

Police Prosecutor Update

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SEARCH AND SEIZURE CANINE SNIFF AT A RESIDENCE

On March 26, 2013, the United States Supreme Court issued a decision in *Florida v. Jardines* ___ S. Ct. ___ (2013), affirming the trial court's granting of the defendant's motion to suppress the evidence.

Police received an unverified tip that the defendant was growing marijuana at his residence. One month later, the police went to the defendant's home and watched for fifteen minutes. They saw no cars in the driveway, no activity around the house, and were unable to see inside because the blinds were drawn. The police and a canine approached the front porch of the home where the canine eventually alerted at the front door.



Officers got a search warrant for the residence. The search of the home revealed marijuana plants and the defendant was arrested.



Ultimately, the United States Supreme Court held that bringing a trained canine onto the curtilage of a residence IS a search within the meaning of the 4th Amendment. Therefore, the police needed a search warrant before allowing the canine to come onto the curtilage and sniff the outside areas of the residence. The Court went on to note that an officer may still conduct "knock and talks" by approaching the residence of a citizen to knock on the front door. The problem was bringing the trained canine onto the curtilage in hopes of discovering incriminating evidence.

This case seems to imply that going onto the curtilage of a residence with any device or tool that could be used to enhance the senses might be improper. However, it appears that this decision will not prohibit canine sniffs during traffic stops, at rented storage buildings or on luggage or packages. It will be a much closer call with canine sniffs at the door of an apartment with a common hallway or the door of a hotel room from outside or a common hallway. It is not clear how far the curtilage of an apartment or a hotel room extends into a common hallway.

In 2009, the Indiana Court of Appeals addressed this issue and held that under the Indiana Constitution, an officer needed reasonable suspicion to have a canine sniff a residence. It seems clear that is no longer good law given the United States Supreme Court opinion in this case.

CRIMINAL TRESPASS

On March 7, 2013, the Indiana Court of Appeals issued a decision in *Willis v. State*, 983 N.E.2d 670 (Ind.Ct. App. 2013), reversing the defendant's conviction for Criminal Trespass.

An off-duty officer working security at an apartment complex arrested the defendant after finding his name on the no-trespass list. The Court found that there was a complete lack of evidence that the defendant was aware of the list or that he had otherwise been denied entrance to the property in a manner required by the statute. Because the State failed to prove a material element of the crime, specifically that the defendant had been "denied entry", the State failed to show that the defendant willfully trespassed on the property of another.

MIRANDA CUSTODIAL INTERROGATION

On March 7, 2013, the Indiana Court of Appeals issued a decision in *Matheny v. State*, 983 N.E.2d 672 (Ind.Ct. App. 2013), affirming the defendant's conviction for Auto Theft.



The defendant was found in the driver's seat of a stolen car trying to get it out of a ditch. When the officer arrived, the defendant refused to identify himself. During a pat down for weapons, the officer removed a wallet and asked the defendant if he lived at the address on the ID. The defendant eventually answered that he did not live at the address and that he lived at the Wheeler Mission. At trial, the officer testified that he asked the defendant his address to verify the information on the ID and the court allowed the statement that he lived at the Wheeler Mission into evidence.

The State later argued that the Wheeler Mission was very close to where the car was stolen from.

The Court found that this was the type of routine question by the police that does not fall within *Miranda's* purview. Questions regarding name, address, height, weight, eye color, date of birth and current age are outside the scope of *Miranda's* coverage.