

**FILED**

NOV 07 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NOS. 298027 /297381

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

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STATE OF WASHINGTON,

Respondent,

v.

DOROTHY LORRAINE JONES

Appellant.

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

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APPELLANT'S OPENING BRIEF

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(360) 362-2435

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A. ASSIGNMENTS OF ERROR

1. The trial abused its discretion when it denied the motion to suppress evidence.

2. The trial court erred when it concluded Ms. Jones did not have standing to challenge the search of place of employment. (Conclusion of Law No. 1) CP 282-283.

3. The trial court erred when it concluded the magistrate did not abuse its discretion when it issued the warrant to allow police to search Ms. Jones's place of employment. (Conclusion of Law No. 2) CP 282-283.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err when it dismissed Ms. Jones's motion to suppress evidence unconstitutionally seized from her place of employment?

2. Did Ms. Jones have standing to challenge the unconstitutional search?

C. STATEMENT OF THE CASE

Dorothy Lorraine Jones (Ms. Jones) lived at 610 ½ South Edison Street and worked as a home caregiver for a family friend, who lived at 1108 West Entiat Avenue. 2/3/11 RP 629.

Ronald Koehler (Koehler) often visited the house at 1108 West Entiat Avenue whenever he was in town. Over time, he and Ms. Jones became acquaintances. 2/3/11 RP 631. One day, Ms. Jones asked

Koehler for a ride to the bank. Police followed them to the bank and arrested Koehler for outstanding warrants. 2/3/11 RP 638.

Koehler gave Ms. Jones the keys to his 2001 Audi TT Quattro, and asked her to take care of it. 2/3/11 RP 638; 2/1/11 RP 107. Koehler's brother-in-law picked up the car later that evening. 2/3/11 RP 639.

Koehler telephoned Ms. Jones from jail. He wanted her ask Ramon Aguilar (Ramon), a friend, to post his \$800.00 bail. 2/1/11 RP 94; 2/3/11 RP 640. As a favor to Koehler, Ms. Jones asked Ramon and he gave her \$800.00. 2/3/11 RP 640. The next day, she posted Koehler's bail. 2/3/11 RP 638.

A few days later, Koehler appeared at the house. He was crying and seemed really upset. He told Ms. Jones that he and Ramon had a disagreement and that Ramon took the keys to the Audi. He pleaded with Ms. Jones to help get the keys back. 2/3/11 RP 641.

Again as a favor to Koehler, Ms. Jones reasoned with Ramon. She told him that if he gave the keys to Koehler's car to her, she would take responsibility for paying back Koehler's loan. 2/1/11 RP 107; 2/3/11 RP 641-642. Ramon agreed and relinquished the keys to Ms. Jones. Ms. Jones returned the keys to Koehler. She told Koehler that she took responsibility to pay back Ramon, so now Koehler owed her the \$800.00. Koehler swore he would get a loan from a relative to pay back the loan. But he never did. That was the last time Ms. Jones saw him. 2/3/11 RP 642.

A few days later, police arrived at 1108 West Entiat Avenue with a search warrant. Koehler accused Ms. Jones of orchestrating a plot to steal his car as retribution, not for the \$800.00 bail loan, but for some \$2,000.00 worth of drugs. 2/2/11 RP 91-92. According to Koehler, he met Jay Fischer (Jay), a mutual acquaintance, at an abandoned house located at 620 North Everett. 2/1/11 RP 153; 2/2/11 RP 209. As soon as he walked in, Ramon blindsided him with a punch to the side of his face. 2/1/11 RP 94. Another man, Fredrico Pulido (Fredrico), joined in the attack. 2/1/11 RP 95. The house did not have electricity. So, according to Koehler, Jay held a flashlight during the attack. 2/1/11 RP 111; 2/1/11 RP 94; 2/1/11 RP 244.

The men bound Koehler's hands and feet with telephone wire and stabbed him in the stomach with an 18-inch cattle prod. 2/1/11 RP 97. For a full hour and a half, Koehler alleged the men shocked him with the cattle prod and used a nail studded 2x4 to poke his eyes. 2/1/11 RP 95; 2/1/11 RP 120-121.

At some point, Ramon telephoned Ms. Jones and asked what she wanted them to do with him. 2/1/11 RP 98. The next thing Koehler claimed to remember was Ms. Jones standing in front of him demanding that he sign papers so they could obtain his car as repayment. 2/1/11 RP 98. According to Koehler, Ramon had already stripped his pockets and had taken his car keys during the attack. 2/1/11 RP 99. Koehler told police that Ms. Jones forced him to sign his name twice on a blank, lined,

piece of paper. 2/1/11 RP 99; 2/1/11 RP 103. He purposely put blood on the paper for trace evidence. 2/1/11 RP 103.

Koehler told police he eventually escaped from his attackers and ran to a nearby gas station. He telephoned police and was transported to hospital. 2/1/11 RP 97; 2/1/11 RP 109. At hospital, police interviewed Koehler and collected his bloodied clothing for analysis. 2/2/11 RP 313.

Police later found Koehler's car in Pasco. 2/1/11 RP 108. The leather interior was ripped; the exterior was scraped and dented. 2/1/11 RP 109. The key was bent in the ignition. 2/1/11 RP 109. The windshield wipers were ripped off and the vents were pulled out. 2/2/11 RP 228. According to Koehler, everything he owned that was in the car was stolen, namely his wallet, a car key, and a cellular phone. 2/1/11 RP 145. Police did not recover any fingerprints from car. 2/2/11 RP 335.

The next day, police obtained a search warrant for 1108 West Entiat Avenue. 2/2/11 RP 377. A superior court judge telephonically approved the affidavit used to support the warrant. That telephone call was not officially transcribed for trial. 1/27/11 RP 11. However, the officer told the judge he had probable cause to believe Ms. Jones was involved in a robbery and the fruits of that crime, a black wallet with dominion for Ronald Koehler; keys to a 2001 Audi TT Quattro coupe; paper with blood and Koehler's signature; a cattle prod; bloody clothing; and a black pre-paid cell phone would be located at 1108 West Entiat Avenue. 1/27/11 RP 6-7.

When police arrived at 1108 West Entiat Avenue, Ms. Jones was in a bedroom at the west end of the home. She was immediately taken outside and detained. 2/2/11 RP 378-379. Police searched the bedroom and found Ms. Jones's purse. Inside the purse, police discovered two pieces of blank paper that had what appeared to be Ron Koehler's signature on both. 2/2/11 RP 379.

Ms. Jones was arrested and charged with first-degree robbery, theft of a motor vehicle, and obtaining a signature by deception or duress. 2/3/11 RP 645. CP 97-98. Jay and Fredrico were also arrested and charged with the same crimes. 2/2/11 RP 305; 2/1/11 RP 265; CP 72-73; CP 74-75. Police were unable to locate Ramon.

During pre trial motions, Ms. Jones moved the court to suppress the pieces of paper seized from the search at 1108 West Entiat Avenue. She questioned the validity of the search warrant and argued that it lacked probable cause. 1/27/11 RP 8-9. In turn, the State maintained the warrant was indeed valid and disputed Ms. Jones's standing to challenge the search. 1/27/11 RP 11-12.

The court denied the motion to suppress and found the search was reasonable. 1/27/11 RP 21. The court concluded that Ms. Jones lacked standing to challenge the search. The court further concluded that even if Ms. Jones had standing, the judge who issued the search warrant did not abuse his discretion because there was probable cause to believe evidence from the robbery could be at 1108 West Entiat Avenue. CP 282-283.

In addition to the motion to suppress, Ms. Jones moved the court to dismiss the theft of a motor vehicle charge because it violated both State and Federal double jeopardy provisions and to dismiss the obtaining a signature by deception or duress charge because the State did not establish a prima facie case. CP 78-84. The court dismissed the obtaining a signature by deception or duress charge. It found Ms. Jones would have had to force Koehler to sign a written instrument in order to be convicted of the charge. And a blank piece of paper was not a written instrument under the law. 2/3/11 RP 555-556. However, the court found the State presented sufficient evidence for the jury to consider the robbery charge. 2/3/11 RP 557.

A jury found Ms. Jones not guilty of first-degree robbery and guilty of theft of a motor vehicle. CP 260; CP 262. The court sentenced Ms. Jones to 4 months incarceration and imposed a variety of court fees. CP 284-291. This appeal followed. CP 299-308.

D. ARGUMENT

1. EVIDENCE USED TO CONVICT MS. JONES WAS OBTAINED IN VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 7 OF THE WASHINGTON CONSTITUTION.

a. The trial court abused its discretion when it denied the motion to suppress evidence. This Court will review the validity of a search warrant for abuse of discretion, and will give great deference to the issuing magistrate. State v. Jacobs, 121 Wn.App. 669, 676, 89 P.3d 232, review

granted in part, 152 Wn.2d 1036 (2004). Abuse of discretion is shown where a court's decision is manifestly unreasonable, or exercised on untenable grounds or for untenable reasons. Richards v. Overlake Hosp. Med. Ctr., 59 Wn.App. 266, 271, 796 P.2d 737 (1990), review denied, 116 Wn.2d 1014 (1991).

This Court's review of the trial court's decision to deny a motion to suppress evidence based on an invalid search warrant must also include a de novo review of the issuing court's decision to grant the search warrant in the first place. State v. Perrone, 119 Wn.2d 538, 549, 834 P.2d 611 (1992). Any doubts are resolved in favor of the validity of the warrant. State v. Kennedy, 72 Wn.App. 244, 248, 864 P.2d 410 (1993).

i. Washington citizens are afforded fundamental privacy protections under the Fourth Amendment and article I, section 7. The Fourth Amendment is one of the most important components of the right to privacy. It provides to people the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and requires warrants to be based "upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." US Const. amend. IV; 5 Seattle J. for Soc. Just. 373.

This provision was enacted partly in response to the evils of general warrants in England and writs of assistance in the American colonies. See Boyd v. United States, 116 U.S. 616, 626-27, 6 S. Ct. 524,

530, 29 L. Ed. 746, 749-50 (1886); State v. Fields, 85 Wn.2d 126, 128, 530 P.2d 284, 285 (1975) (en banc). Such warrants and writs had provided law enforcement officers virtually unlimited discretion to search whenever, wherever, and whomever they chose. 28 Seattle U. L. Rev. 467. In adopting the Fourth Amendment, the Framers sought to curb the abuses that accompanied these unconstrained licenses to search. Id. citing Chimel v. California, 395 U.S. 752, 760-61, 89 S. Ct. 2034, 2038-39, 23 L. Ed. 2d 685, 692-93 (1969).

Article I, section 7 of the Washington Constitution is a counterpart to the Fourth Amendment. It provides greater protection than its federal counterpart and “ ‘clearly recognizes an individual’s right to privacy with no express limitations.’ ” State v. Winterstein, 167 Wn.2d 620, 631, 220 P.3d 1226 (2009) (quoting State v. White, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982)). It specifically guarantees that “no person shall be disturbed in his private affairs, or his home invaded, without authority of law.” The requisite “authority of law” is generally a warrant. Winterstein, 167 Wn.2d at 628, 220 P.3d 1226.

ii. The search warrant issued for 1108 West Entiat lacked probable cause. It is well-established that the warrant clauses of the Fourth Amendment to the United States Constitution and article I, section 7 of our state constitution require that a search warrant be issued only on a determination of probable cause. State v. Cole, 128 Wn.2d 262, 286, 906

P.2d 925 (1995); State v. Fry, 168 Wn.2d 1, 5–6, 228 P.3d 1 (2010) (citing State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002)).

Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that evidence of a crime will be found at the place to be searched. State v. Jackson, 150 Wn.2d 251, 264-65, 76 P.3d 217 (2003). Accordingly, the police must show a nexus between the criminal activity and the item to be seized and also show 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). Although a magistrate may draw reasonable inferences from specific facts, broad generalizations are insufficient to establish probable cause. Thein, 138 Wn.2d at 148-49.

In State v. Thein, 138 Wn.2d at 148–49, 977 P.2d 582 (1999), our Supreme Court found that material presented to a judge must establish a specific factual basis from which the judge is able to conclude there is a fair probability that evidence of the suspected illegal activity will be discovered at the place searched. Without such a factual basis, the Court concluded the necessary ‘reasonable nexus is not established . . . . Thein, 138 Wn.2d at 147.

In that case, police executed a valid search warrant on a house containing a marijuana grow operation. Thein, 138 Wn.2d at 136, 977 P.2d 582. The search warrant was supported by affidavits containing facts about two controlled marijuana buys performed by an informant that had

taken place at the grow operation house. Thein, 138 Wn.2d at 136, 977 P.2d 582. The informant had also advised police that the suspect living at the house had fallen behind on rent payments and that another person had purchased the house, thereby becoming the suspect's landlord. Thein, 138 Wn.2d at 138, 977 P.2d 582. The informant stated that this landlord supplied the suspect with marijuana. Thein, 138 Wn.2d at 138, 977 P.2d 582.

During the search, police uncovered several copies of money orders from the suspect made out to Stephen Thein bearing the notation "rent." Thein, 138 Wn.2d at 136, 977 P.2d 582. Various persons came to the grow operation house and told the police that a man named "Steve" was the landlord and one of the people who supplied the suspect with marijuana. Thein, 138 Wn.2d at 137-38, 977 P.2d 582. Thein did not reside at the grow operation house. Thein, 138 Wn.2d at 136, 977 P.2d 582. The police also found a box of nails addressed to Thein at his residential address and uncovered boxes of oil filters, one of which was marked "Toyota." Thein, 138 Wn.2d at 137, 977 P.2d 582.

On further investigation, the police learned that the oil filters fit 1994 Toyota pickup trucks. Thein, 138 Wn.2d at 137, 977 P.2d 582. The Washington State Department of Licensing listed Thein as the registered owner of a 1994 Toyota pickup truck. Thein, 138 Wn.2d at 138, 977 P.2d 582. 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 (the manufacture and distribution of marijuana) and Thein's residential address was based on two types of information: (1) particular facts; and (2) stereotypes about the practices of drug dealers. See Thein, 138 Wn.2d at 150, 977 P.2d 582. The particular facts included: (1) the box of nails found at the grow operation house that was addressed to Thein's residential address; and (2) oil filters that matched the make and model of Thein's vehicle. See Thein, 138 Wn.2d at 150, 977 P.2d 582.

Thein moved to suppress the evidence found during the search of his residence. Thein, 138 Wn.2d at 140, 977 P.2d 582. He argued that (1) the affidavits did not establish a sufficient nexus between his residence and the manufacture and distribution of marijuana; and (2) even if the police had probable cause to believe he was involved in a grow operation, "there was no evidence connecting any illegal activity to his ... residence." Thein, 138 Wn.2d at 140, 977 P.2d 582. The trial court denied Thein's motion to suppress, and the Court of Appeals affirmed. Thein, 138 Wn.2d at 140, 977 P.2d 582.

Our Supreme Court reversed the lower courts' decisions and held the affidavits failed to establish the requisite nexus. Thein, 138 Wn.2d at 150, 977 P.2d 582. Characterizing the affidavit's recitation of the box of nails and the oil filter as "innocuous," the Court ruled these items incapable of establishing 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. The Court held that 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 (internal citations omitted).

Like the search warrant issued in Thein, the search warrant issued here did not provide a factual basis from which the judge could conclude evidence from a robbery that reportedly occurred the day before at 620 North Everett Street would be found at 1108 West Entiat Avenue. 2/1/11 RP 83. The officer, who applied for the telephonic warrant, simply told the judge that Ms. Jones worked at 1108 West Entiat Avenue and that she may have been involved in a robbery. 1/27/11 RP 7. Under Thein, that information was not enough to establish probable cause.

In addition, the warrant, itself, lacked a sufficient factual basis. It simply contained boilerplate probable cause language, listed items believed to be taken during the robbery, and described the residence at 1108 West Entiat Avenue.<sup>1</sup> Without a factual basis to prove otherwise, it was unreasonable for the judge to grant a search warrant based on an

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<sup>1</sup> I have designated this exhibit for the Court’s review.

inference that Ms. Jones would bring evidence of a criminal activity to her place of employment.

b. The evidence presented against Ms. Jones was unconstitutionally seized and should have been suppressed. “In instances where a warrant is facially insufficient or an arrest is based on an unconstitutional statute, a constitutional violation clearly exists because of the demonstrable absence of ‘authority of law’ to justify the search or arrest.” State v. Chenoweth, 160 Wn.2d 454, 158 P.3d 595 (2007). Evidence that is the product of those unlawful searches or seizures are not admissible and must be suppressed. State v. Thomas, 91 Wn.App. 195, 201, 955 P.2d 420 (1998); State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999).

Here, the jury acquitted Ms. Jones of first degree robbery, but found her guilty of theft of a motor vehicle. CP 260; CP 262. Had the court properly suppressed the pieces of paper seized during the search at 1108 West Entiat Avenue, it is quite possible the jury would have acquitted Ms. Jones of that crime as well.

2. MS. JONES HAD STANDING TO CHALLENGE THE WARRANT ISSUED TO SEARCH HER PLACE OF EMPLOYMENT.

This Court must review conclusions of law in an order pertaining to suppression of evidence de novo. State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996). Findings of fact must, in turn, support the conclusions of law. State v. Vickers, 148 Wn.2d 91, 108, 116, 59 P.3d 58

(2002). This Court must treat unchallenged findings as verities on appeal. State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003). This Court must also review issues of standing de novo. State v. Magneson, 107 Wn.App. 221, 224, 26 P.3d 986, review denied, 145 Wn.2d 1013, 37 P.3d 291 (2001).

Standing is a “party’s right to make a legal claim or seek judicial enforcement of a duty or right.” Black’s Law Dictionary, at 1442 (8th ed.2004). When a defendant seeks to suppress evidence on privacy grounds and the State contests the defendant’s standing, the defendant has the burden to establish that the search violated his own privacy rights. State v. Cardenas, 146 Wn.2d 400, 404, 47 P.3d 127, 57 P.3d 1156 (2002), cert. denied, 538 U.S. 912, 123 S.Ct. 1495, 155 L.Ed.2d 236 (2003); State v. Jacobs, 101 Wn.App. 80, 87, 2 P.3d 974 (2000).

A claimant who has a legitimate expectation of privacy in the invaded place has standing to claim a privacy violation. Jacobs, 101 Wn.App. at 87, 2 P.3d 974. A two-part inquiry resolves a question of standing: (i) did the claimant manifest a subjective expectation of privacy in the object of the challenged search; and (ii) does society recognize the expectation as reasonable? Jacobs, 101 Wn.App. at 87, 2 P.3d 974.

(i) Ms. Jones manifested a subjective expectation of privacy in the contents of her purse. “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). “What a

person knowingly exposes to the public ... is not a subject of Fourth Amendment protection. But what he {or she} seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.” State v. Kealey, 80 Wn.App. 162, 168, 907 P.2d 319 (1995) (quoting Katz v. United States, 389 U.S. 347, 351-52, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)).

In State v. White, 44 Wn.App. 276, 278-279, 722 P.2d 118, review denied, 107 Wn.2d 1006 (1986), the Court applied the Fourth Amendment when it upheld the search of a cosmetics case found in an arrestee’s coat pocket. The Court, in that case, observed that there is a diminished expectation of privacy in personal possessions closely associated with an arrestee’s clothing but a greater expectation of privacy in items such as purses or luggage. White, 44 Wn.App. at 278-79. In situations where this greater expectation of privacy exists, there must be additional reasons present to warrant the search. White, 44 Wn.App. at 279.

Here, the warrant issued expressly authorized police to search 1108 West Entiat Avenue. There were no additional reasons, like officer safety, that police could assert as a basis to search Ms. Jones’s purse.

(ii) Society recognizes a woman’s expectation of privacy in the contents of her purse as reasonable. “Purses, briefcases, and luggage constitute traditional repositories of personal belongings protected under the Fourth Amendment.” Kealey, 80 Wn.App. at 170 (citing Arkansas v. Sanders, 442 U.S. 753, 762, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979)). The

very purpose of such a purse or pouch is to serve as a repository for personal, private effects when one wishes to carry them. Sanders, 442 U.S. at 762 n. 9.

Under a warrant authorizing a search of premises, a search of the owner's personal effects found on the premises is justified if those personal effects can reasonably be expected to contain the items described in the warrant. State v. Hill, 123 Wn.2d 641, 643, 870 P.2d 313 (1994); State v. Worth, 37 Wn.App. 889, 892, 683 P.2d 622 (1984). A premises search warrant also gives limited permission for law enforcement officials to detain non-owner occupants at the site while they conduct the search. Worth, 37 Wn.App. at 892. But a warrant that authorizes the search of premises "cannot be converted into a general warrant to conduct a personal search of occupants and other individuals found at the site." Worth, 37 Wn.App. at 892.

In State v. Worth, the Court addressed whether police had the right to search a visitor's purse which they found resting against a chair during the search of another's home. 37 Wn.App. at 891. Police searched the visitor's purse twice. During the second search, they found a bundle of cocaine and arrested the visitor. 37 Wn.App. at 891.

The Court held that the search of the visitor's purse was unconstitutional. It noted two determinative factors: (1) Worth's purse was readily recognizable to the officers as a personal effect belonging to her; and (2) she had the purse under her immediate control and sought to

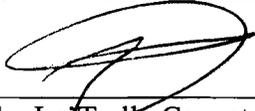
protect it as private, making it an extension of her person. Worth, 37 Wn.App. at 893.

Here, the officers who searched the residence did not have authority to conduct a personal search of Ms. Jones's purse. Like the defendant in Worth, Ms. Jones was not a tenant at 1108 West Entiat Avenue. She was merely a visitor. 2/3/11 RP 629. Furthermore, it was clear Ms. Jones sought to maintain the privacy of her purse because it was under her immediate control in the bedroom. 2/2/11 RP 378-379. Moreover, police recognized that the purse belonged to Ms. Jones. 2/2/11 RP 396. Given that, Ms. Jones had standing to challenge the search.

E. CONCLUSION

For the reasons set forth above, Ms. Jones respectfully asks this Court to reverse her conviction.

Respectfully submitted this 3<sup>rd</sup> day of November, 2011.

  
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