

Nº. 50372-7-II

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

STATE OF WASHINGTON
Respondent,

v.

KASSANDRA MAE JEFFERS,
Appellant.

OPENING BRIEF OF APPELLANT

Appeal from the Superior Court of Lewis County,
Cause No. 16-1-00736-21
The Honorable James W. Lawler, Presiding Judge

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A. ASSIGNMENTS OF ERROR

1. Error is assigned to “Finding of Fact 1.12” relating to the denial of the motion to suppress that states:

“Jeffers’s purse and wallet were closely associated with her when she was told to exit the vehicle.”

Finding of Fact 1.12 is misidentified as a finding of fact. It is, in fact, a conclusion of law that is not supported by the facts and is contrary to Washington law.

2. Error is assigned to “Finding of Fact 1.12” relating to the stipulated facts bench trial that states:

“Jeffers’s purse and wallet were closely associated with her when she was told to exit the vehicle.”

Finding of Fact 1.12 is misidentified as a finding of fact. It is, in fact, a conclusion of law that is not supported by the facts and is contrary to Washington law.

3. The trial court erred in denying Ms. Jeffers’ motion to suppress.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Did the Court abuse its discretion by ruling the search of Ms. Jeffers’ purse was lawful as a search incident to arrest where the arresting officer himself created the “exigency” that allowed the search? (Assignments of Error Nos. 1, 2 & 3)

C. STATEMENT OF THE CASE

Factual and Procedural Background

On December 15, 2016, then Toledo police officer Andrew Scrivner was on “routine patrol duty” when he “saw a van which [he] knew was

associated with Ms. Jeffers.”¹ Because Officer Scrivner was aware of an “unconfirmed” warrant for Ms. Jeffers’ arrest, he “activated his emergency lights and stopped her.”² While Ms. Jeffers sat in her car, Officer Scrivner checked her registration and insurance, and “ran her name through dispatch, which “came back as unconfirmed felony warrant.”³ Officer Scrivner told dispatch to “confirm the warrant.”⁴ Officer Scrivner then “told Ms. Jeffers . . . to grab her belongings and . . . exit the car.”⁵ Ms. Jeffers complied, and was told by Officer Scrivner to sit her purse on the hood of the patrol vehicle.⁶

Officer Scrivner then walked Ms. Jeffers to the rear of his vehicle, and a “few moments later dispatch advised [him] that the warrant was confirmed.”⁷ Officer Scrivner testified, “that’s when I placed her in handcuffs, told her she was under arrest for a warrant, and then search incident to arrest, I searched her, placed her in my patrol car.”⁸

When Officer Scrivner was asked why he told Ms. Jeffers to “grab her belongings,” he responded,

Because I know just from my experience women carry

¹ RP 5-7.

² RP 8.

³ *Id.*

⁴ *Id.*

⁵ Officer Scrivner testified that he gave Ms. Jeffers a “directive” to bring her belongings with her when she exited her vehicle. RP 18.

⁶ RP 9.

⁷ *Id.*

⁸ *Id.*

purses, they carry multiple items, and I figured she'd want to have her items with her to the jail because that's what women like -- they like to have their stuff with them. And also per our policy, if we're going to tow a vehicle, we have to do an inventory and we don't want to have any false claims against us.⁹

Asked to describe what he did in this case to conduct a "search incident to arrest," Officer Scrivener testified:

I searched Ms. Jeffers first to make sure she didn't have any weapons or contraband or anything else that would hurt me or anybody. Once she didn't have anything on her person, I set her in the rear of my patrol car, shut the door. And then I went and did an inventory search of her purse for search incident to arrest and that's when I found some contraband.¹⁰

Ms. Jeffers described the same time period as follows:

He was pretty demanding, saying, you know, step out and grab my purse. I remember that pretty clear. . . .

He demanded me to, you know, get out of the car. I tried -- I tried to step out. And, again, he, you know, had his flashlight and he's like "grab your purse" and he, you know, shined it on the purse. . . .

I eventually got out and I grabbed my purse and set it on the seat. . . .¹¹

Ms. Jeffers also testified that her wallet was on top of her purse, and that the purse had been on the floor and when she gave Officer Scrivner her

⁹ RP 9-10.

¹⁰ RP 11.

¹¹ RP 21.

ID and other documents that she “never touched the purse.”¹² She stated that she kept her wallet on top of the purse because “Officer Scrivner likes to pull me over every time he sees me.”¹³

While searching Ms. Jeffers’ purse, Officer Scrivner opened two “black make-up bags,” in one of which he found a syringe, and found in the second bag “white crystalline” powder that tested “presumed” positive for methamphetamine.¹⁴ On December 6, 2016, Ms. Jeffers was charged with possession of a controlled substance under RCW 69.50.4013.¹⁵

Motion to Suppress Evidence

On February 16, 2017, Ms. Jeffers filed a Motion to Suppress Evidence “obtained as a result of an unlawful search of the Defendant’s purse followed by an unlawful search of the vehicle that she was driving at the time of her arrest.”¹⁶

Stipulated Facts Bench Trial

A stipulated facts bench trial took place on April 12, 2017. The State conceded and the Court ordered that “all items of evidence found by means of the impound inventory of the van subsequent to the defendant’s

¹² RP 23.

¹³ *Id.*

¹⁴ RP 12-13.

¹⁵ CP 1.

¹⁶ CP 7.

arrest are suppressed.”¹⁷ Ms. Jeffers was found guilty as charged.¹⁸

Sentencing Hearing

On May 7, 2017, Ms. Jeffers was sentenced to twelve months of community custody, 30 days of which were electronic home monitoring, with credit for two days time served.¹⁹ The Court signed an Order of Indigency authorizing the Defendant to Seek Review at Public Expense and Providing for Appointment of Attorney on Appeal.²⁰ Nevertheless, the following legal financial obligations were imposed on Ms. Jeffers: “\$500 crime victim assessment, \$200 filing fee, \$700 attorney fee, \$100 DNA fee, \$1,000 VUCSA fine, and \$100 lab fee.”²¹

Notice of Appeal was timely filed on May 17, 2017.

D. ARGUMENT

1. The trial court erred in ruling that the search of Ms. Jeffers’ purse was lawful.

(a) Standard of review.

A trial court's ruling on admission of evidence is reviewed for abuse of discretion.²² A trial court abuses its discretion when its decision is

¹⁷ CP 24.

¹⁸ RP 51.

¹⁹ CP 32.

²⁰ CP 50.

²¹ RP 60-61

²² *State v. Ortiz*, 119 Wn.2d 294, 308, 831 P.2d 1060 (1992).

“manifestly unreasonable or based on untenable grounds.”²³ A court’s

decision is manifestly unreasonable

if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.²⁴

(b) The permissible scope of a search of an arrestee’s person incident to her arrest under *Byrd*.

Article I, section 7 of the Washington State Constitution provides for broad privacy protections for individuals and generally prohibits unreasonable police invasions into personal affairs. We presume that a warrantless search of an individual’s personal item, such as a backpack, violates these protections unless the search falls within ‘one of the few carefully drawn and jealously guarded exceptions.’²⁵

“The State bears the burden to prove that one of the narrowly drawn exceptions to the warrant requirement validates the warrantless search.”²⁶

“A search incident to arrest is a valid exception to the warrant requirement.”²⁷ However, “[u]nlike the case-by-case approach necessary to satisfy the exigent circumstances exception, the search incident to arrest exception is **categorical**.”²⁸ The search incident to arrest exception to the

²³ *Grandmaster Sheng-Yen Lu v. King County*, 110 Wn.App. 92, 99, 38 P.3d 1040 (2002).

²⁴ *Id.*, 110 Wn.App. at 99, 38 P.3d 1040.

²⁵ *State v. Brock*, 184 Wn.2d 148, 153-54, 355 P.3d 1118 (2015) (internal quotation marks omitted) (quoting *State v. Byrd*, 178 Wn.2d 611, 616, 310 P.3d 793 (2013)).

²⁶ *State v. Kirwin*, 165 Wn.2d 818, 824, 203 P.3d 1044 (2009).

²⁷ *State v. Baird*, 187 Wn.2d 210, 230-231, 386 P.3d 239 (2016).

²⁸ *Baird*, 187 Wn.2d at 231, 386 P.3d 239 (emphasis added) (citing *Birchfield*, 136 S.Ct. at 2179.)

warrant requirement applies **only** to “articles ‘in such immediate physical relation to the one arrested as to be in a fair sense a projection of his person.’”²⁹

The trial court ruled Officer Scrivener’s search of Ms. Jeffers’ purse was “a valid search incident to arrest” under *State v. Byrd*³⁰ because

This issue turns on the nature of this item and the nature of this being a woman’s purse. There are very few things that are much more closely associated with a person than a woman’s purse.

So my finding is that this was a valid search incident to arrest. Under *Byrd*, a purse, this purse, was immediately associated with her.³¹

The trial court’s ruling was in error because it is based on an oversimplified understanding of the principles announced in *Byrd*.

In *Byrd*, Byrd was arrested while sitting in the passenger seat of a vehicle and holding her purse in her lap.³² Before removing Byrd from the car, the arresting officer seized the purse and set it on the ground nearby.³³ The officer then secured Byrd in a patrol car and returned to the purse within “moments” to search it for weapons or contraband.³⁴ Inside a

²⁹ *Id.* (quoting *Byrd*, 178 Wn.2d at 623, 310 P.3d 793 (quoting *United States v. Rabinowitz*, 339 U.S. 56, 78, 70 S.Ct. 430, 94 L.Ed. 653 (1950) (Frankfurter, J., dissenting))).

³⁰ 178 Wn.2d 611, 617-19, 310 P.3d 793 (2013).

³¹ RP 44.

³² *Byrd*, 178 Wn.2d at 615, 310 P.3d 793.

³³ *Byrd*, 178 Wn.2d at 615, 310 P.3d 793.

³⁴ *Byrd*, 178 Wn.2d at 615, 310 P.3d 793.

sunglasses case in Byrd's purse, the officer found methamphetamine.³⁵

Byrd moved to suppress the evidence of the methamphetamine and the trial court held that the search of the purse was unlawful because, at the time of the search, Byrd was secured and could not access the purse and therefore the contents of the purse could not be accessed by Byrd to pose a threat to officers or to be destroyed by Byrd.³⁶ The Court of Appeals agreed and affirmed the suppression, holding that the search of Byrd's purse had to be justified by concerns for evidence preservation or officer safety and because Byrd was restrained she could not destroy evidence or reach weapons that might be in her purse.³⁷

The *Byrd* court recognized that under both the Fourth Amendment and article 1, § 7 the search incident to arrest “embraces not one but two analytically distinct concepts under Fourth Amendment and article 1, § 7 jurisprudence”: (1) a search of the area within the immediate control of the arrestee; and (2) a search of the person of the arrestee.³⁸

The *Byrd* court also noted,

This court has long recognized the distinction between searches of the arrestee's person and surroundings. In *Parker*, 139 Wn.2d at 510, 987 P.2d 73, we explained that the rules of *Chimel* and *Robinson* are distinct because “*Chimel* applies to the area within the immediate control of

³⁵ *Byrd*, 178 Wn.2d at 615, 310 P.3d 793.

³⁶ *Byrd*, 178 Wn.2d at 615, 310 P.3d 793.

³⁷ *Byrd*, 178 Wn.2d at 616, 310 P.3d 793.

³⁸ *Byrd*, 178 Wn.2d at 617-618, 310 P.3d 793.

the arrestee and *Robinson* to the person of the arrestee.”³⁹

The *Byrd* court continued,

Whether a search incident to arrest is governed by *Chimel* or *Robinson* turns on whether the item searched was an article of the arrestee's person. See *United States v. Chadwick*, 433 U.S. 1, 15, 97 S.Ct. 2476, 2486, 53 L.Ed.2d 538 (1977) (requiring *Chimel* justification only for searches of “personal property *not* immediately associated with the person of the arrestee” (emphasis added)), overruled on other grounds by *California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991). Many courts, including Washington courts, draw a bright line between these two prongs of the search incident to arrest exception with the “time of arrest” rule.⁴⁰

“Unlike searches of the arrestee's surroundings, searches of the arrestee's person and personal effects do not require ‘a case-by-case adjudication’ because they always implicate *Chimel* concerns for officer safety and evidence preservation.”⁴¹ Under the time of arrest rule, an article is “immediately associated” with the arrestee's person and can be searched under *Robinson*, if the arrestee has actual possession of it at the time of a lawful custodial arrest.⁴²

The *Byrd* court

caution[ed] that the proper scope of the time of arrest rule is narrow, in keeping with this “jealously guarded” exception to the warrant requirement. *Ortega*, 177 Wn.2d at 122, 297 P.3d 57. It does not extend to all articles in an arrestee's

³⁹ *Byrd*, 178 Wn.2d at 619, 310 P.3d 793.

⁴⁰ *Byrd*, 178 Wn.2d at 620–21, 310 P.3d 793.

⁴¹ *Byrd*, 178 Wn.2d at 618, 310 P.3d 793.

⁴² *Byrd*, 178 Wn.2d at 621, 310 P.3d 793.

constructive possession, but only those personal articles in the arrestee's actual and exclusive possession at or immediately preceding the time of arrest. Some of our cases contain dicta, based on loose language from *Belton*, suggesting that the rule covers articles within the arrestee's reach. See, e.g., *Smith*, 119 Wn.2d at 681–82, 835 P.2d 1025 (holding correctly that an arrestee's purse is an article of her person, but claiming a broader rule). This suggestion is incorrect. Searches of the arrestee's person incident to arrest extend only to articles “in such immediate physical relation to the one arrested as to be in a fair sense a projection of his person.” *United States v. Rabinowitz*, 339 U.S. 56, 78, 70 S.Ct. 430, 94 L.Ed. 653 (1950) (Frankfurter, J., dissenting) (describing the historical limits of the exception). Extending *Robinson* to articles within the arrestee's reach but not actually in his possession exceeds the rule's rationale and infringes on territory reserved to *Gant* and *Valdez*.⁴³

The *Byrd* court held that the search of Byrd's purse was lawful because the purse was “unquestionably an article ‘immediately associated’ with her person” because “the purse was within Ms. Byrd's reach and could even be described as on her person, not only at the stop but at the time of arrest” and “[t]he purse left Byrd's hands only after her arrest, when [the arresting officer] momentarily set it aside” and “[t]here was no ‘significant delay between the arrest and the search’ that would ‘render[] the search unreasonable.’”⁴⁴

In sum, as relevant to this case, under *Byrd* police may always search personal effects of an arrestee incident to his or her arrest so long as the following factors are met:

⁴³ *Byrd*, 178 Wn.2d at 623, 310 P.3d 793.

⁴⁴ *Byrd*, 178 Wn.2d at 623–24, 310 P.3d 793.

(1) the property searched is “immediately associated” with the arrestee defined as “in such immediate physical relation to the one arrested as to be in a fair sense a projection of his person”;

(2) the arrestee has “actual and exclusive” possession of the property as opposed to constructive possession; and

(3) there is no significant delay between the arrest and the search.

(c) *Byrd* does not support the trial court’s decision that the search of Ms. Jeffers’ purse was a lawful search incident to arrest.

Ms. Jeffers does not dispute that a purse may be considered property of the sort “intimately associated” with the person holding it or that there was no significant delay between her arrest and the search of her purse. Ms. Jeffers asserts that the search of her purse was unlawful because at the time of her seizure the purse was not in her actual possession.

i. Ms. Jeffers did not have actual possession of her purse at the time she was seized.

The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention, short of a traditional arrest.⁴⁵ A person is “seized” within the meaning of the Fourth Amendment only when, by means of physical force or a show of authority, his freedom of movement is restrained.⁴⁶ There is a “seizure” when, in view of all of the circumstances surrounding the incident, a reasonable

⁴⁵ *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 2578, 45 L.Ed.2d 607 (1975); *Davis v. Mississippi*, 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969).

⁴⁶ *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

person would have believed that he was not free to leave.⁴⁷ This rule also applies to the stopping of an automobile and detention of its occupants.⁴⁸

Washington Constitution article I, section 7 states: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” This provision provides greater protection than the Fourth Amendment because it focuses on the disturbance of private affairs rather than focusing on unreasonable searches and seizures.⁴⁹

“A seizure under article I, section 7 occurs when, due to an officer's use of physical force or display of authority, an individual's freedom of movement is restrained and the individual would not believe that he is free to leave or decline a request.”⁵⁰ “This determination is made by looking objectively at the actions of the law enforcement officer.”⁵¹

Where police pull up near a vehicle and activate their emergency lights, the police have seized the occupants of the vehicle for Fourth Amendment purposes.⁵²

Ms. Jeffers was seized by Officer Scrivener at the moment he activated his emergency lights and pulled her over. The testimony of both Officer Scrivener and Ms. Jeffers was that when Officer Scrivener stopped Ms. Jeffers, Ms. Jeffers' purse was sitting on the floor of her vehicle in

⁴⁷ *Id.*

⁴⁸ *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

⁴⁹ *State v. Gantt*, 163 Wn.App.133, 138, 257 P.3d 682 (2011), citing *State v. Harrington*, 167 Wn.2d 656, 663, 222 P.3d 92 (2009).

⁵⁰ *State v. Beito*, 147 Wn.App. 504, 508, 195 P.3d 1023 (2008).

⁵¹ *Id.* (quoting *State v. Mote*, 129 Wn.App. 276, 282–83, 120 P.3d 596 (2005)).

⁵² *State v. Stroud*, 30 Wn.App. 392, 396, 634 P.2d 316 (1981), *review denied* 96 Wn.2d 1025 (1982).

between her seat and the front passenger seat. Unlike Byrd, Ms. Jeffers was not holding her purse in her lap at the time of her seizure. Ms. Jeffers did not have actual possession of her purse at the time of her seizure.

ii. The fact the item was a woman's purse does not mean that Ms. Jeffers had actual possession of the purse at the time she was seized by Officer Scrivener.

The trial court erred because the “nature of the item” to be searched does not control the issue of whether an item constitutes part of the arrestee’s person. A woman’s purse is not ipso facto “part of the arrestee’s person” if it is not on her person at the time of seizure. Rather, “[s]earches of the arrestee's person incident to arrest extend only to articles “in such immediate physical relation to the one arrested as to be in a fair sense a projection of his person.”⁵³ The *Byrd* court noted:

Here, Byrd's purse was unquestionably an article “immediately associated” with her person. As the dissenting judge in the Court of Appeals astutely observed, “the purse was within Ms. Byrd's reach **and could even be described as on her person, not only at the stop but at the time of arrest.**”⁵⁴

The question in *Byrd* was whether the arrestee’s purse, which was **sitting on her lap at the time of arrest, constituted part of the arrestee’s**

⁵³ *Byrd*, 178 Wn.2d 611, 623, 310 P.3d 793 (quoting *United States v. Rabinowitz*, 339 U.S. 56, 78, 70 S.Ct. 430, 94 L.Ed. 653 (1950) (Frankfurter, J., dissenting) (describing the historical limits of the exception).

⁵⁴ *Byrd*, 178 Wn.2d at 623, 310 P.3d 793 (quoting *Byrd*, 162 Wn.App. at 618, 258 P.3d 686 (Brown, J., dissenting)).

person, as opposed to part of the surrounding area, for purposes of whether the arresting officers could search the purse incident to the arrest.

The analysis in *Byrd* was focused on the “time of arrest” rule, which is that “an article is ‘immediately associated’ with the arrestee’s person and can be searched under *Robinson*, **if the arrestee has actual possession of it at the time of a lawful custodial arrest.**”⁵⁵ The *Byrd* court “rel[ie]d on the time of arrest rule and h[e]ld that **because Byrd’s purse was on her lap at the time of her arrest**, it was an article of her person.”⁵⁶

Ms. Jeffers did not have actual possession of her purse at the time she was seized, therefore it was not an article of her person.

iii. Officer Scrivener ordering Ms. Jeffers to take her purse out of the vehicle did not render the search of her purse incident to her arrest lawful.

In this case, Ms. Jeffers’ purse was not in her actual possession at the time of her custodial arrest, nor was it in her actual possession at the time she was seized. Ms. Jeffers removed her purse from the floor of her minivan and placed it on the hood of Officer Scrivener’s patrol car at his direction. Officer Scrivener then walked Ms. Jeffers to the rear of his car, where they waited on dispatch to confirm the existence of an outstanding warrant. After the warrant was confirmed, Officer Scrivener placed Ms.

⁵⁵ *Byrd*, 178 Wn.2d at 621, 310 P.3d 793

⁵⁶ *Byrd*, 178 Wn.2d at 625, 310 P.3d 793.

Jeffers in handcuffs, told her she was under arrest, searched her person, and placed her in his patrol car.⁵⁷ Only then did Officer Scrivener search Ms. Jeffers' purse, which was still sitting on the hood of his patrol car.

Ms. Jeffers' purse was on the floor of her minivan when Officer Scrivener first contacted her. It was not a "projection" of her person. When Officer Scrivener ordered Ms. Jeffers to exit her car, she 'tried to step out," but he then ordered her to "grab her purse."⁵⁸ In short, Officer Scrivener accomplished a seizure of personal property, using Ms. Jeffers as his agent.

Officer Scrivener knew that if Ms. Jeffers left her purse inside her vehicle when he ordered her to exit the car, he would not be able to search it without a warrant, because she was not under arrest at that time.⁵⁹ Officer Scrivener therefore "directed" her to remove her purse from the car, thus accomplishing through Ms. Jeffers what he himself is forbidden to do under Washington law:

Police may not evade *Gant* by removing an article from a car before searching it, but this is not because the federal and state constitutions specially protect articles in cars. It is because, under *Chimel*, the State must justify the warrantless search **of every article not on the arrestee's person or closely associated with the arrestee's person**

⁵⁷ *Id.*

⁵⁸ RP 21.

⁵⁹ *Cf. Byrd*, 178 Wn.2d at 624 ("If an officer cannot prevent an **arrestee** from leaving her purse in a car, what of other personal articles, such as an **arrestee's** jacket, baggie of drugs, or concealed firearm?").

at the time of his or her arrest.⁶⁰

Here, had Officer Scrivener not directed Ms. Jeffers to bring her purse outside of the vehicle, he would have needed a warrant to search the car and the purse:

[A]fter an arrestee is secured and removed from the automobile, he or she poses no risk of obtaining a weapon or concealing or destroying evidence **of the crime of arrest located in the automobile**, and thus the arrestee's presence does **not** justify a warrantless search under the search incident to arrest exception.⁶¹

Police may not manufacture their own exigent circumstances in order to justify warrantless search.⁶² Officer Scrivener could not lawfully search Ms. Jeffers purse incident to her arrest where the only reason she actually possessed the purse was because Officer Scrivener told her to bring it with her when she exited the vehicle.

2. This court should vacate Ms. Jeffers' conviction and remand for a retrial where all evidence discovered pursuant to the search of her purse is excluded.

When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be

⁶⁰ *Byrd*, 178 Wn.2d at 624-625, 310 P.3d 793.

⁶¹ *State v. Snapp*, 174 Wn.2d 177, 189, 275 P.3d 289 (2012) (quoting *State v. Buelna Valdez*, 167 Wn.2d 761, 777 224 P.3d 751 (2009)).

⁶² *Cf. State v. Hall*, 53 Wn.App. 296, 302, 766 P.2d 512, *review denied*, 112 Wn.2d 1016 (1989). *See also United States v. Webster*, 750 F.2d 307, 327 (5th Cir.1984), *cert. denied*, 471 U.S. 1106 (1985) (police officers cannot deliberately create exigent circumstances to justify a warrantless entry into a private dwelling); *United States v. Thompson*, 700 F.2d 944, 950 (5th Cir.1983) (and cases cited therein).

suppressed.⁶³ Under article 1, section 7, suppression is constitutionally required.⁶⁴ This constitutionally mandated exclusionary rule “saves article 1, section 7 from becoming a meaningless promise.”⁶⁵ Exclusion provides a remedy for the citizen in question and saves the integrity of the judiciary by “not tainting our proceedings by illegally obtained evidence.”⁶⁶

An error in admitting evidence that does not result in prejudice to the defendant is not grounds for reversal. [Where] the error...result[s] from violation of an evidentiary rule, not a constitutional mandate...we apply “the rule that error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred.” The improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole.⁶⁷

Where erroneously admitted evidence materially affected the outcome of a trial, the remedy is remand for a new trial.⁶⁸

As discussed above, the warrantless search of Ms. Jeffers’ purse was unlawful and it was error for the trial court to admit the evidence. This evidence materially affected the outcome of Ms. Jeffers’ trial because it was the only evidence to support the charge against Ms. Jeffers. The proper remedy in this case is to vacate Ms. Jeffers’ conviction and remand

⁶³ *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986).

⁶⁴ *State v. White*, 97 Wn.2d 92, 110-112, 640 P.2d 1061 (1982).

⁶⁵ *State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833 (1999).

⁶⁶ *Ladson*, 138 Wn.2d at 359-360, 979 P.2d 833.

⁶⁷ *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120, 1127 (1997) (internal citations omitted).

⁶⁸ See *State v. Stanton*, 68 Wn.App. 855, 867, 845 P.2d 1365 (1993).

for a new trial where the evidence is excluded.

E. CONCLUSION

The trial court abused its discretion in denying Ms. Jeffers' motion to suppress all evidence found in her purse because the facts of this case did not meet the legal standard to make the search of the purse lawful incident to Ms. Jeffers' arrest. The erroneous introduction of this evidence materially affected the outcome of the trial because the evidence found in the purse was the only evidence that supported the charge against her.

For the reasons stated above, this court should vacate Ms. Jeffers' conviction and remand for a new trial where the evidence is excluded.

DATED this 14th day of September, 2017.

Respectfully submitted,



Reed Speir, WSBA No. 36270
Attorney for Appellant

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 14th day of September, 2017, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Lewis County Prosecutor's Office
Law & Justice Center, 2nd Floor
345 West Main Street
Chehalis WA 98532

And to:

Ms. Cassandra Jeffers
P.O. Box 1411
Toledo, WA 98591

Signed at Tacoma, Washington this 14th day of September, 2017.



Reed Speir, WSBA No. 36270

LAW OFFICE OF REED SPEIR

September 13, 2017 - 7:15 PM

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Appellate Court Case Title: State of Washington, Respondent v Cassandra Mae Jeffers, Appellant
Superior Court Case Number: 16-1-00736-2

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