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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

KASSANDRA MAE JEFFERS,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

JONATHAN L. MEYER
Lewis County Prosecuting Attorney



By:

JESSICA L. BLYE, WSBA No. 43759
Deputy Prosecuting Attorney

Lewis County Prosecutor's Office
345 W. Main Street, 2nd Floor
Chehalis, WA 98532-1900
(360) 740-1240

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. ISSUES.....1

II. STATEMENT OF THE CASE1

III. ARGUMENT3

A. THE SEARCH OF JEFFERS’S PURSE WAS LAWFUL
BECAUSE IT WAS CLOSELY ASSOCIATED WITH
HER IMMEDIATELY PRECEDING HER ARREST AND
BECAUSE THE PURSE WAS A PERSONAL ITEM
THAT WOULD GO WITH JEFFERS TO THE JAIL3

1. Standard Of Review4

2. The Fourth Amendment And Article One, Section
Seven, Protect Citizens From Warrantless Searches
And Seizures By Police6

3. Officer Scrivner Searched Jeffers's Purse Incident
To Her Lawful Arrest.....7

IV. CONCLUSION.....15

TABLE OF AUTHORITIES

Washington Cases

<i>State ex. rel. Lige v. County of Pierce</i> , 65 Wn. App. 614, 829 P.2d 217 (1992), review denied 120 Wn.2d 1008 (1992)	5
<i>State v. Brock</i> , 184 Wn.2d 148, 335 P.3d 1118 (2015).....	9, 10, 14
<i>State v. Byrd</i> , 178 Wn.2d 611, 310 P.3d 793 (2013)	6, 7, 8, 9, 12, 13, 14
<i>State v. Campbell</i> , 166 Wn. App. 464, 272 P.3d 859 (2011)	4
<i>State v. Gaines</i> , 122 Wn.2d 502, 859 P.2d 36, 40 (1993).....	5
<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994).....	4
<i>State v. Ladson</i> , 138 Wn.2d 343, 979 P.2d 833 (1999)	6
<i>State v. Lohr</i> , 164 Wn. App. 414, 263 P.3d 1287 (2011)	4
<i>State v. Monaghan</i> , 165 Wn. App. 782, 266 P.3d 222 (2012).....	6
<i>State v. O’Neill</i> , 148 Wn.2d 564, 62 P.3d 489 (2003)	7
<i>State v. Sadler</i> , 147 Wn. App. 97, 193 P.3d 1108 (2008)	5, 12
<i>State v. Smith</i> , 119 Wn.2d 675, 835 P.2d 1025 (1992).....	7
<i>State v. Snapp</i> , 174 Wn.2d 177, 186, 275 P.3d 289 (2012).....	13
<i>State v. Stevenson</i> , 128 Wn. App. 179, 114 P.3d 699 (2005)....	5, 11

Federal Cases

<i>Arizona v. Gant</i> , 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009)	13
---	----

<i>Chimel v. California</i> , 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969)	8
<i>Skinner v. Ry Labor Executives' Ass'n</i> , 489 U.S. 602, 109 S. Ct. 1402, 103 L. Ed.2d 639 (1989)	6
<i>Terry v. Ohio</i> , 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed.2d 889 (1968) ..	9
<i>United States v. Rabinowitz</i> , 339 U.S. 56, 70 S.Ct. 430, 94 L.Ed. 653 (1950)	8
<i>United States v. Robinson</i> , 414 U.S. 218, 94 S. Ct. 467, 38 L.Ed.2d 427 (1973)	7, 8
<i>Weeks v. United States</i> , 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914)	7

Washington Statutes

RCW 10.31.060	7
---------------------	---

Constitutional Provisions

Washington Constitution, Article I, § 7	6
U.S. Constitution, Amendment IV	6

Other Rules or Authorities

CrR 3.6	15
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I. ISSUES

- A. Did the trial court err when it concluded Jeffers's purse was closely associated with her at the time of, and immediately preceding, her arrest?
- B. Did the officer have the authority to search Jeffers's purse when the purse was a personal item that would go to the jail with Jeffers?

II. STATEMENT OF THE CASE

On December 5, 2016, Officer Scrivner observed Kassandra Jeffers driving a silver minivan. RP 7-8; CP 22. Officer Scrivner recognized Jeffers from prior contacts and knew Jeffers had a warrant for her arrest. RP 7; CP 22. Officer Scrivner pulled the minivan over and contacted Jeffers. RP 8; CP 22.

When Officer Scrivner contacted Jeffers, Jeffers's purse was a few inches from her leg and elbow, located on the floor of the van between the two bucket seats. RP 13-14; CP 22. During the contact, Jeffers produced identification from her wallet, which was sitting on top of the purse. RP 21, 26; CP 22. Officer Scrivner informed Jeffers of the warrant and called dispatch for confirmation. RP 8; CP 22.

While waiting for dispatch to confirm the warrant, Officer Scrivner instructed Jeffers to grab her belongings to take with her to the jail. RP 9, 18-19, 25; CP 22. Jeffers grabbed her wallet and purse and exited the minivan. RP 9; CP 22. Jeffers placed her purse on the

hood of Officer Scrivner's patrol vehicle, and they walked toward the back of the vehicle. RP 9; CP 23. Officer Scrivner then handcuffed Jeffers pending confirmation of the warrant. RP 9; CP 23.

A few minutes later, dispatch confirmed the warrant and Officer Scrivner advised Jeffers she was under arrest. RP 9; CP 23. Scrivner then searched Jeffers and her purse. RP 10-11; CP 23. Inside a makeup bag within the purse, Officer Scrivner found several syringes and a plastic container with a bundle of white crystalline substance inside. RP 12-13; CP 23. Officer Scrivner believed the substance to be methamphetamine based on his training, knowledge, and experience. RP 13; CP 23. The substance field tested positive for methamphetamine. RP 13; CP 23. Jeffers was charged with Possession of Methamphetamine. CP 1-2.

Jeffers moved to suppress the collected evidence. CP 13-19. Jeffers argued the search of the purse was not a proper search incident to her arrest because Jeffers was not in actual possession of the purse at the time of arrest. RP 36-41; CP 13-19. At an evidentiary hearing, Officer Scrivner testified that he expected the purse to go with Jeffers to the jail when the warrant was confirmed and she was arrested. RP 9-10.

The trial court found Officer Scrivner's search of the purse was a lawful search incident to arrest and determined that Jeffers's purse was closely associated with her at the time of, and immediately preceding, her arrest. RP 44-46; CP 23. The trial court denied the motions to suppress, entering written findings of fact and conclusions of law. RP 44-46; CP 21-24.

Jeffers proceeded with a stipulated facts bench trial, with the intent to appeal the trial court's ruling on the motion to suppress. RP 49-51. The trial court reviewed the stipulated facts and found Jeffers guilty of Possession of Methamphetamine. RP 51; CP 32. This appeal follows. CP 44.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. THE SEARCH OF JEFFERS'S PURSE WAS LAWFUL BECAUSE IT WAS CLOSELY ASSOCIATED WITH HER IMMEDIATELY PRECEDING HER ARREST AND BECAUSE THE PURSE WAS A PERSONAL ITEM THAT WOULD GO WITH JEFFERS TO THE JAIL.

Jeffers argues the trial court incorrectly denied her motion to suppress the evidence found in her purse after she was arrested. The trial court correctly ruled Officer Scrivner's search was a lawful search incident to arrest because the purse was closely associated

with Jeffers immediately preceding her arrest. Additionally, the purse was properly within the scope of the officer's authority to search because it was a personal item of Jeffers that was going with her to the jail. This Court should find that the motion to suppress the evidence obtained was correctly denied.

1. Standard Of Review.

When an appellant challenges a trial court's denial of a motion to suppress, the reviewing court determines whether there is substantial evidence to support the challenged findings of fact and whether those findings support the trial court's conclusions of law. *State v. Campbell*, 166 Wn. App. 464, 469, 272 P.3d 859 (2011). Findings of fact entered by a trial court after a suppression hearing will be reviewed by the appellate court only if the appellant has assigned error to the fact. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). "Where there is substantial evidence in the record supporting the challenged facts, those facts will be binding on appeal." *Id.* Substantial evidence exists when the evidence is sufficient to persuade a rational, fair-minded person of the truth of the finding based upon the evidence in the record. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011) (citation omitted). The appellate court defers to the fact finder regarding the credibility of

witnesses and the weight to be given reasonable but competing inferences. *State ex. rel. Lige v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992), *review denied* 120 Wn.2d 1008 (1992). Findings of fact not assigned error are considered verities on appeal. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005).

A trial court's conclusions of law are reviewed de novo, with deference to the trial court on issues of weight and credibility. *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008). If a conclusion of law is incorrectly labeled as a finding of fact, it is reviewed as a conclusion of law and will be upheld if supported by the findings. *State v. Gaines*, 122 Wn.2d 502, 508, 859 P.2d 36, 40 (1993) (citations omitted).

In the present case Jeffers does not assign error to any of the findings of fact, aside from Finding of Fact 1.12, which Jeffers argues should be reviewed as a question of law. The remaining findings of fact are therefore verities on appeal. Jeffers fails to assign error to the conclusions of law. Given Jeffers's arguments on appeal, the State will assume this was an oversight.¹

¹ Challenged Finding of Fact 1.12 is extremely similar to Conclusion of Law 2.1. The State assumes Jeffers is challenging this conclusion of law.

2. The Fourth Amendment And Article One, Section Seven, Protect Citizens From Warrantless Searches And Seizures By Police.

Citizens have the right to not be disturbed in their private affairs except under authority of the law. U.S. Const. amend IV; Const. art. I, § 7. The right to privacy in Washington State is broader than the right under the Fourth Amendment of the United States Constitution. Const. art. I, § 7; *State v. Byrd*, 178 Wn.2d 611, 616, 310 P.3d 793 (2013). Washington State places a greater emphasis on privacy and recognizes individuals have a right to privacy with no express limitations. Const. art. I, § 7; *State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833 (1999).

Generally, a search is not reasonable unless it is based on a warrant issued upon probable cause. *Skinner v. Ry Labor Executives' Ass'n*, 489 U.S. 602, 619, 109 S. Ct. 1402, 103 L. Ed.2d 639 (1989). "Under article 1, section 7, a warrantless search is per se unreasonable unless the State proves that one of the few carefully drawn and jealously guarded exceptions applies." *Byrd*, 178 Wn.2d at 616 (internal quotations and citations omitted). The remedy for an unconstitutional search or seizure is exclusion of the evidence that was uncovered and obtained. *State v. Monaghan*, 165 Wn. App. 782, 789, 266 P.3d 222 (2012).

3. Officer Scrivner Searched Jeffers's Purse Incident To Her Lawful Arrest.

Officers may make an arrest on a warrant by telegraph or teletype if the warrant's existence and information is verified. RCW 10.31.060. When a person is under actual, lawful custodial arrest he or she may be searched incident to that arrest. *United States v. Robinson*, 414 U.S. 218, 224, 94 S. Ct. 467, 38 L.Ed.2d 427 (1973); *State v. Byrd*, 178 Wn.2d at 618-19; *State v. O'Neill*, 148 Wn.2d 564, 585, 62 P.3d 489 (2003); *State v. Smith*, 119 Wn.2d 675, 678, 835 P.2d 1025 (1992). The right to search incident to arrest is of long pedigree in English and American law. *Weeks v. United States*, 232 U.S. 383, 392, 34 S. Ct. 341, 58 L. Ed. 652 (1914).²

In *Byrd* the Supreme Court cited to the United States Supreme Court's decision in *United States v. Robinson*, 414 U.S. 218, 94 S. Ct. 467, 38 L.Ed.2d 427 (1973) to explain the search incident to lawful arrest exception. *Byrd*, 178 Wn.2d at 617-18.

In *Robinson*, the Court held that under 'the long line of authorities of this Court dating back to *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed 652 (1914)' and 'the history of practice in this country and in England,' searches of an arrestee's person, including articles of the person such as clothing or personal

² Noting that "the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested . . . has been uniformly maintained in many cases."

effects, require 'no additional justification' beyond the validity of the custodial arrest.

Id., citing *Robinson*, 414 U.S. at 235 (internal alterations omitted).

The Supreme Court upheld the distinction between searches of an arrestee's person as compared to the arrestee's surroundings. *Byrd*, 178 Wn.2d at 619-620. It is not necessary to do a case specific determination that there was an officer safety issue or the search was necessary for evidence preservation when the search is of the person after a lawful custodial arrest. *Id.*

The search of the person extends to personal items "immediately associated" with the arrestee's person. *Id.* at 621. The exception applies to "personal articles in the arrestee's actual and exclusive possession at or immediately preceding the time of arrest." *Id.* at 623. Such searches are limited "to articles 'in such immediate physical relation to the one arrested as to be in a fair sense a projection of his person.'" *Id.* at 623 (*quoting United States v. Rabinowitz*, 339 U.S. 56, 78, 70 S.Ct. 430, 94 L.Ed. 653 (1950) (Frankfurter, dissenting), *overruled by Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969)). A purse can be considered a projection of an arrestee's person. *Byrd*, 178 Wn.2d at 619-620.

In *State v. Brock*, the Supreme Court further clarified the search incident to arrest exception in regards to personal items of the arrestee. *State v. Brock*, 184 Wn.2d 148, 335 P.3d 1118 (2015). In *Brock* the defendant was detained as part of a *Terry*³ investigative stop. *Brock*, 184 Wn.2d at 151. At the time Brock was detained by the officer he was wearing a backpack. *Id.* The officer had Brock remove the backpack, and when they moved over to the officer's patrol car, the officer carried the backpack over to the car and set it 12 to 15 feet away from Brock. *Id.* at 151-52. Brock was placed under arrest approximately 10 minutes after his initial contact with the officer. *Id.* at 152. After placing Brock under arrest the officer searched the backpack incident to arrest and discovered marijuana and methamphetamine. *Id.*

The key question in *Brock* was how to define "actual and exclusive possession at or immediately preceding the time of arrest." *Brock*, 184 Wn.2d 154-58.⁴ Immediately preceding does not necessarily mean in the seconds before the arrest. *Id.* 157-58. The Supreme Court held:

The proper inquiry is whether possession so immediately precedes arrest that the item is still functionally a part of the arrestee's person. Put simply,

³ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed.2d 889 (1968).

⁴ *Citing Byrd*, 178 Wn.2d at 623.

personal items that will go to jail with the arrestee are considered in the arrestee's "possession" are within the scope of the officer's authority to search.

Id. at 158.

Jeffers argues because her purse was not attached to her person when the officer first seized her or at the time of arrest, Jeffers did not have actual possession of the purse. Brief of Appellant 14.⁵

When Officer Scrivner first seized Jeffers by conducting a traffic stop, Jeffers's purse was a few inches from her leg and elbow on the floor of the minivan. CP 22. Jeffers's wallet, from which she retrieved her driver's license, had been sitting on top of her purse. CP 22. When Officer Scrivner told Jeffers to exit the vehicle and grab her belongings to take to jail, Jeffers picked up her purse, removed it from the minivan, and placed the purse on Officer Scrivner's patrol car. CP 22-23. Officer Scrivner arrested Jeffers on the warrant a few minutes later. CP 23.

These facts support the conclusion that, when Jeffers was first pulled over, her purse was "in such immediate physical relation" to

⁵ Appellate counsel dedicates much of his brief to arguing whether Jeffers had actual possession of her purse at the time of her seizure. However, the search incident to arrest exception focuses on the time of *arrest*, not seizure, and whether or not the article was in the arrestee's possession at or immediately preceding the time of arrest. *Byrd*, 178 Wn.2d at 623.

her that the purse could fairly be considered a projection of her person. When Jeffers removed her purse from the minivan minutes before she was arrested, she had actual possession of her purse. This purse was a personal item that was going to go with Jeffers to the jail, and was therefore in her possession and within the scope of Officer Scrivner's authority to search. The totality of the evidence in this case shows Jeffers was in possession of her purse immediately preceding her arrest.

Jeffers argues the only reason she had actual possession of her purse at any point during the encounter was because Officer Scrivner ordered her to remove the purse from her vehicle when she tried to exit without it. Brief of Appellant 14. However, this was not a finding of the court. The court found Officer Scrivner ordered Jeffers to grab her belongings to take with her to the jail and Jeffers responded by grabbing her purse and her wallet. CP 22. Jeffers has not assigned error to these findings of fact and they are verities on appeal. See *Stevenson*, 128 Wn. App. at 193. These findings are also supported by the record through Officer Scrivner's testimony. RP 9, 18-19, 25. Jeffers's argument is based on the version of events provided by her own testimony, which was not adopted by the trial court. RP 41-45; CP 21-23. This Court gives deference to the trial

court regarding issues of weight and credibility. See *Sadler*, 147 Wn. App. at 123.

Jeffers cites to *Byrd* to support the proposition that, had Jeffers exited the vehicle without her purse, Officer Scrivner would have needed a warrant to search the purse. Brief of Appellant 15. However, *Byrd* does not lead to this conclusion.

Byrd posed a hypothetical question as an argumentum ad absurdum – ‘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, a “baggie” of drugs, or a concealed firearm?’ 178 Wn.2d at 624. This question was used to show it was absurd to suggest an officer would not have authority “to seize articles of [the arrestee’s] person, including her clothing and purse that were in her possession at the time of arrest.” *Id.*

Byrd specifically notes personal articles in vehicles do not have special protection from search and seizure. *Id.* Warrantless searches “of every article not on the arrestee’s person or closely associated with the arrestee’s person” must be justified by the State. *Id.* at 625. It follows that articles either on the arrestee, arrestee’s person or closely associated with the arrestee’s person do not require “justification beyond the validity of the arrest.” *Id.* at 617-18.

The constitutional protections of *Arizona v. Gant*⁶ “do not include the arrestee's person or her personal articles, even if the arrestee is in a car at the time of arrest. *State v. Byrd*, 178 Wn.2d 611, 624, 310 P.3d 793, 799 (2013).”

Jeffers emphasizes *Byrd's* use of “arrestee” in its discussion to imply that, because Jeffers was merely seized but not under arrest at the time she exited the vehicle, she could not be prevented from leaving her purse in the vehicle and leaving her purse in the vehicle would have caused the purse to not be closely associated with her at the time of her arrest. Brief of Appellant 15. However, in *Byrd* the Court had no reason to discuss whether its analysis would be affected if the defendant had been arrested after she exited the vehicle because those were not the facts of the case. *Byrd*, 178 Wn.2d at 615.

The other opinion Jeffers cites, *State v. Snapp*, specifically involved vehicle searches, not searches of an arrestee's person or personal articles. 174 Wn.2d 177, 184, 186, 275 P.3d 289 (2012). Because *Snapp* involved searches of the arrestees' vehicles, it was necessary to determine whether there was an officer safety or evidence preservation issue to justify the warrantless searches. *Id.*

⁶ *Arizona v. Gant*, 556 U. S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009).

at 189. This is not analogous to the present case, where Officer Scriver searched a personal article and not the interior of a vehicle.

Officer Scriver's search of Jeffers's purse incident to Jeffers's arrest on her warrant was permissible pursuant to *State v. Byrd* and *State v. Brock*. The trial court correctly denied the motion to suppress and this Court should affirm the ruling and Jeffers's conviction.

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IV. CONCLUSION

The trial court properly denied Jeffers's motion to suppress the methamphetamine located in her purse. Jeffers's purse was searched incident to her lawful arrest, as it was immediately associated with her person and she had actual possession of the purse immediately prior to her arrest. This Court should affirm the trial court's conclusions of law from the CrR 3.6 Hearing and Jeffers's conviction for Possession of Methamphetamine.

RESPECTFULLY submitted this 13th day of November, 2017.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

A handwritten signature in blue ink, consisting of a large, stylized initial 'J' followed by a long horizontal stroke.

by: _____
JESSICA L. BLYE, WSBA 43759
Attorney for Plaintiff

LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

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