# COURT OF APPEALS
**SECOND DISTRICT OF TEXAS**
**FORT WORTH**

**NO. 02-18-00154-CR**

YESENIA NATALIA PEREZ — APPELLANT

V.

THE STATE OF TEXAS — STATE

---

FROM THE 371ST DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1466940D

---

## MEMORANDUM OPINION[1]

---

Appellant Yesenia Natalia Perez was charged by indictment with the second-degree felony offense of possession of methamphetamine between four and 200 grams.[2] The trial court denied Appellant's pretrial motion to suppress, and she pled guilty to the charged offense in exchange for a sentence of three

[1]*See* Tex. R. App. P. 47.4.

[2]*See* Tex. Health & Safety Code Ann. § 481.115(a), (d) (West 2017).

years' confinement in the Correctional Institutions Division of the Texas Department of Criminal Justice. She reserved her right to appeal the trial court's denial of her motion to suppress.

Appellant brings a single point on appeal, challenging the trial court's denial of her motion to suppress. Because the trial court properly denied the motion to suppress, we affirm the trial court's judgment.

## I. BRIEF FACTS

An employee of the Automark Automobile Dealership in Dallas notified the Haltom City Police Department that a car stolen four days earlier from its purchaser had been located by its tracker on the parking lot of a Goodwill store on Denton Highway in Haltom City. The employee reported that he had spoken to the driver of the car, who said he was waiting for Appellant, who had gone inside the Goodwill store to make a payment on the car. When the police arrived, the car was empty. The driver had joined Appellant inside the Goodwill store, and both had gone out the back door to the Sam's Dollar Store next door.

Officer Rogers arrived at the Sam's Dollar Store, where the manager pointed out Appellant as the person who had entered with the driver of the stolen car. Officer Rogers spoke with Appellant and then handcuffed her as the police continued their investigation into the car theft. By the time Officer Brittany Yarbrough arrived at the scene, Appellant had already been detained and handcuffed, and her purse was behind the sales counter. When Officer Yarbrough asked the store manager about the purse, he handed it to her. The

purse was not zipped, and Officer Yarbrough testified that she could see a methamphetamine pipe in plain view inside the purse and that Appellant admitted both that the purse belonged to her and that she knew the pipe was inside.

Officer Cody Daniels arrived and took charge of the investigation. He, too, saw the pipe Officer Yarbrough had seen inside the open purse, as well as another pipe. Officer Daniels then searched the purse and found a brown bag containing "multiple small plastic baggies" filled with methamphetamine. Both sides agree that Daniels conducted the search without a warrant.

## II. MOTION TO SUPPRESS

### A. Standard of Review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review.[3] We give almost total deference to a trial court's rulings on questions of historical fact and application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor, but we review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor.[4]

When the record is silent on the reasons for the trial court's ruling, or when there are no explicit fact findings and neither party timely requested findings and conclusions from the trial court, we imply the necessary fact findings that would

[3] *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997).

[4] *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002).

support the trial court's ruling if the evidence, viewed in the light most favorable to the trial court's ruling, supports those findings.[5] We then review the trial court's legal ruling de novo unless the implied fact findings supported by the record are also dispositive of the legal ruling.[6]

We must uphold the trial court's ruling if it is supported by the record and correct under any theory of law applicable to the case even if the trial court gave the wrong reason for its ruling.[7]

**B. Analysis**

To better understand the argument on appeal, we first note that defense counsel clarified the scope of the motion to suppress at the hearing:

| | |
|---|---|
| [DEFENSE COUNSEL]: | Basically, it's a search issue, Your Honor. It's not a detention issue because the— |
| THE COURT: | Is it a . . . a warrantless search? |
| [DEFENSE COUNSEL]: | It is a warrantless search, Your Honor. |
| THE COURT: | Okay. Of a what? Car? |
| [DEFENSE COUNSEL]: | Purse. |

[5]*State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008); *see Wiede v. State*, 214 S.W.3d 17, 25 (Tex. Crim. App. 2007).

[6]*State v. Kelly*, 204 S.W.3d 808, 819 (Tex. Crim. App. 2006).

[7]*State v. Stevens*, 235 S.W.3d 736, 740 (Tex. Crim. App. 2007); *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex. Crim. App. 2003), *cert. denied*, 541 U.S. 974 (2004).

| | |
|---|---|
| THE COURT: | Of a purse. All right.<br><br>And does the State agree that this is a warrantless search? |
| [PROSECUTOR]: | The State does, Your Honor. |
| THE COURT: | All right. You may be seated, and the State may proceed. |
| [PROSECUTOR]: | Your Honor, if I may clarify, I was under a misunderstanding as to what this was fully about. So it's not about the detention? |
| [DEFENSE COUNSEL]: | Well, I believe there is an ancillary issue about whether we should have been detained at all, because we weren't—we weren't detained for an offense. We weren't detained under reasonable suspicion. And, therefore, there was no basis to search our purse. |
| ***THE COURT:*** | ***So you're challenging the initial detention—*** |
| [DEFENSE COUNSEL]: | Yes. |
| THE COURT: | —and the ultimate search. |
| ***[DEFENSE COUNSEL]:*** | ***But nothing—nothing—let's just say nothing after the acquisition of the contraband.*** |

[Emphases added.]

Appellant argues on appeal that, although her detention was justified at its inception by the police investigation into who had stolen the car, the detention was not justified by the time the police searched her purse because the police already knew then that the male driver had stolen the car, and he was in custody. She argues that when the police searched her purse, her detention had

"exceeded the justification for its genesis" and that any further detention was nothing more than a "fishing expedition for unrelated criminal activity."[8] Additionally, Appellant argues that the search of her purse was unlawful because the police had "no specific articulable facts that warrant[ed] a reasonable belief" that she was armed or dangerous.

The State, however, points out that Officer Daniels repeatedly testified that officers were still investigating Appellant's role in the theft when Officer Yarbrough saw the pipe and when she handed Appellant's purse with two pipes plainly visible to Officer Daniels.

Although there is no evidence Appellant had been arrested at the point Officer Yarbrough first saw the pipe in Appellant's purse, Appellant was sitting on the floor, handcuffed. At a minimum, she had been detained.[9] The law is well established that

> [w]hen there is a detention, courts must decide whether the detaining officer had reasonable suspicion that the citizen is, has been, or soon will be, engaged in criminal activity. When there is a warrantless arrest, courts must determine whether the arresting officer had probable cause to believe the same. The State bears the

[8]*Davis v. State*, 947 S.W.2d 240, 243 (Tex. Crim. App. 1997) (internal quotation marks omitted) (quoting *Ohio v. Robinette*, 519 U.S. 33, 41, 117 S. Ct. 417, 422 (1996) (Ginsberg, J., concurring)).

[9]*See Johnson v. State*, 912 S.W.2d 227, 235 (Tex. Crim. App. 1995) (op. on reh'g).

> burden of producing specific articulable facts showing reasonable suspicion and probable cause.[10]

When Officer Yarbrough held Appellant's purse, the police had credible information that Appellant had gotten out of the stolen car, gone into the Goodwill store, been warned about the police by the driver of the stolen car, and fled with the driver out the back door of the Goodwill store and into the Sam's Dollar Store. That is, Appellant had been seized while in flight from a stolen car during an active investigation, although police had not decided whether to charge her in the car theft. According to the testimony, the officers were certain at that time that the male was the one who was driving the car and who had stolen it. However, the investigation into Appellant's complicity as a party in the car theft was clearly open and active when Officer Yarbrough observed the methamphetamine pipe and Appellant admitted it was hers. Appellant's detention at the point of the purse search was therefore lawful.[11]

As for the search, the State contends that it was not a search for weapons but a search justified under the "plain view" doctrine. Officer Yarbrough testified that she saw a methamphetamine pipe when she glanced in the unzipped purse, and Appellant admitted it was hers. Officer Daniels testified that he saw two

---

[10]*State v. Woodard*, 341 S.W.3d 404, 411 (Tex. Crim. App. 2011) (citations omitted).

[11]*See id.* at 411, 414.

pipes when he looked into the open purse Officer Yarbrough "was holding for [Appellant]."

The plain view doctrine permits an officer to seize property if (1) the law enforcement officer is in a position where the object can be plainly viewed; (2) the "incriminating character" of the object in plain view is "immediately apparent"; and (3) the officials have the right to access the object.[12] Officer Yarbrough testified that the purse was behind the counter and that the glass pipe was clearly visible lying on top of the contents of the open purse when the store manager handed her the purse. Officer Yarbrough was lawfully inside the store, a place in which Appellant had no special expectation of privacy. The officers were still investigating the theft of the car. Appellant was seated on the floor, handcuffed. Officer Yarbrough immediately recognized the pipe as drug paraphernalia. That is, Officer Yarbrough saw the crime of possession of drug paraphernalia committed in her presence.[13] When she passed the purse to Officer Daniels, he saw that pipe and another pipe in plain view. He also saw the crime of possession of drug paraphernalia committed in his presence.[14] Neither officer was required to ignore seeing the commission of a crime. Thus, the officers observed the drug paraphernalia in plain view inside Appellant's open

[12]*Keehn v. State*, 279 S.W.3d 330, 334 (Tex. Crim. App. 2009) (internal quotation marks and citations omitted).

[13]*See* Tex. Health & Safety Code Ann. § 481.125 (West 2017).

[14]*See id.*

purse, and they were justified in searching the entire purse as a search incident to arrest.[15]

## III. CONCLUSION

Having examined the complete record, and applying the appropriate standard of review, we hold that the trial court did not err by denying Appellant's motion to suppress. We, therefore, overrule Appellant's sole point on appeal and affirm the trial court's judgment.

/s/ Lee Ann Dauphinot

LEE ANN DAUPHINOT
JUSTICE

PANEL: SUDDERTH, C.J.; PITTMAN, J.; and LEE ANN DAUPHINOT (Senior Justice, Retired, Sitting by Assignment).

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: May 31, 2018

[15] *See State v. Ford*, 537 S.W.3d 19, 24 (Tex. Crim. App. 2017) ("If an officer has probable cause to arrest, a search incident to arrest is valid if conducted immediately before or after a formal arrest."); *Stewart v. State*, 611 S.W.2d 434, 438 (Tex. Crim. App. [Panel Op.] 1981).