

FILED
Court of Appeals
Division III
State of Washington
11/13/2017 9:19 AM
CASE: 354521

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON, Respondent,

v.

DAWN MARIE MITCHELL, Appellant.

BENTON COUNTY SUPERIOR CASE: 161006713

BRIEF OF THE APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred when it denied the defendant's CrR 3.6 and 3.5 Motion to Suppress both the physical evidence and the unlawful fruit of her subsequent oral admissions. The court did so by allowing a warrantless jail inventory search of Ms. Mitchell's purse. This search was far from the crime scene in time and place, absent of any officer safety concerns and far from a recognized warrantless search exception.

B. ISSUES ON ASSIGNMENTS OF ERROR

Does The Search Incident to Lawful Arrest Exception extend to an individual's purse when that individual (1) is already in custody (2) is arrested not on a new criminal investigation but on an unrelated misdemeanor warrant (3) did not agree to the search (4) is at the jail being processed (4) is nearly a half hour and miles away from the arrest scene (5) has nothing in their history or actions that raise any safety concerns, (6) already had the purse taken from them and placed in the locked police trunk for transport and (6) when the officers admit they already looked into the purse back at the arrest and saw nothing of concern?

C. STATEMENT OF THE CASE

The facts that matter are undisputed. On 3/8/16, around 10 pm, Detectives Bennett and Dorame stopped a (modern) Ford Thunderbird because one brake light was off. Ms. Mitchell was a front seat passenger and they asked her to identify herself (RP 7).

1 They ran her name and discovered a misdemeanor warrant for a DUI out
2 of Yakima County. She was arrested not for the investigation of a new crime but only on
3 the warrant. They handcuffed her and took her to the Benton County Jail. They searched
4 her purse long after she was placed into custody, by their own estimates, approximately
5 25 minutes after the arrest (RP 9). Ms Mitchell did nothing to raise safety or evidence
6 preservation issues (RP 16, 23-24). Although it was not mentioned in his report,
7 Detective Bennett testified that the purse was actually searched twice for he made a
8 preliminary look into the purse at the scene of arrest but had not seen any contraband or
9 items that would trigger safety concerns (RP 8, 13-14). After seizing the purse, they
10 placed it into their vehicle trunk for the ride to the jail (RP 24).

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13 In the “inventory search,” the detectives found a small pill they suspected
14 was contraband. It was in a small compartment inside the purse (RP 9-10). At this point,
15 Mitchell was read her Miranda Rights where she indicated that she received the pink pill
16 from a girl she only knew as Melissa. She made a few additional statements and the
17 officer told her he believed she was not being truthful. Ms Mitchell soon after told him
18 she did not want to discuss the issue any longer.

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21 Ms. Mitchell was charged with unlawful drug possession. She brought a
22 CrR. 3.6 and 3.5 Motion to Suppress both the contraband evidence and her admissions as
23 the fruit of a warrantless and illegal search. On March 22, 2013, testimony was taken and
24 the court orally denied the defense motion.

25
26 The court relied in part on *State v. Byrd*, 178 Wn.2d 611, 310, P.3d 793
27 (2013). The court also relied in part on *United States v. Robinson*, 414 U.S. 218, 94 S.Ct.
28 467, 38 L.Ed.2d. 427 (1973). The court held that the search qualified as a Search Incident
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1 to Lawful Arrest exception to the warrant requirement. The court indicated that two
2 categories of this exception apply. The first is based on items within the immediate
3 control of the arrestee and are allowed for the preservation of evidence and for officer
4 safety. The court held the second category does not require either evidence or safety
5 concerns but are allowed by virtue of the lawful arrest as long as they are
6 *contemporaneous*.
7

8 Ms Mitchell submitted the case to the court to preserve her issues on appeal. She
9 was found guilty.
10

11 **D. LEGAL ARGUMENT**

12

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14 In 2007, the U.S. Supreme Court put to rest an issue that had already been
15 put to bed by many state courts. It stated unequivocally that a passenger, along with the
16 driver is legally seized when the car is pulled over. *Brendlin v. California*, 551 U.S. 249
17 (2007). Our own Supreme Court recognized this more than once. “Each individual
18 possess the right to privacy, meaning that person has the right to be left alone unless there
19 is probable cause based on objective facts that the person is committing a crime.” *State v.*
20 *Grande* 164 Wn.2d 135, 141, 187 P.3d 248 (2008). Of course, Ms. Mitchell quickly
21 became more than a passenger when her warrant was discovered.
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25 In 1989, Division II overturned the search of a purse of an individual
26 arrested on a misdemeanor warrant gone through only after the defendant was brought to
27 jail. *State v. Smith*, 56 Wn.App. 145, 783 P.2d 96 (1989). The court refused to justify this
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1 inventory search and found there “were no special circumstances present that justified a
2 warrantless search as there was no possibility that the defendant could destroy evidence
3 or grab a weapon. *Id.* at 151 citing *State v. Boyce*, 52 Wn.App. 274, 279, 758 P.2d 1017
4 (1988). They further relied upon *State v. Carner*, 28 Wn.App. 439, 624 P.2d 204 (1981).
5

6 In the case at bar, Ms. Mitchell’s detectives had no concern for their
7 safety. She was far from the arrest, at the jailhouse, in cuffs, had her purse taken and
8 placed in the locked police trunk, and by the detectives own admission, had already had
9 her pursed looked into at roadside all with nothing raising alarm. See also *State v.*
10 *Caldera*, 84 Wn.App. 527, 929 P.2d 482. In 1998, Division Two further cemented the
11 principles laid out in *Smith* and *Caldera* noting a strong legal difference (and purpose)
12 between the search incident to lawful arrest and the jail inventory search. *State v. Jordan*,
13 92 Wn.App. 25, 960 P.2d 949 (1998).
14

15 Quite recently, Division Two upheld and clarified these principles in
16 *State of Washington v. Jason Ray Dunham*, 194 Wn.App. 744, 379 P.3d 958 (2016). In
17 this matter, the court actually did uphold a search of the individual’s closed backpack
18 after arriving at jail. It did so however only for unique, pronounced and well proven
19 safety concerns. The court (rejecting the State’s argument) reiterated that inventoried
20 items continue to receive constitutional protection against warrantless searches. They
21 only justified the search because previous (and legal) searches of Mr. Dunham *at the*
22 *scene of arrest* had revealed numerous knives. *Id.* at 751. Thus, even the jail had a
23 legitimate safety concerns which earned the warrant exception.
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27 Our Federal Ninth Circuit Court of Appeals has reaffirmed these
28 principles and found Fourth Amendment violations under very similar circumstances and
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1 an “inventory” search of a passenger / suspect’s purse. *United States v. Monclavo-Cruz*,
2 662 F.2d 1285 (1981). Ms. Monclavo-Cruz was arrested out of a vehicle by federal
3 immigration officers and her purse was immediately taken. Her purse was searched only
4 after they arrived at the immigration office. The Ninth Circuit suppressed the resulting
5 evidence citing the U.S. Supreme Court:
6

7 “warrantless searches of luggage or other property seized at the time of an
8 arrest cannot be justified as incident to that arrest either is the “search is
9 remote in time or place from the arrest,” *Preston v. United States*, 376 U.S.
10 (364) at 367, 84 S.Ct. 881, 11 L.ed.2d 777, or no exigency exists. Once law
11 enforcement officers have reduced the luggage or other personal property
12 not immediately associated with the person of the arrestee to their exclusive
13 control, and there is no longer any danger that the arrestee might gain
14 access to the property to seize a weapon or destroy evidence, a search of
15 that property is not longer an incident of the arrest.

16 *Id.* at 1287

17 The Ninth circuit also indicated that “it is beyond doubt that society recognizes that an
18 expectation of privacy in purses is reasonable.” *Id.* It went on to add “a person’s
19 expectation of privacy in personal luggage are substantially greater than in an
20 automobile.” *Id.* at 1288.

21 Likewise, the Ninth Circuit rejected the testimony from the officer that he
22 was not in a position to search the purse at the scene of the arrest: “the fact that an officer
23 is prevented from conducting a Chimel/Belton search, however, is not a sufficient reason
24 to justify a search an hour later at the station. The protective rationale for the search no
25 longer applies.” *Id.* at 1288. Nor did the federal court allow the fruit in as an inventory
26 search: we follow the Eighth Circuit in holding that the community caretaking functions
27 of the police are usually well served by simply inventorying personal baggage as a unit
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1 without searching it.” *Id.* at 1289. The Court added that unlike searches of the person,
2 searches of possessions within an arrestee’s immediate control cannot be justified by any
3 reduced expectations of privacy caused by the arrest. *Id.* at 1290.
4

5 In denying Ms. Mitchell motion, the Benton County Court relied in part on
6 *State v. Byrd*, 178 Wn.2d 611, 310 P.3d 793 (2013). The court also relied in part on
7 *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d. 427 (1973). The court
8 held that the search qualified as a Search Incident to Lawful Arrest exception to the
9 warrant requirement. The court indicated that two categories of this exception apply. The
10 first is based on items within the immediate control of the arrestee and are allowed for the
11 preservation of evidence and for officer safety. The court held the second category does
12 not require either evidence or safety concerns but are allowed by virtue of the lawful
13 arrest as long as they are *contemporaneous*. RP at
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16 The court’s reliance was misplaced. In *Byrd*, our Supreme Court made
17 careful note that the arresting officer was detaining an individual in the midst of
18 committing the crime for which they were being arrested. *Id.* at 615. They suspected the
19 vehicle in which Byrd was sitting was stolen. The court also took careful note that the
20 search was the truest form of a contemporaneous search as they “remov[ed] Byrd from
21 the car....seized the purse and set in on the ground nearby...secured Byrd in a patrol car
22 and returned to the purse within “moments” to search it for weapons or contraband.” *Id.*
23 *(the court italicizing the word moments)*. The court carefully noted that the officer’s
24 motivations were still based upon evidence and safety.
25
26

27 The Supreme Court indicated that if a search is *contemporaneous with the*
28 *arrest*, they can automatically invoke the exception because “because they always
29

1 implicate *Chimel* concerns for officer safety and evidence preservation” *Id.* at 618. The
2 court cemented this reasoning again:

3 [The dissent] overlooks the fact that exigencies are *presumed* when an
4 officer searches an arrestee’s person. The search incident to arrest rule
5 respects than an officer who takes a suspect into custody faces an
6 unpredictable and inherently dangerous situation...so long as they are
incident to custodial arrest.

7 *Id.* at 630.

8 The Court went on to note that the “Time of Arrest Rule” reflects the practical reality that
9 a “search of the arrestee’s person to remove weapons and secure evidence must include
10 more than his literal person. *Id.* at 621.

11 *Byrd* also carefully noted that the “time of arrest rule is narrow, in keeping with
12 the jealously guarded exception to the warrant.” *Id.* at 623. Unlike Ms. Mitchell, the
13 Supreme Court again noted that “the purse left *Byrd*’s hand only after her arrest, when
14 [the officer] momentarily set it aside. There was no significant delay between the arrest
15 and the search that would render the search unreasonable.” *Id.* at 623-4. The Court then
16 pointed to *United States v. Chadwick*, 433 U.S. 1 (1977) and added that the search can
17 not be too remote in *either time or place.* *Id.* at 624-25 (emphasis added).
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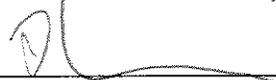
23 CONCLUSION

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25 The facts are undisputed and lie far outside any search warrant exception.
26 Law enforcement was not investigating a new crime nor were they preserving evidence.
27 Ms. Mitchell had long been in custody, in cuffs and was nearly a half hour and miles
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1 away from the (non) crime scene. She was merely being processed into jail on a
2 misdemeanor warrant when her closed purse and personal luggage was searched. Her
3 purse had already been taken from her and placed in the locked trunk of the police car.
4 There was nothing she did during the arrest and there was nothing in her criminal record
5 that raised safety concerns for these detectives.
6

7 Nevertheless, the detectives had already made a preliminary look into Ms.
8 Mitchell's purse at the scene, and in doing so, dispelled any remaining issues. (RP 8, 13-
9 14). As our Ninth Circuit stated in *Monclavo-Cruz*, whatever excuses they gave for not
10 conducting a Chimel/Belton search is not a sufficient reason to justify a search later at the
11 station. The protective rationale for the search no longer applies. *Id.* at 1288. The trial
12 court inappropriately labeled this search Incident to Lawful Arrest and erred when it
13 found the search was made pursuant to a warrant exception. It further erred when it
14 allowed all further fruit and admission into evidence. Ms Mitchell asks this court to
15 reverse that ruling.
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19 Dated: November 10, 2017

20 
21 _____
22 David C. Mason
23 WSBA #21075
24 Attorney for Appellant, Dawn Mitchell
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IN THE COURT OF APPEALS DIVISION THREE
STATE OF WASHINGTON

STATE OF WASHINGTON)	CASE 354521
)	Benton County Superior Court
Plaintiff,)	NO. 16-1-00671-3
)	
vs.)	
)	DECLARATION OF SERVICE
DAWN MARIE MITCHELL)	
)	
)	
Defendant.)	
)	
)	CLERK'S ACTION REQUIRED

I declare under penalty of perjury under the Laws of The State of Washington that on November 13, 2017, I served a true and correct copy of the Appellant's Brief on the Benton County Prosecutor by placing this document in the U.S. Mail, postage paid to the Benton County Prosecutor, 7122 W Okanogan Pl # A, Kennewick, Washington, 99336. The prosecutor and court reporter were also served / filed upon electronically by agreement.

Dated: August 13, 2017



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THE LAW OFFICE OF DAVID C. MASON

November 13, 2017 - 9:19 AM

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