

TABLE OF CONTENTS

	Page
I. IDENTITY OF RESPONDENT.....	1
II. BRIEF ANSWER OF THE RESPONDENT	1
III. STATEMENT OF THE CASE.....	1
IV. ARGUMENT	4
A. Standard of Review.....	5
B. The trial court properly did not suppress the marijuana observed in plain view by the officers.	6
1. The officers observed marijuana in plain view	6
2. Consent voluntarily given for officers to enter residence.....	8
C. The Trial Court Properly Did Not Suppress the Marijuana Detected by the Officers in Open View.....	11
1. <i>Ferrier</i> Warning Given	14
<i>Ferrier</i> Not Applicable to Appellant’s Consent to Entry	15
V. CONCLUSION	20

TABLE OF AUTHORITIES

Page

Cases

Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968)..... 5

In re C.B., 61 Wn.App. 280, 810 P.2d 518 (1991)..... 5

State v. Bustamante-Davila, 138 Wn.2d 964, 983 P.2d 590 (1999) 5, 8, 9, 10, 16, 20

State v. Chaussee, 72 Wn.App. 704, 866 P.2d 643 (1994)..... 12

State v. Ferrier, 136 Wn.2d 103, 960 P.2d 927 (1998) i, 3. 4. 5. 8. 9. 14. 15. 16, 17, 18, 19, 20.

State v. Ferro, 64 Wn.App. 181, 824 P.2d 500 (1992)..... 12

State v. Graffius, 74 Wn.App. 23, 871 P.2d 1115 (1994)..... 7, 13

State v. Hoggatt, 108 Wn.App. 257, 30 P.3d 488 (Div. 2, 2001)..... 5, 7, 8

State v. Johnson, 104 Wn.App. 489, 17 P.3d 3 (Div. 2, 2001)..... 16, 17

State v. Khounvichai, 149 Wn.2d 557, 69 P.3d 862 (2003)..... 18, 19, 20

State v. Rose, 128 Wn.2d 388, 909 P.2d 280 (1996) 13

State v. Ross, 91 Wn.App. 814, 959 P.2d 1188 (Div. 2, 1998) 12, 13, 14, 20

State v. Seagull, 95 Wn.2d 898, 632 P.2d 44 (1981)..... 12,13

State v. Shoemaker, 85 Wn.2d 207 (1975)..... 8

State v. Williams, 142 Wn.2d 17, 11 P.3d 714 (2000)..... 16, 17, 19

Other Authorities

1 Wayne R. LaFave, <i>Search and Seizure</i> § 2.2, at 240 (1978).....	13
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I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington.

II. BRIEF ANSWER OF THE RESPONDENT

The judgment and sentence in this case should be affirmed as the trial court properly denied the defendant's motion to suppress.

III. STATEMENT OF THE CASE

On September 8, 2004, Idaho State Police Detective Paul Berger, Internal Revenue Service Special Agent Doug Nelson and Clark County Sheriff's Detective Chuck Christensen drove to 115 Lariat Road, Ariel, Cowlitz County, Washington, to serve a Federal Grand Jury Subpoena and to interview Timothy Eugene Haddon (hereinafter "defendant") regarding his brother's criminal activities. The defendant's residence sits in the middle of a large open field. There is limited driveway access, no garage and no sidewalks. FF 1, CP at 28.

When the officers arrived at the defendant's residence they were not there to investigate a marijuana growing operation belonging to the defendant. CL 2, CP at 30.

While approaching the front of the residence, Detective Berger and Special Agent Nelson detected the odor of growing marijuana. Detective Berger has specialized training in the investigation of marijuana growing operations, has investigated numerous marijuana growing operations and

is familiar with the odor of growing marijuana. Special Agent Nelson is also familiar with the odor of growing marijuana based upon his training and experience. FF 2, CP at 28.

The defendant answered the door upon which Detective Berger was knocking. This door was located approximately eight to twelve feet to the left of the front door. Detective Berger identified himself, told the defendant why he was there, and asked the defendant if he could enter the residence. FF 3, CP at 28-29.

The defendant testified that Detective Berger told him at the time he initially made contact at the door, that he (defendant) could either let them (the police) in or they would all go downtown. The defendant believed that this meant he would be arrested and taken to jail. FF 9, CP at 29.

The defendant allowed the detectives to enter the residence. The defendant was cooperative throughout his contact with the officers. FF 3, CP at 29.

In the living room of the residence, Detective Berger observed a baggie of marijuana. FF 4, CP at 29.

The defendant testified that he led the officers to his dining room table. RP 7/21/05 at 55. The defendant and the officers spoke about the money laundering activities of the defendant's brother. RP 7/21/05 at 56.

The defendant noted that the tone of the questioning while at the dining room table was in the nature of “good cop-bad cop.” FF 9, CP at 29.

The defendant also noted that the officers curtailed his freedom of movement by following him when he went to get a glass of water and by telling him that if went anywhere in the house, they would be going with him. FF 9, CP at 29.

Upon the completion of the interview as to the defendant’s brother’s activities, Detective Christensen asked the defendant if he used medical marijuana. The defendant admitted that he did but indicated that he did not have a medical marijuana card. Detective Christensen then asked how many marijuana plants the defendant had in the residence. The defendant hung his head and answered “six.” FF 5, CP at 29.

Detective Christensen advised the defendant that he was violating the law. The defendant allowed Detective Christensen to use the defendant’s phone to call the Cowlitz County Sheriff’s Office. FF 6, CP at 29.

Cowlitz County Sheriff’s Deputies Troy Brightbill and Robert Brewer arrived at the scene. Deputy Brewer entered the residence and advised the defendant of his *Miranda* warnings. The defendant indicated he understood his rights and agreed to speak with Deputy Brewer. Deputy Brewer also read the defendant and his wife their *Ferrier* warnings from a

department-issued consent to search form. Both the defendant and his wife signed the consent to search form allowing the deputies to search the residence. FF 7, CP at 29. The defendant testified that the police also told him that he could make it easy on himself and allow them to search or they could get a search warrant and then he would go to jail. FF 9 at CP 29.

The deputies seized six mature and six juvenile marijuana plants. The defendant also handed over a quantity of processed marijuana to the deputies. FF 8, CP at 29.

On September 29, 2005, the court conducted a stipulated facts trial, and found the defendant guilty of one count of violation of the uniform controlled substances act – manufacturing marijuana, and one count of violation of the uniform controlled substances act - possess marijuana in excess of 40 grams. CP at 32. The defendant was sentenced to 30 days for each count. CP at 36.

IV. ARGUMENT

In this case there is a single issue that requires two different analytical approaches. The primary issue is whether the trial court erred by denying the defendant's motion to suppress evidence in this case. The first track requires an analysis of whether the trial court should have suppressed the marijuana observed in plain view by the officers. The

second track requires an analysis of whether the trial court should have suppressed the marijuana in open view detected by the officers. In either case the trial court properly denied the motion to suppress.

A. Standard of Review

The Appellant consented to the police entry into his home. FF 3, CP at 29. The issue is whether that consent was voluntarily given. Whether the Appellant consented voluntarily is a factual inquiry. *State v. Bustamante-Davila*, 138 Wn.2d 964, 981, 983 P.2d 590 (1999). The precise question is whether a rational trier of fact taking the evidence in light most favorable to the State could find consent by clear and convincing evidence. *State v. Hoggatt*, 108 Wn.App. 257, 262-63, 30 P.3d 488 (Div. 2, 2001), citing *Bumper v. North Carolina*, 391 U.S. 543, 548 n. 9, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968) (consent must be shown by clear and convincing evidence); *In re C.B.*, 61 Wn.App. 280, 282-83, 810 P.2d 518 (1991) (to produce substantial evidence is to meet burden of production; when burden of persuasion is clear and convincing evidence, burden of production is met if trier could find fact by clear and convincing evidence), and *State v. Ferrier*, 136 Wn.2d 103, 116, 960 P.2d 927 (1998).

B. The trial court properly did not suppress the marijuana observed in plain view by the officers.

1. The officers observed marijuana in plain view

The trial court found that “In the living room of the residence, Detective Berger observed a baggie of marijuana.” FF 4, CP at 29. That baggie of marijuana was in plain view of the officers, and no warrant is required when the police observe an item in plain view.

Plain view really involves three stages: *viewing*, *reaching* and *seizing*. (1) The officer must *view* the item to be seized without intruding unlawfully on the defendant’s privacy.^{FN31} (2) The officer must *reach* the item without intruding unlawfully on the defendant’s privacy.^{FN32} (3) The officer must *seize* the item (a) without intruding unlawfully on the defendant’s privacy (as opposed to the defendant’s possession),^{FN33} and (b) with probable cause to believe the item is contraband or evidence of a crime.^{FN34} The officer does *271 not need a warrant for the item if these requirements are met.^{FN35}

FN31. At the viewing stage, the officer may or may not be intruding on privacy. *E.g.*, *State v. Bobic*, 140 Wn.2d 250, 258, 996 P.2d 610 (2000); *State v. Dyreson*, 104 Wn.App. 703, 709-10, 17 P.3d 668 (2001). If the officer is not intruding on privacy, the situation is called “open view.” *E.g.*, *Dyreson*, 104 Wn.App. at 709, 17 P.3d 668; *Lemus*, 103 Wn.App. at 102, 11 P.3d 326; *State v. Dykstra*, 84 Wn.App. 186, 191, 926 P.2d 929 (1996). If the officer is intruding on privacy, the situation is called “plain view,” *e.g.*, *State v. Myers*, 117 Wn.2d 332, 346, 815 P.2d 761 (1991), *Lemus*, 103 Wn.App. at 102, 11 P.3d 326, and the officer must have “prior justification for the intrusion [.]” *See also Bustamante-Davila*, 138 Wn.2d at 982, 983 P.2d 590; *State v. Gocken*, 71 Wn.App. 267, 278, 857 P.2d 1074 (1993), *review denied*, 123 Wn.2d 1024, 875 P.2d 635 (1994); *State v. Rodriguez*, 65 Wn.App. 409, 416, 828 P.2d 636, *review denied*, 119 Wn.2d 1019, 838 P.2d 692 (1992).

FN32. This means, among other things, that when an officer is intruding on a reasonable expectation of privacy, the officer must not exceed the scope of the warrant, consent, or other source of authority under which he or she acts. *E.g.*, *Bustamante-Davila*, 138 Wn.2d at 983-84, 983 P.2d 590; *State v. Murray*, 84 Wn.2d 527, 534, 527 P.2d 1303 (1974), *cert. denied*, 421 U.S. 1004, 95 S.Ct. 2407, 44 L.Ed.2d 673 (1975); *Johnson*, 104 Wn.App. at 501, 17 P.3d 3; *State v. King*, 89 Wn.App. 612, 617, 949 P.2d 856 (1998); *State v. Watkins*, 76 Wn.App. 726, 730-31, 887 P.2d 492 (1995). It used to be said that the officer must “inadvertently discover” the incriminating evidence. *E.g.*, *Coolidge*, 403 U.S. at 466, 91 S.Ct. 2022; *State v. Dimmer*, 7 Wn.App. 31, 33, 497 P.2d 613, *review denied*, 81 Wn.2d 1003 (1972). That idea, however, has since been discredited, or at least refined, by both federal and state courts. *E.g.*, *Horton v. California*, 496 U.S. 128, 130, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990); *State v. Hudson*, 124 Wn.2d 107, 114, n. 1, 874 P.2d 160 (1994); *State v. Fowler*, 76 Wn.App. 168, 173, 883 P.2d 338 (1994), *review denied*, 126 Wn.2d 1009, 892 P.2d 1088 (1995); *State v. Graffius*, 74 Wn.App. 23, 30, n. 2, 871 P.2d 1115 (1994); *State v. Goodin*, 67 Wn.App. 623, 627, 838 P.2d 135 (1992), *review denied*, 121 Wn.2d 1019, 854 P.2d 41 (1993); *State v. Wright*, 61 Wn.App. 819, 824, n. 7, 810 P.2d 935, *review denied*, 117 Wn.2d 1012, 816 P.2d 1225 (1991). Yet the idea seems to persist in cases where it makes no difference. *E.g.*, *Bustamante-Davila*, 138 Wn.2d at 982, 983 P.2d 590; *Myers*, 117 Wn.2d at 346-47, 815 P.2d 761; *Gocken*, 71 Wn.App. at 276-78, 857 P.2d 1074; *Rodriguez*, 65 Wn.App. at 416, 828 P.2d 636.

State v. Hoggatt, 108 Wn.App. 257, 270-71, 30 P.3d 488 (Div. 2, 2001)

(footnotes 33, 34 and 35 omitted).

Here the officer viewed, reached and seized the baggie of marijuana without intruding unlawfully on the appellant’s privacy.

Hoggatt, 108 Wn. App. At 270. The officers had prior justification for

intruding on appellant's privacy. See *Hoggatt*, 108 Wn.App. note 31 at 270.

The trial court noted that when the officers came to the appellant's residence they were "not there to investigate a marijuana growing operation belonging to the defendant." CL 3, CP at 30. The officers were present at the house to "serve a Federal Grand Jury Subpoena and to interview Timothy Eugene Haddon (hereafter 'defendant') regarding his brother's criminal activity." FF 1, CP at 28.

3. Consent voluntarily given for officers to enter residence

The Appellant argues that "the consent obtained from Haddon to search his residence was clearly coerced, involuntary, and thus cannot support the warrantless search of his residence." Br. of App.at 32. The Appellant provided consent at two different times. First the Appellant consented to entry into his home by the police when the officers knocked on the door to announce their presence. ("The defendant allowed the detectives to enter the residence" FF 3, CP at 29.) Secondly -- following the arrival of the Cowlitz County deputies -- the Appellant consented in writing to the search of the bedrooms in his house. FF 7, CP at 29. The Cowlitz County deputies gave the Appellant his *Miranda* warnings, and Deputy Brewer "also read the defendant and his wife their *Ferrier*

warnings from a department-issued consent to search form.” FF 7, CP at 29.

The State has burden of demonstrating the voluntariness of the consent. *Bustamante-Davila*, 138 Wn.2d at 981, citing *State v. Shoemaker*, 85 Wn.2d 207, 210 (1975).

To be valid, the consent must be voluntary and the search must not have exceeded the scope of consent. Whether consent is freely given is a question of fact dependent upon the totality of the circumstances which includes ‘(1) whether *Miranda* warnings have been given prior to obtaining consent; (2) the degree of education and intelligence of the consenting person; and (3) whether the consenting person had been advised of his right to consent.’ No one factor is dispositive.

Bustamante-Davila, 138 Wn.2d at 981-82.

In *Bustamante-Davila* the petitioner “was not informed of his right to refuse entry” and consented to entry into his residence by the INS agent and did not object to entry by the police officers accompanying the agent. “There was no drawing of weapons by either the agent or the police officers, nor was petitioner ordered to open the door. In addition, it is evident from petitioner’s testimony that he is a person of at least average or higher intelligence.” *Bustamante-Davila*, 138 Wn.2d at 982.

Likewise here with the Appellant, Haddon was not informed of his right to refuse entry. There is nothing in the record to show that Haddon was not a person of average intelligence. The Appellant testified that he

worked as a “computer help desk analyst”. RP (7/21/05) at 43. Further it appears that his testimony is in context with the questions asked, and would be consistent with a “person of at least average or higher intelligence.” See *Bustamante-Davila*, 138 Wn.2d at 982.

The trial court here did find that “The defendant allowed the detectives to enter the residence.” FF 3, CP at 29. But the court also noted that the “defendant testified that Detective Berger told him at the time he initially made contact at the door that he (defendant) could either let them (the police) in or they would all go downtown. The defendant believed that this meant he would be arrested and taken to jail.” FF 9, CP at 29.

However, in looking at the totality of the circumstances, as required in *Bustamante-Davila*, the Appellant freely consented to entry of the officers into his home. *Bustamante-Davila*, 138 Wn.2d at 981-82. As in *Bustamante-Davila*, there was no drawing of weapons, nor was the Appellant ordered to open the door. Haddon himself testified that officers asked “Would it be okay if we came in and talked to you?” RP 7/21/05 at 53-54.

The Appellant does not appear to argue that his subjective belief about being arrested should be a factor the court should consider in determining the voluntariness of his consent, and if he is so arguing, the

Appellant has not provided authority for that proposition. Even should the court decide that the Appellant's subjective belief is part of the 'totality of the circumstances' under *Bustamante-Davila*, there is nothing in the record to support the defendant's subjective belief that he would be arrested and taken to jail if he did not allow the officers to enter his residence. Indeed, the record shows that even after the Cowlitz County deputies dismantled the Appellant's marijuana grow operation, the deputies did not take the Appellant to jail, since Haddon was cooperative "that it was okay just to summons him into court, and that's what we did." RP 7/21/05 at 34-35.

C. The Trial Court Properly Did Not Suppress the Marijuana Detected by the Officers in Open View.

In contrast with the baggie of marijuana detected by the police in plain view when they entered the residence, the officers detected the marijuana grow operation from the curtilage. The trial court here found that the officers "detected the odor of growing marijuana" while approaching the front of the residence. FF 2, CP at 28. Detective Berger testified that when he was at the door he could "smell the odor that I associate with the growing of marijuana from that area." RP 7/14/06 at 11. Detective Berger was also outside of the house when "Just before getting to the door, it would be the right side of the door, I could hear the

humming of ballast coming from the within the wall. There was no window there, there was a wall. I could hear the humming and the odor of marijuana got stronger when I got to that back door area.” RP 7/14/06 at 13. Agent Nelson testified that as he walked up to the front door he “could smell a strong odor of – of marijuana. Q. Okay. Burning marijuana or growing marijuana? A. Growing marijuana.” RP 7/14/06 at 57.

The officers were on legitimate business – serving a federal witness subpoena -- in the curtilage impliedly open to the public when they smelled the marijuana grow operation.

But “[p]olice officers on legitimate business may enter an area of curtilage which is impliedly open to the public, such as an access route to a house or a walkway leading to a residence.”

State v. Ross, 91 Wn.App. 814, 818, 959 P.2d 1188 (Div. 2, 1998), citing *State v. Chaussee*, 72 Wn.App. 704, 708, 866 P.2d 643 (1994) (citing *State v. Seagull*, 95 Wn.2d 898, 902, 632 P.2d 44 (1981); *State v. Ferro*, 64 Wn.App. 181, 183, 824 P.2d 500 (1992)).

There was no search under the Fourth Amendment when the officers smelled the marijuana grow operation. The officers were lawfully at a vantage point when they smelled the marijuana grow operation.

However, no search within the meaning of the Fourth Amendment occurs where the “open view” doctrine is satisfied. Under the “open view” doctrine: “ ‘As a general proposition, it is fair to say

that when a law enforcement officer is able to detect something by utilization of one or more of his senses while lawfully present at the vantage point where those senses are used, that detection does not constitute a “search”....’ ” *Young*, 123 Wn.2d at 182, 867 P.2d 593 (quoting *State v. Seagull*, 95 Wn.2d 898, 901, 632 P.2d 44 (1981) (quoting in turn 1 Wayne R. LaFave, *Search and Seizure* § 2.2, at 240 (1978))).

State v. Rose, 128 Wn.2d 388, 392, 909 P.2d 280 (1996)

The officers did not exceed the scope of “open view”.

In determining whether an officer exceeded the scope of an “open view”, one must consider several factors, including whether the officer (1) spied into the house; (2) acted secretly; (3) approached the house in daylight; (4) used the normal, most direct access route to the house; (5) attempted to talk with the resident; (6) created an artificial vantage point; and (7) made the discovery accidentally.

State v. Ross, 91 Wn.App. 814, 819, 959 P.2d 1188 (Div. 2, 1998), citing *State v. Graffius*, 74 Wn.App. 23, 27, 871 P.2d 1115 (1994), and *State v. Seagull*, 95 Wn.2d, 898, 905, 632 P.2d 44 (1981).

The officers did not spy into the Appellant’s house or act secretly. Rather they approached the house in daylight. RP 7/21/05 at 35, 44. There is nothing in the record to support that the officer used anything other than the normal, most direct access route to the house. For example, there is nothing in the defendant’s testimony to indicate that he had areas of the yard fenced off or marked no trespassing, or that the officers were in some place improper. RP 7/21/06 at 43-67. The court found that the Appellant’s house sits in the middle of a large open field with limited

driveway access, no garage, and no sidewalks. FF 1, CP at 28. There is further nothing in the record to show that the officers created an artificial vantage point. The officers here indeed made the discovery of the marijuana grow operation accidentally, as they happened to smell the smell of growing marijuana as they approached the door while serving the federal witness subpoena. All the *Ross* requirements are met here, as the officers did not exceed the scope of open view. *Ross*, 91 Wn.App. at 819.

1. *Ferrier* Warning Given

The Appellant argues that the trial court erred by denying his motion to suppress evidence. Br. of App. at 1. He argues that the police were “required to inform Haddon, prior to entering his home, that he had a right to lawfully refuse to consent to the search for the marijuana grow, that he could revoke at any time any consent that he might give, and that he could limit the scope of the search to certain areas of his home.” Br. of App. at 27.

Cowlitz County Deputy Brewer gave the Appellant and his wife *Ferrier* warnings, which were signed by both of them. CL 8, CP at 30. Deputy Brewer testified that after advising the Appellant of his Miranda rights, he read the Consent to Search Form to “Mr. Haddon and his wife,” and that both of them signed”. RP 7/21/05 at 32. Deputy Brightbill asked

the Appellant to “show me around the residence, and he did so.” RP 7/21/05 at 41. The Appellant led Deputy Brightbill to “a back bedroom area” where there was a small marijuana growing operation. RP 7/21/05 at 41. Deputy Brightbill found six growing marijuana plants in the house. RP 7/21/05 at 41.

The Appellant contends that the *Ferrier* warnings provided by the police were untimely, that the officers should have provided the *Ferrier* warnings “at the threshold to his residence, when he responded to their knock on his door.” Br. of App. at 29.

The trial court noted that the officers were “within the proper bounds of the curtilage of the defendant’s residence when they smelled the odor of marijuana. The officers were in a position in which they had a right to be when they smelled the odor of marijuana.” CL 3, CP at 30. The trial court also concluded that “the officers’ initial contact with the defendant at the door is not tantamount to a ‘knock and talk.’ *Ferrier* warnings are not required at that point.” CL 5, CP at 30.

2. *Ferrier* Not Applicable to Appellant’s Consent to Entry

The police were not required to give a *Ferrier* warning to the Appellant prior to the obtaining the Appellant’s consent for their entry into the Appellant’s residence. The trial court concluded that the officers’

initial contact with the defendant was “not tantamount to a ‘knock and talk.’ Ferrier warnings are not required at that point.” CL 5, CP at 30.

The courts have “limited *Ferrier* to the kind of coercive searches the police employed there.” *State v. Johnson*, 104 Wn.App. 489, 505, 17 P.3d 3 (Div. 2, 2001), citing *State v. Williams*, 142 Wn.2d 17, 26, 11 P.3d 714 (2000). A *Ferrier* warning is required only in situations where the police employ a “knock-and-talk procedure, which the Washington State Supreme Court has defined as:

In a “knock-and-talk” procedure, not having obtained a warrant, police officers proceed to premises where they believe contraband will be found. Once there they knock on the door and talk with the resident, asking if they may enter. After being allowed to enter, the officers then explain why they are there, that they have no search warrant, and ask permission to search the premises.

Johnson, 104 Wn.App. at 505, citing *Bustamante-Davila*, 138 Wn.2d at 976-77.

The *Johnson* decision noted that *Ferrier* does not apply where officers have an arrest warrant, or in good faith believe they have an arrest warrant. *Johnson*, 104 Wn.App. at 505, citing *Williams*, 142 Wn.2d at 27, and *Bustamante-Davila*, 138 Wn.2d at 984.

Unlike *Ferrier*, the officers here were not going to the Appellant’s house because the believed contraband will be found there. While it is listed as a conclusion of law, the trial court found that when the officers

arrived at the Appellant's residence "they were not there to investigate a marijuana growing operation belonging to the defendant." CL 2, CP at 30.

This finding is critical because it limits the applicability of *Ferrier* in this case. The officers did not proceed to the Appellant's residence to "conduct a search for contraband or evidence of a crime without obtaining a search warrant." *Johnson*, 104 Wn.App. Note at 52 at 506, citing *Williams*, 142 Wn.2d at 28. Even after the officers smelled the marijuana grow operation, the officers first addressed their original objective to "serve a Federal Grand Jury Subpoena and to interview Timothy Eugene Haddon (hereafter 'defendant') regarding his brother's criminal activities." FF 1, CP at 28. ("We were there to serve a grand jury subpoena on Timothy Haddon, as well as interview him in reference to his brother's activities on a money laundering case." RP 7/14/05 at 7.) The record is clear that the officers and Appellant first discussed the subpoena and money laundering. The Appellant testified that "Detective Berger made it plain that he want to talk to me about laundering money at the back door." RP 7/21/05 at 55. This is noted inferentially by the court in its findings that it was only "Upon the completion of the interview as to the defendant's brother's activities" that Detective Christenson "asked the defendant if he used medical marijuana." FF 5, CP at 29.

Both the Court of Appeals decision and the Supreme Court decision in *Khounvichai* support that *Ferrier* does not apply in situations such as this. In *Khounvichai* the police were investigating a malicious mischief report, and went to the home of a possible suspect. *State v. Khounvichai*, 149 Wn.2d 557, 559, 69 P.3d 862 (2003). The occupant of the apartment, who was the suspect's grandmother, allowed the officers inside and accompanied them to a closed bedroom door where the grandmother knocked and called "there's someone here to see you." *Khounvichai*, 149 Wn.2d at 560. During a struggle with *Khounvichai*, who happened to be one of several occupants in the room, "a baggie of white powder, later determined to be cocaine, fell out of *Khounvichai*'s hand." *Khounvichai*, 149 Wn.2d at 560. *Khounvichai* moved to suppress the cocaine arguing that the grandmother's consent was invalid under *Ferrier* since she was not warned of her right to refuse entry. *Khounvichai*, 149 Wn.2d at 560. Tried as a juvenile, the trial court denied *Khounvichai*'s motion to suppress. *Khounvichai*, 149 Wn.2d at 560.

The Court of Appeals affirmed, noting that a *Ferrier* warning is not required every time an officer enters a home.

We recognize that law enforcement officers need to enter people's homes in order to provide their valuable services for the community on a daily basis. We do not find it prudent or necessary to extend *Ferrier* to require that police advise citizens of their right to refuse entry every time a police officer enters their

home. Police officers are oftentimes invited into homes for investigative purposes, including inspection of break-ins, vandalism, and other routine responses. We do not find a constitutional requirement that a police officer read a warning each time the officer enters a home to exercise that investigative duty. To apply the *Ferrier* rule in these situations would unnecessarily hamper a police officer's ability to investigate*728 complaints and assist the citizenry. *Instead, we limit the requirement of a warning to situations where police seek to conduct a search for contraband or evidence of a crime without obtaining a search warrant.*^{FN12}

FN12. *Williams*, 142 Wn.2d at 27-28, 11 P.3d 714 (emphasis added).

State v. Khounvichai, 110 Wn.App. 722, 727-28, 42 P.3d 1000 (Div. 1, 2002).

The Washington Supreme Court affirmed as well:

We granted review to determine whether the police must administer *Ferrier* warnings when seeking entry into a home to question a resident in the course of investigating a crime. We hold that the *Ferrier* warnings are not required in this situation and reiterate that these warnings are required only when police officers seek entry to conduct a consensual search for contraband or evidence of a crime. We affirm the Court of Appeals.

State v. Khounvichai, 149 Wn.2d 557, 559, 69 P.3d 862 (2003).

The situation here with the Appellant is more like the situation in *Khounvichai* than in *Ferrier*. The officers here were not seeking entry into the Appellant's house to conduct a consensual search for contraband or evidence of a crime, as was the case in *Ferrier*. They were at the Appellant's house to serve a federal witness warrant, and were not there to search for a marijuana grow operation. FF 1, CP at 28; CL 2, CP at 30.

As in *Khounvichai*, the officers here received consent from the occupant to enter the home, and while in the home the officer observed contraband in plain view. Also, as mentioned in the prior section of this brief, *Ferrier* does not apply to items observed in open view of the officers.

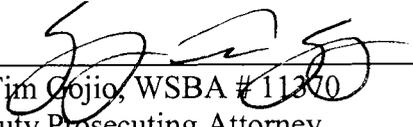
V. CONCLUSION

The trial court properly denied the Appellant's motion to suppress. The officers observed the baggie of marijuana in plain view while they were investigating the Appellant's involvement in his brother's money laundering activities. The Appellant consented to the entry of the officers into his home, and in looking at the totality of the circumstance, the Appellant freely consented to that entry. *Bustamante-Davila*, 138 Wn.2d at 981-82.

Prior to searching the back bedroom, the officers gave the Appellant *Ferrier* warnings. That back bedroom contained a marijuana grow operation detected in open view by the officers. There was no search of the defendant when the officers smelled the marijuana grow operation. *Ross*, 91 Wn.App. at 818. The officers properly obtained consent to search under *Ferrier*, and the trial court properly denied the Appellant's motion to suppress.

Respectfully submitted this 7 day of August, 2006.

SUSAN I. BAUR
Prosecuting Attorney

By 
G. Tim Cojio, WSBA # 11370
Deputy Prosecuting Attorney
Representing Respondent

COURT OF APPEALS, STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)
)
 Respondent,)
)
 vs.)
)
 TIMOTHY HADDON,)
)
 Appellant.)
 _____)

NO.
Cowlitz County No.
04-1-01522-4

CERTIFICATE OF
MAILING

FILED
COURT OF APPEALS
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STATE OF WASHINGTON
BY
DEPUTY

I, Audrey J. Gilliam, certify and declare:

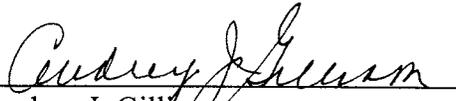
That on the 7th day of August, 2006, I deposited in the mails of
the United States Postal Service, first class mail, a properly stamped and
address envelope, containing Brief of Respondent addressed to the
following parties:

Court of Appeals
950 Broadway, Suite 300
Tacoma, WA 98402

James K. Morgan
Attorney at Law
1555 Third Ave., Suite A
Longview, WA 98632

I certify under penalty of perjury pursuant to the laws of the State
of Washington that the foregoing is true and correct.

Dated this 7th day of August, 2006.


Audrey J. Gilliam