

THE FOURTH AMENDMENT - SEARCH AND SEIZURE LAW

No other area of criminal law invokes the Fourth Amendment more often than drugs. Most drug evidence is obtained by police using various methods to get into someone's home, their shirt pocket, or the trunk of their car. When they do this, they invoke legal principles contained in The Fourth Amendment.

The Fourth Amendment is a huge bedrock of criminal "justice" and part of The Bill of Rights. The Fourth Amendment came about from tensions in America's pre-revolutionary history with colonists fed up with the British Government abusing its power and busting into homes, farms and other property with little basis.

Despite the shocking news regarding the N.S.A. and internet spying, the Fourth Amendment still has profound power in our daily courts and can suppress or "throw out" key evidence in the government's case when police fail to follow the rules. **The Law Office of David C. Mason** has successfully convinced many judges to either limit or completely reduce the government's case to nothing based on violations of the Fourth Amendment.

The Words of our Constitution

The Fourth Amendment declares "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Search Warrant & The Expectation of Privacy

The heart of the Fourth Amendment requires the police to get a "search warrant" before they enter any area where a citizen has "a reasonable expectation of privacy." A warrant is like "a note from your teacher." It is written permission from a judge after the officer has submitted his own request usually in writing. Police are now allowed to obtain "**telephonic warrants**" by speaking directly to the judge but everything must still be recorded for later legal use.

The Exceptions to the Warrant

Two-hundred and twenty years later, our courts have given the police numerous "exceptions" to this rule and will often allow them into our homes, cars, and shirt pockets

without violating the Constitution. Nevertheless, this rule is still one of the most complex and powerful tools in criminal defense, is actually the least understood by police officers and probably accounts for the most evidence that is “thrown out” on a daily basis. In fact Washington State’s own Constitution carries even more protection and this law office has convinced more than one judge that evidence should be “thrown out” simply because our state rights are that much stronger.

Washington’s Greater Protection Consent to Search The Ferrier Warnings

The largest “exception” to the search warrant is when police can “voluntarily” get you to agree or “consent” to the search. The State, not the defendant, must prove this by all the evidence or the “totality of the circumstances.” In Washington, consent is determined by many factors which include whether

- . *Miranda* warnings were read
- . They told you that you could refuse
- . They recorded your “waiver of rights” and consent
- . You have little or a lot of “experience” with “the criminal justice system.”
- . They threatened you with a warrant or arrest if you did not consent

Your Home has the Most Protection

In Washington, when police search your home, they must take additional steps and actually read you “**Ferrier Warnings**” derived from State v. Ferrier, 136 Wn.2d 103 (1998). Like your **Miranda Warnings**, before you give them consent to search, the officers must inform you that:

1. You have the right to refuse to consent.
2. If you consent to the search, you have the right to withdraw the consent at any time.
3. You have the right to limit the scope of the consent to certain areas of the premises or vehicle.
4. Evidence found during the search may be used in court against you or any other person.

The rule has been expanded to protection in your **hotel room**. State v. Kennedy, 107 Wn. App. 972 (2001). The law is even leaning toward applying it to **vehicles**. State v. Parker, 139 Wn.2d 486 (1999). Like the Fourth Amendment itself,

our courts have carved out some exceptions but prosecutors and police captains insist that field officers read the Ferrier Warnings.

Police Make More Mistakes in This Are of Law

Because Miranda is more imbedded in American Culture, young police officers (and some old ones) often forget or misunderstand the Ferrier Rule and fail to read these warnings. More often, they usually threaten you with arrest or a warrant if you do not “consent” to search. The smarter ones do not record that in their reports, the dumber ones do.

If you have legal questions or are under investigation or charge, **PLEASE CONTACT OUR OFFICE FO A FREE CONSULTATION**