NO. 338339 *consolidated with* 338347

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Appellant,

v.

NANCY L. ST. PIERRE-WALSH

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LINCOLN COUNTY
The Honorable Strohmaier

AMENDED RESPONDENT'S BRIEF

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I. STATEMENT OF THE CASE

The state charged Nancy St. Pierre-Walsh with one count possession of a controlled substance after an officer found a locked case in her purse that contained two methamphetamine pipes during a search at Michael Hulburt's house. CP 86-87.

Law enforcement became interested in Mr. Hulburt after an officer received a tip from an informant that Mr. Hulburt had a marijuana grow operation on his property that he probably did not have license to operate. Although the officer knew the informant's name, since the person wished to remain anonymous, the officer, and later the court, referred to the informant as anonymous. CP 39-43.

The informant went on to tell the officer traffic had been in and out of Mr. Hulburt's residence usually between midnight and two in the morning and vehicles would enter the property with lights turned off. CP 112-115. The informant also told the officer Mr. Hulburt, an ex felon, possibly had a handgun, based on a photograph of Mr. Hulburt in front of a cougar pelt with a handgun resting on the pelt. 9/16/15 RP 17. The officer tried, but could not locate the photograph, so the case became inactive for a time. 9/16/15 RP 19.

Some time later, the informant produced a copy of the photograph and gave it to the officer. 9/16/15 RP 21. Not long after, the officer learned another officer saw a marijuana garden outside, behind a chain link fence, on Mr. Hulburt's property, while he was there on an unrelated matter. 9/16/15 RP 26. The officer used what the other officer saw at Mr. Hulburt's residence to corroborate the informant's tip and applied for a warrant to search Mr. Hulburt's house, yard, and detached garage. 9/16/15 RP 23; CP

117-120; 112-116. When the officer applied the warrant, he did not know whether or not Mr. Hulburt was legally authorized to grow marijuana. CP 39-43; 9/16/15 RP 34.

To establish probable cause for the search, the officer drafted a declaration that contained information about his background and training, described what the other officer saw when he visited Mr. Hulburt's property on the unrelated matter, and relayed what the informant said. The declaration also contained the following language:

> NOTE: I know through my experience with marijuana grows that none of the processed marijuana is ever kept inside a grow enclosure that is located outside and open to the elements. I also know that harvested plants are usually taken into buildings near the grow site to hang and let dry before the usable portion of marijuana plants is processed for consumption. It is common practice for individuals that have a marijuana grow with marijuana plants as mature as this one, to have a starter room located on the property with young marijuana plants under grow lights to replenish their numbers once they harvest the mature marijuana plants. I also know through my experience with medical marijuana grows, individuals often keep their medical records inside a residence or building near the grow site to avoid having them destroyed by the elements.

CP 114-115.

The officer presented the warrant application and declaration to a judge to approve. As was customary, the judge administered oath to the officer. 9/16/15 RP 29. According to the officer, the judge asked how the anonymous informant knew the details s/he claimed to know and he told him. However, whatever dialogue, the judge and the officer, exchanged could not be confirmed because the proceeding was not recorded. 9/16/15 RP 29. Nevertheless, the judge signed the warrant and police executed a search on Mr. Hulburt's property.

During the search on Mr. Hulburt's property, police seized what they believed to be bomb making materials from the detached garage and drug paraphernalia from his

house. CP 108. In an upstairs bedroom, an officer found a purse on the floor next to a bed. The officer emptied the purse's contents and found a locked case. The officer used a fork that was on the bed to pry the case open and discovered two methamphetamine pipes and small zip lock bags with little yellow car monikers on them. The officer also found a wallet that had Ms. St. Pierre-Walsh's identification inside. CP 94.

Both Ms. St. Pierre-Walsh and Mr. Hulburt moved the court to suppress evidence police seized from the search. They argued the declaration did not contain sufficient facts to establish probable cause for a search on Mr. Hulburt's property. In addition, Ms. St. Pierre-Walsh argued the warrantless search on her purse was illegal and violated her right to privacy. CP 88-97.

The same judge who signed the warrant presided at the suppression hearing. The judge immediately found the court was not in a position, without relevant expert testimony, to determine whether or not the so-called bomb making materials seized from Mr. Hulburt's garage could in fact create a bomb and did not address that issue further. So, the court focused on the photograph that depicted Mr. Hulburt in front of a cougar pelt with a handgun resting on the pelt.

The court realized the photograph had been taken months before the search, but did not know whether or not the handgun or cougar pelt belonged to Mr. Hulburt or whether they were even in his possession. The court found the nexus between the handgun and cougar pelt on the photograph was too tenuous. CP 110.

The court also found the declaration used to establish probable cause did not provide sufficient information to allow police to search Mr. Hulburt's fenced yard. The

reason being, at the time the officer applied for the warrant, he did not seem to know whether or not Mr. Hulburt was legally authorized to grow marijuana. CP 110.

The court further found there was no information that set forth any specific facts that contraband or other evidence or illegal activity could be found inside Mr. Hulburt's home or the detached garage, only the deputy's generalized observations from his previous training and law enforcement experience that processed marijuana is not kept outside and open to the elements, that harvested plants are taken inside to hang and dry, and that it is common practice to have a room located on the property with young starter plants and grow lights. CP 110.

Based on those findings, the court granted Ms. St. Pierre-Walsh's and Mr. Hulburt's motions to suppress evidence and dismissed the charges against them. CP 104. The state appealed.

On appeal, the state conceded with the court the handgun, the cougar pelt, and the photograph of Mr. Hulburt with those items did not have sufficient nexus to Mr. Hulburt's residence or garage, because there was no information as to when or where the photograph was taken. Br. Resp. at 14. However, the state insisted the trial court erred when it dismissed what the informant had to say as unreliable. The state maintained even without the informant's tip, probable cause still existed to support the search. Br. Resp. at 15; Br. Resp. at 20. We respond to the state's arguments below.

II. ARGUMENT

THE JUDGE PROPERLY SUPPRESSED EVIDENCE SEIZED PURSUANT A SEARCH WARRANT HE ISSUED WITHOUT SUFFICIENT PROBABLE CAUSE.

Standard of review

This court must review the trial court's decision to issue the warrant for a manifest abuse of discretion. State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). To determine whether or not the trial court abused its discretion, this court must consider whether or not the affidavit used to support the warrant, on its face, contained sufficient facts to support probable cause. State v. Perez, 92 Wn.App. 1, 4, 963 P.2d 881 (1998).

The determination that a warrant should issue is a matter within the discretion of the issuing judge. Id. For that reason, this court must solely consider information provided the issuing judge and give great deference to the issuing judge's determination about probable cause. Perez, 92 Wn.App. at 4; State v. Merkt, 124 Wn. App. 607, 612, 102 P.3d 828, 831 (2004). Moreover, this court must evaluate the affidavit in a commonsense manner and should resolve any doubt in favor of validity. State v. Kalakosky, 121 Wn.2d 525, 531, 852 P.2d 1064 (1993). Throughout this brief, whenever case law uses the term *affidavit,* we keep that term for legal consistency. However, we refer to the *affidavit* at issue here as a declaration.

Analysis

A. The declaration was legally insufficient to establish probable cause. A court must only issue a search warrant if probable cause exists. U.S. Const. amend. IV; Const. art. I, § 7. Probable cause is established in an affidavit that supports a search warrant

with facts sufficient for a reasonable person to conclude the defendant probably is involved in criminal activity. State v. Cord, 103 Wn.2d 361, 365, 693 P.2d 81 (1985). In other words, to establish probable cause, the affidavit must contain facts sufficient for a reasonable person to conclude the defendant is probably involved in criminal activity. State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Accordingly, the affidavit of probable cause must show "a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched." State v. Thein, 138 Wn. 2d 133, 140, 977 P.2d 582 (1999); State v. Merkt, 124 Wn. App. 607, 612-13, 102 P.3d 828 (2004).(*citing* Wayne R. LaFave, Search and Seizure § 3.7(d), at 372 (3d ed.1996));

Here, police based the search warrant for Mr. Hulburt's property on a tip from the anonymous informant.

1. The informant's tip. When an informant's tip forms the basis for a search warrant, the affidavit in support of the warrant must establish the basis of information and credibility of the informant in order to evaluate the existence of probable cause. State v. Jackson, 102 Wn.2d 432, 433, 688 P.2d 136 (1984); see Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964). Because of concern for reliability, information received from informants is subject to some scrutiny by a judge to ensure the information is valid. State v. Huft, 106 Wn. 2d 206, 209, 720 P.2d 838 (1986) citing State v. Wolken, 103 Wn.2d 823, 827, 700 P.2d 319 (1985).

In Washington, the two-pronged Aguilar-Spinelli test has been an important method to evaluate informants' tips under both the Fourth Amendment and Const. art. 1,

§ 7. State v. Jackson, 102 Wn. 2d 432, 436, 688 P.2d 136, 139 (1984). The first prong evaluates the trustworthiness of the informant's conclusions based on the underlying circumstances and sources of his knowledge.

i. Basis or source of informant's knowledge. To satisfy this prong in Aguilar-Spinelli, the declaration here had to demonstrate the informant had to first-hand knowledge about what was going on at Mr. Hulburt's property.

For example, in State v. Wolken,103 Wn. 2d 823, 700 P.2d 319 (1985), the informant tipped police two people he knew had a marijuana operation in their home. On the same day police received the tip, an officer obtained a search warrant from a judge. The officer's affidavit for the warrant recited that the informant stated he had been in the residence on two separate occasions, and observed marijuana plants, approximately 2 feet tall, being cultivated in the back bedroom with the use of halide grow lights and cardboard covered windows. State v. Wolken, 103 Wn. 2d 825. Because the affidavit demonstrated the informant personally viewed the marijuana in some detail and had firsthand information, the court found the affidavit facially valid and enough to establish probable cause. Id.

Similarly, in State v. Vickers, 148 Wn. 2d 91, 113, 59 P.3d 58 (2002), the affidavit police used to establish probable cause for a search warrant in that case confirmed the informant either engaged in or heard conversations between the defendants about how to execute a robbery in a distinct manner consistent with the manner of a robbery that had actually occurred. State v. Vickers, 148 Wn. 2d 110, 59 P.3d 58, 68 (2002).

The affidavit in that case explained how the informant contacted police after she became concerned over conservations she had with the defendants about how to commit a robbery. She heard one defendant say he would enter a premises shooting to catch everyone off guard, which was exactly how a robbery been committed in Tacoma. State v. Vickers, 148 Wn. 2d 110. In addition, the affidavit stated the informant saw the defendants board the ferry bound for Steilacoom on the day the shooting occurred and that they did not return to Anderson Island that night.

The court found the informant's personal observations sufficiently satisfied the Aguilar-Spinelli basis of knowledge test and the magistrate did not abuse his discretion when he found probable cause to issue the search warrant. Id. at 111.

Unlike the affidavits in Wolken and Vickers, the declaration here failed the Aguilar-Spinelli basis of knowledge test. The reason being, there was nothing in the declaration to show the informant had firsthand knowledge of what s/he alleged was going on at Mr. Hulburt's property. The declaration simply stated the anonymous informant told police there had been a large amount of traffic, usually between midnight and two in the morning, at Mr. Hulburt's house and the informant believed Mr. Hulburt sold live marijuana plants to individuals. The informant also told police vehicles would enter Mr. Hulburt's property with their lights turned off. CP 113-114. Aside from bare assertions, the declaration here did not say how the informant knew any of this to be so and therefore did not satisfy the first prong in Aguilar-Spinelli.

The second prong in Aguilar-Spinelli tests veracity. It evaluates the informant's truthfulness. Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964);

Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); State v. Lair, 95 Wn. 2d 706, 709, 630 P.2d 427 (1981).

ii. Veracity. To guard against anonymous troublemakers, our courts require "'heightened demonstrations of credibility for citizen informants whose identities were known to the police but not revealed to the magistrate.'" State v. Ibarra, 61 Wn.App. 695, 700, 812 P.2d 114 (1991). Accordingly, the affiant must supply enough additional information to support an inference that the informant was telling the truth. Id.

That concern is substantially decreased, however, where information in the affidavit demonstrates the informant is truly a citizen informant who is not involved in the criminal activity or motivated by self-interest. Ibarra, 61 Wn.App. at 700, 812 P.2d 114. Consequently, if a citizen informant wishes to remain anonymous, the affidavit must contain background facts to support a reasonable inference that the information is credible and without motive to falsify. State v. Wilke, 55 Wn.App. 470, 477, 778 P.2d 1054, review denied, 113 Wash.2d 1032, 784 P.2d 531 (1989); State v. Cole, 128 Wn. 2d 262, 287-88, 906 P.2d 925 (1995).

Here, because there was no information in the declaration to demonstrate whether or not the informant was a credible, law-abiding citizen, who did not have motive to falsify information, the declaration failed to meet the second prong in Aguilar-Spinelli.

Underlying the Aguilar-Spinelli test is the basic belief the determination of probable cause to issue a warrant must be made by a judge, not law enforcement officers who seek warrants. State v. Jackson, 102 Wn. 2d 432, 436, 688 P.2d 136, 139 (1984). To perform the constitutionally prescribed function, rather than being a rubber stamp, a

magistrate requires an affidavit, which informs him of the underlying circumstances, which lead the officer to conclude that the informant was credible and obtained the information in a reliable way. Only in this way can the magistrate make the proper independent judgment about the persuasiveness of the facts relied upon by the officer to show probable cause. State v. Jackson, 102 Wn. 2d 436-37, 688 P.2d 136, 139 (1984).

The declaration here did not inform the judge of the any circumstances, which lead the officer to conclude the informant was credible. Therefore, the court did not abuse its discretion when it dismissed what the informant had to say as unreliable and insufficient to establish probable cause. CP 39-43.

Even though we believe the court properly found the informant's tip unreliable, the state insists the declaration still established enough probable cause to justify the search. According to the state, the officer's independent observation of the marijuana garden along with the detective's training and experience in how marijuana is manufactured and packaged for sale were enough to establish a nexus between the items to be seized and the place to be searched. Br. Resp. at 21.

2. The officer's independent observation. Generally, both prongs of Aguilar-Spinelli must be present to establish probable cause. Jackson, 102 Wn.2d at 437, 688 P.2d 136; Ibarra, 61 Wn.App. at 698, 812 P.2d 114. If either or both parts of the test are deficient, probable cause may yet be satisfied by independent police investigation that corroborates the informant's tip . State v. Vickers, 148 Wn. 2d 91, 112, 59 P.3d 58, 69 (2002). Corroborating details must create a reasonable inference that the suspect is probably involved in criminal activity and that evidence of the crime can be found at the

place to be searched. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999); State v. Huft, 106 Wn.2d 206, 211, 720 P.2d 838 (1986).

A police investigation that merely verifies innocuous details, commonly known facts, or predictable events will not suffice. State v. Jackson, 102 Wn.2d at 438. And although common sense and experience inform the inferences reasonably to be drawn from the facts, broad generalizations do not alone establish probable cause. State v. Thein, 138 Wn. 2d 133, 148-49, 977 P.2d 582, 589 (1999). Absent a sufficient basis in fact from which to conclude evidence of illegal activity will likely be found at the place to be searched, a reasonable nexus is not established as a matter of law. See, e.g., State v. Smith, 93 Wn.2d 329, 352, 610 P.2d 869 (2011) ("if the affidavit or testimony reveals nothing more than a declaration of suspicion and belief, it is legally insufficient").

For example, in State v. Thein, our Supreme Court found the affidavit the trial court relied on to establish probable cause which contained only generalized statements about drug dealers' common habits, particularly that they commonly keep a portion of their drug inventory, paraphernalia, drug trafficking records, large sums of money, financial records of drug transactions, and weapons in their residences, was not enough to establish probable cause and to form a sufficient basis from which to conclude illegal activity would likely be found at the place searched.

In that case, officers executed a search warrant at a house and found marijuana and items commonly associated with marijuana cultivation. They arrested the occupant. 138 Wn.2d at 136–37. During the search, officers also found two packages at the house addressed to Thein, one, a 'Clean-air' system addressed to Thein at the address searched, the other, a box of nails, addressed to Thein at a different address. Thein, 138 Wn.2d at

137. Further investigation led officers to believe Thein was a drug supplier. Thein, 138 Wn.2d at 137–38.

The police then applied for a warrant to search Thein's residential address. Thein, 138 Wn.2d at 139–40, 977 P.2d 582. In the supporting affidavits, the nexus between the suspected criminal activity and Thein's residential address was based on particular facts which included the box of nails found at the grow operation house that was addressed to Thein's residential address; and oil filters that matched the make and model of Thein's vehicle, as well as the following stereotypes about the practices of drug dealers:

> Based on my experience and training, as well as the corporate knowledge and experience of other fellow law enforcement officers, I am aware that it is generally a common practice for drug traffickers to store at least a portion of their drug inventory and drug related paraphernalia in their common residences. It is generally a common practice for drug traffickers to maintain in their residences records relating to drug trafficking activities, including records maintained on personal computers.... Moreover, it is generally a common practice for traffickers to conceal at their residences large sums of money.... I know from previous training and experiences that it is common practice for drug traffickers to maintain firearms, other weapons and ammunition in their residences for the purpose of protecting their drug inventory and drug proceeds... Firearms and ammunition have been recovered in the majority of residence searches in the drug investigations in which I have been involved.

See Thein, 138 Wash.2d at 150, 977 P.2d 582; Id. at 138–39.

The court characterized the affidavit's recitation of the box of nails and the oil filter as "innocuous," and ruled those items were could not establish a nexus between the residence and evidence of suspected criminal activity. Thein, 138 Wn.2d at 150, 977 P.2d 582. The court further ruled that stereotypes about narcotic traffickers, standing alone,

were insufficient to establish the requisite nexus, no matter how consistent the stereotypes were with commonsense and experience. Thein, 138 Wn.2d at 148–49, 977 P.2d 582. Consequently, the necessary connection between Thein's residential address and evidence of drug-related crimes was not established as a matter of law because neither the particular facts nor the stereotypes about drug dealers could serve as a basis for probable cause. Thein, 138 Wn.2d at 147, 977 P.2d 582.

The facts in Thein are similar to the facts here. Like the officers in Thein, an officer here saw a marijuana garden outside, behind a chain link fence, on Mr. Hulburt's property, while he was there on an unrelated matter. 9/16/15 RP 26. Around that same time, a detective received an anonymous tip Mr. Hulburt grew marijuana on his property. 9/16/15 RP 22-23. The detective used what the other officer saw at Mr. Hulburt's residence to corroborate the tip and applied for a warrant to search Mr. Hulburt's fenced yard, residence, and an unattached garage. 9/16/15 RP 23. The officer did not know at the time whether or not Mr. Hulburt was legally authorized to grow marijuana. CP 110.

To support the search, the detective prepared a declaration that contained particular information from the informant about traffic at Mr. Hulburt's property and live marijuana plants and the following stereotypes about how marijuana dealers cultivate grow operations:

> NOTE: I know through my experience with marijuana grows that none of the processed marijuana is ever kept inside a grow enclosure that is located outside and open to the elements. I also know that harvested plants are usually taken into buildings near the grow site to hang and let dry before the usable portion of marijuana plants is processed for consumption. It is common practice for individuals that have a marijuana grow with marijuana plants as mature as this one, to have a starter room located on the property with young marijuana plants under grow lights to replenish their

> numbers once they harvest the mature marijuana plants. I also know through my experience with medical marijuana grows, individuals often keep their medical records inside a residence or building near the grow site to avoid having them destroyed by the elements.

CP 114-115.

Like the declaration in Thein, the declaration here contained generalizations about drug dealers, which were not enough to establish a sufficient nexus between Mr. Hulburt's residence and the manufacture and distribution of marijuana. But even if police had probable cause to believe he was involved in a grow operation, "there was no evidence to connect any illegal activity to his ... residence. Thein, 138 Wn.2d at 140, 977 P.2d 582. The grow operation the other officer saw was outside. "The absence of evidence of an outdoor grow operation does not necessarily mean the presence of an indoor grow operation." Thein, 138 Wn.2d at 150.

The judge here realized the converse to that must also be true: Evidence of an outdoor grow does not necessarily mean there was an indoor grow operation or mean the grow was illegal. There were no specific facts that contraband or other illegal activity could be found inside Mr. Hulburt's residence or detached garage, only the detective's generalized observations from his previous training and law enforcement experience. CP 39-43. For those reasons, the judge properly found the independent police investigation was not enough to corroborate the informant's tip to the extent it cured the deficiency in the declaration.

The court did not abuse its discretion when it suppressed evidence seized from the search on Mr. Hulburt's property. Should this court find otherwise, we ask this court to uphold the trial court's decision to suppress evidence seized, without warrant, from Ms. St. Pierre-Walsh's purse.

B. Ms. St. Pierre-Walsh had a reasonable expectation of privacy in the contents of the locked case even though it was in Mr. Hulburt's home. Article I, section 7 of our state constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Const. art. 1, §. 7; State v. Carter, 151 Wn. 2d 118, 125, 85 P.3d 887 (2004). Article I, section 7 provides a strong privacy interest, exceeding that provided by the federal constitution. State v. Evans, 159 Wn. 2d 402, 412, 150 P.3d 105 (2007).

To establish whether or not Ms. St. Pierre-Walsh had a reasonable expectation of privacy in the contents of locked case, this court must consider: (1) whether or not she "exhibited an actual expectation of privacy by seeking to preserve something as private?" and (2) "[d]oes society recognize that expectation as reasonable?" State v. Kealey, 80 Wn.App. 162, 168, 907 P.2d 319 (1995). A container which can support a reasonable expectation of privacy may not be searched, even on probable cause, without a warrant." United States v. Jacobsen, 466 U.S. 109, 120 n. 17, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984) (citing United States v. Ross, 456 U.S. 798, 809–12, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982)). State v. Rison, 116 Wn. App. 955, 959-60, 69 P.3d 362 (2003). However, the burden is on the defendant to establish a subjective expectation of privacy. State v. Evans, 159 Wn. 2d 402, 409, 150 P.3d 105, 109 (2007). Below we analyze whether or not Ms. St. Pierre-Walsh had established a reasonable expectation of privacy in the contents of her purse.

1. Actual expectation of privacy. To determine whether or not Ms. St. Pierre-Walsh actually expected the contents of the case to remain private, this court will look to see whether or not she, by her conduct, exhibited an actual expectation of privacy;

that is, whether or not she has shown that "she [sought] to preserve [something] as private." State v. Rison, 116 Wn. App. 955, 960, 69 P.3d 362 (2003).

Here, Ms. St. Pierre-Walsh kept a case in her purse. The case was closed and locked to a point where to reveal its contents, the officer had to use a fork to pry open the lock. CP 88-97. The fact Ms. St. Pierre-Walsh kept the case locked and in her purse demonstrated she expected its contents to remain private.

2. Society recognizes that expectation as reasonable. An expectation of privacy must be reasonable, i.e., one "rooted in 'understandings that are recognized and permitted by society.'" State v. Jones, 68 Wn.App. 843, 850, 845 P.2d 1358 (1993) (quoting Minnesota v. Olson, 495 U.S. 91, 100, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990) (quoting Rakas v. Illinois, 439 U.S. 128, 144 n. 12, 99 S.Ct. 431 n. 12, 58 L.Ed.2d 387 (1978))). State v. Kealey, 80 Wn. App. 162, 170, 907 P.2d 319, 324 (1995), as amended on denial of reconsideration (Feb. 26, 1996). There is no question Ms. St. Pierre-Walsh's expectation of privacy in the contents of her purse was reasonable. The reason being, purses, briefcases, and luggage constitute traditional repositories of personal belongings protected under the Fourth Amendment. See Arkansas v. Sanders, 442 U.S. 753, 762, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979) (citing United States v. Chadwick, 433 U.S. 1, 13, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977)). State v. Kealey, 80 Wn. App. 162, 170, 907 P.2d 319, 324 (1995), as amended on denial of reconsideration (Feb. 26, 1996).

Most certainly, society recognizes a woman's purse and its contents, particularly the locked case, as private. The very purpose of a purse is to serve "as a repository for personal, private effects" when one wishes to carry them. Arkansas v. Sanders, 442 U.S. at 762 n. 9, 99 S.Ct. at 2592 n. 9. State v. Kealey, 80 Wn. App. 162, 170, 907 P.2d 319,

324 (1995), as amended on denial of reconsideration (Feb. 26, 1996). "It would be difficult to define an object more inherently private than the contents of a woman's purse." State v. Johnston, 31 Wn.App. 889, 892, 645 P.2d 63 (1982). Thus, a purse is inevitably associated with an expectation of privacy. See United States v. Chadwick, 433 U.S. at 13, 97 S.Ct. at 2484. State v. Kealey, 80 Wn. App. 162, 170, 907 P.2d 319, 324 (1995), as amended on denial of reconsideration (Feb. 26, 1996); State v. Evans, 159 Wn. 2d 402, 409, 150 P.3d 105, 109 (2007).

Here, Ms. St. Pierre-Walsh sought to keep the contents of that case private by locking it and by storing it her purse. Society recognizes her expectation of privacy in the contents of her purse as reasonable. Therefore, the search on Ms. St. Pierre-Walsh's purse was unconstitutional and the evidence seized from it must remain suppressed.

III. CONCLUSION

Given the arguments above, we ask this court to affirm the trial court's ruling.

Submitted this 11th day of July, 2016.

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DECLARATION OF SERVICE

July 11, 16

Court of Appeals Case No. 338339 consolidated with 338347

Case Name: **State of Washington v. Nancy L. St. Pierre-Walsh**

I declare under penalty and perjury of the laws of Washington State that on Monday, July 11, 16, I filed an AMENDED RESPONDENT'S BRIEF with Division Three Court of Appeals and served copies to:

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