



POLICE / PROSECUTOR UPDATE

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The Indiana Supreme Court recently issued an interesting opinion dealing with the warrantless arrest of an individual in his residence and the admissibility of a statement subsequently given to police by that individual. The opinion is interesting because the legality or illegality of the arrest had no bearing on the admissibility of the statement. Yet the Court devoted a significant portion of the opinion to a discussion of the law on this issue. It provides a good opportunity to review the law in this area.

A brief statement of the facts of the case is sufficient. The police had probable cause to arrest the defendant for murder. Without obtaining an arrest warrant, two officers went to defendant's home. The defendant answered the police knock by opening the front door, but not the screen door. When the officers asked him to come with them, he attempted to shut the front door but an officer opened the screen door, blocked the front door, and reached inside the house and pulled the defendant out by the arm. The defendant was then arrested and gave a statement at the police station regarding the murder.

The law is that police may not make a warrantless and nonconsensual or non-exigent circumstance entry into a suspect's home in order to make a routine felony arrest, even if the police have probable cause to make the arrest. On the other hand, where an arrest is initiated just outside the threshold of the suspect's home, as by announcing authority and intent, the suspect cannot avoid arrest by retreating into the home. This is basically a hot pursuit situation.

In the case we are examining, there was clearly no consent by the defendant or exigent circumstances. It was, in the court's words, a "threshold arrest." The issues in such cases are

whether police may cause a suspect to come into public view and then arrest him, and whether a glass or screen door may be breached to drag the suspect out. The Court never answered but left the clear impression the answer would be no.

A *minority* of federal and state courts hold that because the threshold is a public place, the police may arrest a suspect there, regardless how the defendant's presence there occurred. A majority of courts hold that some form of consent is required before police may make a warrantless arrest at the threshold. Most courts agree that a forcible removal of a suspect from the threshold of his home is unconstitutional.

The Court then stated that it is a "dubious proposition" that the threshold of a person's home is a public place. Opening the front door to find out the purpose of a person's knock is not an invitation to enter. The person retains the ability to exclude the knocker, especially where a screen or storm door remains closed. Therefore, without so stating, the Court very clearly implies that a non-consensual, non-exigent circumstance warrantless arrest at the threshold of a suspect's residence (read also motel room, etc.) is unconstitutional.

However, it is also the law that where the police have probable cause to arrest a suspect, the law does not bar the use of a statement made by a defendant *outside* of his home, even though the arrest is unlawfully made in the home of the defendant. That is, so long as the defendant has been given his *Miranda* rights, and the statement is voluntary, it will be admissible if made outside the home.

Cox v. State, ___ N.E.2d ___ (Ind. 06/26/98)

New York v. Harris, 495 U.S. 14, 110 S.Ct. 1640 (1990)

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