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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

NO. 38971-1-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

ERICA N. GOOKIN,

Appellant,

APPEAL FROM THE SUPERIOR COURT
FOR THURSTON COUNTY
The Honorable Gary R. Tabor, Judge
Cause No. 08-1-01796-0

REPLY BRIEF

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TABLE OF CONTENTS

Page

A. ASSIGNMENT OF ERROR 1

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR 1

C. STATEMENT OF THE CASE 1

D. ARGUMENT 1

GOOKIN HAD AUTOMATIC STANDING TO CHALLENGE THE SEARCH AT ISSUE 1

E. CONCLUSION 3

TABLE OF AUTHORITIES

Page(s)

State of Washington

State v. Goucher, 124 Wn.2d 778, 881 P.2d 210 (1994) 1

State v. Jones, 68 Wn. App. 843, 845 P.2d 1358, review denied, 122 Wn.2d 1018 (1997) 1

State v. Jones, 146 Wn.2d 328, 45 P.3d 1062 (2001) 2

State v. Kypreos, 115 Wn. App. 207, 61 P.3d 352, reviewed denied, 149 Wn.2d 1029 (2003) 2

Federal Cases

Arizona v. Gant, ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) 8, 9, 12

A. ASSIGNMENT OF ERROR

The trial court erred in denying Gookin's motion to suppress where she had automatic standing.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether Gookin had automatic standing?

C. STATEMENT OF THE CASE

Appellant Erica Gookin (Gookin) incorporates and adopts by reference the statement of the case and law set forth in her opening brief filed herein on September 14, 2009. On or about November 3, the State filed its respondent's brief. For purposes of this reply brief, Gookin limits her argument to the following.

D. ARGUMENT IN REPLY TO STATE'S RESPONSE

GOOKIN HAD AUTOMATIC STANDING TO CHALLENGE THE SEARCH AT ISSUE.

As a prerequisite to asserting an unconstitutional invasion of rights, a person must demonstrate that he or she has a legitimate expectation of privacy in the area or item searched. State v. Goucher, 124 Wn.2d 778, 787, 881 P.2d 210 (1994); State v. Jones, 68 Wn. App. 843, 847, 845 P.2d 1358, review denied, 122 Wn.2d 1018 (1997). Since the charge in this case involved the essential element of possession of heroin, and since there was evidence that Gookin was in possession of the item

seized, she had a legitimate expectation of privacy in the area searched and has standing to challenge the search. State v. Jones, 146 Wn.2d 328, 331-34, 45 P.3d 1062 (2001); State v. Kypreos, 115 Wn. App. 207, 211-12, 61 P.3d 352, reviewed denied, 149 Wn.2d 1029 (2003). In Jones, supra, our State Supreme Court re-affirmed its adherence to automatic standing, a doctrine that allows a violation of a third party's rights to be asserted by the accused.

In order to invoke automatic standing, two requirements must be met: (1) Possession must be an essential element of the offense for which the defendant is charged, and (2) the defendant must be in possession of the seized property at the time of the contested search. State v. Jones, 146 Wn.2d at 332. Both requirements are satisfied here. In addition, there is a direct relationship in this case between the challenged police action and the evidence (heroin) used against Gookin, who was the sole passenger in the vehicle to be searched incident to the arrest of the driver, Yoder, and who exited the vehicle only because she had been ordered to do so by Deputy Simper. [RP 02/23/09 11]. As emphasized in Gookin's opening brief, absent the unconstitutional justification for the warrantless search of the vehicle, as mandated by Arizona v. Gant, ___ U.S. ___, 129 S. CT. 1710, 173 L. ED. 2D 485 (2009), Deputy Simper was without justification to interact with Gookin for the purpose of searching the vehicle and his

directions to her in that regard that culminated in the seizure of the heroine from her. [Br. of Appellant at 9).

E. CONCLUSION

Based on the above, Gookin respectfully requests this court to reverse and dismiss her conviction consistent with the argument presented herein.

DATED this 7th day of December 2009.

Respectfully submitted,

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CERTIFICATE

I certify that I mailed a copy of the above brief by depositing it in the United States Mail, first class postage pre-paid, to the following people at the addresses indicated:

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