

No. 41213-6-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

Vs.

**SUSAN KAY LOHR,**

Appellant.

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COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON  
BY SIB  
DEPUTY

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Brief**

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## I. ISSUES

- A. Was Lohr's right to privacy violated when police searched Lohr's purse while executing a search warrant at the house she was visiting?
- B. Did the trial court error when it denied Lohr's motion to suppress the controlled substance found in her purse?

## II. STATEMENT OF THE CASE

On December 30, 2009 the Centralia Police Department executed a search warrant on the residence and property located at 2314 North Pearl Street in Centralia, Washington. CP 5. The police were searching for evidence of controlled substances at the property. CP 5. Officer Clary was one of the Centralia Police officers present on the scene as the search warrant was being executed. 2RP 5<sup>1</sup>, CP 5. Officer Clary was serving as security while another team of officers made entry into the buildings. 2RP 5. After entry was made Officer Clary entered the residence for security as there were multiple people still inside the residence. 2RP 5. Lohr was one of the people who were present in the residence. 2RP 5-6. Officer Clary was informed by another officer that Lohr could leave the premises. 2RP 6. Lohr asked to take her

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<sup>1</sup> There are three verbatim report of the proceedings transcribed for the record in this case. The report of proceedings will be cited as follows throughout the State's response brief: 1RP - February 17, 2010 and September 9, 2010 motion hearings; 2RP – July 21, 2010 Suppression Hearing and August 12, 2010 hearing; 3RP – September 15, 2010 Stipulated Facts Trial and Sentencing.

belongings with her. 2 RP 6. Lohr first asked Officer Clary for her boots and then her pants. 2 RP 6. The items Lohr requested were on or beside a chair approximately seven to eight feet away from Lohr. 2RP 6. Officer Clary gave Lohr the boots and pants. 2RP 6-7. There was a purse sitting with the boots and pants and Officer Clary picked it up and asked Lohr if it belonged to her and Lohr stated it did. 2RP 7. The purse was open. 2RP 7. Prior to handing the purse to Lohr, Officer Clary looked inside and saw an identification card or a license and he pulled it out to determine if the purse did actually belong to Lohr. 2RP 7. The identification did belong to Lohr. 2RP 7. Officer Clary also looked inside the purse to ensure there were not any weapons inside of it. 2RP 13. Officer Clary also saw inside the purse, with the license were multiple hypodermic needles. 2RP 7. Officer Clary saw that two of the needles appeared to be loaded with drugs. 2RP 7.

### **III. ARGUMENT**

#### **A. LOHR'S PRIVACY RIGHTS WERE NOT VIOLATED WHEN THE OFFICER SEARCHED LOHR'S PURSE WHILE EXECUTING A SEARCH WARRANT AT THE RESIDENCE SHE WAS VISITING.**

The Fourth Amendment to the United States Constitution declares that people have a right to not have government

unreasonably intrude on one's private affairs. Probable cause is required and must be established prior to the government obtaining a warrant to search. U.S. Const. amend. 4. The Washington State Constitution protects the privacy rights of the citizens of Washington State. Const. art. I, § 7. It is well established that Article 1, Section 7 "is explicitly broader than that of the Fourth Amendment as it 'clearly recognizes an individual's right to privacy with no express limitations' and places a greater emphasis on privacy." *State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833, 838 (1999).

A warrant that authorizes the search of a residence justifies a search of the owner's personal effects found on the premises, if they are plausible repositories for the objects specified by the warrant. *State v. Worth*, 37 Wn. App. 889, 892, 683 P.2d 622 (1984), *citing State v. White*, 13 Wn. App. 949, 538 P.2d 860 (1975). A premises search warrant also gives law enforcement officers permission to detain non-owner occupants of the premises at the site while law enforcement officers conduct the search. *State v. Worth*, 37 Wn. App. at 892, *citing State v. Broadnax*, 98 Wn.2d 289, 654 P.2d 96 (1982).

During a search of a residence under a premise warrant, law

enforcement officers may search the personal effects of the owner of the residence. *State v. Worth*, 37 Wn. App. at 892. A premise warrant does not allow the law enforcement officer to search the non-owner individuals, guests, found at the residence. *State v. Broadnax*, 98 Wn.2d at 301. This prohibition of searching guests has been found to apply to what these individuals are wearing or holding. *State v. Worth*, 37 Wn. App. at 889.

The court in *Worth* found that the search of the defendant's purse was unconstitutional for two reasons: 1) the purse was readily recognizable as belonging to her; and 2) the purse was in the defendant's immediate control. *Id.* at 893. Following the *Worth* ruling, the supreme court later found that a search of sweatpants found approximately 6 feet away from the defendant were not in his immediate control and therefore were part of the premises to be searched. *State v. Hill*, 123 Wn.2d 641, 643-644, 870 P.2d 313 (1994). The case turned on the fact that the sweatpants were not intimately connected to the defendant and therefore not an extension of the defendant's person and could be searched. *State v. Hill*, 123 Wn.2d at 644. While the court in *Hill* did state that it was not addressing whether under these facts it would be permissible under a premises warrant for an officer to search a visitor's

belongings, the analysis in *Hill* should be extended to include visitor's belongings. *Id.* at 648. If an item belonging to a visitor is not intimately connected to that person, the police are not going to definitively know whether the item belongs to the visitor or a resident of the premises being searched.

Lohr's purse was not immediately recognizable as belonging to her. 2RP 13-14. Lohr had not requested the purse, she asked for her boots and a pair of pants. 2RP 6-7, 11-13. Officer Clary picked up the purse that was sitting near the pants and boots and asked Lohr if the purse belonged to her. 2RP 7, 13. If the purse was immediately recognizable as belonging to Lohr, Officer Clary would not have needed to ask Lohr if the purse belonged to her. The purse was also not in Lohr's immediate control, it was sitting on the floor by a chair. 2RP 6-7, 11. Under Lohr's analysis, a visitor could demand any personal item, stating it belonged to them, and police would not be able to look inside the item to verify ownership. A person would be able to claim a tote bag, knapsack, backpack, purse or any other receptacle that was near other personal effects, regardless of whether it belonged to that person, just by staking a claim to the item. The analysis in *Hill* should be extended to include items that may or may not belong to visitor when the item is

not immediately recognizable as belonging to the visitor and not within the visitor's immediate control. The contraband found in Lohr's purse was discovered when the officer looked into the purse to determine ownership which is permissible under the law and therefore Lohr's privacy rights were not violated.

**B. THE TRIAL COURT MADE THE CORRECT RULING WHEN IT DENIED LOHR'S MOTION TO SUPPRESS THE EVIDENCE FOUND INSIDE THE PURSE.**

Findings of fact entered by a trial court after a suppression motion will only be reviewed by the appellate court if the appellant has assigned error to the fact. *State v. Hill*, 123 Wn.2d 647. "Where there is substantial evidence in the record supporting the challenged facts, those facts will be binding on appeal." *Id.* There is substantial evidence when the "evidence is sufficient to persuade a fair-minded person of the truth of the finding," *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008). The appellate court defers to the fact finder regarding the credibility of witnesses and the weight to be given reasonable but competing inferences. *State ex rel. Lige v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992), *review denied* 120 Wn.2d 1008 (1992). Findings of fact not assigned error are considered verities on appeal. *State v.*

*Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). A trial court's conclusions of law are reviewed de novo, with deference to the trial court on issues of weight and credibility. *State v. Sadler*, 147 Wn. App. at 123.

Lohr assigns error to the trial court's findings of fact 1.16, 1.17 and 1.18 from the suppression hearing. Brief of Appellant 1. There is substantial evidence in the record supporting that the purse was not immediately recognizable as belonging to Lohr. Officer Clary inquired if the purse belonged to Lohr, therefore it was not immediately recognizable as belonging to Lohr. 2RP 7, 13-14, CP 24. Officer Clary looked inside the open purse to ensure Lohr was the owner and there was no weapon inside. 2RP 7, 13, CP 24. Inside the purse Officer Clary discovered several syringes and Lohr's identification card. 2RP 7. CP 24. While there was testimony by Lohr contradicting some of Officer Clary's testimony, the trial court in its findings of fact clearly found Officer Clary's testimony more credible. There is substantial evidence to support the trial court's findings in the suppression hearings findings of fact 1.16, 1.17 and 1.18. CP 24.

There is substantial evidence to support the findings of fact from the suppression hearing Lohr is assigning error to. Therefore,

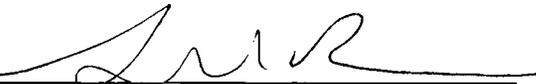
the trial court conclusions of law in 2.2, 2.3 and 2.4 from the suppression hearing are supported and the trial court properly denied Lohr's motion to suppress the evidence located in Lohr's purse.

**IV. CONCLUSION**

For the foregoing reasons, this court should affirm Lohr's conviction for possession of methamphetamine.

RESPECTFULLY submitted this 28<sup>th</sup> day of January, 2011.

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by:   
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DECLARATION OF  
MAILING

STATE OF WASHINGTON  
BY Sherri Heilman  
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COURT OF APPEALS  
DIVISION II

Ms. Sherri Heilman, paralegal for Sara I. Beigh, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On January 28, 2011, the appellant was served with a copy of the **Respondent's Brief** by depositing same in the United States Mail, postage pre-paid, to the attorney for Appellant at the name and address indicated below:

LISE ELLNER  
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P.O. BOX 2711  
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DATED this 28<sup>th</sup> day of January, 2011, at Chehalis, Washington.

Sherri Heilman  
Sherri Heilman, Paralegal  
Lewis County Prosecuting Attorney Office