IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ERICA N. GOOKIN, Appellant.	No. 38971-1-II UNPUBLISHED OPINION

Penoyar, C.J. — Erica N. Gookin appeals her unlawful possession of a controlled substance conviction.[1] She argues that as a passenger in a vehicle that was searched incident to the driver's arrest, she has automatic standing to challenge the vehicle search because it led to a pat down search of her person, which produced the evidence the State used to convict her. Gookin further argues that under *Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), the vehicle search incident to the driver's arrest was unlawful and, therefore, by extension, the pat down search of her person was also unlawful. Because Gookin lacks standing to contest the vehicle search and consented to the pat down search following her lawful detention, we affirm.

facts

On October 6, 2008, while on patrol, Thurston County Sheriff's Deputy Cameron Simper pulled over a vehicle with expired license tabs. Based on previous interactions with the driver, Simper recognized him as Ezra Yoder. Simper discovered that Yoder was driving with a suspended license and arrested him.

[1] A violation of RCW 69.50.4013.

After placing Yoder in the patrol car, Simper approached the vehicle and asked the passenger, Gookin, to step out of the vehicle so he could search it incident to arrest. Gookin exited the vehicle with her hands in the pockets of her oversized coat. For safety reasons, Simper asked Gookin to remove her hands from her pockets, and Gookin complied. Next, Simper asked Gookin if she would consent to a pat down for weapons. Gookin consented and Simper patted down the outside of her coat pockets, feeling several items he believed to be hypodermic needles.

Simper questioned Gookin about the objects, and she confirmed that the objects were needles and that she had used one of the needles. Simper then asked Gookin to remove the needles from her pocket, and she complied, placing a plastic bag containing several needles on the hood of the vehicle. Simper also asked Gookin if she was carrying drugs. Gookin responded that she had a small baggy that previously contained methamphetamine. She removed the baggy from her pocket and handed it to Simper. Soon after, Simper examined the bag of needles and saw a dark substance he believed to be drugs, which field tested as an opium alkaloid.

Before trial, Gookin moved to suppress the evidence, challenging whether Simper had a reasonable basis to believe that she was armed or dangerous or involved in criminal activity. The trial judge denied the motion and found Gookin guilty of unlawful possession of a controlled substance, heroin.

ANALYSIS

I. CrR 3.6

Gookin argues that the trial court erred in denying her motion to suppress and thus erred in entering findings of fact 8, 13, and 19, but she fails to provide argument or authority to support these assignments of error. As such, we will not consider them. *State v. Olson,* 126 Wn.2d 315,

321, 893 P.2d 629 (1995); *see also State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (unchallenged findings of fact are verities on appeal).

Gookin also argues that the trial court erred in denying her motion to suppress and thus erred in its conclusions of law. We review conclusions of law in an order pertaining to suppression of evidence de novo. *State v. Johnson,* 128 Wn.2d 431, 443, 909 P.2d 293 (1996). As these challenges are simply part of Gookin's legal arguments, we address them collectively below.

II. Automatic Standing and *Gant*

Gookin argues that she has automatic standing to challenge the search of Yoder's car incident to his arrest and, by connection, the search of her person. She relies on the two-prong test from *State v. Jones:* "To assert automatic standing a defendant (1) must be charged with an offense that involves possession as an essential element; and (2) must be in possession of the subject matter at the time of the search or seizure." 146 Wn.2d 328, 332, 45 P.3d 1062 (2002). Additionally, Gookin acknowledges that "there [must be] a direct relationship in this case between the challenged police action and the evidence used against" her. *Jones*, 146 Wn.2d at 334. The State echoes this rule, citing *State v. Zakel*, 119 Wn.2d 563, 568, 834 P.2d 1046 (1992), and *State v. Kypreos*, 110 Wn. App. 612, 620, 39 P.3d 371 (2002) (quoting *State v. Williams*, 142 Wn.2d 17, 23, 11 P.3d 714 (2000) ("Inherent in the conditions for automatic standing is the principle that the 'fruits of the search' bear a direct relationship to the search the defendant seeks to contest.").

Neither party addresses the underlying basis for Washington's automatic standing rule. While it is true that automatic standing arises only under certain fact patterns and in the context of

certain procedural postures, the doctrine's purpose is to protect defendants forced to choose between their respective rights under the Fourth and Fifth Amendments. As our Supreme Court explained:

> [W]ithout automatic standing, a defendant will ordinarily be deterred from asserting a possessory interest in illegally seized evidence because of the risk that statements made at the suppression hearing will later be used to incriminate him albeit under the guise of impeachment. For a defendant, the only solution to this dilemma is to relinquish his constitutional right to testify in his own defense.

State v. Simpson, 95 Wn.2d 170, 180, 622 P.2d 1199 (1980) (footnote omitted).

In *Williams*, our Supreme Court clarified that a defendant may only invoke automatic standing when facing the Fourth-Fifth Amendment dilemma:

> We cannot agree that the automatic standing rule as originally conceived by the Supreme Court would have any application where there is no conflict in the exercise of his Fourth and Fifth Amendment rights. Moreover, as expressed by the plurality opinion in *Simpson,* the automatic standing rule may not be used where the defendant is not faced with "the risk that statements made at the suppression hearing will later be used to incriminate him albeit under the guise of impeachment." [*Simpson,* 95 Wn.2d at 180]. Automatic standing is not a vehicle to collaterally attack every police search that results in a seizure of contraband or evidence of a crime.

142 Wn.2d at 23.

Here, Gookin faced no such constitutional dilemma. The State concedes that Gookin had standing to object to the search of her person. Thus, Gookin had no need to testify as to what was on her person in order to seek suppression of that evidence. Since the State did not use the evidence seized from the vehicle against Gookin, she also had no need to testify about what was in the vehicle. The automatic standing rule simply does not come into play in this case.

III. Consent to Search During Lawful Detention

Simper had a valid reason for stopping Yoder's vehicle: Yoder's expired license tabs.

Following Yoder's lawful arrest, Simper had Gookin step from the vehicle and then sought and obtained her consent to a pat down search. We need not address whether the pat down was justified because a warrantless search is constitutional if based on voluntary consent. *State v. Flowers,* 57 Wn. App. 636, 644-45, 789 P.2d 333 (1990).

Gookin argues that her illegal detention vitiated her consent, relying on *State v. Armenta*, 134 Wn.2d 1, 17, 984 P.2d 1280 (1997), where the court found that the defendant's "consent, although voluntary, was tainted by the prior illegal detention." In this case, no illegal detention occurred. Simper lawfully seized Yoder's car and, as we explained above, Gookin lacks standing to object to her removal from the vehicle because it was part and parcel of the vehicle search. Based on Gookin's consent, the pat down search was constitutional.

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.

Penoyar, C.J.

We concur:

Hunt, J.

Van Deren, J.