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COURT OF APPEALS DIV I  
STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Christopher Jon Moore,**

Appellant.

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Snohomish County Superior Court

Cause No. 11-1-01356-6

The Honorable Judge Janice E. Ellis

**Appellant's Reply Brief**

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## ARGUMENT

The state contends the only issue before this court is whether or not the initial entry into the Mr. Moore's home was legal. This is erroneous. There are two issues before the court: first, was the entry into Mr. Moore's home legal; and second, was the subsequent search of Mr. Moore's home legal?

There are no exceptions to Mr. Moore's Constitutional rights that permitted the officers' actions.

- 1. The officers violated Article I, Section 7 of the Washington Constitution by invading Mr. Moore's home without authority of law.**

The uncontroverted evidence is that when officers approached Mr. Moore's home, they were concerned someone in the house might have been harmed. This concern was based solely on a phone call from an anonymous informant. No concrete evidence existed that any foul play had occurred at Mr. Moore's home. When officers asked if they could come inside Mr. Moore's home it was not to investigate a crime. The purpose of entry into the home was to search it for a potential victim. Once inside the home Officer Xiong immediately did a protective sweep of the house. This sweep happened before the officers had knowledge

about Ms. Brockman's relationship to Mr. Moore and any activities that occurred that night.

The state erroneously relies on *State v. Khounvichai*, 149 Wn.2d 557 (2003) as authority for the officers' actions in this case. In *Khounvichai*, unlike this case, the purported scene of the crime was not Mr. Khounvichai's residence. The police were investigating a broken window at another home. When officers arrived, they were escorted by the home's owner to Mr. Khounvichai's room, where illegal activity was discovered.

The Court held that there was no need for *Ferrier* warnings in that case because the sole purpose of entry into the home was to speak to Mr. Khounvichai, not to search the home.

This case is unlike *Khounvichai* because the reason the officers wanted to gain entry into the home was to search it. The officers just assumed (incorrectly, discussed below) that once inside they'd be able to search without a warrant under the emergency exception doctrine.

In *Khounvichai* the court noted specifically, "When police obtain consent to search a home pursuant to a "knock and talk" they go through private belongings and affairs without restriction. Such an intrusion into privacy is not present, however, when the

police seek consensual entry to question a resident.” *Khounvichai* at 865-66.

In this case the officers' entry into the home was to search it for an alleged victim of assault. Such an intrusion into privacy requires *Ferrier* warnings. Without them the entry into Mr. Moore's home was illegal.

**2. The officers did not satisfy the emergency aid exception to the warrant requirement.**

The state's characterizations of the facts are slightly misleading.

The initial information given to the officers was that a domestic assault had been reported. The information given officers was that a third party had called 911, reporting a domestic disturbance at Mr. Moore's home. That was it.

Once at Mr. Moore's home, officers noted nothing out of the ordinary. There were no signs of disturbance. When they approached the house they noted nothing out of the ordinary. When officers looked inside after Mr. Moore answered the door they noted nothing out of the ordinary, and in fact noted Mr. Moore's two children watching television.

Once inside the home Officer Xiong immediately searched the house. **While Officer Xiong was searching the house Officer Vermuellen confirmed that Mr. Moore knew Ms. Brockman.**

*After* this confirmation, Officer Vermuellen attempted to contact Ms. Brockman but was unable to do so. *After* searching the house officers were told by dispatch about additional information the anonymous caller (who turned out to have given a false name the first time he called) provided. This information included identifying that one of the parties was a man named "Chris" and that the caller had heard screaming from Ms. Brockman in the background before the phone hung up.

## **2.1 Officer's Subjective Beliefs**

The state concedes that the analysis in this case falls under that laid out in *State v. Schultz*, and that the first hurdle the state must overcome is demonstrating the officers subjectively believed Ms. Brockman was in need of assistance.

The evidence before this court does in fact satisfy this first hurdle. Mr. Moore is not submitting to the court that the officers involved had any ulterior motives in entering the home.

## **2.2 A Reasonable Person in the Same Situation Would Not Similarly Believe there was a Need for Assistance**

The state attempts to summarize Mr. Moore's arguments into one or two sentences. That summary, however, mischaracterizes the argument.

The basis for finding a reasonable person in the same situation would not similarly believe there was a need for assistance in this case is not based solely on the entry into Mr. Moore's home. It is based on the entirety of the facts of this case.

Absent the anonymous phone call, officers in this case had absolutely no other evidence any domestic disturbance had occurred at all when they searched the home.

The references to *Schultz* only serve to bolster that argument, as the court in *Schultz* found the factual circumstances didn't meet the requirements of the test for the emergency aid exception to the warrant requirement.

The state relies on a quote from the *Schultz* opinion to bolster its argument:

Similarly, if the officers could not have ascertained the location of the man whose voice they had heard, they would have been entitled to make further inquiries and perhaps enter the home to verify that he was safe.

*Schultz*, 170 Wn.2d at 761

It is precisely those facts in *Schultz* that may have afforded officers more room to investigate that are in fact absent in this case.

Officers in this case heard no voices. They saw no signs of struggle. When Mr. Moore answered the door they didn't note anything out of the ordinary. Mr. Moore's children were sitting on the couch watching television. Officers didn't have any information about Ms. Brockman until *after* they'd started to search Mr. Moore's house.

And, upon being confronted with all of this information officers still chose to enter Mr. Moore's home and immediately search it without consent or a warrant.

As the facts of this case relate to *Schultz*, it is persuasive that in that case, under those factual circumstances, the court found the officers behavior to be unreasonable, and in this case, with far fewer facts in favor of the emergency exception, officers nevertheless kicked locked doors in and rummaged through Mr. Moore's home.

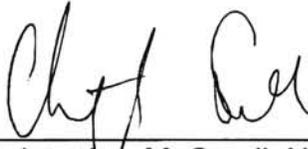
### **CONCLUSION**

The police violated Mr. Moore's constitutional right not to have his home invaded without authority of law. The evidence must

be suppressed, the conviction reversed, and the case dismissed  
with prejudice.

Respectfully submitted on February 25, 2013.

**CMS LAW FIRM LLC**

A handwritten signature in black ink, appearing to read "Chris Small", written over a horizontal line.

Christopher M. Small, No. 41244  
Attorney for the Appellant

CERTIFICATE OF SERVICE

I certify that on the 25<sup>th</sup> day of February, 2013, I caused a true and correct copy of the Appellant's Reply Brief for Attorney Christopher Small's client Christopher Moore, No. 68828-6-I, to be served on the following in the manner indicated below:

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