

FILED

JUN 08 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
B:

NO. 29392-1-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

RESPONDENT,

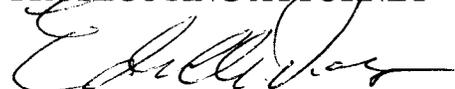
v.

MAYA MICHELLE CAMPBELL,

APPELLANT.

BRIEF OF RESPONDENT

**D. ANGUS LEE
PROSECUTING ATTORNEY**



**By: Edward A. Owens, WSBA #29387
Chief Deputy Prosecuting Attorney
Attorney for Respondent**

**PO BOX 37
EPHRATA WA 98823
(509)754-2011**

FILED

JUN 08 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
B: _____

NO. 29392-1-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

RESPONDENT,

v.

MAYA MICHELLE CAMPBELL,

APPELLANT.

BRIEF OF RESPONDENT

**D. ANGUS LEE
PROSECUTING ATTORNEY**



**By: Edward A. Owens, WSBA #29387
Chief Deputy Prosecuting Attorney
Attorney for Respondent**

**PO BOX 37
EPHRATA WA 98823
(509)754-2011**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii-iii
I. IDENTITY OF RESPONDENT	1
II. RELIEF REQUESTED	1
III. ISSUE.....	1
IV. STATEMENT OF THE CASE	1-5
V. ARGUMENT.....	5-10
VI. CONCLUSION.....	11

TABLE OF AUTHORITIES

Page

STATE CASES

<i>State v. Duncan</i> , 146 Wn.2d 166, 43 P.3d 513 (2002)	5
<i>State v. Fricks</i> , 91 Wn.2d 391, 588 P.2d 1328 (1979).....	8
<i>State v. Flores-Moreno</i> , 72 Wn. App. 733, 866 P.2d 648 (1994)	6
<i>State v. Glaspar</i> , 84 Wn.2d 17, 523 P.2d 937 (1974).....	6
<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994).....	5
<i>State v. Huff</i> , 64 Wn. App. 641, 826 P.2d 698 (1992).....	6
<i>State v. Jackson</i> , 107 Wn. App. 646, 27 P.3d 689 (2001)	9
<i>State v. Johnson</i> , 128 Wn.2d 431, 909 P.2d 293 (1996).....	6
<i>State v. Lund</i> , 70 Wn. App. 437, 853 P.2d 1379 (1993).....	6
<i>State v. Parker</i> , 139 Wn.2d 486, 987 P.2d 73 (1999).....	6, 7, 9
<i>State v. Terrovona</i> , 105 Wn.2d 632, 716 P.2d 295 (1986)	6

FEDERAL CASES

<i>Arkansas v. Sanders</i> , 422 U.S. 753, 61 L.Ed.2d 235, 99 S. Ct. 2586 (1979).....	7
<i>Cardwell v. Lewis</i> , 417 U.S. 583, 41 L.Ed.2d 325 94 S. Ct. 2464 (1974).....	8

TABLE OF AUTHORITIES (continued):

	<u>Page</u>
<i>Chambers v. Maroney</i> , 399 U.S. 42, 26 L.Ed.2d 419, 90 S. Ct. 1975 (1970).....	7
<i>Houghton v. State</i> , 956 P.2d 393 (Wyo. 1998) rev'd, 526 U.S. 295, 119 S. Ct. 1297, 143 L.Ed.2d 408 (1999).....	6, 7
<i>Johnson v. United States</i> , 333 U.S. 10, 92 L.Ed. 436, 68 S. Ct. 367 (1948).....	10
<i>Michigan v. Thomas</i> , 458 U.S. 259, 73 L.Ed.2d 750, 102 S. Ct. 3079 (1982), cert. denied, 483 U.S. 1023 (1987).....	7-8
<i>Segura v. United States</i> , 468 U.S. 796, 82 L.Ed.2d 599, 104 S. Ct. 3380 (1984).....	7
<i>Texas v. White</i> , 423 U.S. 67, 46 L.Ed.2d 209, 96 S. Ct. 304 (1975).....	7
<i>United States v. Doty</i> , 714 F.2d 761 (8 th cir. 1983).....	10
<i>United States v. Rubies</i> , 612 F.2d 397, 404 n.7 (9 th cir. 1979), cert. denied, 446 U.S. 940 (1980).....	10
<i>United States v. Van Leeuwem</i> , 397 U.S. 249, 25 L.Ed.2d 282, 90 S. Ct. 1029 (1970).....	7

OTHER AUTHORITIES

U.S. Const. amend. IV	5
-----------------------------	---

I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Grant County Prosecuting Attorney's Office, is the respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in any hearings, the trial, or conviction of the appellant.

III. ISSUE

The court did not err when it denied the defendant's motion to suppress evidence as the seizure and search of the defendant's purse was not unlawful.

IV. STATEMENT OF THE CASE

On September 9, 2008, a confidential informant notified Officer Sean Cook of the Grand Coulee Police Department that he had arranged to purchase 700 pills of MDMA (ecstasy) from a person by the name of Jeffrey Joseph. (3/4/2009 RP 15). The sale and purchase of the drugs was to occur at a picnic table near a parking lot in Electric City. (Trial Vol. 1, RP 78-79).

On the same date, September 9, 2008, Jeffrey Joseph and J.C. Moses met with the defendant, Maya Campbell, at J.C. Moses' house in Spokane. (Trial Vol. 2, 298-299). At that meeting Maya Campbell brought with her 1,000 hits of MDMA. (Trial Vol. 2, RP 300). J.C.

Moses, Jeffrey Joseph, and Maya Campbell then all drove to Jeffrey Joseph's parents' house in Nespelem, WA. (Trial Vol. 2, RP 303). On the way to Nespelem, Maya Campbell took a bag of ecstasy pills out of her purse and showed them to J.C. Moses. (Trial Vol. 2, RP 303-304).

Later on that same evening, while in Nespelem, Dante Smith drove Mr. Joseph, Billy Drywater, J.C. Moses, and Maya Campbell to the H & H Grocery store in Electric City to do the drug deal. (Trial Vol. 2, RP 309-310; Trial Vol. 1, RP 78-79). They arrived after dark and pulled over near the parking lot of H & H Apartments which are near the H & H grocery store. (Trial Vol. 1, RP 88). Officers had already arrived and were stationed in hidden positions around the picnic table area. Officer Higgs of the Grand Coulee Police Department was on the ground about 10-12 feet from the picnic table. Mr. Joseph left the vehicle and walked to the picnic table and spoke with the informant. (Trial Vol. 3, RP 403). Officer Higgs testified that he overheard parts of the conversation between Mr. Joseph and the informant, stating, "the wind was actually fairly strong that night so I could only hear certain comments here and there." (Trial Vol. 3, RP 403).

Mr. Joseph told the informant the drugs were in the car and he would get them. (Trial Vol. 3, RP 406). He, (Joseph), returned without

the drugs and said his “partner was worried about how the deal was going down.” (Trial Vol. 3, RP 406).

After more discussion, Mr. Joseph left the picnic area and went back to his car again. Officers saw the lights turn on and the vehicle start to move. (Trial Vol. 3, 376). There was no completed sale of drugs. (3/4/2009 RP 27).

Officer Cook radioed Officer Holland to conduct a traffic stop on the car Mr. Joseph was in because Mr. Smith was an unlicensed driver, and Mr. Joseph had told the informant there were drugs in the vehicle. (Trial Vol. 3, RP 378; 3/4/2009 RP 28). The driver and passengers were taken out of the vehicle one by one because officers were aware Mr. Joseph carried guns. (Trial Vol. 2, RP 112). Mr. Smith was arrested for driving without a valid operator’s license. (Trial Vol. 3, RP 386). Mr. Moses was placed in custody based on an outstanding warrant. (Trial Vol. 3, RP 387). Billy Drywater was released at the scene. (Trial Vol. 3, 387). Mr. Joseph was arrested.

At the time of the stop the defendant, Maya Campbell, was sitting in the front passenger seat. (Trial Vol. 3, RP 113). When she was ordered out of the vehicle she did not take anything out of the vehicle with her. Later the defendant requested her purse and was denied access to it. (Trial Vol. 3, RP 117-118). When officers spoke to both the defendant and Mr.

Joseph, the defendant told officers she did not know anything and only wanted to get her purse and leave. (3/4/2009, RP 35). Mr. Joseph told officers there were 700 ecstasy pills in the vehicle, which Mr. Joseph said were his. (3/4/2009, RP 56).

Officer Cook asked permission to search the vehicle and then decided to seek a search warrant instead. (Trial Vol. 3, RP 116). Once the search warrant was served on the vehicle a purse was located on the floorboard of the passenger seat. (Trial Vol. 3, RP 119). Inside the purse were located 700 pills of ecstasy in plastic bags. (Trial Vol. 2, RP 139). The plastic bags were sent to the crime lab to check for fingerprints. (Trial Vol. 3, RP 145). The defendant's prints were found on the inside of the plastic bag found in her purse. (Trial Vol. 3, 235). After the defendant was arrested at the scene of the stop, she was taken to the police department and interviewed. There she admitted the pills were hers. (Trial Vol. 3, RP 40). The defendant was charged by information with one count of possession of a controlled substance and one count of possession with intent to deliver a controlled substance. (CP 1).

In a pretrial 3.5 hearing, the court concluded that the defendant "was free to leave the scene as there was no probable cause to detain her at the point in the investigation." (CP 22). The court also concluded the unlawful detention ended when, after serving the search warrant, officers

found drugs in her purse and arrested her. (CP 22). The defendant brought a motion to suppress the evidence found in her purse. (CP 10-13). At that hearing the court ruled that the officers “were not obligated to give her the purse she asked for.” (CP 26). The motion to suppress was denied. (CP 27). The matter proceeded to trial and the defendant was found guilty on both counts. The defendant was sentenced to a total of sixteen months, with twelve months of community custody. (CP 109). The defendant’s sentence is currently on stay.

V. ARGUMENT

Defendant argues that the court erred in denying the defendant’s motion to suppress evidence claiming there was no probable cause to detain her and thus the search of her purse was unlawful.

When reviewing the denial of a suppression motion, the appellate court determines whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Conclusions of law pertaining to the suppression of evidence are reviewed de novo. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002).

The United States Constitution protects the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U.S. Const. amend. IV. It further prohibits

warrantless searches unless the search is justified under an established exception to the warrant requirement. *State v. Johnson*, 128 Wn.2d 431, 451, 909 P.2d 293 (1996). One such exception is the automobile exception. *State v. Glaspar*, 84 Wn.2d 17, 21-22, 523 P.2d 937 (1974).

In *State v. Terrovona*, 105 Wn.2d 632, 645, 716 P.2d 295 (1986), the Washington Supreme Court held that the police, if they had probable cause to search, may seize a residence for the time reasonable needed to obtain a search warrant. Thereafter, case law extended this right to automobiles. *State v. Flores-Moreno*, 72 Wn. App. 733, 740, 866 P.2d 648 (1994); *State v. Lund*, 70 Wn. App. 437, 448-49, 853 P.2d 1379 (1993); *State v. Huff*, 64 Wn. App. 641, 653, 826 P.2d 698 (1992). That is what took place in this case where the police had probable cause to search and then obtained a search warrant.

To determine whether an item or article in a car belongs to a passenger, thereby protecting it from search, the Washington Supreme Court adopted the “clearly and closely” associated test set forth in *Houghton v. State*, 956 P.2d 363, 370 (Wyo. 1998) rev’d, 526 U.S. 295, 119 S. Ct. 1297, 143 L.Ed.2d 408 (1999) (Stevens, J dissenting); *State v. Parker*, 139 Wn.2d 486, 503, 987 P.2d 73 (1999). In *Houghton*, the Wyoming court held that police officers may assume that all containers in the car may be searched, unless officers know or should have known that

the container is a personal effect of a passenger who is not independently suspected of criminal activity. *Parker*, 139 Wn.2d at 503; *Houghton*, 956 P.2d at 370.

The United States Supreme Court has upheld the warrantless seizure of various kinds of property for the time reasonably necessary to obtain a warrant, provided that the police have probable cause to search. *Arkansas v. Sanders*, 422 U.S. 753, 61 L.Ed.2d 235, 99 S. Ct. 2586 (1979) (luggage); *United States v. Van Leeuwem*, 397 U.S. 249, 25 L.Ed.2d 282, 90 S. Ct. 1029 (1970) (packages in the mail); *Segura v. United States*, 468 U.S. 796, 82 L.Ed.2d 599, 104 S. Ct. 3380 (1984) (plurality opinion) (an apartment may be secured from the inside even absent exigent circumstances); *Segura v. United States*, *supra*, at 824 N.15 (Stevens, J dissenting) (apartment may be secured from the outside, even absent exigent circumstances). With specific regard to cars, it has held that when an officer develops probable cause to believe that a car which he or she has lawfully stopped contains contraband, it is reasonable under the Fourth Amendment to seize and hold the car for “whatever period is necessary” in order to obtain a search warrant. *Chambers v. Maroney*, 399 U.S. 42, 51, 26 L.Ed.2d 419, 90 S. Ct. 1975 (1970); *Texas v. White*, 423 U.S. 67, 46 L.Ed.2d 209, 96 S. Ct. 304 (1975) (per curiam); *Michigan v. Thomas*, 458 U.S. 259, 73 L.Ed.2d 750, 102 S. Ct. 3079 (1982), cert. denied, 483 U.S.

1023 (1987); *see also*, *Cardwell v. Lewis*, 417 U.S. 583, 595, 41 L.Ed.2d 325, 94 S. Ct. 2464 (1974).

Defendant argues that the police had to release the purse that belonged to the defendant because she wanted to leave and wanted to take the purse with her. The facts in this case show that the defendant was a passenger in the vehicle that officers stopped for several reasons; one of those reasons was because the driver of the vehicle, Dante Smith, was known to the police to be suspended and could not legally drive a vehicle. The other reason is that the police had probable cause to believe there were illegal drugs in the vehicle as Officer Higgs had just heard Jeffrey Joseph tell the C.I that “he was going back to the truck to get the ecstasy.” (Trial Vol. 3, 405). Probable cause exists where the facts and circumstances within the arresting officer’s knowledge, and of which there is reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe a crime has been committed. *State v. Fricks*, 91 Wn.2d 391, 588 P.2d 1328 (1979).

When looking at the facts of this case, it is true as the court ruled that at the time of the stop, officers had no probable cause to arrest the defendant. (3/4/2009 RP 57; CP 22) However, the officers had surely obtained a great deal of evidence that there were illegal drugs in the car and thus would not be required to give items in the car back to an owner

especially if they are “independently suspected of criminal activity.” *Parker*, 139 Wn.2d 486 at 503. Containers the police officers know or should know belong to non arrested occupants may not be searched unless there is an independent objective basis to believe the containers hold a weapon or evidence. *State v. Jackson*, 107 Wn. App. 646, 27 P.3d 689 (2001). The evidence in this case showed that the defendant arrived at the scene with four others. She was the front right passenger in that vehicle. (Trial Vol. 3, RP 113) When she was ordered out of the car she left her purse, which was at her feet on the front passenger floorboard sitting underneath some other items. She was not ordered to leave her purse in the car as the defendant attempts to argue. She was told she could not get her purse out of the car later when she asked for it. (Trial Vol. 3, RP 117-118).

The State argues that the officers had obtained probable cause to believe there were drugs in the car as Jeffrey Joseph had told them. (Trial Vol. 3, RP 406). A deal of 100 pills to sell had been agreed upon and the defendant went back to the car to get them. (Trial Vol. 3, RP 406). Prior to going back to the car to get the pills, Officer Higgs overheard Mr. Joseph telling the C.I. that his partner was in the car and nervous how this deal was taking place. Days earlier Officer Cook had heard a female voice in the background of a phone conversation with Jeffrey Joseph. The

female was arguing about the location where the drug deal was going to take place, and he testified that the female voice he heard sounded like the defendant's voice. (3/4/2009 RP 61-62). The defendant was in the vehicle the entire time the drug deal was taking place. The officers were told drugs were in the car and that another person in the car was a partner to the drug deal, but they did not know where in the car the drugs were at.

Instead of searching immediately, Officer Cook chose to seek a warrant, a course of action that the law prefers. *United States v. Rubies*, 612 F.2d 397, 404 n.7 (9th cir. 1979), cert. denied, 446 U.S. 940 (1980); *United States v. Doty*, 714 F.2d 761, 763 (8th cir. 1983); *see also, Johnson v. United States*, 333 U.S. 10, 14, 92 L.Ed. 436, 68 S. Ct. 367, 369 (1948). So that possible evidence would not be destroyed or taken, he seized and held the car not only for the time needed to search, but also for the time needed to obtain a warrant. Thus the defendant's privacy rights were not invaded, but her possessory rights were interfered with for a longer period of time than if Officer Cook had searched immediately without a warrant. The defendant's purse was in that vehicle at the time of the aborted drug deal and immediate stop of the vehicle. There was probable cause to believe that the drugs could have been in her purse, thus the officers had no obligation to release the purse to the defendant until after serving the search warrant that was obtained.

VI. CONCLUSION

Based on the forgoing facts and authorities, along with the facts of this case presented to the court, the State respectfully requests this Court deny the defendant's request to reverse the Court's decision not to suppress the evidence located in the defendant's purse.

Dated this 7th day of June 2011.

Respectfully submitted,

D. ANGUS LEE
PROSECUTING ATTORNEY

By: 
Edward A. Owens – WSBA #29387
Chief Deputy Prosecuting Attorney