

**[J-93-2002]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 15 MAP 2002
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered June 22, 2001 at No. 1913
	:	MDA 2000 which Affirmed the Judgment
v.	:	of Sentence of Centre County Court of
	:	Common Pleas, Criminal Division entered
	:	May 16, 2000 at No. 1999-1937
JAMES L. GILLESPIE,	:	
	:	
Appellant	:	ARGUED: May 16, 2002

**CONCURRING AND DISSENTING OPINION**

**MR. JUSTICE NIGRO**

**Decided: April 25, 2003**

Like Justice Saylor, I join the majority's disposition on the issue involving the definition of a firearm under 18 Pa.C.S. § 6105(i). However, as I believe the police clearly violated Appellant's constitutional rights by ordering him to leave his own home while they obtained a search warrant, I simply cannot join that portion of the majority opinion that upholds the trial court's denial of Appellant's motion to suppress.

In reaching its conclusion that the officers' ordering of Appellant to leave his home was reasonable, the majority cites to Illinois v. McArthur, 531 U.S. 326 (2001), which it contends stands for the broad proposition that "if probable cause exists to support the issuance of a warrant, police may secure the residence of an individual by having him wait outside his home to preserve the loss of evidence while a warrant is diligently sought." Slip Op. at 7. Importantly, however, McArthur involved a situation where the police prevented an individual from re-entering his home in order to prevent the destruction of evidence.

Here, in contrast, the police were inside Appellant's home -- despite the fact that they had no warrant and, by this point, had been instructed by Appellant to leave -- when they told Appellant that he would have to leave his own home so that they could secure a warrant. Indeed, McArthur itself implicitly recognizes the difference between a situation such as this, involving police action inside a home, and the situation presented by McArthur, where the police action occurred solely outside the home. See id. at 333-36. See also Payton v. New York, 445 U.S. 573 (1980) (searches and seizures in public places are treated differently than those occurring inside the home).

In my view, once Appellant instructed the police to leave his home, the police no longer had any right to be in Appellant's home, and certainly had no right to order Appellant to leave his home while the police sought out a warrant. By holding otherwise, the majority turns on its head the long-standing precedent of this Court that the sanctity of the home is "the place deserving the utmost protection pursuant to the Fourth Amendment." Commonwealth v. Gindlespenger, 743 A.2d 898, 902 (Pa. 1999); Commonwealth v. Bricker, 666 A.2d 257, 261 (Pa. 1995) ("we have long recognized the sanctity of the home in this Commonwealth as we have repeatedly stated that upon closing the door to one's home to the outside world, a person may legitimately expect the highest degree of privacy known to our society") (internal quotation marks omitted); Commonwealth v. Roland, 637 A.2d 269, 270 (Pa. 1994) (warrantless searches and seizures in private home are presumptively unreasonable). As I continue to believe that an individual is constitutionally entitled to be free from such unreasonable seizures in his home as that which occurred here, I would reverse the trial court's order denying Appellant's motion to suppress.