

FILED

JUN 04 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 28407-7-III

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

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

KIM ANN SCHARNHORST,
Defendant/Appellant.

APPEAL FROM THE BENTON COUNTY SUPERIOR COURT

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

In its response brief, the State asserts that State v. Patton, 167 Wn.2d 379, 219 P.3d 651 (2009), does not apply to the present case because “the Patton court did not address a search incident to arrest . . .” State’s Response Brief, p. 5. This assertion by the State is completely false.

The opening sentence of the Patton opinion states, “This case asks us to determine the validity of an automobile search under the "incident to arrest" exception to the general warrant requirement of article I, section 7 of the Washington State Constitution.” Patton, 167 Wn.2d at 383, 219 P.3d 651. Near the end of its opinion the Court states, “Today we hold that the search of a vehicle incident to the arrest of a recent occupant is unlawful absent a reasonable basis to believe that the arrestee poses a safety risk or that the vehicle contains evidence of the crime of arrest that could be concealed or destroyed, and that these concerns exist at the time of the search.” Patton, 167 Wn.2d at 394-95, 219 P.3d 651.

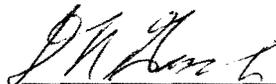
Thus, there is no question that Patton addressed the very issue that the State argues it did not address, and Patton’s holding is germane to the issue raised in the present case. Here, as in Patton, there was no proof that the arrestee posed a safety risk, or that the evidence believed to be

contained in the vehicle was presently at risk of being concealed or destroyed. Therefore, the search of the vehicle incident to the driver's arrest was unlawful. Since the subsequent detention of Ms. Scharnhorst, the removal of her purse, and discovery of contraband stemmed from the illegal search of the vehicle, the evidence seized must be suppressed. State v. Larson, 93 Wn.2d 638, 645-46, 611 P.2d 771 (1980); Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

B. CONCLUSION

For the reasons stated herein and in Appellant's initial brief, the conviction should be reversed and the case dismissed.

Respectfully submitted June 4, 2010.



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