STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Bernadette Eileen Arndt,

Defendant.

File No. 62SU-CR-13-2322

AMICUS CURIAE BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FOR LACK OF PROBABLE CAUSE

I. Introduction[1]

Defendant Bernadette Arndt is charged in the above-entitled matter with obstructing legal process in violation of Minnesota Statutes Section 609.50, subdivision 1(2). That statute provides that whoever intentionally "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties" commits a misdemeanor offense punishable by up to 90 days imprisonment and/or a $1,000 fine. Minn. Stat. § 609.50, subd. 1(1) and 2(3). The criminal charge against Ms. Arndt is based on her refusal to open her apartment door for the police.

Both the Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution provide: "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

---

[1] Counsel certifies that this brief was authored in whole by listed counsel for *amicus curiae* ACLU of Minnesota. No person or entity other than *amicus curiae* made any monetary contribution to the preparation or submission of the brief. This brief is filed on behalf of the American Civil Liberties Union of Minnesota.

oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV (emphasis supplied); Minn. Const. art. I, § 10 (same).

As the Minnesota Supreme Court recognized in *State v. Lemieux*, 726 N.W.2d 783, 787 (Minn. 2007): "It is a 'basic principle of Fourth Amendment law,' that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York,* 445 U.S. 573, 586 (1980)(footnote omitted). "'[A]t the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home.'" *Soldal v. Cook County,* 506 U.S. 56, 61 (1992)(quoting *Silverman v. United States,* 365 U.S. 505, 511, (1961))."

Notwithstanding the existence of exigent circumstances justifying a warrantless residential search, individuals have a constitutional right to refuse to allow the police to enter their homes without a search warrant. A resident's exercise of that right cannot constitutionally constitute the crime of obstructing legal process unless the police have a search warrant, or the occupant physically obstructs an officer's warrantless entry by doing something more than merely refusing to open a locked door. In the case at bar, the police had no search warrant and Ms. Arndt did nothing more than refuse to open her door for the police. Consequently, both the Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution require this Court to dismiss the obstructing legal process charges pending against Ms. Arndt.

II. Statement of Facts

According to police reports filed in this case, shortly before 7:00 p.m., on June 20, 2013, White Bear Lake police officers responded to Ms. Arndt's apartment building in response to a disorderly conduct complaint. The police did not have a warrant and were responding to a call from a neighbor who reported hearing yelling, swearing, and things breaking in the apartment. When the first responding officers arrived, the disturbance had passed but they could hear movement inside the apartment. They knocked on the door and announced themselves as police officers but nobody answered.

The police then spoke to the neighbor, who reported that just a few minutes earlier it sounded like the occupants were "beating the hell out of each other." The officers called for additional backup and a shift supervisor to assist them in a forcible entry into the apartment to conduct a welfare check on the occupants. When the backup arrived (three additional officers and a sergeant) they continued to knock loudly on the door and announce themselves as police. One officer also attempted to make contact with the occupants by knocking on a window of the apartment.

After several minutes of knocking, the officers warned the occupants that the door would be kicked in if they did not open it. When there was still no response, the officers kicked in the door. Ms. Arndt, her adult son and juvenile daughter were in the living room. All appeared to be unharmed. The adults were ordered to the floor and police handcuffed them. Upon a search of the home, police located another woman, Ms. Arndt's adult daughter, who was also unharmed. While the apartment was messy, police were unable to determine whether the mess had been caused by a physical altercation.

They found no evidence of criminal activity in the home. Ms. Arndt's adult daughter admitted to yelling earlier in the day. Both of Ms. Arndt's adult children stated to police that they heard the knocking and that their mother told them not to answer the door.

The police charged Ms. Arndt with obstructing legal process for refusing to open the door to her apartment. Prosecuting Ms. Arndt for obstructing legal process under these circumstances is improper because her failure to open the door does not constitute a **physical** obstruction and because the Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution protect her right to refuse police entry into her home without a warrant.

III. Legal Argument

A. Minnesota Case Law

In *State v. Kraswky*, 426 N.W.2d 875, 878 (Minn. 1988), the Minnesota Supreme Court construed Minnesota Statutes Section 609.50 to prohibit "only intentional physical obstruction or interference with a peace officer in the performance of his duties." Subsequently, in *State v. Tomlin*, 622 N.W.2d 546 (Minn. 2001), the court reaffirmed that conduct that does not physically obstruct officers does not violate Section 609.50. The *Tomlin* court held that although a defendant's lies and omissions may "have interrupted the officers' activities during their investigation" and "lengthened the time in which it took the police to apprehend" the suspects, the defendant's false statements "did not physically prevent or obstruct the police from trying to obtain the evidence." *Id.* at 549.

Similarly, in *State v. Patch*, 594 N.W.2d 537 (Minn. App. 1999), the Minnesota Court of Appeals held that a defendant's verbal conduct that assisted a suspect in avoiding arrest did not violate Section 609.50. The defendant in *Patch* warned the suspect that the police were coming to arrest her, helped the suspect look for a back door to make her escape, stood lookout at the front door, and offered the suspect a ride. *See id.* at 538. Likewise, in an opinion authored by current Minnesota Supreme Court Justice Christopher Dietzen, the court of appeals ruled that fleeing a police officer does not violate Section 609.50 because it does not involve any physical activity directed at officers that could obstruct their investigation. *See State v. Morin*, 736 N.W.2d 691, 698 (Minn. App. 2007). As Justice Dietzen observed: "Fleeing a police officer, although a physical act, is of a significantly different nature from obstructing or resisting a police officer." *Id.*

B. Federal Case Law Interpreting Section 609.50

In *Adewale v. Whalen*, 21 F.Supp.2d 1006 (D. Minn. 1998), United States District Court Judge John Tunheim held that refusing to open a security door for the police at an apartment building did not constitute obstructing legal process under Section 609.50. In that federal civil rights case, the police went to an apartment building to investigate a 911 hang-up call. *Id.* at 1009. The plaintiff, Lillia Adewale, refused to open the locked security door to the apartment building for the police. *Id.* She was subsequently charged in Hennepin County District Court with obstructing legal process in violation of Minnesota Statutes Section 609.50, subdivision 1(2)—the same charge pending against Ms. Arndt in the case at bar. *Id.* at 1011. Following a trial, the Hennepin County District

Court found her not guilty and she then filed a civil lawsuit against the arresting officer. *Id.*

Analyzing the legality of Ms. Adewale's refusal to open the security door for the police, Judge Tunheim observed:

> The Minnesota Supreme Court has not considered whether the refusal to open a door can amount to obstruction of the legal process. However, courts in other jurisdictions have held that refusing to open a door for police is not obstruction of the legal process. If confronted with this issue, this Court holds that the Minnesota Supreme Court would reach the same result.

Id. at n.4 (citations omitted).

Judge Tunheim held that Ms. Adewale had no legal obligation to assist the officers by opening the security door for them. *Id.* He noted that, as in the case at bar, the officers "were not attempting to make an arrest when they encountered the security door, and they did not have a warrant for entry into the building." *Id.* Judge Tunheim concluded that "[a]lthough citizens should be encouraged to assist officers whenever possible, a bystander is not under any legal obligation to open a door for a police officer performing an investigation without a warrant. Thus, [Ms. Adewale] did not engage in illegal conduct when she refused to open the security door for" the officers. *Id.*

More recently, in *Clark v. Pielert*, 2009 WL 35337 (D. Minn. 2009)[2], another federal civil rights case, United States District Court Judge David Doty similarly held that a person's refusal to open a door for the police does not constitute obstruction of legal process under Minnesota Statutes Section 609.50. This case also involved the police

[2] A copy of this unpublished opinion is attached hereto.

responding to a 911 hang-up call at an apartment building. The plaintiff, Yvonne Clark, refused to open the door to her apartment for the police who broke the door down and charged her with obstructing legal process. *Id.* at *1. Those charges were later dismissed. *Id.* at *2.

The issue presented on the defendant police officers' motion for summary judgment was whether Ms. Clark's refusal to open her door established "arguable probable cause that she obstructed the officers' response to the 911 call." *Id.* at *6. Despite recognizing that the officers "had a right to enter [Ms.] Clark's apartment because of a reasonable belief that an emergency existed," Judge Doty ruled that Ms. Clark "had no affirmative duty to assist their entry, and she cannot be criminally punished for refusing to" open the door for the police. *Id.* (citations omitted). Judge Doty further held that Ms. "Clark's actions did not physically prevent the officers from investigating the 911 call. Instead, [the officers] easily forced entry after [Ms.] Clark moved away from the door and [Ms.] Clark did not actively obstruct [the officers] once they entered the apartment." *Id.* Therefore, Judge Doty ruled "there was no arguable probable cause to arrest [Ms.] Clark for obstructing legal process." *Id.*

C. Federal Case Law

The United States Supreme Court has repeatedly recognized that the Fourth Amendment protects a person's right to refuse to consent to a warrantless entry under various circumstances. *See, e.g., Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 540 (1967)(constitutional right to resist warrantless housing inspection); *See v. City of Seattle*, 387 U.S. 541, 546 (1967)(constitutional right to resist

warrantless fire inspection). In *District of Columbia v. Little*, 339 U.S. 468 (1950), an opinion authored by Justice Black, the Court held that refusing to unlock the door to one's home does not constitute misdemeanor interference with a health inspection. Emphasizing that the defendant "neither used nor threatened force of any kind," the Court observed that a prohibition against "interfering with or preventing any inspection" to determine a home's sanitary condition "cannot fairly be interpreted to encompass" a person's mere failure to unlock a door and permit a warrantless entry. *Id.* at 5, 7. The Court reasoned that "[t]he right to privacy in the home holds too high a place in our system of laws to justify a statutory interpretation that would impose a criminal punishment on one who does nothing more than" refusing to unlock a door. *Id.* at 7.

Reversing a conviction for harboring a fugitive in *United States v. Prescott*, 581 F.2d 1343, 1351 (9th Cir. 1978), the Ninth Circuit held that "passive refusal to consent to a warrantless search is privileged conduct which cannot be considered evidence of criminal wrongdoing." The *Prescott* court supported its holding with this reasoning:

> "When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search." When, on the other hand, the officer demands entry but presents no warrant, there is a presumption that the officer has no right to enter, because it is only in certain carefully defined circumstances that lack of a warrant is excused. An occupant can act on that presumption and refuse admission. He need not try to ascertain whether, in a particular case, the absence of a warrant is excused. He is not required to surrender his Fourth Amendment protection on the say so of the officer. **The Amendment gives him a constitutional right to refuse to consent to entry and search. His asserting it cannot be a crime. Nor can it be evidence of a crime.**

Id. at 1350-51 (citations omitted & emphasis supplied).

D. Other State Court Case Law

Courts in other states have similarly concluded that simply refusing to unlock or open a door in response to a police officer's warrantless request does not constitute obstructing legal process. For example, in *State v. Hatfield*, 518 P.2d 389 (Kan. 1974), the Kansas Supreme Court held that a mother's refusal to unlock the door to her house so the sheriff could execute a judicial order of protective custody, and transport her daughter to a state hospital pending a hearing on an application to determine her alleged mental illness, did not violate the Kansas obstruction of legal process statute. Reversing the defendant's conviction under that statute, the court observed that "the state has shown nothing more than that she refused to comply with the request of the sheriff to unlock the doors of her house in order that he might enter and serve a protective custody order upon her fourteen year old daughter. There is no evidence that she physically attempted to block or obstruct the sheriff's entrance . . . . [T]he defendant did not obstruct, resist, impede or oppose the sheriff, but, at most, simply refused to assist him in executing the process in his hands." *Id.* at 835.

An Illinois appellate court in *People v. Hilgenberg*, 585 N.E.2d 180 (Ill. App. 1991), likewise concluded that refusing to open the door to a residence at a police officer's request did not violate Illinois' obstructing legal process statute. The police in that case were responding to a report of underage consumption of alcohol and disorderly conduct when the defendants refused to open the door of a home or permit the police to enter. *Id.* at 182. The Illinois statute prohibited "obstructing" or "resisting" a police officer. *Id.* at 183. As in Minnesota, Illinois courts have interpreted their state's

obstructing legal process statute to require "an act of physical resistance." *Id.* Distinguishing between action and inaction, and noting the "occupants of the premises had a right to refuse [the officers'] request," the *Hilgenberg* court acknowledged that "an allegation of the failure to cooperate with an officer is not necessarily the same as resisting or obstructing an officer." *Id.* at 183, 184. Accordingly, the court held that "the defendants' inaction should not be deemed to be an act of physical resistance where it was merely alleged that the defendants refused to open the door or permit the entry of the sheriff. . . ." *Id.* at 184. *See also People v. Cope,* 701 N.E.2d 165, 169-70 (Ill. App. 1998)(a defendant's refusal to open the door in response to demands by the police cannot constitute obstructing legal process unless police have a warrant).

An Ohio appellate court in *City of Columbus v. Michel*, 378 N.E.2d 1077 (Ohio App. 1978), also concluded that refusing to open a door for officers responding to a domestic call did not violate Ohio's obstructing legal process statute. Officers in that case were dispatched on a domestic disturbance and fight call. *Id.* at 1077. They discovered a broken window in an upper level apartment, and a telephone receiver and broken glass on the ground beneath the window. *Id.* A woman in a lower level apartment came out and identified herself as the caller. *Id.*

Officers knocked several times on the door to the upper level apartment but received no response. *Id.* Nevertheless, they could hear someone walking around in the apartment and a light inside the apartment was extinguished after the officers began knocking. *Id.* at 46-47. After "approximately seven to ten minutes of knocking on the door," identifying themselves as police officers, requesting the occupants to open the

door, and receiving no response, the officers announced that they would kick the door in if the occupants did not open it. *Id.* at 47. "Approximately two minutes later," one of the occupants opened the door. *Id.* The defendant, who lived in the apartment, was charged with obstructing legal process by refusing to open the door to his apartment despite repeated requests from the police. *Id.* at 46-47.

Distinguishing between acts and omissions, the Ohio appellate court held that obstructing legal process requires the doing of an act and that the failure to do an act cannot constitute obstructing legal process. *Id.* at 48. "Here the evidence is clear and unequivocal that defendant committed No act which would hamper or impede the law enforcement officers, but, rather, it was his omission of action that led to his arrest." *Id.* Despite acknowledging that "the officers would have been justified in breaking open the door of the apartment to determine whether anyone [inside] was injured," the court ruled that the "defendant's failure to open the door to the apartment is not a crime" under Ohio's obstructing legal process statute. *Id. See also State v. Vivantonio*, 995 N.E.2d 1291, 1294-95 (Ohio App. 2013)(refusing to respond to persistent knocking on an apartment door by police officers responding to a domestic disturbance call does not support a conviction for obstructing legal process – even if exigent circumstances justify a forcible entry into the apartment).

IV. Conclusion

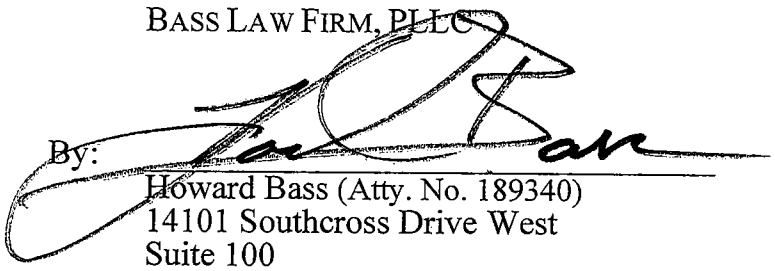
As the case law discussed above makes clear, an individual has a constitutional right to refuse to permit the police to make a warrantless entry into his or her residence – so long as that person does not **physically** obstruct, resist, or interfere with that entry.

Merely refusing to unlock or open a door at the request of a police officer does not constitute **physical** obstruction, resistance, or interference. Furthermore, refusing to permit a warrantless entry is constitutionally privileged, regardless of whether exigent circumstances justify that entry.

Accordingly, for the reasons presented herein, amicus curiae American Civil Liberties Union of Minnesota urges this Court to dismiss the complaint filed against Ms. Arndt in this case for lack of probable cause to believe she committed the offense charged.

Respectfully submitted,

BASS LAW FIRM, PLLC

By: 
Howard Bass (Atty. No. 189340)
14101 Southcross Drive West
Suite 100
Burnsville, MN 55337
952/224-0182

-and-

AMERICAN CIVIL LIBERTIES UNION
OF MINNESOTA

Teresa J. Nelson (Atty. No. 269736)
2300 Myrtle Ave.
Suite 180
St. Paul, MN 55114
651/645-4097

Attorneys for Amicus Curiae, ACLU-MN

Dated: November 21, 2013