SUPREME COURT NO. 95911-1

NO. 34935-7-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LAURA GENE TAYLOR,

Petitioner.

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

The Honorable Carrie L. Runge, Judge

PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

A. IDENTITY OF PETITIONER 1

B. COURT OF APPEALS DECISION 1

C. ISSUE PRESENTED FOR REVIEW 1

D. GROUNDS FOR REVIEW 1

E. RELEVANT FACTS 2

F. ARGUMENT IN SUPPORT OF REVIEW 6

THIS CASE RAISES AN IMPORTANT CONSTITUTIONAL QUESTION AS TO WHAT FACTS OFFICERS MUST REVEAL WHEN SEEKING A WARRANT TO SEARCH MULTIPLE PURSES WHEN THE SUSPECT ONLY CLAIMS OWNERSHIP OF ONE OF THE PURSES 6

G. CONCLUSION 11

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Chenoweth
160 Wn.2d 454, 158 P.3d 595 (2007) 7

State v. Eisele
9 Wn. App. 174, 511 P.2d 1368 (1973) 7

State v. Garrison
118 Wn.2d 870, 827 P.2d 1388 (1992). 7

State v. Gersvold
66 Wn. 2d 900, 406 P.2d 318 (1965) 8

State v. Jackson
150 Wn.2d 251, 76 P.3d 217 (2003) 7, 8

State v. Martines
184 Wn.2d 83, 355 P.3d 1111 (2015) 6

State v. Ollivier
178 Wn.2d 813, 312 P.3d 1 (2013) 6, 7

FEDERAL CASES

Franks v. Delaware
438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).... 4, 5, 6, 7, 10

Marron v. United States
275 U.S. 192, 48 S.Ct. 74, 72 L.Ed. 231 (1927) 7

RULES, STATUTES AND OTHER AUTHORITIES

RAP 13.4 1

U.S. Const. Amend. IV 1, 6

Const. Art. I, § 7 ..... 1, 6

A. IDENTITY OF PETITIONER

Petitioner Laura Taylor, the appellant below, asks this Court to review the decision referred to in Section B.

B. COURT OF APPEALS DECISION

Taylor asks this Court to review the decision of the Court of Appeals Division Three in State v. Taylor, which was filed on April 24, 2018.[1]

C. ISSUE PRESENTED FOR REVIEW

When attempting to procure a search warrant for a purse, is it a material omission for the affiant to withhold information that it seeks to search multiple purses, only one of which the suspect claims ownership?

D. GROUNDS FOR REVIEW

Review should be granted under RAP 13.4(b)(3) because – as explained below – this case raises a significant question of law under both the Fourth Amendment to the United States Constitution and article 1, section 7 of the Washington Constitution.

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[1] A copy of the opinion is attached as an Appendix.

E. RELEVANT FACTS

Sheena Marie LePaige was Laura Taylor's friend. 2RP 56, 132. LePaige had lived at the Santiago Sunset Estates mobile home park in Kennewick, Washington for a few years before she was evicted in April 2015. 2RP 21-24, 44. A neighbor noticed LePaige appeared to have gotten into drugs over the years, and she carried around various purses that she often hugged to her chest in a protective way. 2RP 41-42.

On August 27, 2015, the park manager gave LePaige's uncle permission to enter the trailer to retrieve LePaige's personal items. 2RP 45. LePaige and Taylor showed up to get these items. 2RP 132. While LePaige was there, someone called police and directed them to the location, informing police that LePaige had a warrant out for her arrest. 2FP 131. When Office Joshua Sullivan arrived, he found LePaige and Taylor present. 2RP 131. Taylor was outside the trailer, and she shouted to LePaige to come out of the residence. 2RP 132. Le Paige exited, and Officer Sullivan arrested her on the outstanding warrant. 2RP 132. Upon LePaige's arrest, Taylor agreed to collect LePaige's property. 2RP 132.

A few days later, Taylor returned to the residence with a silver Durango truck to remove LePaige's property. 2RP 53; CP 16. The property manager called police to report a trespass or burglary. 2RP 46, 52. Officers arrived and found Taylor moving things out of the residence. 2RP 54. Taylor was handcuffed. 2RP 55. Inside the residence, officers observed a large black purse that contained a smaller purse and a black zipper pouch. RP 84, 86. Outside, officers observed Taylor's truck filled with various personal items, fixtures, and a breaker box. 2RP 56, 84. Taylor told police she was helping a friend and she believed she had permission to take the items. 2RP 56; CP 16.

Officers searched Taylor's pockets and found an Allen wrench, screws, and washers. 2RP 59. When officers asked Taylor for identification, she said it was in her purse which was in the truck, but then she recalled it might be in the house. 2RP 96. When officers asked if they could retrieve the purse to obtain her identification, Taylor said, "I prefer you didn't." CP 9; 1RP 6. Despite this, the purses were retrieved. 2RP 86.

Taylor informed officers that the larger purse and its contents were not hers. 2RP 87, 91; CP 10. The smaller purse that was inside the big black purse was Taylor's purse, and that was where

officers found her identification. 2RP 87, 88, 91. Rather than leaving it at that, however, Officer Shirrel Veitenheimer set the large purse on the ground and kicked at it so she could inspect its contents. CP 10; 1RP 6. She also took out the zipper pouch that was in the larger purse, unzipped it, and looked inside. CP10; 1RP 6.

Eventually, Taylor was booked for possessing stolen property. CP 17. Meanwhile, officers sought a search warrant to search the truck and Taylor's purse. CP 14-19. However, the affiant failed to inform the judge that officers had taken possession of multiple purses – only one of which Taylor claimed was hers. CP 14-19. Instead, he implied that there was only one purse, which was Taylor's. CP 15-19. Upon a search, officers discovered methamphetamine inside the zipper pouch which was in the larger bag. 2RP 68. Taylor was charged with one count of unlawful possession of a controlled substance and one count of possession of stolen property. CP 1-3.

Prior to trial, Taylor moved for a Franks[2] hearing. CP 9-19. She pointed to four misrepresentations or omissions of material facts that were made with intentional or reckless disregard for the

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

truth. CP 9-12. She alleged, among other things, that the affiant omitted the fact that there was more than one black purse and Taylor only claimed ownership of the small black purse. CP 9-10. Counsel asserted that this and other errors went to the credibility of officer and that the officers were just trying to cover up the mistake of a warrantless search by getting an after-the-fact search warrant based on an inaccurate and incomplete account of the facts. CP 10-12; 1RP 4-5.

In response, the prosecutor argued that none of the omitted or contested facts were material to a finding of probable cause. 1RP 8-10. The trial court agreed and denied Taylor's motion. CP 82-84.

On appeal, Taylor asserted the trial court erred in denying appellant's motion for a Franks hearing. Brief of Appellant (BOA) 7-14. She explained that the affiant's failure to inform the judge that there were multiple purses found, only one of which Taylor claimed to be her own, was a material factual omission made in reckless disregard of the truth. BOA at 11-13. She explained this was material to the question of whether there was probable cause to search the larger bag and zipper pouch and a necessary fact for the trial court to properly determine the scope of the search. BOA

12-13. Taylor argued this was a sufficient preliminary showing to support a Franks hearing. BOA 13-14.

The Court of Appeals disagreed. It suggested that the warrant was only issued to search "Taylor's purse located in the mobile home" not the large purse and its contents (i.e. the zipper pouch). Appendix A at 3. It then concluded the fact that there was a large purse "did not relate to the question of whether authority should be granted to search Ms. Taylor's purse." Id. Thus, it found the omitted facts were not material under Franks, and it affirmed. Id.

F. ARGUMENT IN SUPPORT OF REVIEW

THIS CASE RAISES AN IMPORTANT CONSTITUTIONAL QUESTION AS TO WHAT FACTS OFFICERS MUST REVEAL WHEN SEEKING A WARRANT TO SEARCH MULTIPLE PURSES WHEN THE SUSPECT ONLY CLAIMS OWNERSHIP OF ONE OF THE PURSES.

Both the Fourth Amendment to the United States Constitution and article 1, section 7 of the Washington Constitution require probable cause to support the issuance of a search warrant. State v. Martines, 184 Wn.2d 83, 90, 355 P.3d 1111 (2015) (Fourth Amendment); State v. Ollivier, 178 Wn.2d 813, 846, 312 P.3d 1 (2013) (article 1, section 7). "Probable cause exists when the affidavit in support of the search warrant 'sets forth facts and

circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime may be found at a certain location.'" Ollivier, 178 Wn.2d at 846–47 (quoting State v. Jackson, 150 Wn.2d 251, 264, 76 P.3d 217 (2003)). The Fourth Amendment requires that a search warrant must particularly describe the place, person, or things to be searched. State v. Eisele, 9 Wn. App. 174, 511 P.2d 1368 (1973); Marron v. United States, 275 U.S. 192, 48 S.Ct. 74, 72 L.Ed. 231 (1927).

Factual inaccuracies or omissions in a warrant affidavit may invalidate the warrant if the defendant establishes that they are (1) material and (2) made in reckless disregard of the truth. Franks v. Delaware, 438 U.S. 154-56, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978); State v. Chenoweth, 160 Wn.2d 454, 478–77, 158 P.3d 595 (2007). If the defendant makes a substantial preliminary showing of a misstatement of facts or omission that is intentional or reckless and is material to the question of probable cause, then the court must hold a Franks hearing. Ollivier, 178 Wn.2d at 847; State v. Garrison, 118 Wn.2d 870, 872, 827 P.2d 1388 (1992).

The issue presented in this case goes to the question of materiality. Evidence is said to be material "when it logically tends

to prove or disprove a fact in issue." State v. Gersvold, 66 Wn. 2d 900, 902–03, 406 P.2d 318, 320 (1965). Materiality is judged not only on what the evidence shows but also from whatever inferences may sensibly be drawn therefrom. Id.

Facts are material to a probable cause determination if these facts are sufficient to establish a reasonable inference that evidence may be found at a specific location at the time the search is conducted. Jackson, 150 Wn.2d at 264. Thus, officers need to include material facts that support probable cause when seeking a warrant. The question presented in this case is whether the flip side is also true. Are facts that support a reasonable inference that evidence will not be found in a location also material to a proper determination of probable cause. In other words, may officers cherry pick which facts to reveal and which to omit based on their own assessment of inferences, or must they unambiguously provide the judge with all the material facts known to them and allow the judge to decide which inferences to draw?

Here, officers were suspiciously vague in the warrant request when it came to identifying the purses police sought to search. Officers knew that Taylor only claimed ownership of the smaller purse that was in the large purse. They also knew the

larger purse contained a separate zipper pouch that was not in the purse Taylor claimed as her own. These facts were never clearly conveyed to the judge. Instead, the affiant glossed over the fact there were multiple purses and bags, instead referring to the purses collectively as: "a black purse" (CP 16), "the black purse" (CP 16), "her [Taylor's] purse" (CP 17), and finally "the large black purse" (CP 17). Not once is it made clear that there are multiple purses. Not once is it explained that Taylor disavowed ownership of the large black purse. Instead, the affiant misled the judge into thinking that Taylor's was the only purse as he went on to claim it was "necessary to gain access to the large purse and its contents to locate dominion, smaller stolen property and burglary tools." CP 17. The judge found probable cause based on this vagueness, and police not only searched Taylor's purse but also the large black purse and its contents (which included the zipper pouch).[3] CP 18.

The fact that there were multiple purses and the fact Taylor disavowed ownership of the large purse were material to a determination of probable cause and to the proper scope of the

[3] That Court of Appeals' decision rests upon its conclusion that the search warrant only authorized a search of Taylor's purse, not the larger bag. However, that is not how the search warrant was interpreted by police who conducted a search of all bags. 2RP 65. Indeed, that is how they found the drugs in the zipper pouch which was not in Taylor's purse. 2RP 69.

warrant. However, in denying Taylor's motion for a Franks hearing, the trial court was not bothered by the fact that the affiant recklessly omitted this information and appears to have misled the judge to believe there was only one purse, and it belonged to Taylor. The Court of Appeals likewise appears unphased by these omissions.

The rulings issued below demonstrate a strong need for this Court's guidance in this important area of the law. It is crucial that police provide judges with all material facts – not just those favorable to furthering their investigation – when they seek to search multiple purses or containers. Only in this way will judges be able to fairly weigh the facts when deciding whether to issue search warrants and when determining the proper scope of a warrant. Without guidance from this Court, police may continue to obtain warrants to search multiple containers or purses without the judge ever knowing there was more than one container or purse at issue. This limits the ability of the judiciary to fulfill its crucial role of checking unwarranted and excessive police intrusion into the private affairs of Washington citizens. For these reasons, Taylor requests this Court grant review.

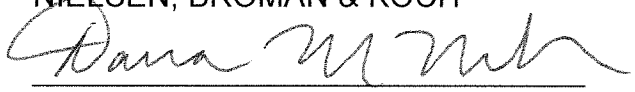
G. CONCLUSION

For the reasons stated above, petitioner respectfully asks this Court to grant review.

DATED this 23rd day of May, 2018.

Respectfully submitted

NIELSEN, BROMAN & KOCH



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

STATE OF WASINGTON, Respondent, v. LAURA JEAN TAYLOR, Appellant.	)	No. 34935-7-III UNPUBLISHED OPINION

KORSMO, J. — Laura Taylor appeals her conviction for possession of a controlled substance, methamphetamine, arguing that the trial court erred in failing to grant her a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). Because the trial court correctly determined that neither of the challenged omissions were material, we affirm.

At issue is methamphetamine discovered in Ms. Taylor's purse pursuant to a search warrant issued to look for stolen property that might be found in the purse.[1] In limited circumstances, the information contained in or omitted from a search warrant can be challenged. *Id.* at 155-156. When information was deliberately or recklessly excluded

[1] Ms. Taylor also was charged with one count of third degree possession of stolen property. The jury was unable to return a verdict on that count and it is not at issue in this appeal.

from an affidavit, a court is to add the information to the warrant and determine if probable cause still exists. *Id.* at 171-172. If there is still probable cause, the motion will be denied.[2] *Id.* at 172. If there no longer is probable cause, then the challenger is entitled to a hearing to attempt to establish the contention that the information was known to police and required to be included in the affidavit. *Id.*

We review a trial court's decision to deny a *Franks* hearing for abuse of discretion. *State v. Wolken*, 103 Wn.2d 823, 829, 700 P.2d 319 (1985). A search warrant is presumed valid. *State v. Chenoweth*, 160 Wn.2d 454, 477, 158 P.3d 595 (2007). The decision to issue a warrant is a discretionary action and, thus, doubts are resolved in favor of the warrant. *Id.*; *State v. Vickers*, 148 Wn.2d 91, 108-109, 59 P.3d 58 (2002).

The search warrant issued here for a purse belonging to Ms. Taylor that had been discovered inside a larger purse that (allegedly) did not belong to her. The officer checking for Ms. Taylor's purse had discovered the smaller purse inside the larger bag, but that information was not included in the search warrant, nor was the fact that no stolen property or weapons were observed in either purse during pre-warrant search. Ms. Taylor contends these were both important pieces of information for the issuing magistrate to consider.

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[2] The same approach applies to false information that was deliberately or recklessly included in the affidavit—delete the information and determine if probable cause still exists. *Franks*, 438 U.S. at 171-172.

The trial court, however, determined the matters were not material in the *Franks* meaning of the term. We agree. Even if the omitted facts had been included, probable cause still existed to search the purse. Indeed, Ms. Taylor does not argue to the contrary. The search warrant explained how she was contacted outside a mobile home from which fixtures and other property had illegally been removed and told officers that her purse was inside the residence. The warrant authorized police to search her purse and her vehicle to recover items that might have been removed from the home.[3]

Adding in language describing that Ms. Taylor's purse allegedly was within someone else's purse does not alter the determination of probable cause related to her purse. The warrant specifically requested authority to search Ms. Taylor's purse located in the mobile home. It specifically limited police to that container. Identifying that there was a second bag might have been useful in determining whether the other bag should be searched or not, but the police only requested authority to search Ms. Taylor's purse, not the larger bag. The information did not relate to the question of whether authority should be granted to search Ms. Taylor's purse. It was not material under *Franks*.

[3] The affidavit also reported that when booked into the jail, items found in Ms. Taylor's pockets included an Allen wrench, screws, and washers. She told the officer that the items had come from the mobile home.

Similarly, the fact that officers searched the purse without reporting discovery of any stolen property was not material to the question of whether probable cause existed. Even if a clearer statement of the initial purse search was included in the affidavit,[4] probable cause still existed to search the purse. Ms. Taylor was caught at the scene; efforts had been made to remove fixtures from the home; she had a tool for unfastening items as well as fasteners she had removed from the house. It was reasonable to believe that more such items might be found in the purse. Explicitly adding that a search for identification had not uncovered any stolen property simply did not eliminate probable cause to search the purse.[5]

The trial court correctly concluded that the alleged omissions were not material under *Franks*. There was no abuse of discretion by denying the request for a hearing.

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[4] Whether this information was omitted from the affidavit is a questionable assertion. The affidavit in support of the search warrant does report that an officer removed Ms. Taylor's purse from the mobile home and obtained her identification from the purse. Clerk's Papers at 16. From that statement, a magistrate could (1) infer that the officer did search the purse to some degree and, (2) since the officer did not report recovering any stolen property, the magistrate also could infer that none was observed.

[5] Details concerning the scope of the search were not provided, so we have no information how thoroughly the purse was searched.

The conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Lawrence-Berrey, C.J.

Siddoway, J.

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

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