

FILED
10/30/2017 2:33 PM
Court of Appeals
Division III
State of Washington

NO. 34935-7-III

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

STATE OF WASHINGTON,

Respondent,

v.

LAURA TAYLOR,

Appellant.

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

The Honorable Carrie L. Runge, Judge

REPLY BRIEF OF APPELLANT

JENNIFER L. DOBSON
DANA M. NELSON
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

| | Page |
|---|------|
| A. <u>ARGUMENT IN REPLY</u> | 1 |
| THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTIN FOR A FRANKS HEARING..... | 1 |
| B. <u>CONCLUSION</u> | 4 |

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Franks v. Delaware

438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978)..... 1, 3

A. ARGUMENT IN REPLY

THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTIN FOR A FRANKS¹ HEARING.

In her opening brief, appellant Laura Taylor asserts that she made a substantial preliminary showing that the affidavit presented in support of a search warrant recklessly omitted the material fact that an officer had already inspected to some degree the purse and bags to be searched and found no evidence of drugs, burglary tools, or stolen property. Brief of Appellant (BOA) 7-14. In response, the State claims: Taylor failed to provide any corroboration for her assertion an officer had searched the bags; the omitted fact was immaterial; and the affidavit was sufficient even if the disputed information were added. As shown below, the State's arguments are not compelling.

First, the State wrongly claims that there was no evidence corroborating Taylor's assertion that an officer searched the purse and the zipper pouch inside (where the drugs were ultimately found) at the scene. Indeed, the State itself provided this

¹ Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

corroboration. In the "State's Memorandum in Response to Defendant's Motion for Frank's Hearing" (State's Memo), the prosecutor states that an officer was expected to testify that, while Taylor was detained and handcuffed, the officer inspected the purse for weapons and looked inside the zipper pouch for Taylor's identification. CP 88. The prosecutor also expected the officer to testify that she did not see any drugs or burglary tools when she looked into both those bags. CP 88. Thus, the officer herself was expected to corroborate the fact that she examined the bag and the zipper pouch and found no drugs or burglary tools before a request for the search warrant was processed.

Next, the State claims that the fact that an officer inspected the bag and the zipper pouch to some extent and found no drugs, stolen property, or burglary tools was not material to a determination of probable cause for a warrant to search the bags again. BOR at 7-8. Again, however, the State's own briefing below undercuts this claim. In discussing the question of materiality, the State claimed: "If [the officer] had seen drugs in the purse, that information would have been included in the search warrant in the first place." CP 88. This is because the prosecutor recognized that a search that resulted in finding incriminating evidence would

logically tend to prove the existence of probable cause. However, one cannot ignore the flip side of this. The fact that the officer inspected the purse and did not see any incriminating evidence was equally relevant as it logically tended to disprove the existence of probable cause. Thus, this fact was material to the issue before the magistrate.

Finally, the State claims the warrant still would have been issued if the omitted material were added. BOR at 8. In support, it lists several facts that it believes are unchanged by this additional information. However, one fact the State emphasizes is that the purse was in the trailer and “was believed to contain dominion[,] smaller stolen property and burglary tools.” BOR at 8 (citing CP 17). The fact that an officer looked in the purse and did not see these things, not only would have undermined the legitimacy of this belief, but likely would have negated the finding of probable cause altogether.

For the reasons stated above and those in the opening brief, this Court should find that Taylor made the necessary preliminary showing to merit a Franks hearing. As such, the trial court erred in denying her this opportunity to fully challenge the search warrant, and the conviction should be reversed.

B. CONCLUSION

For reasons stated herein and in appellant's opening brief, appellant asks this Court to reverse Taylor's conviction.

DATED this 30th day of October, 2017.

Respectfully submitted,

NIELSEN BROMAN & KOCH, PLLC.



JENNIFER L. DOBSON, WSBA 30487
DANA M. NELSON, WSBA No. 28239

Office ID No. 91051

Attorneys for Appellant

NIELSEN, BROMAN & KOCH P.L.L.C.

October 30, 2017 - 2:33 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 34935-7
Appellate Court Case Title: State of Washington v. Laura Jean Taylor
Superior Court Case Number: 16-1-00119-3

The following documents have been uploaded:

- 349357_Briefs_20171030143133D3836411_0143.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was RBOA 34935-7-III.pdf

A copy of the uploaded files will be sent to:

- andy.miller@co.benton.wa.us
- diana.ruff@co.benton.wa.us
- dobsonlaw@comcast.net
- nielsene@nwattorney.net
- prosecuting@co.benton.wa.us

Comments:

copy mailed to: Laura Taylor 720 Shockley Rd Richland, WA 99352

Sender Name: John Sloane - Email: Sloanej@nwattorney.net

Filing on Behalf of: Dana M Nelson - Email: nelsond@nwattorney.net (Alternate Email:)

Address:
1908 E. Madison Street
Seattle, WA, 98122
Phone: (206) 623-2373

Note: The Filing Id is 20171030143133D3836411