

29497-8-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ERIN M. MACKEY, APPELLANT

APPEAL FROM THE SUPERIOR COURT

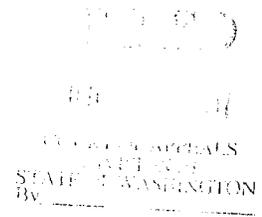
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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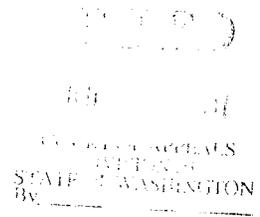
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I.

APPELLANT'S ASSIGNMENTS OF ERROR

- A. The court erred when it failed to suppress evidence from an unconstitutional warrantless search.
- B. The court erred in finding: “The photos do not indicate that the bag is or is not distinctly feminine. (CP 57).
- C. The court erred in finding: Because the items searched were both located in Styer’s bedroom, it was reasonable to assume that they belonged to him or were controlled by him. (CP 38).
- D. The court erred in its conclusion of law: Mackey left the bedroom to meet with law enforcement upon their arrival. Mackey made no attempt to protect the privacy of the purse. *State v. Worth*, 37 Wn. App. 889, 683 P.2d 622 (1984).
- E. The court erred in its conclusion of law: “Based on the evidence they were searching for, namely drugs, it was reasonable to search the bag and purse as these are both common repositories for narcotics.” (CP 38).

II.

ISSUES PRESENTED

- A. DID THE TRIAL COURT ERR IN FINDING THE SEARCH OF THE EFFECTS ON THE PROBATIONER'S SHARED BED TO BE ADMISSIBLE?

III.

STATEMENT OF THE CASE

For the purposes of this appeal, the State accepts the timeline and occurrences contained in the defendant's version of the Statement of the Case.

IV.

ARGUMENT

There is no contest that the officers could search the Styer's residence under their authority as Community Corrections Officers, and under a consent obtained from Mr. Styer. "We are therefore satisfied that it is constitutionally permissible for a probation or parole officer, when reasonable, to search a parolee, his effects, and his home without first obtaining a search warrant." *State v. Simms*, 10 Wn. App. 75, 85, 516 P.2d 1088 (1973). The Washington State Supreme Court echoed this

idea in *State v. Campbell*, 103 Wn.2d 1, 22, 691 P.2d 929 (1984). “The rationale for excepting probationers from the general requirement that a search requires a warrant based on probable cause is that a person judicially sentenced to confinement but released on probation remains in the custody of the law.” *State v. Reichert*, 158 Wn. App. 374, 386, 242 P.3d 44 (2010).

The issues in this case are the actions of the officers in opening a “purse” and satchel found in the middle of the bed shared by Mr. Styer and the defendant. It should be noted that the defendant insists that the container found on the bed was a “purse.” In her brief, the defendant states: “It was a purse, typically associated with a female and, it was in the bedroom...” Brf. of App. 16. An examination of photographs taken of the container show that the item is closer to being a “pack” or “bag.” Exh. P2-P4. The larger container being referred to as a “purse” is a soft-sided bag with wide handles and camouflage print on the outside. The State submits that the “purse” is not immediately identifiable as belonging to a female. There are no tags or other identification on the item. The defendant tries to make a point that the item in question was referred to by various police officers as a “purse” and the item was never something gender neutral, such as a backpack. Apparently, the defendant’s theory is that if you call something a “purse,” often enough, it becomes a “purse”

even if it is not a “purse.” The item is clearly not a backpack. It is not large enough and does not have the harness needed to be carried on the back. Further, the State submits that camouflage patterns on the material from which the bag is manufactured are a typically male related motif, often associated with hunting or combat.

Mr. Styer appeared at the Department of Corrections, admitted to using methamphetamine and tested positive for methamphetamine. RP 4. Mr. Styer also had checks on his person which did not belong to him. RP 4. A search of Mr. Styer did not reveal any methamphetamine or paraphernalia. RP 4. Since the drugs were not on his person, the logical recourse was to search Mr. Styer’s residence for methamphetamine and phony negotiable checks. RP 4.

The defendant did not contest these facts at the hearing. The only defense put forth was that the effects searched belonged to the defendant, not Mr. Styer. The defense position boils down to a single claim: The personal effects searched did not belong to Mr. Styer, so any search of those items was beyond the CCO’s authority. The defense makes an argument that unreasonably limits the scope of a CCO search. To avoid a CCO finding contraband, all a CCO offender need do is put his contraband into a container that looks like it belongs to someone of the opposite gender. Working through the defendant’s arguments, there is no way that

authorities could *ever* search the purse and satchel. It is unlikely that the defendant would want to claim ownership of an item with illegal drugs inside. So, if the defendant says nothing, not even a search warrant would be of assistance as the authorities could not assert to the magistrate who owned the purse and satchel. Apparently, the defense would have these items remain unidentified and unsearched even though everyone agrees that authorities had the ability to search the residence under *Simms*, 10 Wn. App. 75, 85. This is not a logical or workable position.

The trial court did not find the bag to be distinctly feminine in nature. CP 34, 35-38.

There was no defense presented at trial. Prior to trial, the trial court heard a defense motion to suppress based on an alleged violation of the defendant's constitutional rights under Art. 1 § 7. The facts indicate that the "purse¹" and attached black satchel were in the middle of the bed in Mr. Styer's bedroom which was shared with the defendant. At the suppression hearing, the defense presented testimony from a 10-year friend of defendant that one of the officers was "rustling around" on the bed with "Erin's purse." RP 16. There are several problems with this testimony. The fact that the defense witness at the suppression hearing

¹ The State will, from time to time, refer to the "bag" found on the bed as a "purse." This is done so only for the purposes of clarity and it should not be inferred that the State agrees with the designation of "purse" for the camouflage zippered bag.

has been friends with the defendant for 10 years, gives him a motive to prevaricate. The fact that Mr. Lance Shields was hiding in the closet (because he had an outstanding arrest warrant) does little to increase his already questionable credibility. Even taking the witness' testimony at face value, the witness did not see anyone open the purse or the satchel. The witness testified that the items belonged to the defendant. RP 16. There is nothing in the record that indicates that Mr. Shields told police at the time of his arrest that the effects on the bed belonged to the defendant. His relaying of that information at a hearing some months after the search would hardly have been helpful to police at the time of the search.

A canine unit assisted in the search. Ofc. Keith Cler testified that in his experience as a drug dog officer, drugs can be hidden in anything. RP 7. Angel, the drug dog, alerted on the purse. RP 7. On top of the purse was a black bag or satchel in which were found narcotics. Ofc. Cler noticed a note on the nightstand next to the bed. This note read "you had 3 grams with the bag. I took half a tea (teener) out of it to take down the street. I'll be back in 20 minutes." The note was signed "K." RP 11. Ofc. Cler testified that the note was a reference to drugs. RP 12-13.

At the time the officers went into Mr. Styer's bedroom, the purse and the satchel were on the bed. The officers were looking for drugs. The "not obviously feminine" appearance of the satchel, the drug dog alerts

and the handwritten note on the nightstand near the camouflage bag gave officers a “well-founded suspicion” that there might be drugs inside the satchel. The defendant asserts that the purse and satchel belonged to the defendant, not Mr. Styer. There was no sort of label on either the purse or the satchel identifying the owner. It was only after looking into the “purse” that the defendant’s driver’s license was discovered.

The defendant argues that the “purse” was obviously feminine in nature. Because of that, the officers could not look inside. The defense theory is that the officers authority to search did not extend to items belonging to someone other than the probationer, Mr. Styer. Since the defendant shared the bed with Mr. Styer, Mr. Styer had constructive possession over the contents of the purse and satchel. Arguably, the constructive possession aspects gave police the authority to search the “purse” and satchel on the bed under the same authority as the officers had to search anything belonging to the probationer. The police, not knowing to whom the items belonged, opened the “purse” and satchel to look for drug items and phony checks. Both drugs and phony checks could easily fit inside those two containers.

Since the purse and satchel were found on a bed shared by Mr. Styer with the defendant, in the residence of Mr. Styer, the items searched were jointly constructively possessed by Mr. Styer and the defendant. The

reasons for the search (drugs, bad checks) were never contested by the defendant.

The trial court's decisions were logical and based on the evidence from the suppression hearing. There was no error.

V.

CONCLUSION

For the reasons stated, the decisions of the trial court should be affirmed.

Dated this 1st day of June, 2011.

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