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NO. 67334-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANTOINE LAMONT BROCK,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SUSAN CRAIGHEAD

SUPPLEMENTAL BRIEF REGARDING EFFECT OF STATE V. BYRD

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A. ISSUE

The Washington Supreme Court in State v. Byrd confirmed long-standing precedent holding that personal effects may be searched incident to arrest. Brock's backpack was in his actual possession upon arrest and it was searched incident to arrest. Does Byrd require that the trial court's order denying suppression of evidence be affirmed?

B. FACTS

The facts developed in the State's original response brief are adequate to resolve the issues presented.

C. ARGUMENT

Brock argued in his initial brief that the search of his backpack was improper because police may not search personal effects incident to arrest. Br. of App. at 12-16 (citing art. I, § 7 and State v. Byrd, 162 Wn. App. 612, 258 P.3d 686, review granted, 173 Wn.2d 1001, 268 P.3d 942 (2011)). The State responded that art. I, § 7 permits a search of a backpack incident to arrest, or as part of an inventory search. Br. of Resp. at 16-26. The case was stayed pending a decision in Byrd. This Court has now asked the

parties to file supplemental briefs limited to five pages addressing the effect of the Washington Supreme Court's decision in State v. Byrd, No. 86399-7 (Oct. 10, 2013).

The Supreme Court held in Byrd that searches of a person and her personal effects—like purses and backpacks—are always appropriate incident to arrest.

> Unlike searches of the arrestee's surroundings, searches of the arrestee's person and personal effects do not require "a case-by-case adjudication" because they always implicate ... concerns for officer safety and evidence preservation. ...Thus, their validity does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. ... The authority to search an arrestee's person and personal effects flows from the authority of a custodial arrest itself. ...
>
> Because this exception is rooted in the arresting officer's lawful authority to take the arrestee into custody, rather than the "reasonableness" of the search, it also satisfies article I, section 7's requirement that incursions on a person's private affairs be supported by "authority of law." ...

Byrd, slip op. at 6 (citations and internal quotations omitted). The court also held that "[w]hen police take an arrestee into custody, they also take possession of his clothing and personal effects, any of which could contain weapons and evidence." Id. at 10.

The court also discussed the scope of such searches. "Searches of the arrestee's person incident to arrest extend only to articles 'in such immediate physical relation to the one arrested as to be in a fair sense a projection of his person' and not to items within the suspects reach or to items constructively possessed. Id. at 12.

Brock's arguments are foreclosed by the decision in Byrd. Brock was lawfully arrested. The item searched was a backpack he had been carrying directly on his person.

Moreover, it does not matter that the officer separated Brock from his backpack before formal arrest. Searches are authorized because it is presumed that taking a person and his or her belongings into custody creates safety risks. Byrd, slip. op. at 10. The decision in Bryd recognizes that the risks are the same even though the defendant and his personal property were separated immediately before formal arrest. The authority to search extends to "those personal articles in the arrestee's actual and exclusive possession *at or immediately preceding* the time of arrest." Id. at 12 (italics added). The backpack was an item in Brock's actual possession immediately preceding his detention and arrest, so it was lawfully searched incident to arrest.

In addition, this Court should also hold, as the State argued earlier, that the search of the backpack was authorized to inventory property before Brock was booked into jail. Br. of Resp. at 21-25.

D. CONCLUSION

For the foregoing reasons, Brock's convictions should be affirmed.

DATED this 31st day of October, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Christopher Gibson, of Nielsen, Broman and Koch, P.L.L.C., at the following address: Central Building, 1908 East Madison Street, Seattle, WA 98122, the attorney of record for the appellant, containing a copy of the Supplemental Brief Regarding Effect of State v. Byrd, in STATE V. ANTOINE LAMONT BROCK, Cause No. 67334-3-I in the Court of Appeals of the State of Washington, Division I.

I certify under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

10-31-13

Name Date

Done in Seattle, Washington