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Court of Appeals
Division II
State of Washington
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NO. 51700-1-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

RACHEL RICHARDS,

Appellant.

RESPONDENT'S BRIEF

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I. RESPONSE TO ASSIGNMENTS OF ERROR

1. The trial court did not err in denying Richards' motion to suppress as the search of her purse was a lawful search incident to arrest.

II. STATEMENT OF THE CASE

On November 11, 2017, Christa Garvin, a loss prevention officer at the Woodland, Washington, Walmart observed Richards put several items of merchandise into her large purse. 2RP 38–9. Richards went to the cash register and paid for some of the items that she had selected but did not pay for the items she had placed in her purse. 2RP 39. Ms. Garvin contacted Richards between the two sets of doors and asked her to go back inside the store. Richards refused and walked outside, where law enforcement officers were waiting for her. 2RP 40.

Woodland Police Sergeant Robb Lipp detained Richards and everyone went to the loss prevention office. 2RP 51. Sergeant Lipp searched Richards' purse in the office and located the stolen merchandise as well as a black, nylon, zippered bag. 2RP 52. Upon opening the nylon bag, Sergeant Lipp observed some syringes, foil with black residue, and some ziplock-style baggies. The black residue appeared to be heroin.

The suspected heroin found in Richards' purse was sent to the Washington State Patrol Crime Laboratory where it was tested and found to contain heroin. CP 10; 2RP 91.

Richards was charged with one count of possession of a controlled substance –heroin – and theft in the third degree. CP 1. Prior to trial, she filed a motion to suppress the drug evidence, arguing that the search of the closed container inside the purse was unlawful. CP 3. The trial court disagreed, finding that closed containers inside a purse that are not locked are subject to search pursuant to a search incident to arrest. 1RP 34. The case ultimately proceeded to trial on March 8, 2018, and Richards was found guilty of both charges. 2RP 120. She now timely appeals.

III. ARGUMENT

The trial court did not err in denying Richards’ motion to suppress as the search of her purse was a lawful search incident to arrest.

Warrantless searches are unreasonable per se under article I, section 7 of the Washington Constitution unless the search falls into one of the “carefully drawn and jealously guarded exceptions.” *State v. Byrd*, 178 Wn.2d 611, 616, 310 P.3d 793 (2013). One such exception is a search incident to a valid arrest. *Id.* at 617.

There are two types of valid search incident to arrest. *Id.* First, the area within the arrestee’s control may be searched, but such a search must be justified by concerns for officer safety or destruction of evidence. Second, the arrestee’s person may be searched incident to arrest. Such a search presumes exigency and does not require any determination that the

search was justified by officer safety or evidence preservation. *Id.* at 618.

The search of an arrestee's person incident to arrest includes "articles of the person such as clothing or personal effects." *Id.*, citing *U.S. v.*

Robinson, 414 U.S. 218, 235, 94 S. Ct. 467 (1973).

An article of property can be searched incident to arrest if it is "immediately associated" with the arrestee's person. An item is immediately associated with the arrestee's person if the arrestee has actual possession of it at the time of a lawful custodial arrest. *Byrd*, 178 Wn.2d at 621. Washington courts have frequently held that searches of purses, jackets, and bags in the arrestee's possession at the time of arrest are lawful. *Id.* at 622. This extends to items only in the arrestee's actual and exclusive possession at or immediately preceding the time of arrest. *Id.*

In *Byrd*, the Washington Supreme Court held that a search of a purse that was in the defendant's lap at the time of her arrest was lawful because the purse was "unquestionably an article 'immediately associated' with her person." *Id.* at 623. In that case, officers took the purse from *Byrd* and set it on the ground before putting her in a patrol car. *Id.* at 615. He then searched the purse, finding a sunglasses case that he opened and which contained methamphetamine. *Id.* Following *Byrd*, the officers in the case at bar were allowed to search Richards' purse incident to her

arrest. Officers were also allowed to search any unlocked containers inside the purse.

Richards argues that the search of her purse could not extend to closed containers within the purse, citing *Riley v. California*, 134 S. Ct. 2473 (2014), and *State v. VanNess*, 186 Wn. App. 148, 344 P.3d 713 (2015). Those cases are distinguishable from the case at bar, however. First, *Riley* was concerned with a search incident to arrest of the contents of a cellular telephone. 134 S. Ct. at 2480. It is axiomatic that cell phones receive a different level of protection under Washington case law, and given that data on a cell phone can in no way endanger a police officer in the course of an arrest, the comparison to the case at bar is inapposite.

Second, *VanNess* involved the prying open of a locked container inside a backpack. The court held that, when a container is locked and officers can prevent the arrestee's access to the container so that officer safety or evidence preservation are not an issue, there is no justification to search that locked container incident to arrest. 186 Wn. App. at 161, citing *State v. Valdez*, 167 Wn.2d 761, 776, 224 P.3d 751 (2009). Conversely, in the case at bar, the container at issue was not locked. It was closed, but there is no case law to support the idea that a search incident to arrest would exclude closed containers in an otherwise searchable purse.

IV. CONCLUSION

Richards' convictions for possession of heroin and theft should be affirmed as the search of her purse was a valid search incident to arrest.

Respectfully submitted this 1st day of November, 2018.

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CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on November 15th, 2018.


Michelle Sasser
Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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