

No. 34935-7-III

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

THE STATE OF WASHINGTON,

Respondent

v.

LAURA JEAN TAYLOR,

Appellant

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

NO. 16-1-00119-3

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The trial court did not err when it denied the defendant's motion for a *Franks* hearing.
- B. The defendant did not provide citation to authority or reference to the relevant portions of the record to support her assignment of error as to the Findings of Fact and Conclusions of Law pursuant to RAP 10.3(a)(6).

II. STATEMENT OF FACTS

The defendant, Laura Taylor, was found guilty of one count of Unlawful Possession of a Controlled Substance. 2RP¹ at 178. On August 27, 2015, the defendant was helping a friend, Sheena LePage, move as LePage had recently been evicted from her trailer. 2RP at 24, 44-45. That same day, police showed up at the trailer to arrest LePage on a warrant for her arrest. 2RP at 131. A few days after the arrest of LePage, the defendant returned to the trailer with an SUV and was seen by a neighbor removing property from the trailer. 2RP at 53. The trailer was under the control of the trailer park manager and people were not allowed to be there without permission, as LePage had been evicted and a writ of restitution had been entered. 2RP at 44-45. A neighbor called the manager to let her

¹ Unless otherwise indicated, the verbatim report of proceedings volumes are referenced as follows: 1RP – October 5, 2016; and 2RP – November 7, 2016, November 8, 2016, and November 16, 2016.

know that people were over at LePage's trailer and were removing things from the trailer. 2RP at 46. The manager of the property then called the police to report a trespassing and possible burglary. 2RP at 45-46. Four police officers responded to the call and found two females at the residence, one being the defendant and the other being a woman who was determined to have no connection to the property or any activities there. 2RP at 55, 57. The defendant had been taking personal items and stripping the fixtures from the trailer and placing them in the SUV that was backed up next to the house. 2RP at 53-54, 56, 59. Officers observed in plain view a breaker box and shower fixtures that had come from the trailer in the defendant's SUV. CP 17; 2RP at 57, 76-77. The defendant was asked for her identification, to which she responded that her identification was in her purse. 2RP at 58. The defendant then stated that her purse was inside the trailer. 2RP at 58. It is disputed as to whether the defendant consented for her identification or the purse to be retrieved from inside the residence. 1RP at 10; 2RP at 56, 86, 96. An officer went inside to look for the purse and found a large, black purse. 2RP at 84, 86. After retrieving the purse, one of the officers present went through the purse looking for the defendant's identification. 2RP at 86-87. The defendant was subsequently arrested, and on her person officers found screws, washers, and a wrench. 2RP at 59-60. Due to the officers' belief that there was probable cause for

a search of the SUV and the defendant's black purse, Officer Paulsen then applied for a search warrant. 2RP at 60-62. Within the large black purse was a smaller black purse and a black pouch. 2RP at 65.

The defendant claimed at the time of her motion for a *Franks* hearing that only the smaller black purse was hers. CP 10. The search warrant for the purse specifically was to obtain evidence of the crime of possession of stolen property and indicated that officers were looking for "shower fixtures, electrical box, doors, household fixtures to include metal fixtures and fittings, sink, sink fixtures, electrical wiring and burglary tools." CP 14, 18. After the warrant was issued and the search of the purse commenced, what appeared to be methamphetamine was found in the black pouch that was inside of the large black purse. 2RP at 69. Officers again called a judge to amend the search warrant to include narcotics. 2RP at 68. After obtaining that search warrant for narcotics, officers seized a Ziploc-style baggie with a white crystal substance inside it, a digital scale, and a glass vial with white powder residue from the black pouch, which was inside of the large black purse from inside the residence. 2RP at 69-71.

The defendant made a motion for a *Franks* hearing, disputing the facts in the affidavit of the search warrant as follows: disputing that she gave consent for the retrieval of her purse from inside the trailer; alleging

that the affidavit did not disclose that one of the officers possibly looked through the purse before the search warrant was requested; and disputing that she stated that she was planning on recycling the breaker box. CP 9-10; 1RP at 5-6. The defendant's motion was denied by the trial court because the court found that none of the disputed facts were material to the issuance of the search warrant. 1RP at 13-15. At trial, the defendant was found guilty of one count of Unlawful Possession of a Controlled Substance. 2RP at 178. The defendant now appeals her conviction.

III. ARGUMENT

A. The trial court did not err when it denied defendant's motion for a *Franks* hearing.

The Fourth Amendment to the United States Constitution and article 1, section 7 of the Washington State Constitution require probable cause to support a search warrant. U.S. Const. amend. IV; Wash. Const. art. I, § 7. In order to obtain a search warrant, there must be an affidavit as provided in RCW 9A.72.085. *State v. Chenoweth*, 160 Wn.2d 454, 465, 158 P.3d 595 (2007). There is a presumption of validity in regards to the search warrant affidavit. *Franks v. Delaware*, 438 U.S. 154, 171, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). The challenger's attack of the affidavit must be more than conclusory. *Id.* A warrant may be invalidated if a defendant establishes factual inaccuracies or omissions to the affidavit that

are made with deliberate falsehood or made in a reckless disregard of the truth, and are material to the probable cause of the warrant. *Id.* at 154-56. If both requirements are met, then the inaccuracies will be removed from the warrant affidavit, or the omissions will be added to it, and if there is still enough content in the affidavit to support a finding of probable cause, then no *Franks* hearing is required. *Id.* at 172.

The denial of a *Franks* hearing is reviewed for abuse of discretion. *State v. Wolken*, 103 Wn.2d 823, 829-30, 700 P.2d 319 (1985). Upon review, courts give great deference to the ruling of a judge on the validity of the warrant and the determination that there was probable cause. *Chenoweth*, 160 Wn.2d at 477. It has been historically accepted that an independent judge provides constitutionally adequate protection from negligent or inadvertent errors regarding the probable cause behind a warrant. *Id.* at 472.

In *State v. Atchley*, the defendant argued that there were material omissions and misrepresentations made by a police officer in the search warrant affidavit for the search of his home. *State v. Atchley*, 142 Wn. App. 147, 153, 173 P.3d 323 (2007). The officer involved had gone to the defendant's home previously and observed what "appeared to be" the root balls of marijuana plants, large quantities of potting soil dispersed around the home, and potting soil in the backyard. *Id.* at 153. The officer stated

that a gate was partially open which enabled him to look into the backyard and see all of the potting soil. *Id.* Based on these observations, the officer returned with a search warrant. *Id.* The defendant was charged with one count of manufacturing a controlled substance and one count of possession of a controlled substance with intent to deliver. *Id.* The defendant tried to suppress the evidence against him and claimed that the root balls of the marijuana plants would not have been visible, and that he had not left his gate open. *Id.* at 158. Photographs were offered in support of these claims. *Id.* The trial court viewed the evidence offered and held that there was nothing on the face of the photographs that would indicate that the officer lied. *Id.* The defendant also claimed the officer omitted material facts from the affidavit of his search warrant, such as information that no criminal background check had been completed on the defendant, that certain information came from an informant, or that the officer had no corroborating evidence that the defendant sold marijuana as the informant claimed. *Id.* at 159. The *Atchley* court found that the defendant failed to show that any of this was done intentionally or with a reckless disregard for the truth. *Atchley*, 142 Wn. App. at 164. The information that had been provided was sufficient on its own for establishing probable cause. *Id.*

Similar to *Atchley*, the defendant here offered no substantial showing of evidence corroborating that the omissions or inaccuracies to

the warrant, as she saw them, were reckless or intentional. The defendant merely averred under oath that she agreed with her attorney with regard to the three points of inaccuracies identified for purposes of the *Franks* motion. The defendant essentially only offered a self-serving affidavit that she disagreed with three separate points in the affidavit, with no other corroborating evidence. A self-serving affidavit with no corroborating evidence is not a substantial showing. *State v. Casal*, 103 Wn.2d 812, 815, 699 P.2d 1234 (1985). Also, the defendant must prove that any omission alleged was made with reckless disregard for the truth. *State v. Garrison*, 118 Wn.2d 870, 873, 827 P.2d 1388 (1992). The defendant failed to establish this at the time of her hearing.

The three points raised by the defendant – whether there was permission to retrieve the purse, that an officer made a cursory search of the purse before the search warrant application was made, and who was going to recycle the breaker box – were not material to whether there was probable cause for a search warrant of the purse for items relating to the crime of possession of stolen property. As the trial judge noted in his findings, the defendant’s permission to retrieve the purse is immaterial as to whether there was sufficient evidence to support probable cause that the purse contained items of evidentiary value for the crime of possession of stolen property. 1RP at 13. The same holds for whether an officer had

previously kicked the purse around and looked in it briefly, and who was going to recycle a breaker box found in plain view in a vehicle associated with the defendant; it simply is not material to the question of probable cause to support a warrant to search a particular place for a particular thing. 1RP at 13.

Regardless, even if the disputed points in the search warrant application were to be removed or added to the affidavit as the defendant wishes, there would still be probable cause for the warrant. If the issuing magistrate had been told that the defendant wanted the purse to remain inside the trailer, that an officer looked through the purse briefly to find identification for the defendant, and that someone else was going to recycle the breaker box, it does not change the following pertinent facts: that there were items clearly belonging to the trailer inside the back of the SUV (breaker box and shower fixture); that the defendant identified the purse as hers; that she had burglary tools and items from inside the trailer on her person at the time of her arrest; and that the purse had been inside the trailer and was believed to contain “dominion[,] smaller stolen property and burglary tools.” CP 17. With just those basic facts, a search warrant for the SUV and the purse is supported by probable cause to believe that evidence of the crime of possession of stolen property will be found in the SUV and purse.

Therefore, the defendant failed to meet the threshold required for a *Franks* hearing and as such, the trial court did not abuse its discretion in the denial of a *Franks* hearing.

B. The defendant did not provide citations to the record or authority of law to support her second assignment of error.

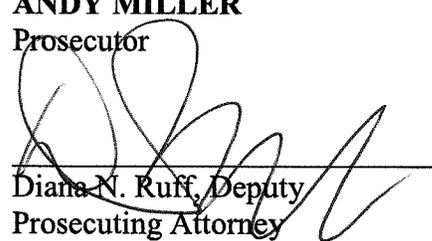
The State declines to respond to the defendant's second assignment of error because there were no citations to the record or to any legal authority to support such error, and the State sees no obvious error to which the defendant is referring in her second assignment. RAP 10.3(a)(6). The State asks the Court to uphold the Findings of Fact and Conclusions of Law as entered by the trial court on March 13, 2017. CP 82-84.

IV. CONCLUSION

Based on the foregoing reasoning and authorities, the defendant's appeal should be denied.

RESPECTFULLY SUBMITTED this 13th day of October, 2017.

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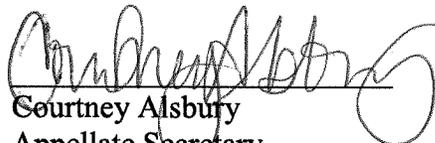
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I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Courtney Alsbury
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

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