

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Mar 19, 2015, 9:47 am
BY RONALD R. CARPENTER
CLERK

RECEIVED BY E-MAIL

NO. 90419-7

THE SUPREME COURT THE STATE OF WASHINGTON

Filed *E*
Washington State Supreme Court

STATE OF WASHINGTON,

Petitioner,

v.

DOMINIC BAIRD and COLLETTE ADAMS,

Respondents.

APR 08 2015

Ronald R. Carpenter
Clerk *byh*

BRIEF OF AMICUS CURIAE

WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

PAMELA B. LOGINSKY

Staff Attorney

Washington Association of Prosecuting Attorneys

206 10th Ave. S.E.

Olympia, WA 98501

Telephone: (360) 753-2175

E-mail: pamloginsky@waprosecutors.org



ORIGINAL

TABLE OF CONTENTS

I. INTEREST OF AMICUS CURIAE 1

II. ISSUES PRESENTED 1

III. STATEMENT OF FACTS 1

IV. ARGUMENT 2

A. ADMINISTRATION OF A WARRANTLESS BREATH
TEST IS LAWFUL PURSUANT TO THE SEARCH
INCIDENT TO ARREST EXCEPTION TO THE
WARRANT REQUIREMENT 2

B. A REFUSAL TO COMPLY WITH AN OFFICER'S
LAWFUL REQUEST MAY BE USED AS EVIDENCE OF
CONSCIOUSNESS OF GUILT 9

V. CONCLUSION 11

TABLE OF AUTHORITIES

TABLE OF CASES

Arkansas v. Sanders, 442 U.S. 753, 99 S. Ct. 2586,
61 L. Ed. 2d 235 (1979) 2

Brent v White, 398 F.2d 503 (5th Cir. 1968), *cert. denied*,
393 U.S. 1123 (1969) 4

Burnett v. Anchorage, 806 F.2d 1447 (9th Cir. 1986) 6

Byrd v. Clark, 783 F.2d 1002 (11th Cir. 1986) 6

Commonwealth v. Anderl, 329 Pa. Super. 69, 477 A.2d 1356
(Pa. Super. 1984) 7

Cooper v. State, 587 S.E.2d 605 (Ga. 2003) 8

Cupp v. Murphy, 412 U.S. 291, 93 S. Ct. 2000,
36 L. Ed. 2d 900 (1973) 5

Douds v. State, 434 S.W.2d 842 (Tex. App.), *review granted*
by In re Douds, 2014 Tex. Crim. App. LEXIS 1270
(Tex. Crim. App., Sept. 17, 2014) 8

Fuller v. M.G. Jewelry, 950 F.2d 1437 (9th Cir. 1991) 5

Gonzalez v. City of Schenectady, 728 F.3d 149 (2nd Cir. 2013) 5

Kaliku v. United States, 994 A.2d 765 (D.C. App. 2010) 4

Maryland v. King, ___ U.S. ___, 133 S. Ct. 1958,
186 L. Ed. 2d 1 (2013) 4

Missouri v. McNeely, ___ U.S. ___, 133 S.Ct. 1552,
185 L. Ed. 2d 696 (2013) 5, 8

Olympia v. Culp, 136 Wash. 374, 240 P. 360 (1925) 3

People v. More, 97 N.Y.2d 209, 764 N.E.2d 967,
738 N.Y.S.2d 667 (2002) 5

<i>South Dakota v. Neville</i> , 459 U.S. 553, 103 S. Ct. 916, 74 L. Ed. 2d 748 (1983)	11
<i>State v. Audley</i> , 77 Wn. App. 897, 894 P.2d 1359 (1995)	5, 6
<i>State v. Bernard</i> , No. A13-1245, ___ N.W.2d ___, 2015 Minn. LEXIS 46 (Feb. 11, 2015)	7
<i>State v. Burns</i> , 19 Wash. 52, 52 P. 316 (1898)	3
<i>State v. Byrd</i> , 178 Wn.2d 611, 310 P.3d 793 (2013)	3, 4
<i>State v. Colosimo</i> , 669 N.W.2d 1 (Minn. 2003), <i>cert. denied</i> , 541 U.S. 988 (2003)	10
<i>State v. DeOliveira</i> , 972 A.2d 653 (R.I. 2009)	7
<i>State v. Dowdy</i> , 332 S.W.3d 868 (Mo. Ct. App. 2011)	7
<i>State v. Gonzalez</i> , 315 Conn. 564, 2015 Conn. Lexis 32 (Feb. 24, 2015)	10
<i>State v. Haze</i> , 218 Kan. 60, 542 P.2d 720 (1975)	10
<i>State v. Hendrickson</i> , 129 Wn.2d 61, 917 P.2d 563 (1996)	2
<i>State v. Hill</i> , 2009 Ohio 2468, 2009 Ohio App. Lexis 2093, 2009 WL 1485026 (Ohio Ct. App. 2009)	7
<i>State v. Houser</i> , 95 Wn.2d 143, 622 P.2d 1218 (1980)	2
<i>State v. Long</i> , 113 Wn.2d 266, 778 P.2d 1027 (1989)	10, 11
<i>State v. MacDicken</i> , 179 Wn.2d 936, 319 P.3d 31(2014)	3
<i>State v. Magnotti</i> , 198 Conn. 209, 502 A.2d 404 (1985)	5
<i>State v. Moore</i> , 79 Wn.2d 51, 483 P.2d 630 (1971)	8
<i>State v. Nordlund</i> , 113 Wn. App. 171, 53 P.3d 520 (2002), <i>review denied</i> , 149 Wn.2d 1005 (2003)	10

<i>State v. Nordstrom</i> , 7 Wash. 506, 35 P. 382 (1893)	3
<i>State v. Royce</i> , 38 Wash. 111, 80 P. 268 (1905)	3
<i>State v. White</i> , 135 Wn.2d 761, 958 P.2d 982 (1998)	3
<i>State v. Wiseman</i> , 816 N.W.2d 689 (Minn. App. 2012), <i>cert. denied</i> , 133 S. Ct. 1585 (2013)	11
<i>Terry v. Ohio</i> , 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)	3
<i>United States v. Love</i> , 482 F.2d 213 (5th Cir. 1973)	5
<i>United States v. Nix</i> , 465 F.2d 90 (5th Cir.), <i>cert. denied</i> , 409 U.S. 1013 (1972)	10
<i>United States v. Reid</i> , 929 F.2d 990 (4th Cir. 1991)	6
<i>United States v. Terry</i> , 702 F.2d 299 (1983)	10
<i>Wing v. State</i> , 268 P.3d 1105 (Alaska Ct. App. 2012)	6

CONSTITUTIONS

Const. art. I, § 7	1-3
Fourth Amendment	1, 3, 7, 8

STATUTES

RCW 36.27.020 1
RCW 46.20.308 8
RCW 46.20.308(1) 8
RCW 46.20.308(7) 9
RCW 46.61.517 11

OTHER AUTHORITIES

Paul Clark, *Do Warrantless Breathalyzer Tests Violate the
Fourth Amendment?*, 44 N.M.L.Rev. 89 (2014) 7

I. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys ("WAPA") represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes. Those persons are also responsible by law for providing advice to the duly elected sheriff. RCW 36.27.020.

WAPA is interested in cases, such as this, which have wide-ranging impact on the ability to investigate criminal activity and on the ability to collect relevant evidence.

II. ISSUES PRESENTED

1. Whether a police may conduct a warrantless breath test on a person arrested for an alcohol related offense pursuant to the search incident to arrest exception to the warrant requirement?

2. Whether the admission of evidence of a person's refusal to comply with a lawful search violates either the Fourth Amendment or Const. art. I, § 7?

III. STATEMENT OF FACTS

The facts of these two cases are discussed in detail in the briefs of the parties and will not be addressed here.

IV. ARGUMENT

WAPA agrees with the arguments put forth by the State in these two cases and will not repeat those arguments. Warrantless breath testing is reasonable under exigent circumstances due to the speed with which alcohol is absorbed by the body and the non-intrusive nature of the testing. WAPA also agrees that there is no constitutional right to refuse a breath test.

WAPA presents this brief to explain why Dominic Baird is mistaken in his claim that breath tests following an arrest for driving under the influence cannot be justified as a search incident to arrest. WAPA also offers a few additional reasons to reaffirm the use of refusal evidence in driving under the influence prosecutions.

A. ADMINISTRATION OF A WARRANTLESS BREATH TEST IS LAWFUL PURSUANT TO THE SEARCH INCIDENT TO ARREST EXCEPTION TO THE WARRANT REQUIREMENT

Dominic Baird, who submitted to the breath test, contends that the results of the test must be suppressed because breath alcohol testing is outside the scope of the search incident to arrest exception to the warrant requirement. Brief of Respondent (Baird), at 18-22. Baird's position is contrary to existing law.

Article I, section 7 permits warrantless searches under certain "jealously and carefully drawn" exceptions" to the warrant requirement. *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996) (quoting *State v. Houser*, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980) (quoting *Arkansas v.*

Sanders, 442 U.S. 753, 759, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979))). The exceptions fall “into six categories: (1) consent; (2) exigent circumstances; (3) search incident to a valid arrest; (4) inventory searches; (5) plain view; and (6) *Terry* investigative stops, *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).” *State v. White*, 135 Wn.2d 761, 769 n. 8, 958 P.2d 982 (1998).

The search incident to arrest exception to the warrant requirement when applied to the person and/or items in the person’s immediate possession is firmly enshrined in Washington law. “This court has, from the earliest times, followed the rule that articles, personal effects, or money, taken from the person of a defendant lawfully arrested may be used in evidence against him.” *Olympia v. Culp*, 136 Wash. 374, 377-78, 240 P. 360 (1925) (citing *State v. Nordstrom*, 7 Wash. 506, 35 P. 382 (1893), *State v. Burns*, 19 Wash. 52, 52 P. 316 (1898), and *State v. Royce*, 38 Wash. 111, 80 P. 268 (1905)). This court, in modern times, follows the rule that officers may search an arrestee’s person and articles closely associated with his or her person at the time of arrest without violating either the Fourth Amendment to the United States Constitution or article I, section 7 of the Washington State Constitution. *State v. MacDicken*, 179 Wn.2d 936, 938, 319 P.3d 31(2014); *State v. Byrd*, 178 Wn.2d 611, 625, 310 P.3d 793 (2013).

Both in early statehood and in modern times, a warrantless search of the arrestee’s person is presumed to be justified by the arrest, itself. *Byrd*,

178 Wn.2d at 618. It is further presumed that the search is necessary for officer safety and evidence preservation. *Id.* When dealing with alcohol, which is rapidly absorbed within the system, the exigency that supports the search incident to arrest doctrine actually exists. The evidence will be lost if a sample is not collected in a timely manner.

The search incident to arrest doctrine is not without its limits. Such searches, must be reasonable in “scope and manner of execution.” *Maryland v. King*, ___ U.S. ___, 133 S. Ct. 1958, 1970, 186 L. Ed. 2d 1 (2013). An exception to the warrant requirement is not *carte blanche*; it merely changes the applicable standard from a rule of *per se* unreasonableness to a test balancing privacy interests against law enforcement interests. *Id.* The more intrusive the search, the greater likelihood that a warrantless intrusion will be found unreasonable. *King*, 133 S. Ct. at 1969 .

When the search involves nudity¹ or a surgical intrusion beneath the skin, a warrant will generally be required. *King*, 133 S. Ct. at 1969. But, other searches, even those that go beyond evidence constantly exposed to the public and/or entail non-surgical intrusions are reasonable. *Compare King*,

¹The Fifth Circuit held in *Brent v White*, 398 F.2d 503, 505 (5th Cir. 1968), *cert. denied*, 393 U.S. 1123 (1969), that a warrantless penis “scraping constituted a permissible search of the person incident to a lawful arrest” as it “involved no intrusion of the body surface.” It is not clear that this procedure would be considered “reasonable” under contemporary standards. The facts of the case, however, fall within the “arrest plus” rule discussed *infra. Id.*, at 505 (noting that in addition to arrest “there was threat of imminent destruction of the evidence of menstrual blood”). Other courts have upheld post-arrest warrantless scrapings of penises when arrest plus exigency exist. *See, e.g., Kaliku v. United States*, 994 A.2d 765, 779-80 (D.C. App. 2010).

133 S. Ct. at 1969 (warrantless buccal swab of inner tissues of a person's cheek is a lawful search incident to arrest as it is far more gentle than a venipuncture to draw blood); *Cupp v. Murphy*, 412 U.S. 291, 93 S. Ct. 2000, 36 L. Ed. 2d 900 (1973) (warrantless scraping from defendant's fingernails reasonable); *United States v. Love*, 482 F.2d 213, 216 (5th Cir. 1973) (warrantless swabbing arrestee's hands with an acetone solution for testing a valid search incident to arrest); *State v. Magnotti*, 198 Conn. 209, 502 A.2d 404 (1985) (warrantless scraping of arrestee's fingernails reasonable under the search incident to arrest exception); *with Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1446-47 (9th Cir. 1991) (holding that strip searches and visual body cavity inspections not reasonable as a search incident to arrest); *People v. More*, 97 N.Y.2d 209, 214, 764 N.E.2d 967, 970, 738 N.Y.S.2d 667 (2002) (warrantless extraction of drugs from defendant's rectum exceeds the scope of a search incident to arrest); *State v. Audley*, 77 Wn. App. 897, 906, 894 P.2d 1359 (1995) ("a strip search of an arrestee cannot be justified under the search incident to arrest exception to the warrant requirement alone").

Even warrantless searches that involve nudity or a surgical entry into the body can be lawfully conducted. These searches require arrest plus some other exigency. *See, e.g., Missouri v. McNeely*, ___ U.S. ___, 133 S.Ct. 1552, 185 L. Ed. 2d 696 (2013) (warrantless venipuncture requires arrest and an exigency other than mere alcohol dissipation); *Gonzalez v. City of Schenectady*, 728 F.3d 149, 158-160 (2nd Cir. 2013) (warrantless strip search

requires arrest and post-arrest assignment to the general jail population or reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest); *Audley*, 77 Wn. App. at 908 (warrantless strip search requires an arrest and reasonable suspicion to believe that a strip search is necessary to discover weapons, criminal evidence, contraband, or other things that constitute a threat to the security of the facility).

Warrantless searches that do not involve a surgical entry into the body or nudity require no justification beyond the arrest. Breath tests fall within this class of searches. Every court that has considered the question has held that warrantless breath tests for alcohol are valid under the search incident to arrest exception to the warrant requirement. *See United States v. Reid*, 929 F.2d 990, 994 (4th Cir. 1991) (warrantless breath tests are lawful under the search incident to arrest doctrine); *Burnett v. Anchorage*, 806 F.2d 1447, 1450 (9th Cir. 1986) (“It is clear then that the breathalyzer examination in question is an appropriate and reasonable search incident to arrest which appellants have no constitutional right to refuse.”); *Byrd v. Clark*, 783 F.2d 1002, 1005 (11th Cir. 1986) (holding that “officers would have been justified in conducting a [breath] search” under the search-incident-to-arrest exception); *Wing v. State*, 268 P.3d 1105, 1110 (Alaska Ct. App. 2012) (“police could administer a breath test as a search incident to arrest for

driving under the influence”); *State v. Bernard*, No. A13-1245, ___ N.W.2d ___, 2015 Minn. LEXIS 46 at *10 (Feb. 11, 2015) (holding that “a warrantless breath test does not violate the Fourth Amendment because it falls under the search-incident-to-a-valid-arrest exception” and noting that “our research has not revealed a single case anywhere in the country that holds that a warrantless breath test is not permissible under the search-incident-to-a-valid-arrest exception”);² *State v. Dowdy*, 332 S.W.3d 868, 870 (Mo. Ct. App. 2011) (warrantless breath test is permissible under the search-incident-to-a valid arrest exception); *State v. Hill*, 2009 Ohio 2468, 2009 Ohio App. Lexis 2093, at P21, 2009 WL 1485026, at *5 (Ohio Ct. App. 2009) (“It is clear then that the breathalyzer examination in question is an appropriate and reasonable search incident to arrest which appellant had no constitutional right to refuse.”); *Commonwealth v. Anderl*, 329 Pa. Super. 69, 477 A.2d 1356, 1364 (Pa. Super. 1984) (upholding warrantless breathalyzer test as valid as a search incident to arrest); *State v. DeOliveira*, 972 A.2d 653, 661 (R.I. 2009) (“a Breathalyzer test is considered a search incident to a lawful arrest and is, therefore, deemed reasonable within the meaning of the Fourth Amendment”).

The holdings of these courts are consistent with the determination of every state’s legislative body, that an arrest for an alcohol related traffic

²There is a relatively recent law review article that argues warrantless breath tests are impermissible under the search incident to arrest exception. *See* Paul Clark, *Do Warrantless Breathalyzer Tests Violate the Fourth Amendment?*, 44 N.M.L.Rev. 89 (2014). This article, however, relies solely upon blood draw cases. *See Id.* at 116-19.

offense justifies the warrantless collection of the arrestee's breath. *See generally McNeely*, at 1566 (noting with approval that all 50 states have implied consent laws that provide a mechanism for securing evidence of alcohol without undertaking warrantless nonconsensual blood draws). This Court has specifically approved of Washington's implied consent statute. *See, e.g., State v. Moore*, 79 Wn.2d 51, 483 P.2d 630 (1971).

Approval of implied consent laws must be based upon a belief that the warrantless administration of a breath test satisfies one or more of the accepted exceptions to the warrant requirement, as an implied consent statute does not create an exception to the warrant requirement. *See, e.g., Cooper v. State*, 587 S.E.2d 605, 612 (Ga. 2003) ("To hold that the legislature could nonetheless pass laws stating that a person 'impliedly' consents to searches under certain circumstances where a search would otherwise be unlawful would be to condone an unconstitutional bypassing of the Fourth Amendment."); *Douds v. State*, 434 S.W.2d 842, 859-60 (Tex. App. 2014) (the implied consent statute cannot alter the Fourth Amendment warrant requirements or its recognized exceptions), *review granted by In re Douds*, 2014 Tex. Crim. App. LEXIS 1270 (Tex. Crim. App., Sept. 17, 2014). The logical exception is search incident to arrest, particularly as RCW 46.20.308 is triggered by an arrest. *See* RCW 46.20.308(1) ("to a test or tests of his or her breath for the purpose of determining the alcohol concentration, THC

concentration, or presence of any drug in his or her breath if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503”); RCW 46.20.308(7) (unlawfulness of arrest will prevent administrative action against person’s license).

This Court should reverse the trial court’s order suppressing Dominic Baird’s breath test and should affirmatively hold that the warrantless administration of a breath alcohol test is valid under the search incident to arrest exception to the warrant requirement.

B. A REFUSAL TO COMPLY WITH AN OFFICER'S
LAWFUL REQUEST MAY BE USED AS EVIDENCE OF
CONSCIOUSNESS OF GUILT

Collette Adams, who refused the officer’s lawful request to take a breath test, contends that her refusal is inadmissible as substantive evidence of a crime. Brief of Respondent (Adams) at 25. Adams’ claim is based upon the assumption that a warrantless breath test violates the constitution. This assumption is incorrect for the reasons identified *supra* in section A of this brief and in the State’s briefs.

Many jurisdictions allow a defendant’s refusal to cooperate with a lawful order to collect evidence as consciousness of guilt. This rule applies

when the lawful order is based upon a search warrant or other court order. *See, e.g., United States v. Nix*, 465 F.2d 90, 93-94 (5th Cir.), *cert. denied*, 409 U.S. 1013 (1972) (refusal to provide a court ordered handwriting exemplar); *State v. Gonzalez*, 315 Conn. 564, 2015 Conn. Lexis 32, 52-53 (Feb. 24, 2015) (refusal to cooperate with search warrant authorizing the collection of a buccal swab for DNA testing); *State v. Haze*, 218 Kan. 60, 542 P.2d 720 (1975) (refusal to provide court ordered handwriting exemplar); *State v. Nordlund*, 113 Wn. App. 171, 188, 53 P.3d 520 (2002), *review denied*, 149 Wn.2d 1005 (2003) (refusal to submit to court ordered body hair sampling).

A defendant's refusal to comply with a lawful order that is based upon an exception to the warrant requirement may also be considered as evidence of consciousness of guilt. *See, e.g., United States v. Terry*, 702 F.2d 299, 314 (1983) (resistance to providing prints pursuant to a lawful custodial arrest). A person can even be criminally prosecuted for refusing to comply with an officer's request to conduct a lawful warrantless search. *See, e.g., State v. Colosimo*, 669 N.W.2d 1 (Minn. 2003), *cert. denied*, 541 U.S. 988 (2003) (refusing to submit to an officer's lawful request to inspect open areas of a motorboat used to transport game fish).

With respect to an individual's refusal to submit to a warrantless breath test, both the Washington Legislature and this Court have recognized the relevancy of the evidence. *See generally State v. Long*, 113 Wn.2d 266,

778 P.2d 1027 (1989); RCW 46.61.517. This Court unanimously found no constitutional barrier to the admission of evidence that a driving while under the influence arrestee refused to submit to a breath test. *Long*, 113 Wn.2d at 272, The United States Supreme Court concurs. *South Dakota v. Neville*, 459 U.S. 553, 103 S. Ct. 916, 74 L. Ed. 2d 748 (1983) (it is constitutionally permissible to use refusal evidence to infer guilt under state implied consent laws). Some jurisdictions go further and criminalize an individual's refusal to submit to a lawful warrantless chemical alcohol test. *See, e.g., State v. Wiseman*, 816 N.W.2d 689, 694 (Minn. App. 2012), *cert. denied*, 133 S. Ct. 1585 (2013) (upholding the Minnesota law that criminalizes chemical test refusal and noting that “[r]efusal to cooperate with a warrantless but constitutionally reasonable police request for evidence, even when accomplished passively or nonviolently, is subject to criminal penalties or otherwise adverse consequences in a variety of contexts.”).

This Court should reverse the trial court's order suppressing Collette Adam's refusal to take a breath test should affirmatively hold that a jury may consider a defendant's failure to comply with a lawful order as evidence of guilt.

V. CONCLUSION

Impaired driving wrecks a horrible toll on human life. This Court should remove the barriers erected by the King County District Court and

specifically hold that warrantless breath tests fall within one or more exception to the warrant requirement and that a person's refusal to submit to a lawful warrantless breath test may be considered by a jury in determining that person's guilt or innocence.

Respectfully submitted this 19th day of March, 2015.

A handwritten signature in cursive script that reads "Pamela Beth Loginsky". The signature is written in black ink and is positioned above the printed name.

PAMELA B. LOGINSKY
WSBA No. 18096
Staff Attorney

OFFICE RECEPTIONIST, CLERK

To: Pam Loginsky; Shelley Williams; dvargas@djvlaw.com; jaceyliu@dui-defendant.net; jrands@jonathanrands.com; brandy.gevers@kingcounty.gov; Erin Norgaard; SweigertJ@nwattorney.net; ryan@robertsonlawseattle.com; howards@slsps.com; shira@stefanikdefense.com
Subject: RE: State v. Baird, No. 90419-7

Received 3-18-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Pam Loginsky [mailto:Pamloginsky@waprosecutors.org]

Sent: Thursday, March 19, 2015 9:41 AM

To: Shelley Williams; OFFICE RECEPTIONIST, CLERK; dvargas@djvlaw.com; jaceyliu@dui-defendant.net; jrands@jonathanrands.com; brandy.gevers@kingcounty.gov; Erin Norgaard; SweigertJ@nwattorney.net; ryan@robertsonlawseattle.com; howards@slsps.com; shira@stefanikdefense.com

Subject: State v. Baird, No. 90419-7

Dear Clerk and Counsel:

Attached for filing is a motion for leave to file an amicus curiae brief, the proposed brief, and a proof of service.

Please let me know if you should encounter any difficulty in opening the documents.

Sincerely,

Pam Loginsky
Staff Attorney
Washington Association of Prosecuting Attorneys
206 10th Ave. SE
Olympia, WA 98501

Phone (360) 753-2175
Fax (360) 753-3943

E-mail pamloginsky@waprosecutors.org