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Court of Appeals  
Division III  
State of Washington  
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No. 35452-1-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON,

Respondent

v.

DAWN MARIE MITCHELL,

Appellant

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 16-1-00671-3

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BRIEF OF RESPONDENT

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## **I. RESPONSE TO ASSIGNMENTS OF ERROR**

- A. The Court did not err in denying the defendant's CrR 3.6 and CrR 3.5 motions to suppress by finding the search of the defendant's purse was lawfully done pursuant to a search incident to arrest as the purse was part of the defendant's person and was not done too remote in time.

## **II. STATEMENT OF FACTS**

On March 8, 2016, at approximately 2151 hours, Kennewick Police Department Officers Juan Dorame and Chris Bennett were working from the same patrol vehicle in the area of Highway 395 and North Yelm Street in Kennewick, Washington. CP 26; RP 7, 19-20. The detectives observed a 1994 Ford Thunderbird with the center high-mounted brake light not illuminating. CP 27. A traffic stop of the vehicle was initiated due to the defective equipment. CP 27. Upon contact with the driver of the vehicle, the driver indicated that he and the defendant, Dawn Mitchell, were moving the defendant's son's property to a storage unit. CP 27; RP 7. Detective Bennett inquired as to what the defendant's son's name was, and the driver responded "Kyle Vanhalteren." CP 27. Vanhalteren's name was run through I-Leads and the defendant was listed as his mother and emergency contact. CP 27; RP 7, 20. No questions were asked of the defendant to ascertain this information. CP 27; RP 7-8, 20.

During the I-Leads search, the defendant was found to have an outstanding misdemeanor warrant for her arrest out of Yakima County. CP 27; RP 7. The defendant was placed under arrest on the warrant. CP 27; RP 8. At the time of her arrest, she had a purse on her lap or in between her legs. CP 27; RP 8, 13, 20-21. Detective Bennett opened the purse to search it incident to arrest, but observed it contained numerous small items that he was afraid would be lost if the purse was searched at the scene. CP 27; RP 8, 13-17. The weather was also prohibitive of conducting the search at the scene. CP 27; RP 8, 11-12, 14, 21, 25. Both the defendant and her purse were transported to the Benton County Jail. CP 27; RP 9. Once at the jail, the defendant was provided a copy of her warrant. RP 9. The defendant did not ask for a copy of the warrant, nor did she ask for the opportunity to post bail. RP 9.

Upon arriving at the jail, Detective Bennett searched the defendant's purse incident to arrest and located several small pieces of tinfoil in a small, wallet-type container that, based upon his training and experience, he recognized to be consistent with narcotics use. CP 27; RP 9-10, 22. Also located in the purse was a small, round, pink-colored pill that was identified as Oxycodone. CP 27; RP 9-10. The entire contact with the defendant, from the traffic stop to her arrest and transport to the jail, took approximately 25 minutes with less than 10 minutes elapsing from

the time the purse was seized, transported to the jail, and then searched.

RP 9, 15, 21.

The defendant was arrested for Unlawful Possession of a Controlled Substance and charged by Information. CP 1-2. A 3.6 hearing was held on March 22, 2017, wherein the trial court denied the defendant's motion to suppress. CP 26-28. A Stipulated Facts Trial was held on May 15, 2017, and the defendant was found guilty of Unlawful Possession of a Controlled Substance. CP 23-25. The defendant was sentenced on June 14, 2017, and a Judgment and Sentence was entered with the court. CP 29-39. This timely filed appeal followed. CP 40-46.

### III. ARGUMENT

- A. The defendant's purse was part of her person at the time of her arrest and therefore lawfully searched incident to arrest less than 10 minutes after its seizure, and thus any items contained therein are admissible.**

A trial court's denial of a motion to suppress is reviewed by considering whether substantial evidence supports the challenged findings, and whether those findings support the trial court's conclusions of law. *State v. Ross*, 106 Wn. App. 876, 880, 26 P.3d 298 (2001). These issues are reviewed de novo. *State v. Budd*, 185 Wn.2d 566, 572, 374 P.3d 137 (2016); *State v. Armenta*, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997).

“Unchallenged findings of fact entered following a suppression hearing are verities on appeal.” *State v. Gaines*, 154 Wn.2d 711, 716, 116 P.3d 993 (2005). Because neither party assigns error to the findings of fact in the instant matter, they are to be taken as true. *Id.*; RP 4.

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. It is presumed that a warrantless search of an individual’s personal item violates these protections unless the search falls within one of the few carefully drawn and jealously guarded exceptions. *State v. Bravo Ortega*, 177 Wn.2d 116, 122, 297 P.3d 57 (2013).

One such exception is a search incident to arrest, in which the arresting officer has authority to search the arrestee’s person and his or her personal effects. There are two discrete types of searches incident to arrest: (1) a search of the arrestee’s person (including those personal effects immediately associated with his or her person—such as purses, backpacks, or luggage) and (2) a search of the area within the arrestee’s immediate control. *State v. Brock*, 184 Wn.2d 148, 154, 355 P.3d 1118 (2015). A valid search of the latter requires a justification grounded in either officer safety or evidence preservation, and there must be some articulable concern that the arrestee can access the item in order to draw a

weapon or destroy evidence. *Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969). The former search does not. A search can be made of the person of the arrestee by virtue of the lawful arrest. *State v. Byrd*, 178 Wn.2d 611, 617, 310 P.3d 793 (2015) (quoting *United States v. Robinson*, 414 U.S. 218, 224, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973)). In such cases, it is presumed that safety and evidence justifications exist when taking personal items into custody as part of the arrestee's person. *Brock*, 184 Wn.2d at 148, 154. There is no fixed outer limit for the number of minutes that may pass between an arrest and a valid, warrantless search. *United States v. McLaughlin*, 170 F.3d 889, 892 (1999). The search must be "spatially and temporally incident to the arrest." *United States v. Camou*, 773 F.3d 932, 937 (2014).

The distinction as to whether a particular personal item constitutes part of the arrestee's person, as opposed to just part of the surrounding area, turns on whether the arrestee had "actual and exclusive possession at or immediately preceding the time of arrest." *Byrd*, 178 Wn.2d at 623. This is known as the "time of arrest" rule. The proper inquiry is whether possession so immediately precedes arrest that the item is still functionally a part of the arrestee's person. *Id.* Personal items that will go to jail with the arrestee are considered in the arrestee's "possession" and are within the scope of the officer's authority to search. *Brock*, 184 Wn.2d at 158.

In the instant case, the defendant was in possession of the purse at the time of her arrest as it was on her lap or between her legs. Thus, the detectives were justified in searching the purse incident to arrest. However, the purse was not searched until they reached the jail due to the large quantity of small items in the purse and the officers' wish to prevent losing any of the items and the prohibitive weather. However, less than 10 minutes passed from the time the purse was seized and its search at the jail, and thus the search was not done in a timeframe too remote from the defendant's arrest to be deemed not contemporaneous. This is in direct contrast to *United States v. Monclavo-Cruz*, 662 F.2d 1285 (1981), that counsel for defense relies upon. In *Monclavo-Cruz*, the court found that a search incident to arrest performed more than an hour after the purse was seized was too remote in time. *Id.* at 1288. The instant facts are more akin to the holding in *State v. Smith*, 119 Wn.2d 675, 683, 835 P.2d 1025 (1992), where the court found that a 17-minute delay in a search incident to arrest was reasonable where the delay results solely from the officer's reasonable actions designed to secure the premises and protect herself and the public.

Counsel for the defendant also relies on the court's holding in *State v. Smith*, 56 Wn. App 145, 783 P.2d 96 (1989), to support the contention that the defendant's purse could not be inventory searched upon arrival at

the jail. However, the court's holding in *Smith*, 56 Wn. App. 145, was founded on the basis that the law enforcement officers did not provide the defendant a copy of her arrest warrant, nor did they allow her to post bail before conducting a jail inventory search of the purse. *Id.* at 150. The defendant's bail in *Smith*, 56 Wn. App. 145, was only \$25.00 and she had requested a copy of the warrant and the opportunity to post the bail before arriving at the jail. *Id.* at 147. The court held that had the officers followed the requirements set forth in RCW 10.31.030, the defendant would have posted bail and the search that resulted in the discovery of the contraband would never have occurred. In the instant matter, the detectives provided the defendant a copy of her warrant upon arrival at the jail, which would have allowed her the opportunity to post bail. However, Detective Bennett testified that the defendant never requested to post bail. RP 9.

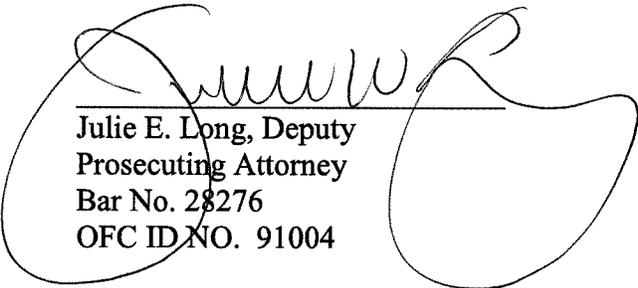
Furthermore, the defendant's purse was searched incident to arrest, not pursuant to a jail inventory search. In Benton County, jail staff perform the inventory searches, not the arresting officers. RP 18. Therefore, any argument that the defendant's purse was searched pursuant to an inventory search must fail, as no such search occurred. The search was done spatially and temporally incident to the lawful arrest of the defendant, and the purse was part of her person and thus subject to said search.

**IV. CONCLUSION**

Based upon the aforementioned rationale, the trial court's denial of defendant's 3.6 motion to suppress should be upheld and the defendant's appeal denied.

**RESPECTFULLY SUBMITTED** this 19th day of January, 2018.

**ANDY MILLER**  
Prosecutor



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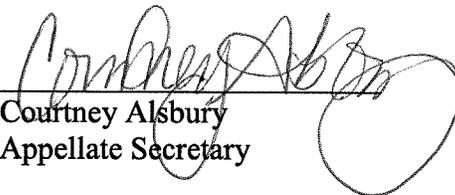
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I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Signed at Kennewick, Washington on January 19, 2018.

  
Courtney Alsbury  
Appellate Secretary

**BENTON COUNTY PROSECUTOR'S OFFICE**

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