

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

NATALIE MARIE WILLIAMS,

Appellant.

No. 38870-7-II

UNPUBLISHED OPINION

Worswick, J — Natalie Williams appeals her conviction for unlawful possession of a controlled substance (methamphetamine), arguing that the trial court erred in denying her CrR 3.6 motion to suppress evidence seized incident to arrest. We reverse and remand.

**FACTS**

On October 7, 2008, Washington State Patrol Trooper Kenny Lutz stopped a white passenger car travelling in excess of the posted speed limit on State Route 432 in Cowlitz County. As Lutz stopped the car, he noticed the right front seat passenger, Williams, trying to put on her seatbelt. Lutz contacted the driver, Jason Bornstedt, and determined he had a misdemeanor warrant and a suspended driver's license. Trooper Richard Bettger arrived to assist at this time. Lutz arrested Bornstedt and placed him in the back of his patrol car.

Trooper Bettger contacted the two passengers, Williams and her son, and asked them both to exit the car. Upon exiting, her son turned away, grabbed a black object from the belt line of his

pants, and asked Williams to “hold my pouch for me.” Report of Proceedings (RP) at 29. Trooper Bettger “stiff-armed” him and the pouch dropped to the ground. RP at 30. As Bettger picked up the pouch, Williams’s son took off running. Lutz ran after him, caught him, and brought him back to the patrol car. The pouch contained syringes and plastic bags containing what appeared to be methamphetamine. Williams voluntarily told Bettger that the pouch was hers.

Troopers Lutz and Bettger arrested Williams and her son for possession of methamphetamine and secured them in the patrol cars. Then Lutz and Bettger conducted a search of the vehicle incident to the arrests and found methamphetamine inside of a purse in the passenger compartment of the car. The purse also contained Williams’s identification.

On October 10, 2008, the State charged Williams by information with one count of possession of methamphetamine. RCW 69.50.4013(1)-(2). Williams filed a CrR 3.6 motion to suppress the methamphetamine found in the purse and the pouch. The trial court suppressed evidence of the pouch and Williams’s statements that the pouch belonged to her. The trial court also found that even had the troopers not searched incident to arrest initially, they would have discovered, while issuing her a seatbelt citation, that Williams had a misdemeanor warrant and would have then searched the car incident to her arrest. On January 21, 2009, the trial court held a trial based on stipulated facts and found Williams guilty. She appeals.

#### ANALYSIS

Williams contends that the trial court erred in denying her motion to suppress methamphetamine found in her purse as the result of a search incident to arrest. We review the

trial court's determination that a warrantless search of a vehicle did not violate article I, section 7 of the Washington State Constitution de novo on appeal. *State v. Moore*, 161 Wn.2d 880, 885, 169 P.3d 469 (2007). We find Williams's argument persuasive and hold the search of her purse to be unlawful.

Williams first asserts that the search was unlawful in light of the United States Supreme Court's recent decision in *Arizona v. Gant*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) because Troopers Lutz and Bettger searched the car incident to the driver's arrest, not her arrest.<sup>1</sup> The State counters that 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.

Contrary to the State's position, Williams was not lawfully arrested. The trial court specifically found that the contents of the black pouch and Williams's statements that the contents belonged to her were inadmissible. The troopers arrested Williams at the time only because of this evidence, which they unconstitutionally obtained. The court specifically found the search of Williams's purse lawful as it would have been discovered independently of the illegal action of the troopers.

The State, in order to refute Williams's assertion that *Gant* applies, cites to *State v. Parker*, 139 Wn.2d 486, 987 P.2d 73 (1999). *Parker* involved the issue of whether the personal belongings of nonarrested vehicle passengers may be subject to a search incident to the arrest of the driver. 139 Wn.2d at 489. *Parker* held that the arrest of one or more vehicle occupants does

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<sup>1</sup> The Supreme Court issued its opinion in *Gant* on April 21, 2009, three months after the trial court held the suppression hearing in this case.

not, without more, provide the “authority of law” under the state constitution to search other, nonarrested vehicle passengers, including personal belongings clearly associated with such nonarrested individuals. 139 Wn.2d at 502-03. If anything, *Parker* supports Williams’s proposition that the search of her purse was unlawful. Thus, we fail to see how *Parker* compels us to rule in the State’s favor. The trial court should have excluded the contents of Williams’s purse as fruit of the poisonous tree because the troopers obtained the contents incident to her unlawful arrest. *See State v. Schlieker*, 115 Wn. App. 264, 266-67, 62 P.3d 520 (2003) (suppression is required as fruit of poisonous tree when police search was unlawful).

Williams also asserts that the trial court improperly found that the inevitable discovery rule allowed for the admission of the methamphetamine evidence found in the purse. She assigns error to the trial court’s finding that Trooper Lutz would have discovered Williams’s outstanding warrant pursuant to a routine check when citing her for the seatbelt violation and would have searched the purse and found the methamphetamine as a result.<sup>2</sup> We agree, as Washington has refused to adopt the inevitable discovery rule.

After the parties submitted their briefing in this case, our Supreme Court issued *State v. Winterstein*, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009), in which it held that the inevitable discovery rule is contrary to the constitutional protections afforded citizens in our state. As a result, the trial court’s finding that the inevitable discovery rule allowed for the admission of the evidence found in the purse cannot serve as a basis to sanction the search here.

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<sup>2</sup> Williams also discusses the seatbelt violation in her Statement of Additional Grounds (SAG). Because we reverse and remand on other grounds, we do not address her SAG.

No. 38870-7-II

Reversed and remanded.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Worswick, J.

We concur:

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Armstrong, J.

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Penoyar, C.J.