

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Apr 23, 2012, 11:36 am
BY RONALD R. CARPENTER
CLERK

No. 86214-1

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DARA RUEM,

Petitioner.

FILED
MAY 04 2012
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON

Sarah A. Dunne, WSBA No. 34869
dunne@aclu-wa.org
Nancy L. Talner, WSBA No. 11196
talner@aclu-wa.org
ACLU of Washington Foundation
901 Fifth Avenue, Suite 630
Seattle, Washington 98164
(206) 624-2184

Rabi Lahiri, WSBA No. 44214
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711
rabi@washapp.org

Attorneys for Amicus Curiae American Civil Liberties Union of
Washington

ORIGINAL

TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE1

ISSUE TO BE ADDRESSED BY AMICUS1

STATEMENT OF THE CASE.....1

ARGUMENT2

 A. This Court should adopt a bright-line rule requiring *Ferrier* warnings whenever police seek entry into a home based on the consent of an occupant.2

 i. The privacy impact of police entry into the home does not depend on the purposes for which police seek to enter.4

 ii. A bright-line rule will better serve both privacy and law-enforcement interests.10

 B. Absent a bright-line rule, this Court should require *Ferrier* warnings where police seek consent to search a home, regardless of what they hope to find.16

CONCLUSION.....18

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

State v. Afana, 169 Wn.2d 169, 233 P.3d 879 (2010)..... 10

State v. Bustamante-Davila, 138 Wn.2d 964, 983 P.2d 590 (1999)8, 15, 16

State v. Ferrier, 136 Wn.2d 103, 960 P.2d 927 (1998) passim

State v. Hatchie, 161 Wn.2d 390, 166 P.3d 698 (2007) 4

State v. Jackson, 150 Wn.2d 251, 76 P.3d 217 (2003) 3

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

State v. Ladson, 138 Wn.2d 343, 979 P.2d 833 (1999) 14

<i>State v. Morse</i> , 156 Wn.2d 1, 123 P.3d 832 (2005).....	3, 6, 11
<i>State v. Myrick</i> , 102 Wn.2d 506, 688 P.2d 151 (1984).....	3
<i>State v. Seagull</i> , 95 Wn.2d 898, 632 P.2d 44 (1981).....	6
<i>State v. Thang</i> , 145 Wn.2d 630, 41 P.3d 1159 (2002).....	8, 15, 16
<i>State v. Thompson</i> , 151 Wn.2d 793, 92 P.3d 228 (2004)	6
<i>State v. Walker</i> , 136 Wash.2d 678, 965 P.2d 1079 (1998)	6
<i>State v. Warren</i> , 165 Wn.2d 17, 195 P.3d 940 (2008).....	13
<i>State v. White</i> , 97 Wn.2d 92, 640 P.2d 1061 (1982).....	3
<i>State v. Williams</i> , 142 Wn.2d 17, 11 P.3d 714 (2000).....	8, 14, 15, 16
<i>State v. Winterstein</i> , 167 Wn.2d 620, 220 P.3d 1226 (2009).....	2
<i>State v. Young</i> , 123 Wn.2d 173, 867 P.2d 593 (1994).....	5, 9

United States Supreme Court Decisions

<i>Kyllo v. United States</i> , 533 U.S. 27, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001).....	5
<i>Miller v. United States</i> , 357 U.S. 301, 78 S. Ct. 1190, 2 L. Ed. 2d 1332 (1958).....	4
<i>Miranda v. Arizona</i> , 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).....	12
<i>Welsh v. Wisconsin</i> , 466 U.S. 740, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984).....	4

Decisions of Other Jurisdictions

<i>Doody v. Ryan</i> , 649 F.3d 986 (9th Cir. 2011).....	11
--	----

Constitutional Provisions

Const. art. I, §.7.....	passim
-------------------------	--------

U.S. Const. amend. IV 3, 4

Other Authorities

David K. Kessler, *Free to Leave? An Empirical Look at the Fourth Amendment's Seizure Standard*, 99 J. Crim. L. & Criminology 51 (2009)..... 13

Janice Nadler & J.D. Trout, *The Language of Consent in Police Encounters*, in *The Oxford Handbook on Language and Law* (Peter Tiersma & Lawrence Solan eds., forthcoming May 2012)..... 13

INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Washington (ACLU) is a statewide, nonpartisan, nonprofit organization of over 19,000 members, dedicated to the preservation of civil liberties, including privacy. The ACLU strongly supports adherence to the provisions of article I, section 7 of the Washington Constitution, prohibiting invasion of the home without authority of law. It has participated in numerous privacy-related cases as amicus curiae, as counsel to parties, and as a party itself.

ISSUE TO BE ADDRESSED BY AMICUS

Whether a warrantless entry into a home based on the consent of an occupant is permissible under article I, section 7 of the Washington Constitution when conducted without first advising the occupant of the right to refuse consent.¹

STATEMENT OF THE CASE

Amicus relies generally on the parties' briefs, which have adequately set forth the facts of this case. As it is particularly important to the issue addressed here, however, amicus reiterates the content of the

¹ Amicus takes no position on the questions of whether the police had authority to enter Mr. Ruem's home based on the arrest warrant for his brother, whether Mr. Ruem actually voluntarily consented to the entry or revoked his consent after initially granting it, or whether any warrant exception other than consent applies in this case.

conversation that one officer testified to having with Mr. Ruem before entering his home:

I was running him on records to see if he had any warrants; told him we were going to go inside and check. I said we'd like to go inside and check. Certainly, would like cooperation more so than force, although the warrant has that address on it, the fact that we're talking, he is referring to his brother living there with him, his car is out front, it's – it gives me reason to believe that he is there. So I told him I was going to go in and look for him, and asked him if that was okay.

State v. Ruem, noted at 162 Wn. App. 1009, slip op. at 3 (2011).

ARGUMENT

- A. **This Court should adopt a bright-line rule requiring *Ferrier* warnings whenever police seek entry into a home based on the consent of an occupant.**

Article I, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Const. art. I, § 7. This Court has repeatedly noted, in a variety of circumstances, that the focus of article I, section 7, is on personal privacy, not the reasonableness of government conduct. *E.g.*, *State v. Winterstein*, 167 Wn.2d 620, 631-32, 220 P.3d 1226 (2009) (noting that "article I, section 7 'clearly recognizes an individual's right to privacy with no express limitations,'" and that "the intent [of article I, section 7] was to protect personal rights rather than [to] curb government

actions") (quoting *State v. White*, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982)); see also *State v. Jackson*, 150 Wn.2d 251, 259-60, 76 P.3d 217 (2003) ("The inquiry under article I, section 7 . . . focuses on 'those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass.'") (quoting *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984)); *State v. Morse*, 156 Wn.2d 1, 9, 123 P.3d 832 (2005) ("Unlike in the Fourth Amendment, the word 'reasonable' does not appear in any form in the text of article I, section 7 of the Washington Constitution.").

Consistent with this focus on personal privacy, this Court held in *State v. Ferrier*, 136 Wn.2d 103, 960 P.2d 927 (1998), that article I, section 7 does not permit police to enter a home based on the consent of a resident within unless they first inform the resident that she has the right to refuse, limit, or revoke consent. Several of this Court's subsequent decisions, however, have narrowed *Ferrier* on grounds unrelated to privacy interests. This case offers the Court an opportunity to return the focus of the *Ferrier* rule to its proper place: the personal privacy interest in the home. Amicus respectfully urges this Court to hold that when police approach a home and request the consent of a resident to enter, they must first—and in every case—inform the resident of her right to refuse, limit, or revoke that consent. Nothing less will honor the stringent privacy

protections for people's private affairs and homes guaranteed by article I, section 7.

i. The privacy impact of police entry into the home does not depend on the purposes for which police seek to enter.

Perhaps the most fundamental point related to this issue is that the initial invasion of privacy effected by police coming into a home arises from the entry itself. As the United States Supreme Court has noted, the principle that the privacy interest in the home encompasses the right to exclude police has centuries-old roots in the common law. *Miller v. United States*, 357 U.S. 301, 306-07, 78 S. Ct. 1190, 2 L. Ed. 2d 1332 (1958) ("The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!") (quoting a 1763 speech made in Parliament); *see also State v. Hatchie*, 161 Wn.2d 390, 397, 166 P.3d 698 (2007) ("The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.") (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 748-49, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984)).

A thorough search of the home may, of course, constitute a greater intrusion than mere entry. But article I, section 7 by its terms protects

against *all* invasions of the home without authority of law, not just particularly onerous ones. Const. art. I, § 7; *see also State v. Young*, 123 Wn.2d 173, 185-86, 867 P.2d 593 (1994) (holding that the use of infrared technology to "see through the walls of a home" is an invasion of the home under article I, section 7 even without physical intrusion, and that because an individual's privacy interest is at its zenith inside the home, "the closer officers come to intrusion into a dwelling, the greater the constitutional protection") (citations omitted); *accord Kyllo v. United States*, 533 U.S. 27, 37, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001) ("In the home, . . . *all* details are intimate details, because the entire area is held safe from prying government eyes.") (emphasis in original). Thus, any entry into the home is an invasion under article I, section 7, and police directly implicate the constitutional right to privacy any time they seek consent to enter a home, regardless of their purpose in doing so or what they actually do once inside.

Moreover, once police have entered a home, their ability to observe the sights, sounds, and smells within is not limited by their original motivation for requesting consent to enter. Indeed, such limits could not be imposed without discarding the well-established plain view doctrine. *See, e.g., Young*, 123 Wn.2d at 182 ("[W]hen 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.'" (quoting *State v. Seagull*, 95 Wn.2d 898, 901, 632 P.2d 44 (1981)). Abandoning the plain view doctrine would, of course, mark a major upheaval in article I, section 7 doctrine, and amicus does not suggest that this Court should do so. But the operation of the plain view doctrine clearly demonstrates why allowing a police officer into one's home always implicates the constitutional right to privacy, regardless of the reasons for which the officer seeks—or claims to seek—consent. It is the fact of entry, regardless of the underlying motivation, that effects an invasion of the home.

This Court has, of course, recognized that people may waive this right to privacy by consenting to the entry and search of their homes. *E.g.*, *Morse*, 156 Wn.2d at 8, 10; *State v. Thompson*, 151 Wn.2d 793, 803, 92 P.3d 228 (2004). But in order to be valid, that consent must, among other things, be given knowingly and voluntarily. *E.g.*, *Ferrier*, 136 Wn.2d at 117; *Thompson*, 151 Wn.2d at 803 (citing *State v. Walker*, 136 Wash.2d 678, 682, 965 P.2d 1079 (1998)).

In *Ferrier*, this Court held that under article I, section 7, police may not search a home based on the consent of an occupant without first informing her of her right to refuse, limit, or revoke consent. 136 Wn.2d at 118-19. The Court focused primarily on the inevitable coercion that occurs

when police appear, uninvited, at a person's residence and request consent to enter and search. *Id.* at 115-16 ("Central to our holding is our belief that any knock and talk is inherently coercive to some degree. . . . [W]e believe that the great majority of home dwellers confronted by police officers on their doorstep or in their home would not question the absence of a search warrant . . ."). Importantly, the factors cited by the Court as potential sources of coercion—being approached at home by police, not knowing of the warrant requirement, not feeling free to request production of a warrant, or "simply being too stunned by the circumstances to make a reasoned decision," *id.* at 115—have nothing to do with the officers' motivation for seeking entry into the home.

By further holding that police must deliver the warning before they enter the home, *Ferrier* also recognized that the privacy of the home is invaded as soon as police enter, regardless of what happens afterwards. *See id.* at 118-19. In fact, this Court decided *Ferrier* based entirely on events that occurred before the police ever sought consent to search the home, and before any constitutionally cognizable search had occurred. *Id.* at 115, 119. The Court explicitly declined to address the validity of a written consent to search that Ms. Ferrier had signed after police were already inside her home, since the unconstitutionality of the initial entry mooted the subsequent issue. *Id.* at 119. The Court thus effectively held

(1) that the required warning addresses not just the right to refuse or limit consent to a search, but also the right to refuse entry; and (2) that that right is violated at the instant police enter the home without providing the warning.

This Court's subsequent cases, however, have significantly limited the scope of *Ferrier*. The Court has declined to apply *Ferrier* in cases where police accompanied an immigration officer executing a removal order, *State v. Bustamante-Davila*, 138 Wn.2d 964, 983 P.2d 590 (1999), where police entered a residence to verify the identity of a guest they already knew to be inside, *State v. Williams*, 142 Wn.2d 17, 11 P.3d 714 (2000), where police entered a home to execute an arrest warrant against a guest, *State v. Thang*, 145 Wn.2d 630, 41 P.3d 1159 (2002), and where police entered a home to question a resident for whom they had no arrest warrant, *State v. Khoumvichai*, 149 Wn.2d 557, 69 P.3d 862 (2003). These cases all interpreted the language of *Ferrier* narrowly, distinguishing *Ferrier* because police there used a knock and talk procedure in order to look for marijuana plants without having to obtain a search warrant, whereas in the later cases, police sought to enter for purposes other than to search for contraband or evidence of a crime. *See Bustamante-Davila*, 138 Wn.2d at 980; *Williams*, 142 Wn.2d at 27-28; *Thang*, 145 Wn.2d at 636-37; *Khoumvichai*, 149 Wn.2d at 566-67.

Amicus respectfully submits that these holdings have departed from the core holding of *Ferrier*. The knock and talk procedure was relevant in *Ferrier* not because the police wanted to search Ms. Ferrier's home, but because they used an inherently coercive procedure to obtain her consent for that search. In other words, the knock and talk in *Ferrier* threatened privacy rights not because police hoped to search the home rather than to enter for another purpose, but because police used the knock and talk procedure in order to avoid the warrant requirement. And the warrant requirement applies to all invasions of the home, be they searches or entries for other purposes. Const. art. I, § 7; *see also Young*, 123 Wn.2d at 185-86.

Thus, while *Ferrier* was framed in terms of consent to search, its key holdings—that consent requests made at the threshold of a home are inherently coercive, and that knowledge of the right to refuse consent is necessary to a voluntary waiver of that right—admit no principled distinction between consent to search a home and consent to enter a home. Indeed, if that distinction had been relevant to the logic underpinning *Ferrier*, then the Court's actual ruling—that police violated Ms. Ferrier's right to privacy by failing to inform her of her rights not just before they searched her home, but before they entered it at all—would make no sense. While the officers' pre-entry intent certainly would have been

relevant to assessing their good faith and the reasonableness of their conduct, personal privacy—not good faith or reasonableness—is the principle by which article I, section 7 operates. *E.g.*, *State v. Afana*, 169 Wn.2d 169, 180, 233 P.3d 879 (2010) (declining to adopt a good-faith exception to the exclusionary rule under article I, section 7, because although "our state's exclusionary rule also aims to deter unlawful police action, its paramount concern is protecting an individual's right of privacy"). To limit *Ferrier* based on the officers' purpose for requesting entry is therefore to draw a distinction without a difference.

ii. A bright-line rule will better serve both privacy and law-enforcement interests.

A bright-line rule not only adheres more faithfully to the reasoning of *Ferrier*, but also offers several practical benefits. Perhaps most obviously, the bright-line rule will give clear guidance to law enforcement and courts as to when *Ferrier* warnings are required. Officers will not have to determine when to give the warning based on speculation about how a court might later view their intent, and courts will not have to try to assess officers' intent long after the fact, when memories may have faded. Nor should delivering the warnings prove burdensome; *Miranda*

warnings, for example, must convey much more information, yet have not proved difficult to recite in practice.²

In some cases, the presence or absence of the warnings could also prove helpful in determining whether police in fact requested entry, rather than demanding it. In this case, for example, one of the officers who entered Mr. Ruem's home testified to the following exchange at the front door:

I was running him on records to see if he had any warrants; told him we were going to go inside and check. I said we'd like to go inside and check. Certainly, would like cooperation more so than force, although the warrant has that address on it, the fact that we're talking, he is referring to his brother living there with him, his car is out front, it's — it gives me reason to believe that he is there. So I told him I was going to go in and look for him, and asked him if that was okay.

Ruem, noted at 162 Wn. App. 1009, slip op. at 3.

In order to assess whether such an interaction was a request or a demand, a court must attempt to parse statements that waver between contradictory and almost intractably ambiguous—dubious grounds on

² *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Under *Miranda*, police must, before conducting a custodial interrogation, advise a person that he has the right to remain silent, that anything he does say can be used against him in court, that he has the right to consult with an attorney both before and during questioning, and that he has the right to an attorney at public expense if he cannot afford one. *See, e.g., Doody v. Ryan*, 649 F.3d 986, 991 (9th Cir. 2011). A *Ferrier* warning, by contrast, must inform only of the right to refuse, limit, or revoke consent. Moreover, under this Court's ruling in *Morse*, police already must make a nuanced inquiry into the relative authority of everybody present in a home to grant or deny consent to enter or search. 156 Wn.2d at 15. Requiring a simple *Ferrier* warning on top of the *Morse* inquiry would impose at most a slight incremental burden on police.

which to determine whether a person validly waived a fundamental constitutional right. Had a *Ferrier* warning been required, however, a court could properly place great weight on whether the warning was actually given, thus avoiding the need to split linguistic hairs to determine whether a statement like, "[s]o I told him I was going to go in and look for [his brother], and asked him if that was okay," *id.*, is a request or a demand.

Requiring the warnings more broadly will also have another significant benefit. By proactively informing people of their right to refuse, limit, or revoke consent, police officers both provide that information *and* affirm that they will respect the right should a person choose to exercise it. *Accord Miranda*, 384 U.S. at 468. This gesture could very well encourage greater trust and cooperation during such encounters; people will inevitably feel more comfortable allowing officers into their living rooms if they are confident that by doing so they will not thereby cede all control over the situation. Providing the warnings could thus lead directly to more productive investigations.

Finally, providing the warnings will not impede any legitimate law-enforcement interest. For one thing, as this Court has recognized, empirical evidence suggests that many people would likely consent even after receiving the warning. *Ferrier*, 136 Wn.2d at 117; *see also* Janice

Nadler & J.D. Trout, *The Language of Consent in Police Encounters*, in *The Oxford Handbook on Language and Law* (Peter Tiersma & Lawrence Solan eds., forthcoming May 2012), available at <http://ssrn.com/abstract=1485008>; David K. Kessler, *Free to Leave? An Empirical Look at the Fourth Amendment's Seizure Standard*, 99 J. Crim. L. & Criminology 51 (2009). Giving the warnings thus would be unlikely to reduce the rate of consent drastically. It would, however, ensure that people do not give consent simply because they do not know that they have the right to withhold it.

Moreover, the only cases where giving a *Ferrier* warning could have any net effect are those in which the fruits of supposedly consensual entries or searches are now admitted against people who did not, in fact, knowingly and voluntarily consent. But the State has no legitimate interest in perpetuating such errors, regardless of whether they lead to more convictions. If providing additional *Ferrier* warnings actually were to reduce the prevalence of consent searches, that change would simply reflect the degree to which courts currently overestimate the true rate of knowing and voluntary consent. This Court, as the "guardian[] of all constitutional protections," *State v. Warren*, 165 Wn.2d 17, 26, 195 P.3d 940 (2008), should embrace any such development with open arms.

Other potential law-enforcement concerns prove similarly misdirected. For example, giving police the responsibility to deliver the warnings before every consent-based home entry does place the risk of error on law enforcement: if police forget to deliver the warning, then any evidence discovered within will be excluded, even if the home's occupant would have consented after an appropriate warning. *Ferrier*, 136 Wn.2d at 118-19. But this risk properly lies with the State, which always bears the burden of proving that an exception to the warrant requirement, such as consent, applies. *See State v. Ladson*, 138 Wn.2d 343, 349-50, 979 P.2d 833 (1999).

Nor would police need to deliver the warning if a home's resident proactively invites or asks them to enter. *Contra Williams*, 142 Wn.2d at 27-28; *Khounvichai*, 149 Wn.2d at 563-64. Both the letter and the logic of *Ferrier* limit its holding to situations where police initiate a request to enter; the coercive circumstances that justify the mandatory warning do not occur when police enter a home only after an unprompted request or invitation by a resident. *See Ferrier*, 136 Wn.2d at 114-15 ("[W]e next consider whether police violated . . . article I, section 7 in the manner in which they conducted this knock and talk procedure *in an effort to obtain Ferrier's consent* to search her home. It is significant to our analysis . . . that *Ferrier* was in her home when *the police initiated contact*

with her.") (emphasis added); *see also Williams*, 142 Wn.2d at 38 (Sanders, J., dissenting).

Amicus thus asks this Court to hold that any time police approach a home and request the consent of an occupant to enter or search, they must first inform that person of his right to refuse consent, to limit the scope of consent, and to revoke consent at any time. This rule acknowledges that the uninvited entry of police officers is an invasion of the home under article I, section 7, and that the subjective intent of officers is irrelevant to the privacy interests protected by article I, section 7. It protects against the kind of coercion that so concerned the *Ferrier* court in all cases in which that coercion is likely to occur, and guards against unknowing and involuntary waivers of the fundamental right to privacy in the home. The rule will not impose any significant burden on police, will not impede any legitimate law-enforcement interests, and will clarify and simplify the law for police and courts to apply going forward. For all of these reasons, amicus urges this Court to adopt this bright-line rule, and to overrule those portions of *Bustamante-Davila*, *Williams*, *Thang*, and *Khounvichai* that artificially limit the scope of *Ferrier*.

B. Absent a bright-line rule, this Court should require *Ferrier* warnings where police seek consent to search a home, regardless of what they hope to find.

If this Court declines to adopt a bright-line rule similar to the one offered by amicus above, it should still hold that *Ferrier* warnings were required in this case, because even though police were looking for a person, rather than for contraband or evidence of a crime, they still sought Mr. Ruem's consent to search his home. That holding would clarify an important point while remaining consistent with the post-*Ferrier* line of cases.

As stated in *Khounvichai*, the *Ferrier* warnings are now required unambiguously only when "police seek entry to a home to conduct a warrantless search for contraband or evidence of a crime." 149 Wn.2d at 566 (citing *Williams*, 142 Wn.2d at 27-28). But the cases distinguishing *Ferrier* have all relied on the fact that police had no intent to search for anything at all, be it object or person. See *Bustamante-Davila*, 138 Wn.2d at 980-81 (declining to apply *Ferrier* because police came to the defendant's home to arrest him, not to search the home); *Williams*, 142 Wn.2d at 27 (finding *Ferrier* inapposite where police sought to enter the home only to verify the identity of somebody they already knew to be inside, rather than "to look for contraband or to arbitrarily search [the] home for a hidden guest"); *Thang*, 145 Wn.2d at 634, 636-37

(distinguishing *Ferrier* where police sought entry only to execute an arrest warrant against guests they knew were residing there).

Khounvichai itself also contains language suggesting that *Ferrier* applies whenever police seek to search a home, even for people. 149 Wn.2d at 563 ("[T]he *Ferrier* requirement is limited to situations where police request entry into a home for the purpose of obtaining consent to conduct a warrantless search"), 564 ("[T]here is a fundamental difference between requesting consent to search a home and requesting consent to enter a home for other legitimate investigatory purposes. . . . [T]he *Ferrier* warnings target searches and not merely contacts between the police and individuals."), 566-67 ("*Ferrier* warnings were not required because the officers did not enter for the purpose of obtaining consent to a warrantless search.>").

If the Court decides to adhere to this line of cases, it should now hold that *Ferrier* applies whenever police seek consent to conduct a warrantless search of a home, regardless of the target of the search. Searching a home for a person would involve exploring every room and every closet, opening cupboards, peeking under furniture, and investigating every other space in the home where a person could hide, until police either find that person or search the entire home. The scope of such a search—and the attendant invasion of privacy—would be no

different than if police were looking for any large object. Similarly, the intrusion caused by a search for an object does not depend on whether police suspect that the object is contraband or evidence of a crime, or seek the object for some other reason. Accordingly, this Court should clarify that, consistent with the post-*Ferrier* line of cases, police must give the *Ferrier* warnings when requesting consent to enter a home to conduct a warrantless search, regardless of what they hope to find or the nature of their interest in it.

CONCLUSION

Amicus asks this Court to hold that *Ferrier* warnings are required whenever police, in lieu of obtaining a warrant, seek the consent of a home's occupant to enter the home for any reason. This rule reflects the rationale behind this Court's decision in *Ferrier* and would provide needed protection for the sanctity of the home under article I, section 7 of the Washington Constitution. Alternatively, amicus asks the Court to hold that under the post-*Ferrier* cases, police must give *Ferrier* warnings any time they seek consent for a warrantless search of a home, regardless of the target or purpose of the search.

DATED this 23rd day of April, 2012.

Respectfully submitted,

/s/ Rabi Lahiri

Rabi Lahiri, WSBA No. 44214

Washington Appellate Project

Sarah A. Dunne, WSBA No. 34869

Nancy L. Talner, WSBA No. 11196

ACLU of Washington Foundation

Attorneys for Amicus Curiae

American Civil Liberties Union of

Washington

DECLARATION OF SERVICE

The undersigned hereby declares as follows:

On April 23, 2012, I caused a true and correct copy of the foregoing document to be duly served via email on the following attorneys of record:

E-mail: lance@hesterlawgroup.com	E-mail: strinen@co.pierce.wa.us
E-mail: leeann@hesterlawgroup.com	E-mail: pcpatcecf@co.pierce.wa.us
Lance M. Hester	Stephen D. Trinen
Hester Law Group	Pierce County Prosecutor's Office
1008 Yakima Ave, Ste. 302	930 Tacoma Ave S., Room 946
Tacoma, WA 98405-4850	Tacoma, WA 98402-2102

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

DATED: April 23rd, 2012, at Seattle, Washington.



Ann Joyce

OFFICE RECEPTIONIST, CLERK

To: Maria Riley
Subject: RE: Scanned image from MX-M700N

Rec. 4-23-12

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.

-----Original Message-----

From: Maria Riley [<mailto:maria@washapp.org>]
Sent: Monday, April 23, 2012 11:34 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: FW: Scanned image from MX-M700N

State v. Dara Reum
Supreme Court No. 86214-1

Please accept the attached document for filing in the above-subject case:

Brief of Amicus Curiae American Civil Liberties Union of Washington

Rabi Lahiri - 44214
Attorney for Appellant
Phone: (206) 587-2711
E-mail: Rabi@washapp.org

By
Ann Joyce
E-mail: Ann@washapp.org