

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000515-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, SPECIAL JUDGE
ACTION NO. 06-CR-00781

ASHLEY RENE SIES

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: The Commonwealth of Kentucky appeals the February 2, 2007, order of the Boone Circuit Court suppressing evidence obtained from a warrant-less search. We reverse and remand.

On September 22, 2006, Ashley Sies was pulled over by Boone County Deputy Sheriff R. A. Walters for speeding. Sies was arrested and placed in Walters' patrol car when he discovered that her license was suspended. Walters returned to Sies' vehicle and searched the vehicle for illegal contraband, but found nothing. He then rolled up her car window, turned off her headlights, shut off her engine, removed

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

her keys, retrieved her purse and cellular telephone, and locked her car. Sies had not asked Walters to retrieve her purse or cellular phone. Walters would later testify that he took them out of her car as standard procedure. Walters placed Sies' personal effects in the front seat of his patrol car and transported her to the Boone County Detention Center.

After arriving at the sally port of the detention center Walters searched Sies' purse and found a hypodermic needle. He also felt what he thought were other needles between the front flap and lining of her purse. In light of the new found evidence, Walters proceeded to the Boone County Sheriff's Department with Sies and advised Sies of her Miranda rights. Walters then discovered a bag of narcotics in Sies' purse and had another deputy cut open her purse where additional needles, cotton swabs with residue and a metal spoon were found. The evidence was sent to a crime lab for testing and was found to contain heroin along with traces of morphine, cocaine, and codeine.

On December 20, 2006, Sies was indicted of the following charges: 1) possession of a controlled substance in the first degree; 2) possession of drug paraphernalia, first offense; 3) driving on a suspended license; and 4) speeding. Sies filed a motion to suppress the evidence obtained from her purse and on February 1, 2007, a suppression hearing was held. The trial court found that the evidence was to be suppressed because the search of Sies' purse was not performed incident to an arrest. In support of its decision, the trial court cited to *Clark v. Commonwealth*, 868 S.W.2d 101 (Ky.App. 1993). This appeal followed.

When reviewing a trial court's admission or suppression of evidence, the Court utilizes a two-part evaluation. "[W]e will apply a clear error standard of review for

factual findings and a *de novo* standard of review for conclusions of law.” *Bishop v. Commonwealth*, 237 S.W.3d 567, 568-9 (Ky.App. 2007) (internal quotations omitted).
See also RCr 9.78.²

All searches without a valid search warrant are unreasonable unless shown to be within one of the exceptions to the rule that a search must rest upon a valid warrant. The burden is on the prosecution to show the search comes within an exception.

Gallman v. Commonwealth, 578 S.W.2d 47, 48 (Ky. 1979) (citing *City of Danville v. Dawson*, 528 S.W.2d 687 (Ky. 1975)). The exceptions to the requirement of a search warrant are: 1) plain view; 2) inventory; 3) automobile; and 4) incident to arrest. See, e.g., *Hazel v. Commonwealth*, 833 S.W.2d 831 (Ky. 1992); *Florida v. Wells*, 495 U.S. 1, 110 S.Ct. 1632, 109 L.Ed.2d 1 (1990); *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); *Commonwealth v. Ramsey*, 744 S.W.2d 418 (Ky. 1987). On appeal, the Commonwealth argues that the trial judge erred when he ruled that the search of Sies’ purse, at the Boone County Jail, was not a search incident to arrest.

The “incident to arrest” exception of a search warrant requirement was adopted by the state of Kentucky in *Ramsey, supra*, from the case of *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981). *Belton, supra*, held that the passenger compartment of an automobile may be searched contemporaneous to a lawful arrest of the occupant of an automobile. In so holding, the Supreme Court found that the exception extended to a jacket located in the vehicle in which the arrestee had been a passenger just prior to his arrest and was therefore “within the arrestee’s immediate control.” *Id.* at 462. The Supreme Court further referenced *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), which held that the essence of a search incident to arrest was to ascertain contents that might pose a danger to police. *Belton, supra*, at 461.

² Kentucky Rules of Criminal Procedure.

In *Clark, supra*, the case on which the trial court relied, this Court held that a search of a vehicle was not “incident to arrest” after the arrestee had been placed in the back of the police cruiser and a substantial period of time had passed. *Clark*, 868 S.W.2d at 108. In support of that holding, this Court opined that the search “was not properly limited to the area within [the arrestee’s] immediate control, from which a weapon could be drawn, or evidence destroyed, which is the justification for the search allowed in *Belton*.” *Id.*

The case sub judice is factually distinguishable from *Clark*, in that it involves the search of a handbag. It is unreasonable to expect an officer to leave a purse in an abandoned car, regardless of whether it was being towed or left on the side of the road. Purses typically contain personal and valuable objects which would be a target for a thief. In fact, Walters testified that the removal of the handbag from the vehicle was standard procedure. Furthermore, Sies’ purse could contain things that she would later need at the detention center, such as identification or medication.

Because the purse would be subject to search within the confines of the vehicle, we do not believe it to be any less subject to search once removed from the vehicle. An unsearched handbag can pose as great of a risk to a police officer as can an unsearched vehicle. The purse could have contained a handgun, knife, or other dangerous object. Furthermore, a purse, analogous to the jacket in *Belton, supra*, can contain evidence which the arrestee placed there in an attempt to hide it from an approaching police officer.

Lastly, while this Court does not profess to know the exact booking procedures for the Boone County Detention Center, we feel it safe to assume that the contents of Sies’ purse would have been inventoried and the contraband discovered upon her booking, had it not been found earlier. Therefore, the evidence would also be

admissible under the inevitable discovery rule. See *Richardson v. Commonwealth*, 975 S.W.2d 932, 934 (Ky.App. 1998).

For the foregoing reasons, we hold that the Boone Circuit Court erred when excluding the evidence found in Sies' purse. Accordingly, the February 2, 2007, order of the Boone Circuit Court is hereby reversed and remanded for proceedings consistent with this opinion.

ALL CONCUR.

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