IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. AMY LOUISE CRITCHFIELD, Appellant.	No. 40160-6-II UNPUBLISHED OPINION

Hunt, J. — Amy Louise Critchfield appeals five drug-related convictions resulting from a stipulated-facts bench trial.[1] She argues that the trial court erred in denying her motion to suppress the drugs seized during a search of the vehicle in which she was riding incident to her arrest because (1) the police officer unlawfully requested her identification (which request led to her arrest for criminal impersonation and vehicle search incident to arrest) because he had no basis for suspecting that she was engaged in criminal activity; and (2) the police officer unlawfully

[1] Critchfield assigns error only to the trial court's refusal to suppress drugs found in the vehicle search incident to her arrest. She challenges the legality of the officer's asking for her identification, which led to her criminal impersonation charge and conviction, only to the extent that it served as the prelude for the vehicle search incident to her arrest. Although at the conclusion of her brief she asks generally that we "reverse the judgment and sentence," Br. of Appellant at 24, nowhere in her brief does she challenge the trial court's conviction for criminal impersonation, as RAP 10.3(a)(4) and (6) and RAP 10.3 (g) require if she were appealing this conviction. Therefore, we assume that she is challenging only her five convictions based on the drugs seized from the vehicle during the illegal search incident to arrest.

searched the vehicle incident to her arrest because he had no reason to believe that she would destroy or conceal evidence of the crime of her arrest. Agreeing with Critchfield's second argument,[2] we accept the State's concession of error that the vehicle search was unlawful and that the seized evidence should have been suppressed. Accordingly, we reverse Critchfield's five drug-related convictions based on the Washington Supreme Court's recent decision in *State v Snapp*, __ Wn 2d ___, 275 P.3d 289 (2012).

FACTS

I. Background

We derive these facts from the police report of "J. Nutter" of the Port Angeles Police Department. Clerk's Papers (CP) at 49. On January 5, 2009, Nutter was driving his marked patrol car when he observed Ronald Critchfield driving a vehicle. Believing that Ronald's[3] driver's license was likely suspended, Nutter asked dispatch to run a check on the vehicle's license plate. When dispatch advised Nutter that Ronald's license was "suspended in the third degree," Nutter activated his patrol car lights. CP at 48.

Ronald pulled into a gas station parking lot. Nutter arrested him for driving with a suspended license, placed him in the back of Nutter's patrol vehicle, and cited him for misdemeanor third degree driving while license suspended or revoked. While Nutter was arresting Ronald, Washington State Patrol Trooper "M. Dufour" arrived and made contact with

[2] Because we reverse based on Critchfield's second argument, challenging the legality of the vehicle search, we need not address her first argument, challenging the officer's request for her identification, which set in action the events that led to the unlawful vehicle search and seizure of the drug evidence.

[3] We use Ronald Critchfield's first name for clarity; we intend no disrespect.

the vehicle's passenger, Ronald's sister, Amy Critchfield (Critchfield), who was acting in a "furtive manner." CP at 48. Dufour later explained to Nutter that

> [w]hen he [Dufour] arrived he observed [Critchfield] acting in a furtive manner as she stuffed white pills into the crack of the seat on her left side. Concerned that [Critchfield] could also retrieve a concealed weapon, Dufour requested that [Critchfield] step out of the vehicle, but she ignored his request and continued to reach between the seats. Trooper Dufour opened the passenger door and physically removed [Critchfield] from the vehicle for officer safety reasons and threatened to arrest her for obstructing a law enforcement officer for failing to follow his commands to get out of the vehicle. Trooper Dufour did not take [Critchfield] into custody and requested she go sit on the front bumper of [Nutter's] patrol car which she voluntarily did.

CP at 48.

Before searching the vehicle incident to Ronald's arrest for driving while license suspended or revoked, Nutter asked Critchfield for her name. She responded, "Nicole R. Critchfield," which name, when run through dispatch, turned up no warrants. CP at 48. "Because [Critchfield] had no photo ID with her," Nutter asked dispatch for a physical description of "Nicole Critchfield." CP at 48. Dispatch advised Nutter that Nicole Critchfield had blue eyes; Nutter observed that Critchfield actually had hazel eyes. When Nutter asked Critchfield for the last four digits of her social security number, she started crying and said she did not know her social security number. Nutter then "looked down into the open black purse that was on the floor of the passenger compartment and saw a pill bottle with the name Amy Critchfield on it." CP at 48. Nutter ran the name Amy Critchfield through dispatch, which advised that she had hazel-colored eyes and an outstanding arrest warrant. Critchfield then admitted her true identity to Nutter. Nutter arrested her, placed her in the back of his patrol

vehicle, and advised her of her *Miranda*[4] rights.

Nutter then searched the vehicle "incident to arrest of both occupants." CP at 48. He found five white pills (later identified as Hydrocodone[5]), one "in the area where Trooper Dufour had described [Critchfield] attempting to hide white pills," another "in the crack of the upholstery in the same area, and three more [Hydrocodone pills] underneath the seat placed consistently with having been pushed through the crack in [the] seat." CP at 48. Critchfield admitted that she did not have either the prescription or the pill bottle for these Hydrocodone pills. Nutter next found "a metal pipe with burnt residue consistent with the smell and appearance of burnt marijuana" in a "small blue purse under [Critchfield's] seat"; Nutter confiscated the pipe to destroy it. CP at 48-49. In the blue purse, Nutter also found 15 to 20 hypodermic needles and "other paraphernalia associated with IV drug use," but he did not find any drugs. CP at 49.

In a "black purse on the passenger side floor," Nutter found a prescription pill bottle bearing Critchfield's name. CP at 49. The prescription bottle was for Roxicet, but the bottle did not contain any Roxicet pills. Instead, the bottle contained one Clonazepam[6] pill, one and a half tablets of Proscholrperazine, three pills of Seroquel, and 11 tablets of Cyclobenzaprine Hcl.[7]

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[4] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[5] Hydrocodone is a Schedule II drug. Former RCW 69.50.206(b)(1)(x) (1993).

[6] Clonazepam is a Schedule IV drug. Former RCW 69.50.210(b)(9) (1993).

[7] Proscholrperazine, Seroquel, and Cyclobenzaprine Hcl are all legend drugs. Legend drugs are "any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only." RCW 69.41.010(12).

Nutter did not arrest Critchfield for possession of the metal pipe, the needles, or the other drug paraphernalia.

After citing Ronald for driving while license suspended or revoked, Nutter released him from custody. Nutter then transported Critchfield to the Clallam County Jail, where she was booked[8] and the jail staff advised that Critchfield had "an outstanding [Department of Corrections] warrant." CP at 49.

II. Procedure

The State charged Critchfield with two counts of felony possession of a controlled substance under RCW 69.50.4013(1); three counts of misdemeanor unlawful possession of a legend drug under former RCW 69.41.030 (2003); and one count of felony first degree criminal impersonation under RCW 9A.60.040(1)(a). At a CrR 3.6 hearing, the parties stipulated that the trial court would consider only the facts set forth in Nutter's police report.

Critchfield moved to suppress the evidence seized from the vehicle, arguing that (1) because Nutter "had no independent suspicion of [her involvement in] criminal activity,"[9] Nutter had unlawfully asked for her identification, which in turn led to her arrest and the unlawful search incident to arrest; and (2) Nutter's search of the vehicle incident to her arrest was unlawful because, at the time of the search, both she and Ronald had been arrested and put inside patrol cars, with no access to their vehicle. The trial court denied Critchfield's motion to suppress on

[8] Although Nutter's police report lists five drug charges and the impersonation charge for which there was probable cause to charge, it does not recite on what charges Critchfield was actually arrested or booked.

[9] Report of Proceedings (RP) (July 29, 2009) at 4.

both grounds. On the second ground, the trial court ruled that the United States Supreme Court's decision in *Arizona v. Gant*,[10] decided a few months earlier, permitted Nutter's warrantless vehicle search incident to Critchfield's arrest because Nutter had a reasonable belief that the vehicle contained evidence of the crime for which he had arrested Critchfield (criminal impersonation).

Critchfield waived her right to a jury trial; and the parties "submitted" the case "to the [trial court] on a stipulation of facts consisting of" Nutter's police report. RP (Sept. 16, 2009) at 3. The trial court found Critchfield guilty of all six counts. Critchfield appealed.[11] The State conceded that we should reverse the trial court's order denying the suppression of the drug evidence found in the vehicle, stating that the search could not be justified under the Washington Supreme Court's reasoning in *State v. Valdez*, 167 Wn.2d 761, 224 P.3d 751 (2009), decided four months after Critchfield's trial. On February 8, 2011, however, we stayed Critchfield's appeal pending the Washington Supreme Court's decision in *State v. Snapp*, No. 84223-0, consolidated with *State v. Wright*, No. 84569-7. The Supreme Court accepted review of *Snapp*[12] to address the lawfulness of a vehicle search for evidence of the crime incident to arrest, absent a concern for destruction of evidence or a threat to officer safety—the remaining issue in Critchfield's appeal and the ground on which the trial court had denied her motion to suppress.

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[10] *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 1723, 173 L. Ed. 2d 485 (2009).

[11] In her notice of appeal, Critchfield states that she is appealing "the trial court's Judgment and Sentence." CP at 22. But, as we have already noted, she neither assigns error to her criminal impersonation conviction nor expressly argues that we should reverse that conviction. Accordingly, we consider at issue in this appeal only her five drug-related convictions.

[12] *State v. Snapp*, 169 Wn.2d 1026, 241 P.3d 413 (2010).

On April 5, 2012, the Supreme Court issued its opinion in *Snapp*, holding that our state constitution forbids an officer's warrantless vehicle search incident to arrest for evidence of the crime of arrest, even if the arresting officer reasonably believes that evidence of the crime may be found inside the vehicle. On May 22, we lifted the stay. Critchfield filed a supplemental brief, arguing that *Snapp* requires suppression of the evidence and reversal of her five drug convictions. We agree.

ANALYSIS

Critchfield argues that Nutter's search of the vehicle after her arrest violated article I, section 7,[13] because Nutter did not have a reasonable belief that inside the vehicle there was evidence of the crime for which Critchfield had been arrested (criminal impersonation) that she might destroy or conceal. We accept the State's concession of error that this search was unlawful. Finding *Snapp* controlling, we hold that the evidence seized from the vehicle should have been suppressed.

In her original brief of appellant, Critchfield argued that (1) in *Valdez* and *State v. Patton*, 167 Wn.2d 379, 219 P.3d 651 (2009), the Washington Supreme Court had prohibited warrantless vehicle searches incident to arrest for evidence of the crime of arrest under article I, section 7 of our constitution unless the officer has a reasonable concern that the suspect might destroy or conceal that evidence; and (2) because Critchfield had already been arrested and placed in a patrol car before the vehicle search, there was no reasonable concern that she might destroy or conceal evidence inside the vehicle in which she and her brother had arrived. In its original brief of

[13] Wash. Const. art. I, § 7.

respondent, the State conceded that Nutter's search was unlawful under *Valdez* and that the drug evidence should have been suppressed.

We did not accept the State's concession at that time because the remaining potential basis for affirming the trial court—the lawfulness of a search for evidence of the crime of arrest under our state constitution (allowable under the federal constitution according to the United States Supreme Court in *Gant*[14])—was pending before our state Supreme Court in *Snapp*. Our Supreme Court recently issued *Snapp*, departing from the United States Supreme Court's holding in *Gant* and holding that a warrantless automobile search incident to a lawful arrest violates the arrestee's right to privacy under article I, section 7, of Washington's constitution, even where the officer has a reasonable belief that the vehicle contains evidence relevant to the crime of arrest[15]:

> [A]lthough the automobile exception [to the warrant requirement] is recognized for purposes of the Fourth Amendment, it is not recognized under article I, section 7. *See Patton*, 167 Wn.2d [379,] 386 n.4, 219 P.3d 651 [(2009)]; *State v. Tibbles*, 169 Wn.2d 364, 369, 236 P.3d 885 (2010) (in context of automobile search where suspect was not arrested; probable cause to search did not justify search of

[14] A warrantless search of a vehicle incident to arrest is lawful under the Fourth Amendment to the United States Constitution "if . . . it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Gant*, 556 U.S. at 351.

[15] In so holding, however, our Supreme Court did not depart from the general rule that

> an officer may search the arrestee and the area within his or her immediate control to remove any weapons the person might try to use to escape or resist arrest and to avoid destruction of evidence of the crime for which the person is arrested.
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> . . . .
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> *Ringer*'s holding that the vehicle search incident to arrest is based on the dual concerns of officer safety and preservation of evidence stands as valid law, and prior cases that rested on other justifications not involving these concerns are not controlling precedent.

Snapp, 275 P.3d at 297 (citing *State v. Ringer*, 100 Wn.2d 686, 697, 674 P.2d 1240 (1983), *overruled on other grounds by State v. Stroud*, 106 Wn.2d 144, 720 P.2d 436 (1986)). This *Ringer* rule, however, does not apply here because Critchfield was under arrest, sitting in a patrol car, with no access to the vehicle being searched.

> vehicle—'the existence of probable cause, standing alone, does not justify a *warrantless* search'); *Ringer*, 100 Wn.2d at 700–01, 674 P.2d 1240. Although the *Thornton*[541 U.S. 615, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004)] exception is consistent with the rationale underlying the federal automobile exception under the Fourth Amendment, it lacks similar support under article I, section 7.

Snapp, 275 P.3d at 296 (internal quotation marks omitted).[16] The Supreme Court reversed the trial court's denial of Snapp's motion to suppress, which denial had also been based on *Gant*.

Similarly here, the trial court followed *Gant* in denying Critchfield's motion to suppress the drug evidence seized from the vehicle in a warrantless search incident to her arrest on the ground that it was evidence of the crime for which she had been arrested. Our Supreme Court's recent decision in *Snapp* now holds that such a search, though lawful under the federal constitution and under *Gant*, is not lawful under our state constitution. Holding that *Snapp* requires suppression of the drug evidence here, we reverse counts I–V. We remand to the trial

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[16] The Court implies that, absent legitimate concerns for officer safety and the destruction of evidence, the police must first obtain a warrant to search a vehicle for evidence of a crime:

> As we said in . . . *Valdez*, "when a search can be delayed to obtain a warrant without running afoul of" concerns for the safety of the officer or to preserve evidence of the crime of arrest from concealment or destruction by the arrestee "(and does not fall within another applicable exception), the warrant *must be obtained*. A warrantless search of an automobile is permissible under the search incident to arrest exception when that search is necessary to preserve officer safety or prevent destruction or concealment of evidence of the crime of arrest."
> . . .
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> Contrary to the urgency attending the search incident to arrest to preserve officer safety and prevent destruction or concealment of evidence, there is no similar necessity associated with a warrantless search based upon either a reasonable belief or probable cause to believe that evidence of the crime of arrest is in the vehicle.

Snapp, 275 P.3d at 298 (internal citations omitted) (quoting *Valdez*, 167 Wn.2d at 773).

court to correct Critchfield's judgment and sentence.

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 in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Johanson, A.C.J.

Penoyar, J.