

No. 48026-3-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, APPELLANT

V.

MARTHA E. FROEHLICH, RESPONDENT

Appeal from the Superior Court of Mason County
The Honorable Daniel L. Goodell Judge

No. 13-1-00445-3

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

1. State's reply to Froehlich's argument that impoundment of the red car she was driving was unjustified on the facts of this case.

The State respectfully relies upon its opening brief to address this section of Froehlich's response brief.

2. State's reply to Froehlich's argument that the Court of Appeals may affirm on alternate grounds and that Trooper Richardson lacked legal authority to open Froehlich's purse.

The trial court order from which the State appeals states that the impoundment at issue in this case was unlawful and that, therefore, "the court need not consider... whether the unzipping of the purse was an appropriate and necessary step for the purpose of inventorying the vehicle." CP 32 (Conclusion of Law No. 28).

The State concedes that *State v. Wisdom*, 187 Wn. App. 652, 349 P.3d 953 (2015), stands for the proposition that officers generally may not (without exigent circumstances) open and search closed containers, such as a purse, during an inventory search. However, in this case the officer testified that he searched the purse left behind in the impounded car because he was trying to confirm the identity of the owner of the purse so that he could possibly return it to the owner in lieu of impoundment. RP 16, 30-32. An officer has a duty to return lost or misplaced property to its

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rightful owner, and the officer may look into a purse in order to identify the rightful owner. *State v. Kealey*, 80 Wn. App. 162, 907 P.2d 319 (1995).

In this case, however, it might seem apparent that Froehlich was the owner of the purse, because she was the only person in custody of it before medics transported her to the hospital. RP 2-35. Still more, the trooper testified in regards to the purse that “typically that’s one spot where a lot of valuables are held, so [he] unzipped the purse” to inventory its contents, and when he did so, he found contraband drugs. RP 16.

Whether it was lawful for the trooper to open the purse and look in it during a lawful impound was not an issue that the trial court considered. CP 32 (Conclusion of Law No. 28). Therefore, the State’s appeal in this case was limited to whether the impound was lawful.

3. State’s reply to Froehlich’s argument that this court should not grant appellate costs to the State in the event that the State prevails on this appeal.

The State is not seeking an award of appellate costs in this case.

B. CONCLUSION

The red car that Froehlich was driving before she was taken away in an ambulance was in a dangerous position that posed a hazard to other

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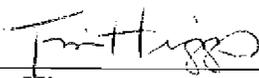
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motorists. Ms. Froehlich was not available to secure the car, because she had been taken away abruptly in an ambulance. The State contends that on the facts of this case, the officer's decision to impound the car was justified and that the trial court erred when it ruled otherwise.

However, although the issue was not decided by the trial court, it is at least doubtful whether the officer's search of Ms. Froehlich's purse can be upheld given the precedent delivered by the recent case of *State v. Wisdom*, 187 Wn. App. 652, 349 P.3d 953 (2015). The trooper explained that his intent was to deliver the purse to Ms. Froehlich if he were able to confirm that it was in fact her purse. If the purse were lost, abandoned, or mislaid, the officer could look in it to identify the owner. *State v. Kealey*, 80 Wn. App. 162, 907 P.2d 319 (1995). Here, it is doubtful that Froehlich's purse was lost, mislaid, or abandoned. Thus, the State must concede that under *State v. Wisdom*, 187 Wn. App. 652, 349 P.3d 953 (2015), search of the purse was unauthorized.

DATED: May 16, 2016.

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