

86399-7
No. 290565

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Appellant,

vs.

LISA ANN BYRD,

Respondent.

APPEAL FROM THE SUPERIOR COURT
OF YAKIMA COUNTY, WASHINGTON

THE HONORABLE BLAINE GIBSON, JUDGE

BRIEF OF APPELLANT

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I.
ASSIGNMENTS OF ERROR

1. The trial court erred in finding that a purse belonging to the Defendant, Lisa Ann Byrd, would have been subject to inventory while Ms. Byrd was being booked . **(CP 9, Findings of Fact XVI, XVIII, XIX)**

2. The trial court erred in concluding that the officer's search of the purse was not lawful as a search incident to arrest, pursuant to Arizona v. Gant, __ U.S. __, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), and State v. Valdez, 167 Wn.2d 761, 224 P.3d 751 (2009). **(CP 9, Conclusions of Law I-V)**

3. The trial court erred, as a matter of law, in granting a defense motion to suppress evidence of possession of a controlled substance. **(CP 10)**

II. ISSUE

Whether a purse, sitting on the lap of a vehicle passenger, is lawfully searched incident to arrest when the passenger is arrested and removed from the vehicle together with the purse.

III. STATEMENT OF FACTS

While on patrol on the evening of November 17, 2009, Officer Jeff Ely of the Yakima Police Department conducted a traffic stop of a maroon Honda Civic. He had determined that the license plate on the Honda was instead registered to an Acura Integra. He was further informed by his dispatcher that the owner of the Acura reported that the plates had been stolen.

(RP 4-5)

A male individual who had been driving the Honda indicated that the front seat passenger owned the car. She was identified as Lisa Ann Byrd. **(RP 5)** Officer Ely took Ms. Byrd into custody for possession of stolen property. The officer

observed that she had a purse on her lap, and her hands were on the purse. **(RP 5-6)** As she was removed from the vehicle, the officer took the purse out of her lap, and placed it outside the vehicle on the ground. He wanted to make sure that it was out of her control “because purses contain dangerous things to us”. **(RP 6)**

After both the driver and Ms. Byrd were secured in a patrol vehicle, Officer Ely returned to the purse and searched it for any weapons or contraband “because it was coming with her to the jail because I had her under arrest for possession of stolen property.” **(RP 6-7)** Inside the purse, the officer found items he recognized to be contraband: glass pipes and white baggies containing a white crystalline substance he recognized as methamphetamine as a result of his training. **(RP 7)**

**IV.
STATEMENT OF PROCEDURE**

Byrd was charged with a single count of possession of a controlled substance, methamphetamine, under Yakima County Superior Court cause number 09-1-02126-6. (CP 38)

She moved to suppress evidence obtained as a result of the search of her purse. (CP 33-37) After a hearing, the court granted the motion and suppressed the evidence, concluding that the search was unlawful under Gant and Valdez, and that the inevitable discovery doctrine did not apply with respect to what would have been an impound inventory search. (CP 7-10) The case was dismissed. (CP 10) The State timely filed this appeal. (CP 2-6)

**V.
STANDARD OF REVIEW**

A reviewing court will review *de novo* a trial court's conclusions of law following a suppression hearing.

State v. Armenta, 134 Wn. 2d 1, 9, 948 P2d 1280 (1997)

VI.
ARGUMENT

A. The search of the purse was lawful incident to Ms. Byrd's arrest. *Gant* and *Valdez* are not implicated as the search was of an item associated with her person, not the vehicle.

It is well-settled that a warrantless search and seizure is *per se* unreasonable under both the Fourth Amendment and Art. I, sec. 7 of the Washington State Constitution, unless the search falls within one or more specific exceptions to the warrant requirement. State v. Ross, 141 Wn.2d 304, 312, 4 P.3d 130 (2000). The State bears the burden of proving that an exception applies. State v. Ladson, 138 Wn.2d 343, 349-50, 979 P.2d 833 (1999).

“A search incident to arrest is one exception, based upon the need to prevent destruction of evidence and the need to locate weapons in the possession of the arrested person.” State v. Johnson, 128 Wn.2d 431, 447, 909 P.2d 293 (1996), *citing*

State v. Stroud, 106 Wn.2d 144, 152, 720 P.2d 436 (1986)

(overruled on other grounds).

A police officer may conduct a search incident to arrest of the arrestee's person and the area within his or her immediate control. Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969). The holding in Chimel was narrowed in its scope by Gant, *supra*. There, the United States Supreme Court held that, "[p]olice may search a vehicle incident to arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." Id., 129 S. Ct. at 1723.

The Washington Supreme Court addressed vehicle searches incident to arrest in Valdez, *supra*, holding that Article I, sec. 7 of the Washington Constitution permits the warrantless search of an automobile under the search incident to arrest exception only when the search is necessary to preserve officer

safety or prevent destruction or concealment of evidence of the crime of arrest. 167 Wn.2d at 778.

In a case based upon facts nearly identical to those present here, and not available to the trial court at the time of the suppression hearing, this court recently held that a search of a purse incident to arrest did not run afoul of Gant. State v. Johnson, 155 Wn. App. 270, 281-82, 229 P.3d 824 (2010). In Johnson, the defendant was arrested for driving without a license after she exited the vehicle with her purse. The court's analysis is instructive:

The search here is not a vehicle search. A search incident to arrest is an exception to the warrant requirement. State v. Smith, 119 Wn.2d 675, 678, 835 P.2d 1025 (1992). And a search incident to the arrest of a person may include those items that are immediately associated with the person. *See, Id.* At 677-78. A search incident to arrest is valid under the Fourth Amendment (1) if the object searched was within the arrestee's control when he or she was arrested, and (2) if the events occurring after the arrest but before the search did not render the search unreasonable. Id., at 681-82.

Johnson, 155 Wn. App. at 281-82.

Here, as well, Ms. Byrd's purse was immediately associated with her person, and under her control, as she was holding it on her lap at the time of her arrest. The reasons for the search incident to arrest are amply supported by the facts, and the search was not unreasonable. Most significantly, it was not a search of the vehicle, and the trial court erred in relying upon Gant.

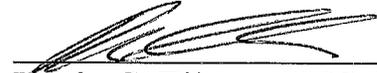
The decision in Valdez is likewise inapplicable, as in that case the defendant was stopped for having a non-functioning headlight, was arrested on an outstanding warrant, and his van was subsequently searched after he was handcuffed and secured in a patrol vehicle. 167 Wn.2d at 765.

Instead, Johnson is directly on point, and dictates reversal of the court's suppression order.

**VII.
CONCLUSION**

For all the foregoing reasons, this court should reverse the order of suppression and dismissal, and remand this matter to the Superior Court for trial.

Respectfully submitted this 24 day of September,
2010.


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