entry. The court stated ". . . where, as here, the state seeks a conviction under the residential entry statute based upon unlawful entry of a separate structure or enclosed space within a dwelling, its burden includes a showing that any permission to be in one section of the dwelling did not extend to the separate structure where the state alleges the residential entry occurred." Davidson v. State, 907 N.E.2d 612 (Ind. App. 2009).

A decade ago, the Indiana Supreme Court held that a defendant could be convicted of robbing a person he had just killed. In a recent theft case, the Court of Appeals rejected the defendant's argument that property cannot be stolen from a dead person. It held that although he was dead, the victim was still a human being capable of being stolen from. Patterson v. State, 909 N.E.2d 1058 (Ind. App. 2009).

The general rule is that absent exigent circumstances it is unconstitutional for police to make a warrantless and nonconsensual entry into a suspect's home to make a routine felony arrest. The home need not be the suspect's own, but only premises in which the suspect has a reasonable expectation of privacy, such as where the suspect is an overnight guest of the owner of the premises. Also, a hotel or motel room is subject to the same Fourth Amendment protection as a home. An arrest warrant carries with it the limited authority to enter a home in which the suspect lives.

This rule has been interpreted as permitting police officers to enter a dwelling if the evidence establishes that the officers are sufficiently certain of the following: (1) that the person to be arrested resides at the residence; and (2) that the person was at the dwelling at the time of the entry. The degree of certainty required under both prongs is a "reasonable belief," which is less exacting than probable cause. Implicit in this reasonable belief standard is that the officers' assessment of the situation need not in fact be correct. Rather, they need only reasonably believe that the suspect resides at the dwelling and is currently present at the dwelling. Duran v. State, 909 N.E.2d 1101 (Ind. App. 2009).

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