

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27522-1-III

Respondent,

)

)

) **Division Three**

v.

)

)

MELANIE CAMPOS,

) **UNPUBLISHED OPINION**

)

Appellant.

)

)

Kulik, C.J. — A judge convicted Melanie Campos of possession of methamphetamine. Ms. Campos was a passenger in a car stopped for speeding. The trial court admitted evidence from Ms. Campos’s purse found in the car, concluding that the search was valid incident to the arrest of another passenger. Ms. Campos appeals her conviction, asserting that the search of her purse was unconstitutional following *Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

We agree that the search was unlawful under *Gant*. However, the record does support the validity of the search under the *Terry*¹ stop exception to the warrant

¹ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

requirement. The driver and passengers were removed from the car. The trooper then planned to allow Ms. Campos to re-enter the car. The passengers' furtive movements, Ms. Campos's remark about weapons, and the trooper's testimony about hidden weapons and his concern for safety justified the search under the *Terry* exception. Accordingly, we affirm the conviction.

FACTS

In June 2005, Trooper Paul Carroll, using radar, clocked a vehicle at 80 m.p.h. in a 70 m.p.h. zone. Trooper Carroll pursued the vehicle for approximately one mile before the vehicle stopped. While following the vehicle, Trooper Carroll could see several heads moving left and right, and up and down, in what he described as furtive movement. The furtive movement put Trooper Carroll on alert.

Trooper Carroll approached the vehicle from the passenger side and saw three people in the backseat and two people in the front seat. He noted that the rear passengers on the right and left were not wearing seatbelts. Trooper Carroll asked for identification from the driver, who was identified as John Campos, and the two unbelted passengers. The passenger seated in the right rear seat stated she did not have any identification because she was 16 years old, but gave her name, Kathleen Larson, and her date of birth. The other unbelted passenger was Lynn Larson, mother of Kathleen Larson.

Trooper Carroll checked all three names and discovered a felony warrant for Kathleen Larson on a theft charge. Trooper Carroll called for backup. When backup arrived, Trooper Carroll informed Kathleen Larson that he was arresting her. Trooper Carroll asked Melanie Campos, who was seated in the front passenger seat of the two-door vehicle, to get out of the car so her seat could be moved forward, allowing Kathleen Larson to climb out of the backseat. When Trooper Carroll asked Ms. Campos if she had any weapons, she replied that she usually makes a joke about that. Trooper Carroll frisked Ms. Campos for weapons and found none. The trooper also searched Kathleen Larson for weapons and placed her in a police car. Trooper Carroll asked everyone to get out of the vehicle so he could search the vehicle incident to arrest. The troopers frisked each occupant for weapons and then moved all the occupants a safe distance away from the car so Trooper Carroll could search the passenger compartment.

Trooper Carroll found a large purse on the floor of the front passenger side where Ms. Campos had been sitting. He stated he was concerned for his safety, particularly because he was going to allow the occupants back into the vehicle following his search, so he frisked the purse for weapons. In his frisk, he found a smaller purse inside the larger purse. When Trooper Carroll unzipped the small purse, he observed a three-inch piece of purple tubing that had black burned residue on one end and white powdery

residue on the other. Trooper Carroll immediately recognized the tubing as a device used to smoke cocaine or methamphetamine. Trooper Carroll arrested Ms. Campos.

Ms. Campos was charged with one count of possession of methamphetamine. The trial court found the evidence produced from Trooper Carroll's search was admissible as the result of a search incident to the arrest of Kathleen Larson. Ms. Campos agreed to a stipulated facts trial. The judge found Ms. Campos guilty of possession of methamphetamine.

Ms. Campos appeals, asserting that Trooper Carroll's search incident to arrest was unreasonable under *Gant* and, therefore, the evidence Trooper Carroll found in his search should have been suppressed.

ANALYSIS

A trial court's conclusions of law pertaining to the suppression of evidence are reviewed de novo. *State v. Holmes*, 108 Wn. App. 511, 516, 31 P.3d 716 (2001). The State filed the written findings of fact and conclusions of law on February 18, 2010, reflecting the trial court's oral ruling. Because the oral findings are sufficiently clear, and to avoid any prejudice to Ms. Campos, we do not consider the late-filed written findings to resolve this appeal.

Ms. Campos asserts that Trooper Carroll's search of her purse was constitutionally

impermissible following the Supreme Court's decision in *Gant* and, therefore, the evidence found as a result of that search should be suppressed and her conviction dismissed.

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution protect an individual against unreasonable searches and seizures. Searches by the police require a warrant unless they fall under one of the narrowly-defined exceptions to the warrant requirement. *State v. Nelson*, 89 Wn. App. 179, 181, 948 P.2d 1314 (1997). One such exception is a search incident to a lawful arrest. *Id.*

The United State's Supreme Court's decision in *Gant* limited the well-established, formerly permissible scope of what was constitutional under the search incident to arrest exception. The Supreme Court held that

[p]olice 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.

Gant, 129 S. Ct. at 1723.

Ms. Campos correctly asserts that Trooper Carroll's search cannot be justified under the standard set forth in *Gant*. Here, Trooper Carroll arrested Kathleen Larson, a passenger, on a theft charge. She was placed in a police car before the search incident to

arrest; thus, she was not within reaching distance of the passenger compartment at the time of the search. The first basis under *Gant* is not satisfied. And the police had no indication that the vehicle contained evidence of Kathleen Larson's theft; therefore, the second basis under *Gant* cannot be satisfied.

The State asserts that the vehicle search can be justified under the *Terry* stop exception, which allows officers to frisk for weapons to ensure their own safety. *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). For a police officer to do a pat-down search, the officer must be able to "point to specific and articulable facts creating an objectively reasonable belief that a suspect is armed and presently dangerous." *Nelson*, 89 Wn. App. at 183. Officers may search for weapons during traffic stops, including a search of a passenger because a passenger could be a danger to the approaching officer. *State v. Larson*, 88 Wn. App. 849, 855-56, 946 P.2d 1212 (1997) (quoting *State v. Kennedy*, 107 Wn.2d 1, 12, 726 P.2d 445 (1986)). And an officer is permitted to perform a search to determine whether a suspect's furtive gesture hid a weapon. *Id.* The purpose of a search under the *Terry* stop exception is to ensure officer safety, and the scope of the search should reflect this purpose. *Id.* at 855.

Here, Trooper Carroll stated he was on high alert because the driver went nearly one mile before pulling over and, in that time, the trooper observed heads moving left and

right, and up and down. Trooper Carroll described this activity as furtive movement. Additionally, Ms. Campos's statement that she usually makes a joke about weapons alerted Trooper Carroll. In his testimony, Trooper Carroll described in detail the weapons that could be hidden in a small purse, the size of the one found inside Ms. Campos's larger purse. Trooper Carroll stated he was concerned about safety because he planned to allow the occupants to return to the vehicle after his search.

Based on Trooper Carroll's testimony, his search of Ms. Campos's purse was justified under the *Terry* stop exception to the warrant requirement. He was concerned for officer safety, and he was searching for weapons when he inadvertently found tubing immediately recognizable as drug paraphernalia.

The trial court admitted the evidence under the search incident to arrest exception, which cannot be upheld following *Gant*. However, this court can affirm the trial court on any grounds supported by the record. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004).

Here, the record supports Trooper Carroll's search under the *Terry* stop exception. We affirm the conviction for possession of methamphetamine.

No. 27522-1-III
State v. Campos

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, C.J.

WE CONCUR:

Brown, J.

Korsmo, J.