

FILED
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STATE OF WASHINGTON
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No. 102622-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MARY MARGARET MERCEDES,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington, petitioner in the Court of Appeals, respondent in this Court, asks that review be denied.

II. STATEMENT OF THE CASE

The facts are correctly set out in the Court of Appeals opinion. As a clarification, contrary to Mercedes's assertion that "the trial court ruled animal control officers intruded into Ms. Mercedes' home without a warrant," officers never entered Mercedes's home, only the surrounding property. Petition for Review at 8. Additionally, the record does not reflect that the pastures "immediately surrounded" Mercedes's home. Officers entered the pasture from the driveway of a 2.89-acre property.

In its opinion reversing the trial court's determination that Ferrier warnings are required before law enforcement

may conduct a warrantless search of a horse pasture, the Court of Appeals made several key holdings:

While warrantless searches are unlawful in general, consent is an exception to the warrant requirement. Slip Op. at *9. The requirement for additional warnings to obtain consent comes from State v. Ferrier, 136 Wn.2d 103, 960 P.2d 927 (1998). These warnings are only required in searches of homes that entail a “knock and talk” procedure according to Washington Supreme Court precedent and published cases from Divisions One and Three of the Court of Appeals. Slip Op. at *10–11. In the sole Division Two case related to this issue, the court’s unpublished decision rested on the key fact that the searched area was the curtilage of the home. Slip Op. at *12–13. In this case, the trial court did not hold the horse pasture was within the home’s curtilage and the court’s holding did not rest on such a finding. Slip Op. at *13.

In light of these holdings, the court reversed the trial court's suppression ruling, holding the trial court erred in concluding the Ferrier rule applied to the defendant's consent to search her fenced pasture. Slip Op. at *15.

In an opinion concurring in part and dissenting in part, Judge Feldman wrote the "constitutional underpinnings" of the Court's ruling in Ferrier clearly extend outside the home. Concurrence/Dissent at *1. Judge Feldman reasoned the Washington Constitution provides the same protections to "private affairs" as to the home in this context. Id. at *2.

III. ARGUMENT

A. THE ISSUE OF WHETHER FERRIER WARNINGS MUST BE GIVEN WHEN OFFICERS SEARCH THE CURTILAGE OF A HOME IS NOT BEFORE THE COURT.

Neither the trial court nor the Court of Appeals held that the search in this case was of the curtilage of Mercedes's home. On the contrary, "several of the trial court's findings suggest the opposite." Slip Op. at *13.

Thus, the issue of whether Ferrier warnings must be given when officers search the curtilage of a home is not before the Court. Significant portions of the Petition for Review address this question, but the record in this case does not allow review of this issue.

B. MERCEDES HAS NOT DEMONSTRATED THIS MATTER INVOLVES A SIGNIFICANT CONSTITUTIONAL QUESTION BECAUSE THE ISSUE OF WHETHER FERRIER WARNINGS APPLY OUTSIDE THE HOME HAS BEEN DECIDED.

In her petition, Mercedes's argument depends on the legal assumption that every part of her 2.89 acres of land deserved the same protections from searches as her home. No case supports this theory. On the contrary, this Court held,

Our decisions have consistently reflected the principle that the home receives heightened constitutional protection. Generally, a person's home is a highly private place. In no area is a citizen more entitled to his privacy than in his or her home. For this reason, the closer officers come to intrusion into a dwelling, the greater the constitutional protection.

State v. Young, 123 Wn.2d 173, 185, 867 P.2d 593 (1994).

The Court in Ferrier relied heavily on Young in its analysis, quoting it repeatedly for the proposition that the home receives greater constitutional protection than any other place. Ferrier, 136 Wn.2d at 118; fn 7 (“In Young we held that ‘in examining our state constitution’s explicit protection of the *home*, the fact the search occurs at a home is central to the analysis.’ Young, 123 Wn.2d at 185 n. 2, 867 P.2d 593.”).

Additionally, as the Court of Appeals held, several Supreme Court cases directly contradict the theory that Ferrier warnings are required outside of knock and talk procedures. See Slip Op. at *11:

State v. Khounvichai, 149 Wn.2d 557, 565-67, 69 P.3d 862 (2003) (Ferrier warnings are required only when police seek entry into a home to conduct a consensual search for contraband or evidence of a crime, not “merely to question or gain information from an occupant”); State v. Williams, 142 Wn.2d

17, 27-28, 19-20, 11 P.3d 714 (2000) (Ferrier warnings not required when police requested consent to enter a tenant's home to arrest the tenant's visitor, who had a valid arrest warrant); State v. Bustamante-Davila, 138 Wn.2d 964, 980-81, 983 P.2d 590 (1999) (Ferrier warnings not required when police and an immigration agent gained consensual entry into defendant's home to serve a presumptively valid deportation order).

The Court of Appeals' opinion in this case was supported by ample authority. There is no dispute that pastures are protected from warrantless searches. The issue here is whether pastures receive the heightened protections of a home. Precedent establishes they do not. Thus, there is no significant constitutional question before this Court.

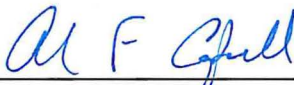
IV. CONCLUSION

The Petition for Review should be denied, as the Court of Appeals decision comports with established precedent and there is not a significant constitutional question before the Court.

This brief contains 913 words (exclusive of appendices, title sheet, table of contents, table of authorities, certificate of service, signature blocks, and pictorial images).

Respectfully submitted on February 21, 2024.

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SNOHOMISH COUNTY PROSECUTOR'S OFFICE

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