IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II
36359-3-II
NO. ~~36539~~-3-II Consolidated

STATE OF WASHINGTON
Appellant,

vs.

ASHLEY B. PARKER
Respondent

STATE OF WASHINGTON
Appellant,

vs.

STEPHANIE ALVAREZ
Respondent

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR JEFFERSON COUNTY
Cause Number: 06-8-00063-4
06-8-00065-1

REPLY TO RESPONDENT'S BRIEF

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ISSUES RAISED BY RESPONDENT

1. **Did the route the police took and the time of the police visit make it unreasonable?**
2. **Were police on legitimate business when they visited the house?**
3. **Did the warrantless entry into the curtilage violate the State and Federal Constitutions?**

ARGUMENT

The police took the most direct route they could find and the time of the police visit was determined by the partiers, not the police, and neither were unreasonable.

Ms. Parker argues the police were not on legitimate business when they visited the house because of the time of day, 11:10 p.m.; and the police did not use the most direct route to the public access.

Police are entitled to enter private property to investigate criminal activity so long as they do not use secretive methods and they use an impliedly open access route through the curtilage. *State v. Gave*, 77 Wash.App. 333, 890 P.2d 1088 (1995). The courts have identified police visits as secretive when the visits were conducted to escape the resident's notice using methods such as approaching from other routes than the main entrance, not announcing their presence to the residents, and visiting under cover of darkness. *See State v. Ross*, 91 Wn.App. 814, 819-20, 959 P.2d 1188 (1998); *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996) ; *State v. Gave, supra*. Police act secretively when they try to avoid notice by the residents when they visit.

In this case, the police could not identify the public access route to the house for several reasons enumerated in Appellant's brief. So the officers searched for the public access route, circling the house, announcing their presence at each gate they passed, including the front gate that was part of the public access route. RP 52-53, 55, 58-59, 60. The police visit to the property was at night, but it was not secretive, rather the police tried to get the attention of the residents at every opportunity. Police must investigate a suspected underage drinking party when the party was in progress, not the day before or the day after. A police visit late at night is secretive only if they are trying to avoid being noticed by the residents. Here, the Police knocked on the front door during the party because they wished to openly conduct their investigation, not to secretly gather evidence.

The Police were on legitimate business when they visited the house.

Ms. Parker additionally argues that the police were not on legitimate business when they visited the house because of the purpose of the visit.

Entering property to speak with occupants as part of an investigation of a possible crime is legitimate police business. *State v. Ross,* 141 Wash.2d at 313-14, 4 P.3d 130; *State v. Seagull,* 95 Wash.2d at 902 n. 1, 632 P.2d 44. Here, the police were briefed a week prior about a rumored underage drinking party at the house, that night a ride-along with one of the officers reported there was an underage drinking party underway at the house, from the road the officers could hear party noises coming from the house, and they entered the property to ask the occupants about the party. Substantial evidence supports finding that the police were engaged in legitimate police business. The nature of the intrusion was legitimate police business, conducted openly.

Did the warrantless entry into the curtilage violate the State and Federal Constitutions?

Ms. Alvarez argues that "The physical layout of the residence and its enclosure clearly indicate the family's intent to prevent uninvited members of the public from entering...By entering without permission, the police officers violated Ms. Alvarez's

reasonable expectation of privacy and intruded upon her private affairs."

Washington Constitution article 1, section 7 provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Under the test as stated in the seminal case, *State v. Myrick,* 102 Wash.2d 506, 688 P.2d 151 (1984), the question under article 1, section 7 is whether the government unreasonably intruded into the defendant's private affairs-an inquiry which "focuses on those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant," *Id.* at 511, 688 P.2d 151. *Myrick* does not, however, elaborate on how this test is to be applied. The *Myrick* court explicitly declined to rely upon either of the two traditional Fourth Amendment analyses, "protected places" or the legitimacy of a defendant's subjective expectations of privacy. But the *Myrick* court nevertheless gave cautious deference to these factors as a starting place in the article 1, section 7 analysis, and enumerated no other specific factors to consider. *Myrick* requires us to look to the nature of the property, the expectation of privacy it reasonably supports, and the nature of the intrusion to answer the ultimate question: Whether the

government's intrusion violated a privacy interest which citizens of this state have traditionally and justifiably held safe from governmental trespass absent a warrant. *State v. Thorson*, 98 Wash.App. 528, 990 P.2d 446 (1999).

Here, the property was residential and unfenced; and the police, after struggling to locate the public access route, followed it. The enclosure increased the resident's privacy, however, without some clear indicators, such as "No Trespassing" signs or a locked gate, the enclosure did not rise to the level of privacy of a home, because the police had no notice of heightened expectations. The *Myrick* test as stated in the seminal case, is 'whether the government unreasonably intruded into the defendant's private affairs-an inquiry which "focuses on those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant,"' *State v. Myrick,* 102 Wash.2d 506, at 511. Although residents maintain an expectation of privacy in the curtilage, or area contiguous with a home, "police with legitimate business may enter areas of the curtilage which are impliedly open, such as access routes to the house," so long as they do so as would a "reasonably respectful citizen." *State v. Seagull,* 95 Wash.2d 898, 902, 632 P.2d 44

(1981). The police intrusion was not unreasonable. They were on legitimate business, openly trying to contact the homeowner, merely opened the gate, announced they were police, went to the front door and knocked, as would any respectful citizen.

The trial court, Ms. Parker, and Ms. Alvarez are mistaken. Permission is not required to enter the curtilage so long as the police stay on the areas impliedly open such as access routes. *Seagull, supra*. The police did not unreasonably intrude into the defendant's private affairs when they entered the gate. The police were on legitimate business, trying only to openly contact the homeowner, entered the unmarked gate because it was on the public access route to the home, and knocked on the front door. To find otherwise would empower a closed gate to prevent police from lawfully contacting a homeowner on urgent, legitimate police business, such as responding to a 911 hang-up call from the home, investigating gunshot reports, notifying the residents of critical evacuations, looking for missing people, warning of dangerous animals in the neighborhood, or, as in this case, responding to a reported crime in progress.

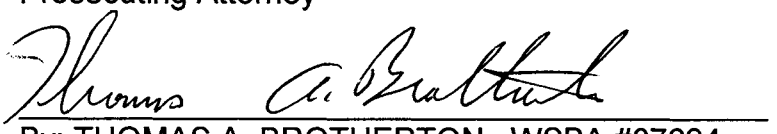
The evidence was lawfully obtained and should not be excluded.

CONCLUSION

The State respectfully requests that this Court reverse the trial court's suppression of the evidence obtained by police and respondent be required to pay costs, including attorney fees, pursuant to RAP 14.3,18.1 and RCW 10.73.

Respectfully submitted this 28TH day of September, 2007

JUELANNE DALZELL, Jefferson County
Prosecuting Attorney



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant, vs. ASHLEY B. PARKER, Respondent, STEPHANIE ALVAREZ, Respondent.	Case No.: 36539-3-II CONSOLIDATED Superior Court No.: 06-8-00063-4 06-8-00065-1 **DECLARATION OF MAILING**

Janice N. Chadbourne declares:

That at all times mentioned herein I was over 18 years of age and a citizen of the United States; that on the 3rd day of January, 2008, I mailed, postage prepaid, a copy of the State's REPLY TO RESPONDENT'S BRIEF to the following:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true and correct.

Dated this 3rd day of January, 2008, at Port Townsend, Washington.

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