

68335-7

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NO. 68335-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TERESA RUSSELL,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Charles R. Snyder, Judge
The Honorable Steven J. Mura, Judge

REPLY BRIEF OF APPELLANT

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 MAR 13 PM 4:44

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A. SUPPLEMENTAL ASSIGNMENTS OF ERROR IN REPLY¹

1. The trial court erred by denying appellant's motion to suppress. CP 150-52.

2. The trial court erred in entering Findings of Fact 7, 8, 9 and 10. CP 151-52.

3. The trial court erred in concluding appellant lacked "standing to contest the search of Helen Kluck's person." CP 152 (Conclusion of Law 2).

4. The trial court erred in concluding appellant lacked standing to contest the search of Kluck because she never possessed the cocaine found on Kluck, after holding there was sufficient evidence appellant possessed the cocaine found on Kluck to deny a pretrial motion to dismiss for a lack of evidence of possession. CP 152 (Conclusion of Law 2); CP 156-57 (Order Denying Knapstead [sic] Motion).

5. The trial court erred in entering Conclusions of Law 3 and 4. CP 152.

¹ In response to the issues raised in the Brief of Appellant, the respondent was permitted to supplement the trial record by filing an "Order Denying Knapstead [sic] Motion" and CrR 3.5 and CrR 3.6 written findings of fact and conclusions of law, all signed by the trial judge who actually heard the motions associated with these documents. Although the newly filed documents are almost identical to the ones they are meant to replace, in light of RAP 10.3(g), appellant provides supplemental assignments of error and supplemental issue statements pertaining to these newly filed documents.

Issues Pertaining to Supplemental Assignments of Error

1. Are several of the findings of fact associated with the trial court's denial of appellant's motion to suppress invalid because they are not substantial evidence from the suppress motion hearing?

2. Did the trial court err in concluding appellant lacked standing to challenge the search of Kluck when it was the drugs discovered on Kluck that were used to charge appellant with possession of cocaine?

3. The trial court denied appellant's pretrial motion to dismiss, finding there was sufficient evidence appellant possessed the drugs found on Kluck. The court then held appellant lacked standing to challenge the search of Kluck because appellant never possessed the drugs found on Kluck. Was the trial court's lack-of-standing ruling erroneous in light of its previous ruling that there was sufficient evidence Appellant possessed drugs to proceed with the prosecution?

B. ARGUMENTS IN REPLY

1. THIS COURT SHOULD ACCEPT THE RESPONDENT'S CONCESSIONS OF ERROR.

The respondent wisely concedes that findings of fact 7, 8, 9, and 10 in the "Findings and Conclusion: Suppression Hearing" order were entered in error because they are not supported by substantial evidence from the suppression hearing. Brief of Respondent (BOR) at 7-13. As

such, this Court should disregard that portion of finding of fact 7 indicating Kluck gave permission to search here purse before Deputy Taddonio took possession of it, and findings 8, 9 and 10 in their entirety.

2. BY RULING RUSSELL LACKED STANDING TO CHALLENGE THE SEARCH OF KLUCK'S PURSE, THE TRIAL COURT DID NOT HAVE TO RULE ON WHETHER KLUCK GAVE CONSTITUTIONALLY VALID CONSENT TO THE SEARCH, AND IT DID NOT DO SO.

The respondent claims that even if the trial court erred in holding Russell lacked standing to challenge the search of Kluck, this Court should affirm because the trial court ruled alternatively, "the search of the purse was not unlawful because Kluck voluntarily consented to the search" BOR at 13 (emphasis added). This claim misrepresents the record. Although the trial court stated Kluck consented to the search, it never concluded the search "was not unlawful". Nor did it have to once it concluded Russell lacked standing. To the extent the trial court made such a ruling, it is dicta. See 1RP 115-19 (trial court's oral ruling denying motion to suppress, in which it never holds the search of Kluck was "not unlawful").

The trial court denied Russell's motion to suppress based on lack of standing. CP 152 (Conclusion of Law 2); 1RP 117. Because, as discussed in the opening brief, this ruling was in error, this Court should reverse

Russell's drug possession conviction, and remand so that the issue of whether the search of Kluck was unlawful can be properly litigated.

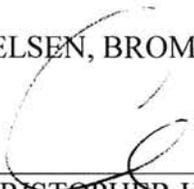
C. CONCLUSION

For the reasons stated here and in the Brief of Appellant, this Court should reverse Russell's drug conviction, and/or remand for resentencing.

DATED this 13th day of March 2013.

Respectfully submitted,

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Respondent,)	
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)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 13TH DAY OF MARCH 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL AND/OR VIA EMAIL.

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SIGNED IN SEATTLE WASHINGTON, THIS 13TH DAY OF MARCH 2013.

x *Patrick Mayovsky*

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