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NO. 41213-6-II

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

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STATE OF WASHINGTON,

Respondent,

v.

SUSAN K. LOHR,

Appellant.

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

The Honorable Nelson Hunt, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant assigns error to the trial courts suppression findings of fact 1.16.
2. Appellant assigns error to the trial courts suppression findings of fact 1.17.
3. Appellant assigns error to the trial courts suppression findings of fact 1.18.
4. Appellant assigns error to the trial courts suppression conclusions 2.2.
5. Appellant assigns error to the trial courts suppression conclusions 2.3.
6. Appellant assigns error to the trial courts suppression conclusions 2.4.
7. Appellant assigns error the court's order denying suppression.
8. Appellant's constitutional rights to privacy and to be free from unreasonable searches was violated by police search of appellant's purse where the search warrant was for the premises.

Issues Presented on Appeal

1. The trial court erred by denying suppression of illegally obtained contraband.
2. The state violated Ms. Lohr's state and federal constitutional rights by illegally searching her purse after she had been released from a crime scene as a non-suspect.

B. STATEMENT OF THE CASE

Susan K. Lohr was charged and convicted by stipulated trial of illegal possession of a controlled substance. CP 1-3, 23-25, 40-42, 46-54. Following a suppression hearing, the trial court denied the motion to suppress the illegally obtained contraband. CP 23-25. Ms. Lohr files this timely appeal. CP 55-64.

C. ARGUMENT

1. THE STATE VIOLATED APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL PRIVACY RIGHTS AND RIGHTS TO BE FREE FROM UNREASONABLE SEARCHES WHEN POLICE SEARCHED APPELLANT'S PURSE INCIDENT TO A SEARCH WARRANT FOR THE PREMISES TO WHICH APPELLANT WAS AN OVERNIGHT GUEST.....2

The issue here is whether the police had the authority to search Ms.

Lohr's purse after she was told that she was free to leave. Ms. Lohr was an overnight guest and not named or suspected of being involved in the search warrant. After Ms. Lohr was told that she was free to leave, she asked for her purse and clothing which were in a pile on the floor next to her. RP 6, 10, 11, 12 (July 21, 2010).

Officer Clary gave Ms. Lohr her pants and boots, but when he picked up her purse he looked inside and then dumped out its contents and discovered two loaded needles. RP 6, 20-21. (July 21, 2010). On direct examination the officer indicated that he wanted to make sure that the purse was Ms. Lohr's even though he could see her identification card inside the open purse. RP 7, 8 (July 21, 2010). On cross examination the officer added that after he squeezed the purse and knew that it did not contain weapons, he needed to nonetheless check for weapons. RP 13-14. The officer admitted that if he had not seen the identification card in the purse he would have believed that it was Ms. Lohr's and given it to her. RP 14. The purse was so intimately connected with Ms. Lohr that the search of the purse constituted a search of her person.

It is well settled that article I, section 7 of the Washington Constitution provides greater protection to individual privacy rights than the

Fourth Amendment. E.g. State v. Hendrickson, 129 Wn.2d 61, 69 n. 1, 917 P.2d 563 (1996); State v. Stroud, 106 Wn.2d 144, 148, 720 P.2d 436 (1986); State v. Williams, 102 Wn.2d 733, 741-42, 689 P.2d 1065 (1984). Article I, section 7 provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” This provision is violated when the State unreasonably intrudes upon a person's private affairs. State v. Boland, 115 Wn.2d 571, 577, 800 P.2d 1112 (1990); State v. Myrick, 102 Wn.2d 506, 510, 688 P.2d 151 (1984).

The Fourth Amendment guarantees that before a search of an individual's person or effects can be commenced, a magistrate must make a prior determination that probable cause exists for the search. Moreover, 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); CrR 2.3(c); Marron v. United States, 275 U.S. 192, 48 S.Ct. 74, 72 L.Ed. 231 (1927).

It is also well-settled that a warrant authorizing a search of the premises justifies a search of personal effects of the owner found therein which are plausible repositories for the objects specified in the warrant. State v. Worth, 37 Wn.App. 889, 893, 683 P.2d 622 (1984); State v. White, 13

Wn.App. 949, 538 P.2d 860 (1975); 2 W. LaFave, Search and Seizure § 4.10 (1978). However, a specific warrant to search premises cannot be converted into a general warrant to conduct a personal search of occupants and other individuals found at the site. Tacoma v. Mundell, 6 Wn.App. 673, 495 P.2d 682 (1972). Michigan v. Summers, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981), clearly establishes that a premises warrant merely gives law enforcement officials permission to detain occupants while they conduct the search.

A premises warrant does not confer authority upon an officer to search the individuals found at the premises. State v. Broadnax, 98 Wn.2d 289, 301, 654 P.2d 96 (1982), citing, Tacoma v. Mundell, 6 Wn. App. 673, 495 P.2d 682, 315 (1972). Furthermore, generally officers have no authority under a premises warrant to search personal effects an individual is wearing or holding. See State v. Worth, 37 Wn. App. at 889.

State v. Worth is on point and controls the outcome of this case. In Worth, Worth lived with Folkert and the warrant authorized the search of Folkert's house. Worth, 37 Wn. App. At 892. The Court held that the fact that Worth lived with Folkert did not give the police the authority to search Worth's purse and violated her Fourth Amendment rights. The warrant only

authorized the search of Folkert's house and Folkert's person. Incident to the search warrant, the police were only authorized to detain Worth while they searched the house. Worth, 37 Wn. App. At 892-893.

In holding the search of Worth's purse unconstitutional, the Court noted that two factors were determinative: (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.

In Ms. Lohr's case, a similar analysis of the first Worth factor indicates that after Clary opened the purse and looked inside, he clearly recognized the purse to be Lohr's because he saw her identification and Ms. Lohr claimed ownership of the purse. Analysis of the second factor similarly demonstrates that Ms. Lohr sought to keep her purse private. Ms. Lohr had the purse in the same room with her on a pile with her pants and boots within reach of where she had been sleeping and once released to leave, she identified the purse and asked for return of all of her belongings.

In Ms. Lohr's case, she had a more tenuous connection to the house than Worth, because Ms. Lohr was only an overnight guest rather than a resident. In Ms. Lohr's case as in Worth, her purse was close to her person,

within reaching distance, piled together with her boots and pants, which the officer conceded he believed to be Ms. Lohr's. RP 12, 18. These facts like those in Worth establish that the purse was a personal effect Ms. Lohr wished to keep private.

The Court in Worth citing State v. Halverson, 21 Wn.App. 35, 584 P.2d 408 (1978), noted that a search of a purse for weapons is not permissible unless the person is "engaged in suspicious activities." Worth, 37 Wn.App. at 892-893. In Worth, there was no evidence that Worth was behaving suspiciously and, "it was apparent to officers conducting the search that Worth's purse was not just another household item which police could search by virtue of their warrant to search the premises of Folkert's house." Id. Worth's purse was on the floor leaning against the chair on which she was seated, thus it "was clear that she owned the purse and sought to maintain its privacy. It was an extension of her person. There was no circumstance which gave the police the license to embark on a more extensive search of Worth's person." Id.

In Ms. Lohr's case as in Worth, the warrant did not authorize a search of the occupants of the house or of Ms. Lohr specifically. CP 23-25. Moreover, Ms. Lohr was not engaged in any suspicious activity therefore the

police did not have permission to search her purse for weapons. Worth, 37 Wn.App. at 892-893. As in Worth, it was clear that Ms. Lohr owned the purse. The officer conceded that had he not seen an identification card he would have given the purse to Ms. Lohr believing it to be hers. RP 14.

The officer did not have the right to search Ms. Lohr's purse under any circumstances present in this case. Rather, the search violated Ms. Lohr's Fourth Amendment rights. The remedy is remand suppression of the contraband obtained in the illegal search. Worth, 37 Wn.App. at 893.

In State v. Hill 123 Wn.2d 641, 870 P.2d 313(1994, a case legally and factually distinguishable from this case, the Court issued a limited opinion under the particulars of that case, which held that "[w]here an item is not clearly connected with an individual, and there is no notice to the police that the individual is a visitor to the premises, there are no grounds on which the defendant may claim that officers are forbidden to search that item pursuant to a premises warrant." Hill, 1234 Wn.2d at 648.

In Ms. Lohr's case unlike in Hill, officer Clary who illegally searched Ms. Lohr's purse knew that Ms. Lohr was free to leave and did not live at the residence. RP 6, 10. In Hill, the police did not know that Hill did not live at the residence. Moreover, in Hill the defendant was discovered sleeping in a

bedroom and the sweatpants the police searched were located on the floor and could have belonged to either Hill who was standing naked near the bed or to the barely clothed woman who was sitting on the bed. In Lohr's case, her purse was with her clothing in a pile and officer Clary believed the purse and clothing to be Ms. Lohr's. Also, unlike in Hill, the police knew that Ms. Lohr did not live at the house and the purse was clearly connected to Ms. Lohr.

A trial court's decision on a suppression motion is reviewed for an abuse of discretion. State v. Wittenbarger, 124 Wn.2d 467, 490, 880 P.2d 517 (1994) (holding trial court abused its discretion in suppressing evidence). 'A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds.' State v. C.J., 148 Wn.2d 672, 686, 63 P.3d 765 (2003); State v. Atsbeha, 142 Wn.2d 904, 913-14, 16 P.3d 626 (2001). If the trial court enters findings of fact and conclusions of law in accordance with CrR 3.6, the appellate court considers whether substantial evidence supports any challenged findings of fact and whether the findings support the trial court's conclusions of law. State v. Hill, 123 Wn.2d 641, 644-47, 870 P.2d 313 (1994).

Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth

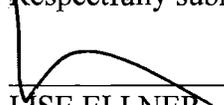
of the finding, State v. Halstien, 122 Wn.2d 109, 129, 857 P.2d 270 (1993). In Ms. Lohr's case, as in Worth, and distinguishable from Hill, the evidence presented here was insufficient to support the challenged findings of fact and the valid findings did not support the trial court's conclusions of law denying suppression. In short, the trial court's reliance on Hill to justify the challenged conclusions of law must be reversed.

D. CONCLUSION

Ms. Lohr respectfully requests this Court reverse her conviction and reverse the order denying suppression of the illegally obtained contraband and remand for a new trial.

DATED this 20th day of November 2010

Respectfully submitted,

  
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I, Lise Ellner, a person over the age of 18 years of age, served Lewis County Prosecutor's Office Appeals Department, Lori Smith Law & Justice Center, 4th Floor 345 West Main Street, Second Floor Chehalis, WA 98532 and Susan Lohr 2413 N. Pearl St. Centralia, WA 98531. Service was made on November 20, 2010 by depositing in the mails of the United States of America, properly stamped and addressed to Ms. Lohr and electronically to the prosecutor.