

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

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

- A. The court erred when it made Conclusion of Law 3.5:
“Law enforcement not obligated to give the defendant’s purse to her when she requested it before the search warrant was served.” CP 26.
- B. The court erred when it made Conclusion of Law 3.6:
“The search of the defendant’s purse was lawful.” (CP 27).
- C. The court erred in denying Ms. Campbell’s motion to suppress evidence. (CP 27).

ISSUES RELATED TO ASSIGNMENT OF ERROR

- 1. After concluding in a 3.5 hearing, that the defendant was unlawfully detained because there was no probable cause to detain her, did it err when it then later also concluded the search of her purse was lawful?
- 2. Did the court err in denying Ms. Campbell’s motion to suppress where the evidence used against her was obtained as a result of an unlawful seizure?

II. STATEMENT OF FACTS

The Grand Coulee Police Department worked with a confidential informant to target Jeffrey Joseph, a suspected seller of narcotics.

On September 9, 2008, the informant notified Officer Sean Cook that he had arranged to purchase 700 MDMA (Ecstasy) pills from Mr. Joseph. (3/4/2009 RP 15). The sale and purchase of the drugs was to occur at a picnic table near a parking lot in Electric City. (Trial Vol. 1 RP 78-79).

That evening, Dante Smith drove Mr. Joseph, Billy Drywater, J.C. Moses, and Maya Campbell to Electric City. (Trial Vol. 2 RP 309-310). They arrived after dark and pulled over near the parking lot. (Trial Vol. 1 RP 88). Officers were stationed in hidden positions around the picnic table area. Officer Higgs of the Grand Coulee police department was on the ground about 10-12 feet from the picnic table. Mr. Joseph left the vehicle, walked to the picnic table and spoke with the informant. (Trial Vol. 1 RP 89). Officer Higgs overheard parts of the conversation between Mr. Joseph and the informant, stating, "The wind was actually fairly strong that night so I could only hear certain comments here and there. (Trial Vol. 3 RP 403).

Mr. Joseph told the informant the drugs were in the car and he would get them. (Trial Vol. 3 RP 405). He went back to his car. (Trial Vol. 2 RP 105). He returned without the drugs and said his "partner was worried about how the deal was going down." (Trial

Vol. 3 RP 406). Neither Mr. Joseph nor the informant ever mentioned Ms. Campbell's name during the drug purchase negotiation. (3/4/2009 RP 26-27).

After more discussion, Mr. Joseph left the picnic table area and went back to his car again. Officers saw the lights turn on and the vehicle start to move. (Trial Vol. 3 RP 376). There was no sale of drugs. (3/4/2009 RP 27).

Officer Cook radioed Officer Holland to conduct a traffic stop on the car because Mr. Smith was an unlicensed driver, and Mr. Joseph had told the informant there were drugs in the vehicle. (Trial Vol. 3 RP 378; 3/4/2009 RP 28). The driver and passengers were taken out one by one because officers were aware Mr. Joseph carried guns. (Trial Vol. 2 RP 112). Mr. Smith was arrested for driving without a valid operator's license. (Trial Vol. 3 RP 386). Mr. Moses was placed in custody based on an outstanding warrant. (Trial Vol. 3 RP 387). Billy Drywater was released at the scene. (Trial Vol. 3 P 387). Mr. Joseph was arrested.

Ms. Campbell got out of the vehicle and officers directed her to leave her purse in the car. (Trial Vol. 3 RP 393). She was handcuffed and told to get on the ground on her knees. (Trial Vol.

2 RP 115). When Officers spoke with both Ms. Campbell and Mr. Joseph, Ms. Campbell told officers said she did not know anything and only wanted to get her purse and leave. (3/4/2009 RP 35). Mr. Joseph told officers there were 700 Ecstasy pills, which belonged to Mr. Smith, in the vehicle. (3/4/2009 RP 56).

Officer Cook asked permission to search the vehicle and then decided to seek a search warrant. (Trial Vol. 2 RP 116). Ms. Campbell was detained for the two hours it took for Officer Cook to procure the search warrant. (3/18/2009 RP 80). Officer Cook later explained her detention:

“Two weeks prior, a week or two prior, actually I could remember hearing her in the background, because her and Mr. Joseph were having a little squabble, she couldn't bring -- they couldn't bring it down, and that was the one where they kept moving us closer and closer to Spokane. Then it's the same pills that are brought down. Like I said, they weren't mentioned by name, it was by girlfriend, but at that point nobody in the car until we figured out who the drugs were belonging to could leave.

Q. So you're saying that you were able to recognize her voice from a telephone conversation that you were listening in on about two weeks prior, you were able to recognize Miss Campbell's voice as the voice in that conversation two weeks prior?

A. Several conversations.

Q. That's pretty important information linking her to Mr. Josephs, isn't it?

A. Somewhat, yes.

Q. But you didn't put that in your report, did you?

A. No, I did not."
(3/4/2009 RP 61-62).

Officers searched Ms. Campbell's purse and discovered 700 ecstasy pills. (Trial Vol. 2 RP 139). She was charged by information with one count of possession of a controlled substance and one count of possession with intent to deliver a controlled substance. (CP 1).

In a pretrial 3.5 hearing, the court concluded that Ms. Campbell "was free to leave the scene as there was no probable cause to detain her at that point in the investigation." (CP 22). The court also concluded the unlawful detention ended when, after serving the search warrant, officers found drugs in her purse and arrested her. (CP 22). Ms. Campbell brought a motion to suppress the evidence found in her purse, which was obtained as a result of her unlawful seizure. (CP 10-13). In that hearing, the court concluded the law enforcement officers "were not obligated to give her the purse when she asked for it." (CP 26). The motion was denied. (CP 27).

The matter proceeded to trial and Ms. Campbell was found guilty on both counts. She was sentenced to a total of sixteen months, with community custody for an additional twelve months. In a separate proceeding, Mr. Joseph was sentenced to two days, with time served. She filed this timely appeal. (CP 109).

III. 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.

When reviewing the denial of a suppression motion, the appellate court determines whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Conclusions of law pertaining to the suppression of evidence are reviewed de novo. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002).

The Fourth Amendment, made applicable to the States by the Fourteenth Amendment, guarantees the right of individuals to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. *Mapp v. Ohio*, 367 U.S. 643,

647, 82 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). The Washington State Constitution provides, "No person shall be disturbed in his private affairs or his home invaded without authority of law." Wash. Const. art. 1 § 7. Read together, both federal and state law hold that valid searches and seizures must be supported by probable cause.

A seizure of a person occurs when police officers objectively manifest that they are restraining the person's movement, and a reasonable person would believe that she was not free to leave. *State v. Stroud*, 30 Wn. App. 392, 305, 634 P.2d 316 (1981). Probable cause exists where the facts and circumstances within the arresting officers' knowledge, and of which there is reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe that a crime has been committed. *State v. Fricks*, 91 Wn.2d 391, 588 P.2d 1328 (1979).

Ms. Campbell was a passenger in a vehicle that officers stopped for two reasons; the driver was driving without a valid operator's license; and officers earlier heard another passenger state that *he* had drugs in the car. An official "seizure" of a person must be supported by probable cause, even if no formal arrest is made. *Dunaway v. New York*, 442 U.S. 200, 208, 99 S.Ct. 2254, 60 L.Ed.2d 824 (1979). At the time of the stop, officers had no

probable cause to arrest Ms. Campbell. (3/4/2009 RP 57). Indeed, the court rightly concluded the officers lacked probable cause to even detain her. (CP 22).

Although legally free to leave, officers nevertheless unlawfully detained her. Evidence recovered as a result of an unlawful seizure must be suppressed. *State v. Larson*, 93 Wn.2d 638, 645-646, 611 P.2d 771 (1980). Here, there was a direct nexus between the unlawful detainment and the evidence in question, because officers directed Ms. Campbell to leave her purse in the car, while they awaited issuance of the search warrant..

The Fourth amendment protections extend to “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). In *Hill*, the question before the Court was whether, when executing a search warrant on a premises, an article of clothing picked up off the floor by an officer was so intimately connected with the defendant that the search of it constituted a search of his person. *Hill*, Wn.2d at 644.

The Court reasoned that a search warrant does not confer authority on officers to search individuals found at the premises or to search the personal effects the individual was wearing or

holding. *Id.* The trial record in *Hill* showed it was not obvious to the officer the clothing (sweatpants) belonged to the defendant before he searched the pockets and found evidence of drugs. *Id.* at 647. The court held that where an item is not clearly connected to an individual, and there is no notice to the police the individual is a visitor to the premises, there are no grounds on which the defendant may claim the officers are forbidden to search that item pursuant to warrant. *Id.* at 548.

In contrast, here the record shows the car was registered to Mr. Joseph's parents. (Trial Vol. 2 RP 116). Ms. Campbell was a passenger in the car. It was undisputed that the purse belonged to her and she wanted to preserve it as private.

In *Worth*, a warrant was issued to search the home of Worth's boyfriend. *Worth*, 37 Wn. App. at 892. Officers detained her at the home and searched her purse. *Id.* Holding the search unconstitutional, the Court pointed out two decisive factors: (1) the purse was readily recognizable 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.

Here, at the initial traffic stop, Ms. Campbell complied with the order to leave the vehicle with her hands up. In obedience to their orders, she did not carry her purse with her out of the car. Once it was found there was no probable cause to detain her, she should have been free to retrieve her purse. "A person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979). The purse was constitutionally protected from the search warrant.

Mr. Joseph was the target of the drug sale/purchase sting, and officers were aware he purportedly had drugs in the vehicle. During the on-scene investigation, he specifically told officers there were drugs in the car and they belonged to Dante Smith. Officers then released Billy Drywater. By contrast, Ms. Campbell, for whom there was no probable cause or reasonable suspicion, was required to remain and not free to take her personal property. This was despite the fact that officers had nothing to independently connect Ms. Campbell to the illegal activity.

The court was correct in concluding Ms. Campbell was unlawfully detained. The officers did not have the right to detain

her or to search her purse under the circumstances present in this case. The court erred when it denied the motion to suppress the evidence obtained as a result of the unlawful seizure of Ms. Campbell.

IV. CONCLUSION

Based on the foregoing facts and authorities, Ms. Campbell respectfully requests this Court remand to the trial court, reversing the denial of the motion to suppress evidence unlawfully obtained from Ms. Campbell's purse.

Dated this 14th day of February, 2011.

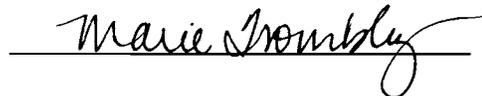
Respectfully submitted,



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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 Brief of Appellant was sent by first class mail, postage prepaid on February 14, 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.

A handwritten signature in black ink, reading "Marie Trombley", is written over a horizontal line.

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