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STATE OF WASHINGTON
BY [Signature]
DEPUTY

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

NATALIE M. WILLIAMS,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF COWLITZ COUNTY

Before the Honorable Stephen M. Warning, Judge

OPENING BRIEF OF APPELLANT

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Ms. WILLIAMS 8-16-07

TABLE OF CONTENTS

Page

A. SUMMARY OF THE CASE.....1

B. ASSIGNMENTS OF ERROR2

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR3

D. STATEMENT OF THE CASE.....4

1. Procedural facts4

 a. Facts relating to 3.6 motion to suppress.....5

E. ARGUMENT14

1. THE REMOVAL OF WILLIAMS FROM THE CAR IN ORDER TO SEARCH THE VEHICLE INCIDENT TO THE DRIVER’S ARREST WAS UNCONSTITUTIONAL UNDER ARIZONA V. GANT WHERE THE TROOPERS LACKED A BASIS TO BELIEVE THAT THEIR SAFETY WAS THREATENED OR THAT EVIDENCE OF A CRIME WAS LOCATED IN THE VEHICLE.....14

 a. Williams has standing to challenge the search of the vehicle incident to the arrest of the driver15

 b. Standard of Review.....16

 c. Applicable Law.....16

2. UNDER ARTICLE I, SECTION 7, AUTHORITY OF LAW FOR AN OTHERWISE ILLEGAL SEARCH MAY NOT BE CURED BY THE “INEVITABLE DISCOVERY” AND “INDEPENDENT SOURCE” RULES WHERE THE AUTHORITY TO ARREST WAS BASED ON A HYPOTHETICAL THAT WILLAIMS

**WAS GOING TO BE CITED FOR AN
INFRACTION.....19**

F. CONCLUSION21

G. APPENDIX.....A-1

TABLE OF AUTHORITIES

<u>WASHINGTON CASES</u>	<u>Page</u>
<i>State v. Boland</i> , 115 Wn.2d 571, 800 P.2d 112 (1990).....	15
<i>State v. Broadnax</i> , 98 Wn.2d 289, 654 P.2d 96 (1982)	17
<i>State v. Callahan</i> , 77 Wn.2d 27, 459 P.2d 400 (1969)	15
<i>State v. Gaines</i> , 154 Wn.2d 711, 116 P.2d 993 (2005).....	20
<i>State v. Gunwall</i> , 106 Wn.2d 54, 720 P.2d 808 (1986)	16
<i>State v. Hendrickson</i> , 129 Wn.2d 61, n. 1, 917 P.2d 563 (1996).....	15, 17
<i>State v. Johnson</i> , 128 Wn.2d 431, 909 P.2d 293 (1996).....	17
<i>State v. Jones</i> , 146 Wn.2d 328, 45 P.3d 1062 (2002)	16
<i>State v. Jones</i> , 146 Wn.2d 328, 45 P.3d 352, <i>reviewed denied</i> , 149 Wn.2d 1029 (2003)	16
<i>State v. Levy</i> , 156 Wn.2d 709, 132 P.3d 1076 (2006).....	16
<i>State v. O’Neill</i> , 148 Wn.2d 564, 62 P.3d 489 (2003)	19
<i>State v. Parker</i> , 139 Wn.2d 486, 987 P.2d 73 (1999).....	16, 17
<i>State v. Rankin</i> , 151 Wn.2d 689, 92 P.3d 202 (2004).....	16
<i>State v. Simms</i> , 10 Wn. App. 75, 515 P.2d 1088 (1974).....	16
<i>State v. Simpson</i> , 95 Wn.2d 170, 622 P.2d 1199 (1980).....	15
<i>State v. White</i> , 44 Wn. App. 276, 722 P.2d 118, <i>reviewed denied</i> , 107 Wn.2d 1006 (1986)	17
<i>State v. Williams</i> , 142 Wn.2d 17, 11 P.3d 714 (2000).....	14
<i>State v. Worth</i> , 37 Wn. App. 889, 683 P.2d 622 (1984)	17
 <u>UNITED STATES CASES</u>	
<i>Arizona v. Gant</i> , ___ U.S. ___, 129 S.Ct. 1710 (2009) ...	1, 3, 15, 18, 19, 21
<i>Nix v. Williams</i> , 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984).....	20

<i>Ybarra v. Illinois</i> , 444 U.S. 85, 100S.Ct. 338, 62 L.Ed. 2d 238 (1979).....	17
---	----

<u>REVISED CODE OF WASHINGTON</u>	<u>Page</u>
--	--------------------

RCW 69.50.4013(1).....	4
RCW 69.50.4013(2).....	4

<u>COURT RULES</u>	<u>Page</u>
---------------------------	--------------------

CrR 3.6.....	8
--------------	---

<u>CONSTITUTIONAL PROVISIONS</u>	<u>Page</u>
---	--------------------

U.S. Const. Amend. IV	8
U.S. Const. Amend XIV	9
Wash. Const. art 1, § 7.....	12

A. SUMMARY OF CASE

Natalie Williams was a passenger in a car stopped by a member of the Washington State Patrol officer for speeding. The driver was determined to have a license suspended in the third degree and also had a warrant for his arrest. The driver was placed under arrest and taken back to the State Trooper's vehicle. A second State Patrol Officer arrived and ordered Williams and her sixteen year old son out of the car in order to search the car incident to the driver's arrest. The Trooper told the sixteen year old that he was going to search him, and the minor reached into his waistline for a black pouch. The trooper "stiff-armed" the minor and the pouch fell to the ground and the minor ran down the side of the highway. The minor was caught by first trooper shortly thereafter. The pouch contained methamphetamine and Williams was arrested. After all three were placed under arrest, the troopers searched the interior of the car. Methamphetamine was found in a purse in the car. The purse also contained Williams' identification. Williams was cited for not wearing a seatbelt, and it was determined that she had a warrant for her arrest. Pursuant to *Arizona v. Gant*, ___ U.S. ___, 129 S.Ct. 1710 (2009), the troopers were not entitled to the initial search the vehicle incident to the driver's arrest for driving with a suspended license and the warrant, and the search of the purse did not fall within any exception to the warrant

requirement of the state and federal constitutions. The trial court's failure to suppress after-acquired evidence requires reversal by this Court.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Natalie Williams' motion to suppress the evidence obtained as a result of the improper search of the car in which she was a passenger. Clerk's Papers [CP] 28.

2. The trial court erred in entering Finding of Fact 4.
A copy of the Findings and Conclusions is attached as Appendix A.

3. The trial court erred in entering Finding of Fact 5.

4. The trial court erred in entering Finding of Fact 8.

5. The trial court erred in entering Findings of Fact 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 insofar as these events occurred after the passengers were ordered from the car pursuant to a search incident to arrest of the driver.

6. The trial court erred in entering Finding of Fact 21.

7. The trial court erred in entering Finding of Fact 22.

8. The trial court erred in entering Finding of Fact 25.

9. The trial court erred in entering Finding of Fact 26.

10. The trial court erred in entering Finding of Fact 27.

11. The trial court erred in entering Conclusion of Law 2.

12. The trial court erred in entering Conclusion of Law 3.

13. The trial court erred in entering Conclusion of Law 7.

13. The trial court erred in entering Conclusion of Law 7.
14. The trial court erred in entering Conclusion of Law 8.
15. The trial court erred in entering Conclusion of Law 9.
16. The trial court erred in entering Conclusion of Law 10.
17. The trial court erred in entering Conclusion of Law 12.
18. The trial court erred in entering Finding of Fact 2.1 and Conclusion of Law 3.1 in the Judgment and Sentence, which found the appellant guilty of possession of methamphetamine.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Under *Arizona v. Gant*, a warrantless search of a car incident to the arrest of the driver is permitted only specific circumstances. Here, police conducted an extensive search of the car incident to the driver's arrest for driving with a suspended license, even though the driver posed no risk to officer safety and was handcuffed and was taken to the backseat of the State Trooper's vehicle at the time a second State Trooper ordered Williams to get out of the car. Where the appellant was not under arrest, but police officers searched the car incident to the arrest of the driver, did the trial court err in denying Williams' motion to suppress the evidence obtained as a result of the Trooper's order to get out of the car in order to search it, in light of the holding of *Arizona v. Gant*?

Assignments of Error 1 through 17.

2. Did the trial court err in finding that the methamphetamine

flowing from the circumstances after the passengers were ordered out of the car, where it was self-serving speculation by the State Trooper that he would have cited the appellant for a seat belt infraction, at which time an outstanding warrant would have been discovered? Assignments of Error 6, 7, 8, 9, 10, 14, 15, 16, and 17.

3. Whether the trial court erred in convicting appellant based on evidence that should have been suppressed where the evidence used at trial against appellant was unconstitutionally obtained from a search of the interior of the car, where appellant was the non-arrested passenger? Assignment of Error 18.

D. STATEMENT OF THE CASE

1. Procedural facts:

Appellant Natalie Williams [Williams] was charged by information filed in Cowlitz County Superior Court with one count of possession of methamphetamine, contrary to RCW 69.50.4013(1), (2). Clerk's Papers [CP] 3-4.

Pursuant to CrR 3.6, Williams filed a motion to suppress methamphetamine found in a purse located in a vehicle in which she had been riding, on the basis that the evidence was unconstitutionally seized as a result of search incident to her arrest a misdemeanor warrant. CP 5-6. Following a hearing on December 17, 2008, before the Honorable Stephen

Following a hearing on December 17, 2008, before the Honorable Stephen Warning, the court found that the driver of a vehicle in which Williams was a passenger was properly arrested and the officers were entitled to order the two passengers—including Williams—out of the vehicle during the search. Report of Proceedings [RP] at 73. The court found that the officer was “absolutely not entitled” to tell S.L.,¹ one of the passengers in the vehicle, that he was going to pat him down. RP at 73. The court nevertheless found that because Williams had a misdemeanor warrant for her arrest and because Trooper Kenny Lutz stated that Williams was going to be cited for not wearing a seatbelt, she would have been arrested and her purse, located in the vehicle, would have been searched incident to arrest. RP at 74. Judge Warning denied the motion to suppress under the rule of inevitable discovery. RP at 74.

The matter proceeded to a stipulated facts trial before Judge Warning on January 21, 2009. The court found Williams guilty as charged in the information. RP 88. She was given 30 days in custody and 12 months of community supervision. RP at 91; CP 37.

Notice of appeal was filed February 9, 2009. CP 43. This appeal follows.

a. Facts relating to CrR 3.6 motion to suppress.

¹S.L., who is Williams’ son, was identified as a minor and therefore is referred to by his initials in this Brief. RP at 9, 29.

Williams' counsel moved to suppress methamphetamine found in a purse located in the vehicle in which she was riding. CP 5-6. The purse was searched by Trooper Lutz and Trooper Richard Bettger as result of a search of the vehicle following Williams' arrest for the contents of a black pouch dropped by her son, which she initially asserted belonged to her. RP at 36-37.

On afternoon of October 7, 2008, Trooper Lutz was on patrol on State Route 432 in Cowlitz County, Washington. RP at 6. Trooper Lutz pulled over a white passenger car for speeding. RP at 6. As he was stopping the car he noted that the front seat passenger, Natalie Williams, was "trying to put on her seat belt." RP at 7, 51. Trooper Lutz asked the driver for identification and the driver stated that he did not have identification. RP at 8. The driver identified himself as Jason Bornstedt, and Trooper Lutz determined that he had a misdemeanor warrant and a suspended driver's license in the third degree. RP at 8. Trooper Bettger, who was also on patrol on State Route 432, received a call from dispatch that Trooper Lutz had pulled over a car and that the driver was suspended. RP at 26.

Trooper Lutz had Bornstedt get out of the car and he placed him under arrest for the warrant and for driving with a suspended license. RP at 8. Trooper Bettger arrived on the scene as Trooper Lutz was placing

the driver in custody. RP at 8, 26. Trooper Lutz led Bornstedt to the rear seat of his patrol car. RP at 9. Trooper Bettger had Williams and S.L., who were both sitting in the back of the car, get out in order to search it incident to Bornstedt's arrest. RP at 9, 27, 41.

Trooper Bettger said that he noticed that S.L.'s hands were shaking as he got out of the vehicle. RP at 28. Trooper Bettger told him that he was going to pat him down for weapons and he turned away from Trooper Bettger and he saw S.L. start to reach in "the belt line of his pants." RP at 29. He stated that S.L. said "mom, can you hold my pouch for me" and Trooper Bettger saw "a black object." RP at 29, 30. As S.L. grabbed the black object, Trooper Bettger "stiff armed" him and the object was knocked to the ground. RP at 30, 31, 43, 50. Trooper Bettger reached down to pick up the object, which was a black, cylindrical zippered pouch. RP at 30, 31, 43. Trooper Bettger told S.L. and Williams to put their hands on the hood of the vehicle. RP at 31. Trooper Bettger picked up the pouch and looked inside. Inside the black pouch, he found syringes, plastic bags containing a white crystal substance. RP at 15, 32. When he looked inside the pouch, S.L. ran down the shoulder of the road. RP at 32, 33. Trooper Bettger yelled for Trooper Lutz to go after S.L. RP at 33.

Trooper Lutz testified that as he took Bornstedt to his car, he heard Trooper Bettger yelling at the passengers to show their hands. RP at

9. He stated that he saw S.L. make “furtive movements towards the inside of his coat.” RP at 10. He saw Trooper Bettger grab S.L., and then he “ripped away” from Bettger and ran down the shoulder of the highway. RP at 10. As S.L. ran, Trooper Lutz got into his car and drove through a field where the railroad tracks are located, parked and the got out and chased S.L. down the railroad tracks. RP at 33. Trooper Lutz caught him, placed him under arrest, and brought him back to his patrol car. RP at 11.

Trooper Bettger told Williams that she was under arrest for possession of methamphetamine in the pouch. RP at 36.

After all three were in custody, Trooper Bettger searched the car and found a green purse. RP at 47. Inside of the purse was a cardboard paper towel roll that contained suspected methamphetamine RP at 12, 36. The purse also contained Williams’ identification. RP at 37.

Trooper Lutz gave Williams her constitutional warnings. RP at 12. S.L. told Trooper Lutz the black pouch that Trooper Bettger picked up from the road belonged to him. RP at 13. Williams told him that the black case belonged to her. RP at 13. Williams said her son was a heroin addict and that that she was trying to get him help. RP at 13. She also said that she was using methamphetamine. RP at 14.

The troopers determined that Williams had a misdemeanor warrant for her arrest. RP at 14, 37. She was given a ticket for a seat belt

infraction. RP at 14. S.L. had a felony warrant for his arrest. RP at 37. Williams, S.L., and Bornstedt were taken to the Cowlitz County Jail. RP at 38.

Trooper Lutz stated that even if Williams had not been under arrest for the contents of the black pouch, she would have been arrested for the warrant. RP at 15. Trooper Lutz said that the passengers were “contacted” in order “[t]o ask them to come out of the car so we can search the car incident to arrest.” RP at 19-20. He acknowledged that it was their intention to search the car incident to arrest of the driver. RP at 20.

Trooper Lutz stated that Williams would have been free to leave if S.L. had not run. RP at 24.

Williams stated that Bornstedt was under arrest when she and her son were ordered out of the vehicle. RP at 52. Williams denied that she said the black pouch was hers—she stated that her son told her “mom, do you want to take this bag[?]” RP at 54. She stated that she was taking off her seatbelt when the car was stopped because she wanted get out and walk before her warrant was discovered. RP at 59, 60.

Defense counsel argued that the officers did not have a basis to detain Williams and pat her down and did not have authority to open the purse found in the vehicle. RP at 63. Counsel stated that if the warrant

had been discovered earlier, that police could have had probable cause to arrest her at that time. RP at 64.

The prosecution argued that because the pouch was within Williams' reach, the Troopers were authorized to look inside it for officer safety, and that because "the wants check [on Williams] would have been run regardless," the search of the vehicle would have been justified at the time of her arrest of the warrant. RP at 69.

Judge Warning found that the initial stop and the arrest of Bornstedt was lawful, and that Trooper Better instructed Williams and S.L. to get out of the car. Finding of Fact [FF] 8, Conclusion of Law [CL] 1. The judge found that the troopers ran a warrants check on Williams and found that she had an outstanding warrant. FF 21. The court found that the troopers normally run a warrant check when citing an individual for an infraction. FF 22. The court concluded that that after arresting her for the warrant, the Troopers would have been permitted to search the purse found in the vehicle incident to arrest, and therefore would have been discovered independently from Trooper Bettger's statement that he was going to search S.L. CL 9, 10. The court found that Trooper Bettger did not have a reasonable and articulable suspicion to permit a search of S.L. after he was ordered out of the car, and that any search would have been unlawful. CL 4.

The court entered the following Findings of Fact and Conclusion of Law on January 21, 2009:

I. FINDINGS OF FACT

1. On October 7, 2008, Trooper Kenny Lutz of the Washington State Patrol observed a white car that appeared to be traveling at a high rate of speed westbound on State Route 432.
2. The posted speed limit at this location was 55 mile per hour ("MPH"). Using a laser speed measuring device, Trooper Lutz obtained measurements of the car's speed at 68 and 69 MPH. Trooper Lutz activated his emergency lights and pulled the car over.
3. There were three occupants in the car. The driver Jason Bornstedt, [S.L.], and the Defendant Natalie Williams. [L.] was in the backseat, and the Defendant was in the front passenger seat.
4. As Trooper Lutz approached the car, he observed the Defendant in the front passenger seat attempting to put on her seatbelt.
5. After making this observation, Trooper Lutz intended to write the Defendant an infraction for failing to wear her seatbelt.
6. Trooper Lutz contacted Bornstedt and discovered that his license was suspended in the third degree and that he had a warrant for his arrest. Trooper Lutz arrested Bornstedt.
7. Trooper Richard Bettger arrived at the scene and attended to the passengers while Trooper Lutz took Bornstedt into custody.
8. Trooper Bettger instructed the Defendant and [L.] to exit the car.
9. Trooper Bettger asked [L.] if he had any weapons on him. [L.] told Trooper Bettger he was only 12-years old and turned away from him. [L.] was actually 16-years old.

10. Trooper Bettger told [L.] he was going to pat him down for officer safety.
11. [L.] responded by reaching under his over-jacket into his waistline. He then turned toward the Defendant and said, "Mom can you hold my pouch for me?"
12. As this took place, Trooper Bettger observed a black cylindrical object coming out of [L.]'s waistline.
13. Fearing the object was a weapon, Trooper Bettger immediately reacted by stiff-arming [L.] The black cylindrical object was a pouch, and it fell to ground.
14. The pouch was within the reach of both [L.] and the Defendant.
15. Concerned that the pouch might contain a weapon, Trooper Bettger picked up the pouch and looked inside. Inside the pouch, Trooper Bettger discovered syringes, needles, and a bag of methamphetamine.
16. [L.] bolted from the car and ran toward the railroad tracks. Trooper Bettger yelled to Trooper Lutz. Trooper Lutz chased [L.] and eventually took him into custody.
17. The Defendant began to claim the pouch was hers.
18. Trooper Bettger advised the Defendant of her constitutional rights. The Defendant yelled at Trooper Bettger repeatedly that the pouch was hers and did not belong to her son.
19. Based on the discovery of the methamphetamine and the Defendant's claim that it belonged to her, Trooper Bettger arrested her.
20. After all three individuals were in custody, Trooper Bettger and Trooper Lutz conducted a search incident to arrest of the car. Inside the car they found a green purse containing a bag of methamphetamine and the Defendant's identification.

21. The troopers ran a warrants check on Lavelle and the Defendant. They discovered that the Defendant had an outstanding warrant.
22. The troopers normally run a warrants check when citing a person for an infraction.
23. Upon discovery of an outstanding warrant, the trooper always arrest unless the warrant is for a non-extraditable offense in another state.
24. Upon arrest, the troopers ordinarily conduct a search incident to arrest.
25. Trooper Lutz would have discovered the Defendant's outstanding warrant based on the routine warrants check that would have been run when citing her for the seatbelt infraction.
26. The troopers would have arrested the Defendant upon discovering the outstanding warrant.
27. After arresting the Defendant for the outstanding warrant, the troopers would have searched her purse incident to her arrest.

II. CONCLUSIONS OF LAW

1. Trooper Lutz had probable cause to stop the car for a traffic infraction.
2. Trooper Lutz had probable cause to cite the Defendant with a traffic infraction for failing to wear her seatbelt.
3. Trooper Lutz had probable cause to arrest Bornstedt for the outstanding warrant and for driving with a suspended license & would have arrested her in the process of citing for the seatbelt infraction.

4. At the time he told [L.] he was going to pat him down for officer safety, Trooper Bettger did not have a reasonable and articulable suspicion to permit such a search.
5. Had this search occurred, it would have been in violation of the Fourth Amendment to the United States Constitution and Article I, Section VII of the Washington State Constitution.
6. Because the evidence regarding the pouch would not have been discovered but for Trooper Bettger's statement that he was going to pat [L.] down, it was obtained in violation of the Fourth Amendment to the United States Constitution and Article I, Section VII of the Washington State Constitution.
7. ~~Trooper Bettger's actions~~ after seeing the pouch come from [L.]'s waistline ~~were otherwise reasonable.~~ the balance of the trooper's actions were reasonable.
8. There was probable cause to arrest the Defendant for the outstanding warrant.
9. After arresting the Defendant for the warrant, the troopers would have been permitted to search her purse as a search incident to her arrest, an exception to the warrant requirement.
10. The methamphetamine in the purse would have been discovered independent of the evidence flowing from Trooper Bettger's statement that he was going to search [L].
11. The methamphetamine found in the pouch and Defendant's statements that the pouch belonged to her are suppressed.
12. The methamphetamine and identification found in the purse are admissible.

CP 25-28. Appendix A.

E. ARGUMENT

1. **THE REMVAL OF WILLIAMS FROM THE CAR IN ORDER TO SEARCH THE VEHICLE**

4. At the time he told [L.] he was going to pat him down for officer safety, Trooper Bettger did not have a reasonable and articulable suspicion to permit such a search.
5. Had this search occurred, it would have been in violation of the Fourth Amendment to the United States Constitution and Article I, Section VII of the Washington State Constitution.
6. Because the evidence regarding the pouch would not have been discovered but for Trooper Bettger's statement that he was going to pat [L.] down, it was obtained in violation of the Fourth Amendment to the United States Constitution and Article I, Section VII of the Washington State Constitution.
7. ~~Trooper Bettger's actions~~ after seeing the pouch come from [L.]'s waistline ~~were otherwise reasonable.~~ the balance of the trooper's actions were reasonable.
8. There was probable cause to arrest the Defendant for the outstanding warrant.
9. After arresting the Defendant for the warrant, the troopers would have been permitted to search her purse as a search incident to her arrest, an exception to the warrant requirement.
10. The methamphetamine in the purse would have been discovered independent of the evidence flowing from Trooper Bettger's statement that he was going to search [L.].
11. The methamphetamine found in the pouch and Defendant's statements that the pouch belonged to her are suppressed.
12. The methamphetamine and identification found in the purse are admissible.

CP 25-28. Appendix A.

E. ARGUMENT

1. THE REMOVAL OF WILLIAMS FROM THE CAR IN ORDER TO SEARCH THE VEHICLE

INCIDENT TO THE DRIVER'S ARREST WAS UNCONSTITUTIONAL UNDER ARIZONA V. GANT WHERE THE TROOPERS LACKED A BASIS TO BELIEVE THAT THEIR SAFETY WAS THREATENED OR THAT EVIDENCE OF A CRIME WAS LOCATED IN THE VEHICLE

- a. Williams has standing to challenge the search of the vehicle incident to the arrest of the driver.**

It is well settled that article I, § 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). Article I, § 7 is violated when the State unreasonably intrudes upon a person's private affairs. *State v. Boland*, 115 Wn.2d 571, 577, 800 P.2d 112 (1990). A person may rely on the automatic standing doctrine only if the challenged police action produced the evidence sought to be used against him or her. *State v. Williams*, 142 Wn.2d 17, 23, 11 P.3d 714 (2000). To assert automatic standing, a defendant must be charged with an offense that involves possession as an essential element, and must be in possession of the item at the time of the search or seizure. *State v. Simpson*, 95 Wn.2d 170, 181, 622 P.2d 1199 (1980). Possession may be actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 459 P.2d 400 (1969). Here, since the crime with which Williams was convicted involves the possession of a controlled substance (methamphetamine) as an essential element, and as there was evidence of constructive possession,

she had a legitimate expectation of privacy regarding the purse that was searched and has standing to challenge the search incident to the arrest of the driver. *State v. Jones*, 146 Wn.2d 328, 331-34, 45 P.3d 352, *reviewed denied*, 149 Wn.2d 1029 (2003); *State v. Simms*, 10 Wn. App. 75, 79, 515 P.2d 1088 (1974).

b. Standard of Review.

On a motion to suppress, this Court reviews factual findings for substantial evidence and conclusions of law *de novo*. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006); *State v. Rankin*, 151 Wn.2d 689, 694, 92 P.3d 202 (2004).

c. Applicable Law.

The Fourth Amendment, made applicable to the states by way of the Fourteenth Amendment, and Art. 1, § 7 of the Washington Constitution,² provide that warrantless searches are *per se* illegal unless they come within one of the few, narrow exceptions to the warrant requirement. *State v. Parker*, 139 Wn.2d 486, 496, 987 P.2d 73 (1999);

² Article I, §7 provides: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

It has been established article I, §7 provides greater protection from unlawful governmental intrusion into private affairs than does the Fourth Amendment. *State v. Rankin*, 151 Wn.2d 689, 694, 92 P.3d 202 (2004). A separate state constitutional analysis, as set forth in *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), is therefore not necessary.

Hendrickson, 129 Wn.2d at 70. Exceptions to the warrant requirement are narrowly drawn and jealously guarded. *State v. Parker*, 139 Wn.2d at 496; *Hendrickson*, 129 Wn.2d at 71. In each case, the State bears the burden of demonstrating that a warrantless search falls within an exception. *Parker*, 139 Wn.2d at 496.

One exception to the warrant requirement is a search incident to a lawful arrest. *State v. Johnson*, 128 Wn.2d 431, 447, 909 P.2d 293 (1996). The authority for this flows directly from the fact of the arrest itself and the simultaneous lessening of the arrestee's privacy interest. *State v. White*, 44 Wn. App. 276, 278, 722 P.2d 118, *review denied*, 107 Wn.2d 1006 (1986) (once arrested there is a diminished expectation of privacy in the person of the arrestee).

Under Article I, § 7, our courts have specifically recognized that “[r]egardless of the setting... ‘constitutional protections [are] possessed individually.’” *State v. Broadnax*, 98 Wn.2d 289,296, 654 P.2d 96 (1982) (quoting *Ybarra v. Illinois*, 444 U.S. 85, 92,100S.Ct. 338, 62 L.Ed. 2d 238 (1979))(emphasis in original.) Accordingly, a person's “mere presence” in a place validly to be searched does not justify a search of that person. *Broadnax*, 98 Wn.2d at 295,301; see *State v. Worth*, 37 Wn. App. 889, 892, 683 P.2d 622 (1984).

On April 21, 2009, the United States Supreme Court in *Arizona v. Gant*, ___ U.S. ___, 129 S.Ct. 1710 (2009), adopted two new rules

concerning vehicle searches incident to arrest. The first rule is that police may search a vehicle incident to arrest only when the occupant is unsecured and within reaching distance of the vehicle's passenger compartment. *Gant*, 129 S.Ct at 1714. The second rule is that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle. *Id.* *Gant* also recognized that vehicle searches may be proper if there is probable cause to believe that that evidence of a crime is present in the vehicle. *Gant*, 129 S.Ct. at 1721.

The holding of *Gant* is controlling in Williams' case. *Gant* was handcuffed and placed in a patrol car before the search began. Similarly, Bornstedt was handcuffed and was taken by Trooper Lutz to the rear seat of his patrol vehicle. RP at 8, 9. Trooper Bettger ordered Williams and S.L. out of the car for the purpose of searching the car incident to Bornstedt's arrest. RP at 19-20. As was the case in *Gant*, Bornstedt clearly could not have accessed the vehicle at the time of the search. Trooper Lutz stated that he was not concerned about his safety regarding the passengers when they were seated in the car. RP at 18-19. He stated that Trooper Bettger ordered them out of the car because "[t]hat's ---we always do." RP at 19.

Moreover, an evidentiary basis for the search was also lacking.

Gant was arrested for driving with a suspended license—an offense for which the officers could not reasonably expect to find evidence in Gant’s car. Similarly, Bornstedt was arrested for driving with suspended license in the third degree and a misdemeanor warrant. No evidence of the offense could have been expected to be contained in the car. Therefore, under *Gant*, the search in this case was unreasonable.

2. UNDER ARTICLE I, SECTION 7, AUTHORITY OF LAW AN OTHERWISE ILLEGAL SEARCH MAY NOT BE CURED BY THE “INEVITABLE DISCOVERY” AND “INDEPENDENT SOURCE” RULES WHERE THE AUTHORITY TO ARREST WAS BASED ON SPECULATION THAT WILLAIMS WAS GOING TO BE CITED FOR AN INFRACTION.

Judge Warning found that Trooper Lutz would have discovered Williams’ outstanding warrant pursuant to a routine warrants check “that would have been run when citing her for the seatbelt infraction.” FF 25. The court concluded that the methamphetamine in the purse “would have been discovered independent of the evidence flowing from Trooper Bettger’s statement that he was going to search [S.L.]” CL 10.

The inevitable discovery rule authorizes the admission of evidence notwithstanding a constitutional violation if the prosecution proves “by a preponderance of the evidence that the evidence ultimately or inevitably would have been discovered using lawful procedures.” *State v. O’Neill*,

148 Wn.2d 564, 591, 62 P.3d 489 (2003) (quoting *Nix v. Williams*, 467 U.S. 431, 444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984)). Under the independent source doctrine, “evidence tainted by unlawful governmental action is not subject to suppression under the exclusionary rule, provided that it ultimately is obtained pursuant to a valid warrant or other lawful means independent of the unlawful action.” *State v. Gaines*, 154 Wn.2d 711, 718, 116 P.2d 993 (2005). Here, the State can show no more than that the evidence *could* have been discovered lawfully, had circumstances been different. The testimony by Trooper Lutz that Williams would have been cited for a seatbelt infraction, however, is completely self-serving and not supported by any evidence. Trooper Lutz stated that he saw the passenger in the front seat “trying to put on her seat belt.” RP at 7. He testified that he “was going to write her for the seat belt.” RP at 69-70. However, the State presented no corroborating testimony that she did not have a seatbelt on when the car was stopped. Williams on the other hand, stated that she was wearing a seatbelt and was taking it off when the car was stopped in order to get out of the car due to her warrant status. RP at 56.

There is no showing that the Troopers would have pursued the seat belt infraction after Bonstedt was arrested had the passengers not been

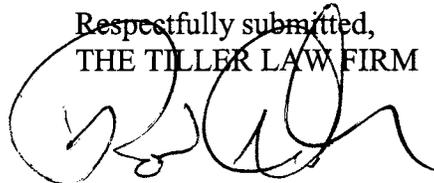
ordered from the car. It is far from certain that officers would have checked her for warrants after Bornstedt was arrested. Accordingly, the court erred in finding that the methamphetamine in the purse would have been found independently of the events that occurred after they were removed from the car and Trooper Bettger's statement that he was going to search S.L.

F. CONCLUSION

Based on the recent holding in *Arizona v. Gant*, Judge Warning erred in denying Williams' motion for suppression, and erred in convicting her based on evidence obtained as a result of the illegal search. Williams' conviction should be reversed and the matter should be remanded to the trial court with an order to dismiss.

DATED: August 6, 2009.

Respectfully submitted,
THE TILLER LAW FIRM

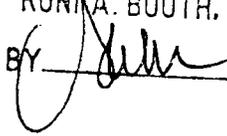


PETER B. TILLER-WSBA 20835
Of Attorneys for Natalie Williams

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COWLITZ COUNTY
RONA. BOOTH, CLERK

BY 

**COWLITZ COUNTY SUPERIOR COURT
STATE OF WASHINGTON**

No. 08-1-01133-7

STATE OF WASHINGTON,

Plaintiff,

vs.

NATALIE WILLIAMS,

Defendant.

**FINDINGS OF FACT &
CONCLUSIONS OF LAW**

I. FINDINGS OF FACT

1. On October 7, 2008, Trooper Kenny Lutz of the Washington State Patrol observed a white car that appeared to be traveling at a high rate of speed westbound on State Route 432.
2. The posted speed limit at this location was 55 miles per hour ("MPH"). Using a laser speed measuring device, Trooper Lutz obtained measurements of the car's speed at 68 and 69 MPH. Trooper Lutz activated his emergency lights and pulled the car over.
3. There were three occupants in the car. The driver Jason Bornstedt, Scott Lavelle, and the Defendant Natalie Williams. Lavelle was in the backseat, and the Defendant was in the front passenger seat.
4. As Trooper Lutz approached the car, he observed the Defendant in the front passenger seat attempting to put on her seatbelt.
5. After making this observation, Trooper Lutz intended to write the Defendant an infraction for failing to wear her seatbelt.
6. Trooper Lutz contacted Bornstedt and discovered that his license was suspended in the third degree and that he had a warrant for his arrest. Trooper Lutz arrested Bornstedt.



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- 1 7. Trooper Richard Bettger arrived at the scene and attended to the passengers while
Trooper Lutz took Bornstedt into custody.
- 2 8. Trooper Bettger instructed the Defendant and Lavelle to exit the car.
- 3 9. Trooper Bettger asked Lavelle if he had any weapons on him. Lavelle told Trooper
4 Bettger he was only 12-years old and turned away from him. Lavelle was actually 16-
5 years old.
- 6 10. Trooper Bettger told Lavelle he was going to pat him down for officer safety.
- 7 11. Lavelle responded by reaching under his over-jacket into his waistline. He then turned
8 toward the Defendant and said, "Mom can you hold my pouch for me?"
- 9 12. As this took place, Trooper Bettger observed a black cylindrical object coming out of
10 Lavelle's waistline.
- 11 13. Fearing the object was a weapon, Trooper Bettger immediately reacted by stiff-arming
12 Lavelle. The black cylindrical object was a pouch, and it fell to the ground.
- 13 14. The pouch was within the reach of both Lavelle and the Defendant.
- 14 15. Concerned that the pouch might contain a weapon, Trooper Bettger picked up the pouch
and looked inside. Inside the pouch, Trooper Bettger discovered syringes, needles, and a
16 bag of methamphetamine.
- 17 16. Lavelle bolted from the car and ran toward the railroad tracks. Trooper Bettger yelled to
Trooper Lutz. Trooper Lutz chased Lavelle and eventually took him into custody.
- 18 17. The Defendant began to claim that the pouch was hers.
- 19 18. Trooper Bettger advised the Defendant of her constitutional rights. The Defendant yelled
at Trooper Bettger repeatedly that the pouch was hers and did not belong to her son.
- 20 19. Based on the discovery of the methamphetamine and the Defendant's claim that it
belonged to her, Trooper Bettger arrested her.
- 21 20. After all three individuals were in custody, Trooper Bettger and Trooper Lutz conducted
a search incident to arrest of the car. Inside the car they found a green purse containing a
22 bag of methamphetamine and the Defendant's identification.
- 23 21. The troopers ran a warrants check on Lavelle and the Defendant. They discovered that
the Defendant had an outstanding warrant.
- 24 22. The troopers normally run a warrants check when citing a person for an infraction.
- 25

- 1 23. Upon discovery of an outstanding warrant, the troopers always arrest unless the warrant
is for a non-extraditable offense in another state.
- 2 24. Upon arrest, the troopers ordinarily conduct a search incident to arrest.
- 3 25. Trooper Lutz would have discovered the Defendant's outstanding warrant based on the
4 routine warrants check that would have been run when citing her for the seatbelt
5 infraction.
- 6 26. The troopers would have arrested the Defendant upon discovering the outstanding
7 warrant.
- 8 27. After arresting the Defendant for the outstanding warrant, the troopers would have
9 searched her purse incident to her arrest.

10 II. CONCLUSIONS OF LAW

- 11 1. Trooper Lutz had probable cause to stop the car for a traffic infraction
- 12 2. Trooper Lutz had probable cause to cite the Defendant with a traffic infraction for failing
13 to wear her seatbelt.
- 14 3. Trooper Lutz had probable cause to arrest Bornstedt for the outstanding warrant and for
15 driving with a suspended license, *and would have arrested her in the process
of citing her for the seat belt violation.*
- 16 4. At the time he told Lavelle he was going to pat him down for officer safety, Trooper
17 Bettger did not have a reasonable and articulable suspicion to permit such a search.
- 18 5. Had this search occurred, it would have been in violation of the Fourth Amendment to the
19 United States Constitution and Article I, Section VII of the Washington State
20 Constitution.
- 21 6. Because the evidence regarding the pouch would not have been discovered but for
22 Trooper Bettger's statement that he was going to pat Lavelle down, it was obtained in
23 violation of the Fourth Amendment to the United States Constitution and Article I,
24 Section VII of the Washington State Constitution.
- 25 7. ~~Trooper Bettger's actions~~ after seeing the pouch come from Lavelle's waistline were
~~otherwise reasonable.~~ *the balance of the trooper's actions were
reasonable*
8. There was probable cause to arrest the Defendant for the outstanding warrant.
9. After arresting the Defendant for the warrant, the troopers would have been permitted to
search her purse as a search incident to her arrest, an exception to the warrant
requirement.

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10. The methamphetamine in the purse would have been discovered independent of the evidence flowing from Trooper Bettger's statement that he was going to search Lavelle.
 11. The methamphetamine found in the pouch and Defendant's statements that the pouch belonged to her are suppressed.
 12. The methamphetamine and identification found in the purse are admissible.

5 DATED this 21 day of Jan, 2009.

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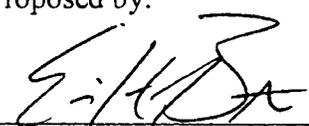


JUDGE STEPHEN F. WARNING
Cowlitz County Superior Court

9 Proposed by:

Notice of presentation given to:

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ERIC H. BENTSON/WSBA #38471
Deputy Prosecuting Attorney

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BRUCE HANIFY/WSBA# 15112
Attorney for the Defendant

EXHIBIT B

STATUTES

RCW 69.50.4013

Possession of controlled substance — Penalty.

(1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

NATALIE M. WILLIAMS,

Appellant.

COURT OF APPEALS NO.
38870-7-II

COWLITZ COUNTY NO.
08-1-01133-7

CERTIFICATE OF MAILING

The undersigned attorney for the Appellant hereby certifies that one original and one copy of the Opening Brief of Appellant were mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to Natalie Williams, Appellant, and Susan Baur, Deputy Prosecutor, by first class mail, postage pre-paid on August 6, 2009, at the Centralia, Washington post office addressed as follows:

Ms. Susan I. Baur
Deputy Prosecutor
Cowlitz County Prosecutor's Office
312 SW 1st Avenue
Kelso, WA 98626-1799

Mr. David Ponzoha
Clerk of the Court
Court of Appeals
950 Broadway, Ste. 300
Tacoma, WA 98402-4454

CERTIFICATE OF
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DATED: August 6, 2009.

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