



Multi-Unit Dwellings and Curtilage

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I blogged [previously](#) about whether the concept of curtilage applies to multi-unit dwellings like duplexes and apartment buildings. It's an interesting question, and the cases summarized in the prior post show that the courts aren't in complete agreement on the issue. I recently had a question on point, and one of the clipping services I get just highlighted a new case on the subject, so I thought I'd mention the case as a way of providing a quick update.

The case is *State v. Milton*, __ N.W.2d __ 2012 WL 4094366 (Minn. Sept. 19, 2012). In a nutshell, the police suspected that the defendant was involved in, or at least knew about, a shooting, so they went to his home. He lived in the upstairs unit of an up/down duplex. While several officers went to the front door, another officer went to the back door in case anyone tried to leave by that route. There she saw "two shell casings. One shell casing was located on the platform of a stairway leading to [the defendant's] back door, and the other shell casing was located further up that stairway. Even though she did not have a search warrant, [the officer] took possession of the shell casings." The casings helped tie the defendant to the murder.

The defendant moved to suppress the casings, but the trial judge ruled that the officer was lawfully present and that the casings were in plain view. After he was convicted, the defendant appealed the ruling, arguing that the officer was not lawfully present because the casings were within the curtilage of his home. The appellate court affirmed. It stated that "a resident of a multifamily residence has a diminished expectation of privacy in the common areas surrounding the residence," and concluded that the external stairway where the officer found the casings served both units to some extent, was therefore a common area, and thus was not part of the defendant's curtilage.