

FILED
JUL 05 2011
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 293921

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

MAYA MICHELLE CAMPBELL, Appellant

APPEAL FROM THE SUPERIOR COURT
OF GRANT COUNTY

THE HONORABLE JOHN ANTOSZ
THE HONORABLE EVAN SPERLINE

REPLY BRIEF

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TABLE OF CONTENTS

I. Summary of Reply.....	1
II. Argument.....	1
III. Conclusion	4

TABLE OF AUTHORITIES

Washington Cases

State v. Eserjose, ---P.3d ----, 2011 WL 2571350 (2011) 3

State v. Larson, 93 Wn.2d 638, 611 P.2d 771 (1980) 3

State v. Parker, 139 Wn.2d 486, 987 P.2d 73 (1999), 2

State v. Worth, 37 Wn. App. 889, 683 P.2d 622 (1984)..... 3

I. SUMMARY OF REPLY

Officers had no reason to independently suspect Ms. Campbell of criminal activity when they ordered her out of the vehicle and told her to leave her purse inside the car. She was unlawfully detained and evidence obtained as a result of that detention should have been suppressed by the trial court.

II. ARGUMENT

The Court Erred In Denying Ms. Campbell's Motion To Suppress Evidence Because There Was No Probable Cause To Detain Her And The Search Of Her Purse Was Unlawful.

In its response brief, the State has incorrectly stated that Ms. Campbell was not ordered by law enforcement officers to leave her purse in the car. (Br. of Resp. at 9). In fact, as she got out of the car she was directed to leave her purse in the vehicle. (Trial Vol.3 RP 393). She was then handcuffed and told to get on the ground on her knees. (Trial Vol. 2 RP 115).

The State argues that the United States Supreme Court has upheld a "warrantless seizure of various kinds of property for the time reasonably necessary to obtain a warrant, provided that the police have probable cause to search". (Br. of Resp. at 7).

And citing *State v. Parker*, 139 Wn.2d 486, 987 P.2d 73 (1999), "...police officers may assume that all containers in the car may be searched, unless officers know or should have known that the container *is a personal effect of a passenger who is not independently suspected of criminal activity.*" (Br. of Resp. at 7). (emphasis added). In *Parker*, the question was whether the belongings of a *non-arrested* passenger were subject to a search incident to the arrest of the driver. *Parker*, 139 Wn.2d at 498.

Here, officers targeted Mr. Joseph and believed evidence of drugs could be found in the car. Further, when questioned at the scene, Mr. Joseph told officers the drugs belonged to Dante Smith. (3/4/2009 RP 56). There was cause to arrest Mr. Smith for driving without a valid license, (Trial Vol. 3 RP 386); cause to arrest Mr. Moses based on an outstanding warrant, (Trial Vol. 3 RP 387), and cause to arrest Mr. Joseph. Billy Drywater, also a passenger in the vehicle, was released at the scene because officers had no probable cause to detain him.

The State asserts that because Ms. Campbell was in the vehicle, and an officer later testified that he thought he had heard her voice in the background during a cell phone call several weeks earlier, that she was somehow independently suspected of criminal

activity. (Br. of Resp. 6-9). This is in direct contradiction to the court's ruling that she was unlawfully detained. (CP 22).

The trial court held there was no probable cause to detain Ms. Campbell, that is, she was not independently suspected of criminal activity. (CP 22; 3/4/2009 RP 57). The Fourth Amendment protection protects "readily recognizable personal effects...which an individual has under his control and seeks to preserve as private." *State v. Worth*, 37 Wn. App. 889, 893, 683 P.2d 622 (1984). The warrantless seizure of her handbag was not supported by probable cause any more than the warrantless seizure of her person.

Under the Fourth Amendment, all fruits of an illegal seizure must be suppressed. *State v. Larson*, 93 Wn.2d 638, 645-646, 611 P.2d 771 (1980). As the Washington Supreme Court recently held, "the exclusionary rule applies equally to evidence derived *during* an illegal search [or seizure]," and "evidence *derived from* an illegal search [or seizure] under the fruit of the poisonous tree doctrine." *State v. Eserjose*, ---P.3d ---, *10, 2011 WL 2571350 (2011). (emphasis and ellipsis in original). Detaining Ms. Campbell and her purse without probable cause violated her privacy rights. The

trial court erred in denying the motion to suppress evidence seized from Ms. Campbell's purse.

III. CONCLUSION

For the reasons stated herein and in Ms. Campbell's opening brief, this Court should remand to the trial court, reversing the denial of the motion to suppress evidence obtained from Ms. Campbell's purse and dismissing all charges with prejudice.

Dated this 5th day of July, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Appellant Maya Campbell, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Reply Brief of Appellant was sent by first class mail, postage prepaid on July 5, 2011, to Maya Campbell, PO Box 1971, Omak, WA 98841; and Edward A. Owens, Grant County Prosecutor's Office, PO Box 37, Ephrata, WA 98823.



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