



**TABLE OF CONTENTS**

	<b>Page</b>
<b>I. STATE’S RESPONSE TO ASSIGNMENT OF ERROR.....</b>	<b>1</b>
<b>I.. ISSUES PERTAINING TO THE STATE’S RESPONSE TO THE ASSIGNMENT OF ERROR .....</b>	<b>1</b>
<b>III. STATEMENT OF THE CASE.....</b>	<b>1</b>
<b>IV ARGUMENT.....</b>	<b>5</b>
<b>A. WHEN A FEMALE PASSENGER IS LAWFULLY ARRESTED, THE POLICE ARE PERMITTED TO SEARCH A PURSE SHE HAD WITH HER IN THE VEHICLE INCIDENT TO HER ARREST. ....</b>	<b>6</b>
<b>B. THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE COURT’S FINDING THAT WILLIAMS WOULD HAVE BEEN CITED FOR A SEATBELT INFRACTION.....</b>	<b>10</b>
<b>V. CONCLUSION .....</b>	<b>15</b>

## TABLE OF AUTHORITIES

Page

### Cases

<i>Arizona v. Gant</i> , __ U.S. __, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) .....	5, 6,7
<i>Burke v. Pepsi-Cola Bottling Co.</i> , 64 Wash.2d 244, 391 P.2d 194 (1964)	11
<i>Chimel v. California</i> , 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969) .....	6
<i>Interstate Hosts, Inc. v. Airport Concessions, Inc.</i> , 71 Wash.2d 487, 429 P.2d 245, 247 (1967).....	11
<i>State v. Fladebo</i> , 113 Wash.2d 388, 779 P.2d 707 (1989) .....	7
<i>State v. Hill</i> , 123 Wash.2d 641, 870 P.2d 313 (1994).....	6, 9, 11, 12, 13
<i>State v. Maxfield</i> , 125 Wash.2d 378, 886 P.2d 123 (1995).....	13, 14
<i>State v. O’Neill</i> , 148 Wash.2d. 564, 62 P.3d 489, 494 (2003).....	11
<i>State v. Parker</i> , 139 Wash.2d 486, 987 P.2d 73 (1999).....	6, 7, 8, 10
<i>State v. Stroud</i> , 106 Wash.2d 144, 720 P.2d 436 (1986).....	6
<i>State v. Vrieling</i> , 144 Wash.2d 489, 28 P.3d 762 (2001).....	6
<i>State v. Worth</i> , 37 Wash.App. 889, 683 P.2d 622 (1984).....	9

### Other Authorities

RAP 10.3(g) .....	11
-------------------	----

### Rules

CrR 3.6.....	13
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**I. STATE'S RESPONSE TO ASSIGNMENT OF ERROR**

When a female passenger is lawfully arrested, the police are permitted to search a purse she has left inside of a vehicle incident to her arrest.

**II. ISSUES PERTAINING TO THE STATE'S RESPONSE TO THE ASSIGNMENT OF ERROR**

- A. When a female passenger is lawfully arrested and leaves her purse inside a vehicle, are the police permitted to search that purse incident to her arrest?**
- B. Was it reversible error for the court to find that Trooper Lutz had observed that Williams was not wearing her seatbelt?**

**III. STATEMENT OF THE CASE**

At around 1:30 in the afternoon on October 7, 2008, Trooper Kenny Lutz of the Washington State Patrol ("WSP") was patrolling traffic on State Route 432 using a laser speed-measuring device. RP at 5-6. Trooper Lutz observed a white passenger car traveling at what appeared to be above the posted 55 miles per hour ("MPH") speed limit and using his laser, he obtained two speed readings of 68 and 69 MPH. RP at 6. Trooper Lutz activated his vehicle's emergency equipment and pulled the car over. RP at 6-7. There were three people in the car, the driver Jason Bornstedt, a passenger in the backseat Scott Lavelle, and a passenger in the front seat Appellant Natalie Williams. RP at 7-9. As he was on his

way to contact the driver of the vehicle, Trooper Lutz observed Williams in the front passenger seat attempting to put her seatbelt on. RP at 7. After making this observation, Trooper Lutz intended to cite Williams for a traffic infraction. RP at 14.

Trooper Lutz contacted Bornstedt and obtained his driver's license. RP at 8. Trooper Lutz then ran a check of Bornstedt and discovered that there was a misdemeanor warrant for his arrest and that his license was suspended in the third degree. RP at 8. Trooper Lutz asked Bornstedt to step out of the car and placed him under arrest for these violations. RP at 8. WSP Trooper Richard Bettger arrived to assist Trooper Lutz. RP at 8. While Trooper Lutz arrested Bornstedt, Trooper Bettger contacted the passengers. RP at 9.

Trooper Bettger asked Lavelle and Williams to exit the car. RP at 27. Trooper Bettger first contacted Lavelle, who was shaking. RP at 28. Trooper Bettger asked Lavelle if he had any weapons on him. RP at 28. Lavelle told Trooper Bettger he was 12 years old, turned away from him, and began to reach into his pants.<sup>1</sup> RP at 28-29. Lavelle also yelled to Williams, "Mom, can you hold this pouch for me?" RP at 29. As Lavelle did this, Trooper Bettger saw a black object coming from his waistline. RP at 29. Trooper Bettger stiff-armed Lavelle, to get him out of "arm's

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<sup>1</sup> Later, Trooper Bettger determined that Lavelle was actually 16 years old. RP at 29.

reach,” in order to secure the black object. RP at 30. The black object fell to the ground and Trooper Bettger observed that it was a black cylindrical pouch that was two to three inches in diameter. RP at 30. Trooper Bettger was concerned that the object was a weapon. RP at 30-31. Trooper Bettger yelled at Williams and Lavelle to get their hands up on the hood of the car. RP at 31. Lavelle fled the scene. RP at 32. Trooper Bettger picked up the pouch and looked inside. RP at 32. When he looked inside, Trooper Bettger observed syringes with needles and plastic bags containing a crystal substance that Trooper Bettger recognized as methamphetamine. RP at 15, 32-33.

As Lavelle ran from the car, Trooper Bettger yelled to Trooper Lutz to get him. RP at 33. Trooper Lutz secured Bornstedt in the backseat of his vehicle and then chased Lavelle toward the railroad tracks. RP at 33. Meanwhile, Williams was yelling and trying to speak with Trooper Bettger. RP at 34. Trooper Bettger advised Williams of her constitutional rights. RP at 34. Williams claimed that the pouch containing the methamphetamine belonged to her, that it was not her sons, and she did not want him to be responsible for it. RP at 34-35. Trooper Bettger responded by asking Williams, “What parent would give her 16-year-old son a pouch of syringes and drugs to hold for them?” RP at 35. At this time, Williams said, “I have the right to remain silent right?” RP

35. Williams then exclaimed without prompting, "My son has a drug problem and maybe our whole family is screwed up." RP 35. Williams also continued to argue that her son had not said, "hold 'my' pouch," but had said, "hold 'the' pouch." RP at 35. Because Williams had said that the pouch containing the methamphetamine was hers, Trooper Bettger advised her that she was under arrest for possession of methamphetamine. RP at 36.

Meanwhile, Trooper Lutz was able to apprehend Lavelle, and he placed him under arrest. RP at 11. Once, Bornstedt, Lavelle, and Williams were secured, the troopers searched the car incident to arrest. RP at 12, 36. In the car, the troopers found a green purse that contained both Williams' identification and methamphetamine. RP at 15, 36-37. The troopers ran a wants check on Williams and discovered that she had an outstanding warrant for her arrest. RP at 37.

Whenever the troopers collect identification or cite a person for an infraction, they run a check for outstanding warrants. RP at 14. If the troopers discover that a person has an outstanding warrant, they always arrest unless the warrant is for a non-extraditable offense in another state. RP at 37. After a person is arrested, the troopers ordinarily conduct a search incident to that person's arrest. RP at 38. Had Williams not been arrested for possession of a controlled substance, Trooper Lutz would have

cited her for failing to wear her seatbelt. RP at 14, 74. When citing Williams for this infraction, Trooper Lutz would have conducted a wants check, discovered the outstanding warrant for her arrest, and would have arrested her. RP at 14, 37, 74. After arresting Williams, the troopers would have searched her purse incident to her arrest. RP at 38, 74.

#### IV. ARGUMENT

Had Williams not been arrested for possession of a controlled substance, she would have been arrested for her outstanding warrant. Although *Arizona v. Gant*, \_\_ U.S. \_\_, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), limits the search of a vehicle incident to a driver's arrest, it does not follow that the police are prohibited from searching the purse of a female passenger left inside the vehicle incident to her lawful arrest. Williams argues two specific issues on appeal: First, that under *Gant*, the troopers were not permitted to search inside the vehicle incident to the driver Bornstedt's arrest. Second, that the trial court erred by finding that Trooper Lutz would have cited Williams for failing to wear a seatbelt, and therefore would not have discovered her outstanding warrant but for her arrest for possession of methamphetamine. The first argument fails to specifically consider the unique circumstances of a female passenger who is arrested and leaves her purse inside another person's vehicle. The

second argument does not overcome the substantial evidence test required to reverse a finding of fact on appeal.

**A. When a female passenger is lawfully arrested, the police are permitted to search a purse she had with her in the vehicle incident to her arrest.**

Because the troopers would have arrested Williams for her outstanding warrant but for the fact she was already under arrest, they were permitted to search her purse incident to her arrest. “Personal items may be so ‘intimately connected with’ an individual that a search of the items constitutes a search of the person.” *State v. Parker*, 139 Wash.2d 486, 498-99, 987 P.2d 73 (1999) (quoting *State v. Hill*, 123 Wash.2d 641, 644, 870 P.2d 313 (1994)). Once a person is arrested, the police are permitted to search that person incident to arrest as an exception to the warrant requirement. *See Chimel v. California*, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969); *State v. Vrieling*, 144 Wash.2d 489, 492, 28 P.3d 762 (2001); *State v. Stroud*, 106 Wash.2d 144, 720 P.2d 436 (1986). Prior to the United State Supreme Court’s holding in *Arizona v. Gant*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), a search of the passenger compartment and unlocked containers inside a vehicle was permitted incident to the lawful arrest of the driver or an occupant of that vehicle. *State v. Stroud*, 106 Wash.2d 144, 152-53, 720 P.2d 436 (1986). It was later determined that a purse did not qualify as a locked container.

*State v. Fladebo*, 113 Wash.2d 388, 395, 779 P.2d 707 (1989). In *Gant*, 129 S.Ct. at 1721, the Court held that after driver is arrested, an officer may not search the vehicle incident to arrest unless the vehicle is within reaching distance of the arrestee or it is reasonable to believe that the vehicle contains evidence of the offense of arrest. However, *Gant* did not involve the arrest of a passenger.

In *State v. Parker*, 139 Wash.2d 486, 503, 987 P.2d 73 (1999), the court held that the police may not search an item if they know or should have known that it belonged to a non-arrested passenger. The *Parker* Court consolidated three cases to address the question of whether police are permitted to search the personal belongings of nonarrested vehicle passengers incident to the arrest of the driver. *Id.* at 489. In the first case, Deborah Parker was a passenger in a vehicle that had been stopped for speeding. *Id.* After the driver was arrested for driving with a revoked license, Parker was asked to take a breathalyzer test to determine if she could drive the vehicle. *Id.* at 489-90. While Parker was outside the vehicle, police noticed cash lying on top of her purse. *Id.* at 490. The arrested driver claimed the money belonged to him. *Id.* The police asked Parker if the driver had placed anything else in her purse prior to being stopped. *Id.* The police searched the purse and discovered

methamphetamine. *Id.* Parker was arrested and charged with unlawful possession of a controlled substance. *Id.*

The third case consolidated in *Parker* also involved the search of a female passenger's purse.<sup>2</sup> *Id.* at 491. Anna Hunnel was the passenger in a car her husband was driving. *Id.* The police arrested Hunnel's husband on an outstanding warrant. *Id.* To determine whether the car could be released to Hunnel, a sheriff asked her for identification. *Id.* Hunnel produced her identification from her purse, which was on the floorboard by her feet. *Id.* The sheriff then asked for Hunnel to exit the car so that it could be searched. *Id.* As Hunnel exited the car, she attempted to take her purse with her. *Id.* However, the sheriff ordered her to leave her purse inside the car. *Id.* Hunnel's purse was then searched as part of a search of the vehicle. *Id.* at 492. Two small baggies of methamphetamine were discovered inside of Hunnel's purse, and she was arrested and charged with unlawful possession of a controlled substance. *Id.*

The State argued that the personal belongings of a passenger could be searched incident to the arrest of the driver, regardless of whether or not the passenger herself had been arrested. *Id.* at 496. The court found that the fact that the defendants had not been under arrest at the time their purses were searched was determinative. *Id.* at 497. The court noted that

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<sup>2</sup> The second case in *Parker*, involved a male passenger and his personal belongings. *Id.* at 490-91.

“[p]ersonal items may be so ‘intimately connected with’ an individual that a search of the items constitutes a search of the person.” *Id.* at 498-99 (quoting *State v. Hill*, 123 Wash.2d 641, 644, 870 P.2d 313 (1994)). The court stated that personal effects “need not be worn or held to fall within the scope of the protection.” *Id.* at 499 (citing *State v. Worth*, 37 Wash.App. 889, 892, 683 P.2d 622 (1984)). The court further explained that the privacy interest of a nonarrested passenger outweighed concerns for officer safety, stating: “It is precisely because the privacy interest of a nonarrested individual remains largely undiminished that full blown evidentiary searches of nonarrested individuals are constitutionally invalid even where officers may legitimately fear for their safety.” *Id.* at 499.

Because the purses were personal belongings “clearly and closely associated with nonarrested vehicle occupants” the police were not permitted to search these purses incident to the arrest of the drivers. *See id.* at 501. To determine whether an item is “clearly and closely” associated with a nonarrested passenger, the police must make a factual determination as to whom an item belongs to. *See id.* at 503. In evaluating the reasonableness of an officer’s factual determination, a court is required to determine whether an officer knew or should have known that an item belonged to a passenger. *See id.* Because it was undisputed that the purses had belonged to the nonarrested female passengers, there

was no lawful justification to search them incident to the arrest of the drivers. *See id.* at 504-05.

Here, unlike the female passengers in *Parker*, Williams was arrested at the time her purse was searched. There were two male occupants in the vehicle and Williams was the sole female. Under these circumstances, the troopers knew or should have known that the purse was “clearly and closely associated” with Williams. Further, for an item to be considered the personal effect of an individual, it need not be worn or held. Thus, the fact that Williams’ purse remained in the car did not cause it to cease to be “intimately connected” to her. Accordingly, the purse was her personal effect and the troopers were permitted to search her purse as a search of her person.<sup>3</sup> For these reasons, after Williams was arrested, the police were permitted to search her purse incident to her arrest.

**B. There was substantial evidence to support the court’s finding that Williams would have been cited for a seatbelt infraction.**

There was substantial evidence to support the court’s finding that Trooper Lutz was credible when he testified that he intended to cite Williams for a seatbelt infraction. When reviewing findings of fact made

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<sup>3</sup> By permitting police to search a female passenger’s purse incident to her arrest, her privacy interest in the purse is arguably furthered. For example, if a female hitchhiker was later arrested as a passenger, she would not want to leave her purse behind with the driver of a vehicle she did not know.

by a trial court, reviewing courts in Washington apply the substantial evidence rule:

The rule is that, if findings made by the trial court are supported by substantial evidence in the record, this court can not and will not substitute its own findings for those of the trial court, even though this court might have resolved the factual dispute the other way and made different or contrary findings were it the trier of fact.

*Interstate Hosts, Inc. v. Airport Concessions, Inc.*, 71 Wash.2d 487, 489-90, 429 P.2d 245, 247 (1967). This rule reflects the deference given to trial courts to determine the credibility of witnesses and the weight that evidence should receive. See *Burke v. Pepsi-Cola Bottling Co.*, 64 Wash.2d 244, 246, 391 P.2d 194 (1964). In *Burke*, the court explained:

The credibility of witnesses and the weight to be given to the evidence are matters which rest within the province of the jury; and, even if it were convinced that a wrong verdict had been rendered, this court would not substitute its judgment for that of the jury so long as there was evidence which, if believed, would support the verdict rendered.

*Id.* Additionally, RAP 10.3(g) states that a separate assignment of error must be made for each finding of fact a party contends is improper and “challenged findings entered after a suppression hearing that are supported by substantial evidence are binding, and, where the findings are unchallenged, they are verities on appeal.” *State v. O’Neill*, 148 Wash.2d 564, 571, 62 P.3d 489, 494 (2003). In *State v. Hill*, 123 Wash.2d 641, 644, 870 P.2d 313, 315 (1994), the Washington Supreme Court provided a

definition of *substantial evidence*: “Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.” In *Hill*, because the defendant did not assign error to the trial court’s findings of fact, the court did not decide the case on those grounds. *Id.* However, the court clarified that the substantial evidence rule is the standard of review for findings of fact challenged on appeal in Washington. *Id.* In doing so, the court distinguished the substantial evidence rule from the broader independent evaluation standard.

The court explained how earlier Washington decisions had misappropriated a federal appellate rule intended for reviewing state court decisions requiring an independent evaluation of the evidence. *Id.* at 645. Because a review by a state appellate court “does not implicate the same concern of undue influence by state courts over matters of federal constitutional law,” reviewing courts in Washington need not conduct an independent evaluation of the evidence. *Id.* at 646. The court recognized that the trier of fact is better-positioned to “assess the credibility of witnesses, take evidence, and observe the demeanor of those testifying” and the superiority of the trier of fact in making these determinations “remains true regardless of the nature of the rights involved.” *Id.* at 646-47. Thus, in Washington rather than conduct an independent evaluation of

47. Thus, in Washington rather than conduct an independent evaluation of the evidence, an appellate court's review of challenged findings of fact is limited to determining whether there is substantial evidence in the record to support the trial court's findings. *Id.* at 644.

In *State v. Maxfield*, 125 Wash.2d 378, 385-86, 886 P.2d 123 (1995), the court applied the substantial evidence review that it had outlined in *Hill*. The court explained the limits of its role in reviewing a challenged finding of fact, stating: "An appellate court will not independently review the evidence. The reason for this is that the trier of fact is in a better position to assess the credibility of witnesses, take evidence, and observe the demeanor of those testifying." *Id.* at 385. The court then addressed the specific challenge. *Id.* At a CrR 3.6 hearing, the trial court judge had disagreed with the defendants' argument that a Drug Task Force officer had requested information from a PUD employee before filing a written request to inspect the file. *Id.* 385-86. The officer testified that he was contacted by a PUD employee and informed that some records indicated high power usage, and that the PUD employee asked him to fill out a disclosure form in order to obtain this information. *Id.* at 386. During cross-examination, when asked what he had specifically said during the conversation, the officer was unable to recall

the details of the conversation. *Id.* Defense counsel then questioned the officer as follows:

Q: Well, did [the PUD employee] identify himself?

A: Yes.

Q: Did he tell you something to the effect that he had some information you might be interested in?

A: Yes.

Q: And did you ask him what it was?

A: Yes

*Id.* The defendants then argued that these responses proved the officer requested inspection or copying of public utility records over the telephone. *Id.*

The court reviewed the entire record, and while acknowledging that the court could have drawn other inferences, found that the record as a whole contained “a sufficient quantity of evidence to persuade a fair-minded and rational person of the truth of the findings challenged.” *Id.* While it might have seemed probable based on the record that upon hearing about the unusually high power readings the officer would have requested them, the trial court drew a different inference. This demonstrates the reluctance reviewing courts have in reversing findings of fact. So long as a finding of fact has a basis in the record and could reasonably be drawn, it should be upheld on appeal.

Here, the circumstances are similar to those in *Maxfield*. Trooper Lutz testified that he observed Williams “trying to put her seatbelt on.”

judge was present at the time of the testimony, he was able to directly observe each witness and was uniquely positioned to gauge which witness appeared to have a superior memory of the event. Ultimately, the judge accepted Trooper Lutz' testimony that Williams was putting the seatbelt on over Williams' testimony that she was taking it off. RP at 72.

Although this may not be the only inference that could be drawn, there was a sufficient quantity of evidence to persuade a fair-minded and rational person. Accordingly, the trial court's finding of fact passes the substantial evidence test and should be upheld.

#### **V. CONCLUSION**

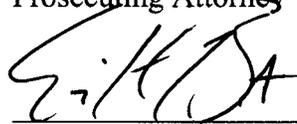
Because Williams' purse was clearly and closely associated with her, the troopers were permitted to conduct a search of her purse incident to her arrest. The trial court's finding that Trooper Lutz was credible when he testified that he observed the Defendant failing to wear her

seatbelt was supported by substantial evidence. Accordingly, Williams' conviction should be affirmed.

Respectfully submitted this 7<sup>th</sup> day of December 2009.

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