

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 35617-1-II

Respondent,

v.

JEANI L. SERO,

UNPUBLISHED OPINION

Appellant.

Hunt, J. — Jeani L. Sero appeals her conviction for unlawful possession of methamphetamine, arguing that the trial court erred in denying her motion to suppress the methamphetamine. Concluding that the trial court did not err, we affirm.¹

FACTS

After the State charged Sero with unlawful possession of methamphetamine, she moved to suppress the methamphetamine, arguing that its seizure was the result of an unconstitutional warrantless search. In denying the motion to suppress, the trial court made the following findings, to which Sero does not assign error, making them verities on appeal:

I.

On April 21, 2004, Hoquiam police officers went to the Westwood Motel as they had information that Ms. Sero was staying in Room 131 at the motel. She had been staying in that room for two or three days with Mr. Rodden who was renting the room.

II.

The officers had an arrest warrant for Ms. Sero, and while several officers were at the front door of the room, an officer covering the back area saw Ms. Sero run through the motel room. Officer Salstrom knocked on the door, and when Mr. Rodden answered the door, he entered the [room] with other officers looking for

¹ A commissioner of this court initially considered Sero's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

Ms. Sero.

III.

After a considerable search for Ms. Sero, and repeated statements that they saw her run through the room and knew she was hiding somewhere, Mr. Rodden eventually disclosed that she was hiding inside the couch.

IV.

As Officer Salstrom removed Ms. Sero from the couch, he saw what appeared to be a glass pipe and a baggie. Mr. Rodden conceded that he was not in a position where he could see what Officer Salstrom saw as he was removing Ms. Sero from the couch.

V.

Officer Salstrom first arrested Ms. Sero on the arrest warrant and took her to his vehicle outside. He then returned to the room, moved the couch, and picked up the broken glass smoking device and what appeared to him to be methamphetamine.

Clerk's Papers (CP) at 32-33.

Based on those findings, the trial court denied Sero's motion to suppress, concluding:

The officers had an arrest warrant for [Ms. Sero] and actually saw her through a back window of the motel room. They had a right to enter the motel room and arrest her. The pipe and the contraband were found in plain view incident to her arrest on a valid arrest warrant.

CP at 33.

A jury subsequently found Sero guilty as charged.

ANALYSIS

Sero argues first that under *Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), the search incident to her arrest violated the Fourth Amendment because Officer Salstrom did not seize the evidence until after he had placed her in his patrol car. In *Gant*, the Court held:

Police may search a vehicle incident to a recent occupant's 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. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another

exception to the warrant requirement applies.

Gant, 129 S. Ct. at 1723-24.

Gant does not apply for three reasons. First, *Gant* applies to warrantless vehicle searches incident to arrest; here, the search was of Sero's motel room incident to her arrest, not her vehicle. Second, even if *Gant* applied to situations other than vehicle searches, Sero was still in the motel room when Officer Salstrom discovered the methamphetamine, and the seized methamphetamine was within her reach when the search occurred, even though she had been handcuffed. That Officer Salstrom did not seize the methamphetamine until after he secured Sero in his patrol car does not make *Gant* applicable.

Third, another exception to the warrant requirement, plain view, applies to this search. "If police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant." *Minnesota v. Dickerson*, 508 U.S. 366, 375, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993). Sero argues that when police observe contraband in plain view, they may not return to seize the contraband without obtaining a warrant, citing *United States v. Murphy*, 516 F.3d 1117, 1121 (9th Cir. 2008). *Murphy* is distinguishable: In *Murphy*, police conducted a protective sweep of a storage unit, saw what they believed to be a methamphetamine lab, left, and returned two hours later to conduct a second search. Here, in contrast, while arresting Sero on a valid arrest warrant, Officer Salstrom saw the glass pipe and baggie in the place where Sero had been hiding; and other officers remained in the motel room while Officer Salstrom secured Sero in his patrol car.

By virtue of the arrest warrant, Officer Salstrom was lawfully in the motel room when he

saw the contraband. Its incriminating character was immediately apparent to him. He had a lawful right of access to the contraband. Thus, he had the right to seize it without first obtaining a warrant. That Officer Salstrom returned 10 to 15 minutes later to seize the contraband does not remove the seizure from the plain view exception to the warrant requirement. The trial court did not err in denying Sero's motion to suppress.

We affirm.

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.

Hunt, J.

We concur:

Houghton, P.J.

Quinn-Brintnall, J.