

[CAPTION]

**MOTION TO SUPPRESS EVIDENCE (ILLEGAL ENTRY ONTO  
CURTILAGE)**

The Defendant, by counsel, respectfully requests that this Court to suppress all property seized by the arresting officers, all observations made by the arresting officers, and all statements made by the Defendant. In support of this Motion, the Defendant states the following:

1. The Defendant is charged with [insert offense(s)].
2. On [insert date], a police officer, without lawful authority, entered the Defendant's curtilage, exceeding the areas upon which visitors would be expected to be invited.
3. Any information resulting from the unlawful entry was unlawfully obtained because:
  - a. At the time the police officer entered the Defendant's curtilage, the police officer neither had a warrant nor a justification for a warrantless entry and, thus, violated the Fourth Amendment to the United States Constitution.
  - b. Considering the totality of the circumstances, the police officer's warrantless entry into the Defendant's home was unreasonable and, thus, violated Article I, Section 11 of the Indiana Constitution.
  - c. The police officer's continued presence on the Defendant's curtilage was neither justified by a warrant nor an exception to the warrant requirement and, thus, violated the Fourth Amendment to the United States Constitution.
  - d. Considering the totality of the circumstances, the police officer's continued presence on the Defendant's curtilage was unreasonable under Article I, Section 11 of the Indiana Constitution.

WHEREFORE, the Defendant requests the Court to:

1. Suppress and bar from use as evidence in the trial of this cause any observations, Defendant's statements, and items seized which resulted from the illegal entry and seizure.

2. Suppress and bar from use in the trial of this cause all testimony relating to any observations, Defendant's statements and items seized that resulted from the illegal entry and seizure.

(Signature)

## CASELAW

## CASEBANK Z.1

U.S. v. Dunn, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987) (a person has a reasonable expectation of privacy in an area surrounding his home if the area harbors intimate activity associated with the sanctity of his home and privacies of life; curtilage questions should be resolved with particular reference to four factors: proximity of area claimed to be curtilage, whether area is included within enclosure surrounding home, nature of uses to which area put, and steps taken to protect area from observations by a passerby).

State v. Neanover, 812 N.E.2d 127 (Ind.Ct.App. 2004) (open landing near apartment was curtilage and illegally entered into by police).

Shultz v. State, 742 N.E.2d 961 (Ind.Ct.App. 2001) (it was unreasonable under Indiana Constitution for police to search property to see if anyone was home after no one responded to their knocking on door where officers did not call out loud to ascertain whether anyone was there, and looked into outbuildings where evidence was recovered).

Hoop v. State, 909 N.E.2d 463 (Ind.Ct.App. 2009) (because the reasonableness analysis under the Indiana Constitution places an overriding weight on the need to restrict arbitrary selection of persons to be searched, reasonable suspicion is needed to conduct a dog sniff of a private residence).

Divello v. State, 782 N.E.2d 433 (Ind.Ct.App. 2003) (although officers' initial entry onto the Defendant's property was permissible, they failed to limit their visit to areas that could reasonably have been viewed by them for legitimate police business and remained on the Defendant's property after it became clear to them that purpose of their visit could not be properly fulfilled).

Trimble v. State, 842 N.E.2d 798 (Ind. 2006) (police officer properly went to doghouse on Defendant's property upon receiving credible report of neglected animals; when police have legitimate investigatory purpose for being on property and were in a place where visitors would be expected to go, publicly viewable evidence of a crime may properly be seized without a warrant, particularly when there is a need to act promptly to protect health or safety of another, whether human or animal). See also Baxter v. State, 891 N.E.2d 110 (Ind.Ct.App. 2008).

Hardister v. State, 849 N.E.2d 563 (Ind. 2006) (officers looking into side and rear windows of residence was reasonable effort to locate the occupants and thus did not constitute an unlawful search). See also Kendall v. State, 849 N.E.2d 1109 (Ind. 2006) (Defendant did not have reasonable expectation of privacy in shared backyard of duplex that was not enclosed by fence, and thus officers' observation of Defendant disposing drugs from such area did not constitute an unlawful search).

Timmons v. State, 734 N.E.2d 1084 (Ind.Ct.App. 2000) (although the Defendant's statement made outside the home was independent of unlawful warrantless arrest in his home, police observation of the Defendant's intoxicated demeanor outside of home after illegal entry into home was fruit of illegal entry).

Litchfield v. State, 824 N.E.2d 356 (Ind. 2005) (warrantless search of trash recovered from place where it is left for collection is permissible under the Indiana Constitution only if investigation officials have an articulable basis justifying the reasonable suspicion that subjects of the search have engaged in violation of the law that might reasonably lead to evidence in the trash). See also Turner v. State, 843 N.E.2d 937 (Ind.Ct.App. 2006); Fuqua v. State, 984 N.E.2d 709 (Ind.Ct.App. 2013).

Florida v. Jardines, 133 S.Ct. 1409, 185 L.E.2d 495 (2013) (holding that officers' use of drug-sniffing dog on front porch of home, to investigate an unverified tip that marijuana was being grown in the home, was

an invasion of the curtilage and constituted a “search” for Fourth Amendment purposes); see also Perez v. State, 27 N.E.3d 1144 (Ind.Ct.App. 2015).

Carpenter v. State, 974 N.E.2d 569 (Ind.Ct.App. 2012) (police had reasonable belief that house where they attempted to execute arrest warrant was residence of subject of warrant and that subject was present, and thus officers’ entry into curtilage of house did not violate Fourth Amendment, even though officers were incorrect that house was subject’s address).

J.K. v. State, 8 N.E.3d 222 (Ind.Ct.App. 2014) (portions of Defendant’s property onto which police officers intruded, including the sides of the house and the backyard, were curtilage under protection of Fourth Amendment—the area was immediately adjacent to the house, the front door was the common means of access to the house and the backdoor was never used to enter the house, there was no sidewalk or other means of ingress or egress to indicate the sides and back of house were open to visitors, and backyard was enclosed by privacy fence and pine trees).

Jadrich v. State, 999 N.E.2d 1022 (Ind.Ct.App. 2013) (police officer lacked reasonable belief that he would be able to serve protective order by using Defendant’s backdoor after unsuccessfully attempting to make contact with Defendant using front door, thus officer’s viewing of “grow” operation in Defendant’s backyard and subsequent search of residence violated Fourth Amendment).