DATE FILED: May 19, 2015 2:48 PM

COURT OF APPEALS, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Ave. Denver, CO 80203	
El Paso County District Court Honorable Marla Prudek Case Number 13CR430	
THE PEOPLE OF THE STATE OF COLORADO Plaintiff-Appellee v. Rebecca Marie Kelley Defendant-Appellant	▲ COURT USE ONLY ▲
Douglas K. Wilson Colorado State Public Defender JOSEPH P. HOUGH, #34384 1300 Broadway, Suite 300 Denver, CO 80203 PDApp.Service@coloradodefenders.us (303) 764-1400 (Telephone)	Case Number: 14CA15

REPLY BRIEF OF DEFENDANT-APPELLANT

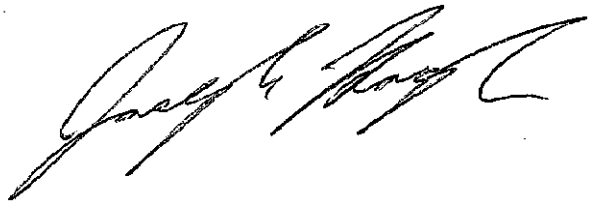
CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

This brief complies with C.A.R. 28(g) because:

It contains 790 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.



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Concerning the first issue presented on appeal, "[w]hether the trial court reversibly erred by failing to grant Kelley's motion to suppress," the State contends that there are "no details about whether the defendant was ordered into the car or whether the officer simply requested she sit in the car because it was snowing and for her safety. Similarly, there are no details about how the defendant's belongings got onto the trunk of the patrol car…Officer Nethercot testified that she moved them into the front seat of the patrol car to keep them dry."(AB,p15)

Contrary to the State's claim, however, Nethercot clearly testified (at the suppression hearing) that she did not give Kelley the choice of sitting in the patrol car (or even the defendant's own vehicle for that matter) but rather, actively ordered or "put[1] her in the back of the cruiser."(R.Tr.(5/2/13),p15-16) Nethercot further indicated that she "had taken[2] [Kelley's] phone and had placed all of her belongings in [Nethercot's] vehicle," and even moved them from the trunk to the front seat of her cruiser for some reason.(R.Tr.(5/2/13),p17) Again, Nethercot gave Kelley no choice in the matter but instead, by her own testimony, took the defendant's belongings from her.

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[1] "Put" is defined as "to place in a specified position or relationship" or "to move in a specified direction." *See* http://www.merriam-webster.com/dictionary/put.

[2] "Take" is defined as "to get into one's hands or into one's possession, power, or control: as to seize or capture physically <*took* them as prisoners>." *See* http://www.merriam-webster.com/dictionary/take (emphasis in original).

And while Nethercot mentioned something to the effect of doing so because it was snowing and for the defendant's own "safety," Nethercot failed to adequately explain how ordering Kelley to the back of a police cruiser and confiscating her personal belongings could have conceivably contributed to the defendant's safety. Indeed, it simply makes no sense that (for whatever weather or "safety" concerns might have been present) Kelley could not have simply sat in her own vehicle (had she needed to be seated at all) and continued to retain possession of her own belongings, including her cellular telephone—which, of course, people do not tend to part with voluntarily and for no good reason.

As for the additional contention that "[e]ven if [Kelley] was seized at this point, there was reasonable suspicion to justify any detention," other than some vague reports about prior robberies at other marijuana dispensaries and that the defendant "appeared nervous and was talking rapidly," the State fails to cite any "specific, articulable, and objective facts" in the record tending to show that a criminal offense "had been or [was] being committed" by the *defendant*. *People v. Schreyer*, 640 P.2d 1147, 1149-50 (Colo. 1982). Indeed, during cross-examination, Nethercot even conceded as much when she testified that, after Deiter fled and immediately before arresting or detaining Kelley, she "wasn't quite sure what was going on…[and] didn't know if [she] had a crime or just somebody [Deiter] who

really wanted no contact with the police."(AB,p44) Clearly then, based on the facts as they were known to Nethercot, at the critical point Kelley was arrested (or detained as the trial court found), neither Nethercot nor any other officer had sufficient "reasonable suspicion" (much less "probable cause") to justify the defendant's seizure. *See People v. Rahming*, 795 P.2d 1338, 1341 (Colo. 1990) (in order to detain an individual, officers must have more than an inchoate or unparticularized suspicion or hunch).

Turning now to the second issue presented, "whether the prosecution failed to prove…that the defendant committed the crime of introduction of contraband," the State relies upon *People v. Etchells*, 646 P.2d 950 (Colo. App. 1982) for the proposition that introduction of contraband does not necessarily require a defendant to possess the contraband.(AB,p24) Assuming, for the sake of argument, that *Etchells* completely applies, the State fails to adequately explain how Kelley (without actual possession of the methamphetamine here) could have possibly "introduced or attempted to introduce" methamphetamine into the CJC.

Furthermore, to be guilty of the "knowing" introduction or attempted introduction of the methamphetamine, Kelley would have had to be "aware that [her] conduct [was] practically certain to cause the result." § 18-1-501(8), C.R.S. (2014). Here, however, there was absolutely no testimony that after removing her

socks and other clothing at the police station, Kelley had any knowledge as to where these items might have been taken and by whom. Indeed, for all Kelley might have known, her socks (containing the contraband) and other belongings continued to remain behind, somewhere at the police station and were never taken to the CJC. In any event, the evidence as presented simply failed to prove substantially and sufficiently that Kelley committed the crime charged. *See Kogan v. People*, 756 P.2d 945 (Colo. 1988).

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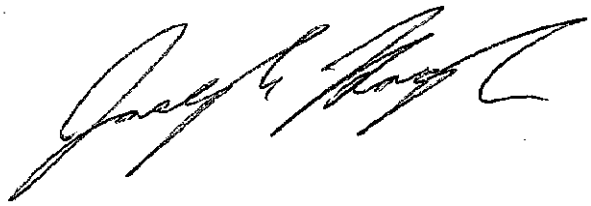

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CERTIFICATE OF SERVICE

I certify that, on May 19, 2015, a copy of this Reply Brief of Defendant-Appellant was electronically served through ICCES on Victoria M. Cisneros of the Attorney General's office through their AG Criminal Appeals account.