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Court of Appeals  
Division III  
State of Washington

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 STEVENS COUNTY SUPERIOR COURT  
HONORABLE ALLEN C. NIELSON

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SUPPLEMENTAL BRIEF OF APPELLANT

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A. QUESTIONS FOR SUPPLEMENTAL BRIEFING

1. What is the effect of *State v. Snapp*?

2. Can Ms. Scharnhorst, as a non-owner passenger, challenge the vehicle search that was undertaken as a result of the arrest of the driver, Ms. Castellano?

B. STATEMENT OF THE CASE

The facts are set forth in Appellant's initial brief and are incorporated herein. Additional pertinent facts will be included in the Argument section when appropriate.

C. ARGUMENT

1. The search of Ms. Scharnhorst's purse was illegal pursuant to *State v. Snapp*.

In *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), the United States Supreme Court held that a warrantless automobile search incident to arrest of a recent occupant of the vehicle is proper under the Fourth Amendment to the United States Constitution only (1) when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search or (2) when it is reasonable to believe evidence relevant to the crime of arrest might be

found in the vehicle. In *State v. Snapp*, 174 Wn.2d 177, 275 P.3d 289 (2012), the Washington Supreme Court held that an equivalent to Gant's second exception was not permissible under article I, section 7 of the Washington State Constitution.

The upshot of the Snapp decision is that under a state constitutional analysis, a warrantless vehicle search incident to arrest is authorized only when the arrestee would be able to obtain a weapon from the vehicle or reach evidence of the crime of arrest to conceal or destroy it. *Snapp*, 174 Wn.2d at 190, 275 P.3d 289.

The effect of the *Snapp* decision on the present case is that the warrantless search of the car cannot be justified by the officer's reasonable belief that evidence relevant to the crime of arrest (possession of methamphetamine) might be found in the vehicle, since both the driver and Ms. Scharnhorst had been arrested and were no longer within reaching distance of the passenger compartment at the time of the search. Therefore, the search of the vehicle was illegal. 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).

2. Ms. Scharnhorst, as an occupant of the vehicle and arrestee, has automatic standing to challenge the vehicle search that was undertaken as a result of the arrest of the driver, Ms. Castellano.

In *State v. Simpson*, 95 Wash.2d 170, 622 P.2d 1199 (1980), a plurality of our Supreme Court stated that a defendant has automatic standing under article I, section 7 to challenge a search or seizure if "(1) the offense with which he is charged involves possession as an 'essential' element of the offense; and (2) the defendant was in possession of the contraband at the time of the contested search or seizure." *Simpson*, 95 Wash.2d at 181, 622 P.2d 1199; *State v. Shuffelen*, 150 Wn.App. 244, 254-55, 208 P.3d 1167 (2009). Scharnhorst meets both criteria for automatic standing under *Simpson* because she was charged with a possessory offense (possession of methamphetamine) and the contraband was in her possession (purse) at the time of the contested search and seizure.

In *State v. Williams*, 142 Wash.2d 17, 23, 11 P.3d 714 (2000), the Supreme Court declared that the automatic standing doctrine applies only when the defendant is asserting that his or her own rights were violated: "Inherent in the conditions for automatic standing is the principle that the

'fruits of the search' bear a direct relationship to the search the defendant seeks to contest." *Williams*, 142 Wash.2d at 23, 11 P.3d 714. Scharnhorst also meets the criteria for automatic standing under *Williams* because she is asserting that her own rights were violated by the search of her purse incident to her arrest for possession of a dangerous weapon that stemmed from the illegal search of the vehicle in which she was an occupant. See RP 7-8. In addition, the 'fruits of the search' (the methamphetamine found in Scharnhorst's purse) bears a direct relationship to the search the defendant seeks to contest (the warrantless search of the vehicle).

D. CONCLUSION

For the reasons stated, the search of Scharnhorst's purse was illegal pursuant to *State v. Snapp* as well as the authority cited in the initial brief, and she has automatic standing under *Simpson* and *Williams* to challenge the search of the vehicle in which she was an occupant.

Respectfully submitted August 24, 2012.

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PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on August 24, 2012, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or e-mailed by prior agreement (as indicated), a true and correct copy of Appellant's Supplemental Brief:

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