

IN THE  
SUPREME COURT OF OHIO

STATE OF OHIO : NO. 2007-0980  
Plaintiff-Appellee : On Appeal from the Hamilton  
County Court of Appeals, First  
vs. : Appellate District  
LAURA MERCIER : Court of Appeals  
Case Number C-060490  
Defendant-Appellant :

**MEMORANDUM IN RESPONSE**

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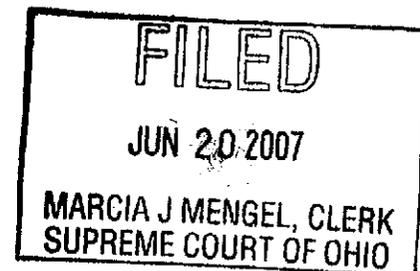


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**EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION**

The issues raised in this appeal has been ruled upon many times by this Court and other appellate courts in Ohio. The appeal does raise any new or novel issues and was ruled upon by the First District Court of Appeals based upon established case law. There are no issues of public or great general interest and jurisdiction should be denied.

**STATEMENT OF THE CASE AND FACTS**

**Procedural Posture:**

Defendant-Appellant, Laura Mercier, filed a motion to suppress evidence of drugs found in her possession, which resulted in her arrest and indictment for felony possession of drugs. The motion was overruled by the trial court, and Mercier subsequently pled no contest to the indicted offense.

The First District Court of Appeals reviewed Mercier's claim that her Motion to Suppress should have been granted. The First District rejected that claim.

Mercier now asks that this Court review that decision.

## **Statement of Facts:**

On July 17, 2005, Mercier accompanied Charles Hagedorn, her co-defendant, on a trip to sell drugs in Hamilton County, Ohio. The two were in Hagedorn's car, when he stopped at a designated site to complete the transaction. Hagedorn exited his vehicle and approached the buyer's (a confidential informant) car to exchange the drugs and payment, while Mercier remained in Hagedorn's automobile.<sup>1</sup> Approximately one to two minutes after the sale, police pulled over Hagedorn's car, with Mercier still in the passenger seat.<sup>2</sup>

Upon questioning, Hagedorn admitted that there was still some marijuana in his vehicle, even after the sale, and handed some marijuana to an officer at that point.<sup>3</sup> Hagedorn was removed from the vehicle, placed into handcuffs, patted down, and secured into the back of a police cruiser. After securing Hagedorn, the police approached Mercier, who had been in Hagedorn's vehicle throughout the investigation, stop, and arrest of Hagedorn. Because the police were going to seize Hagedorn's vehicle based upon the felony drug sale, they asked Mercier to exit the vehicle as well.<sup>4</sup> Upon her exit, Mercier left her purse in the car, and according to the police department's procedure the purse was searched.

While testifying, Officer Zumbiel of the Madeira Police Department stated that the purse was searched, in part, because Mercier had been in the vehicle at the time of the drug

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<sup>1</sup>T.p. 10-11.

<sup>2</sup>T.p. 7-8.

<sup>3</sup>T.p. 9.

<sup>4</sup>T.p. 11.

transaction and in close proximity to the location of the drugs in Hagedorn's car.<sup>5</sup> Furthermore, in deciding to search Mercier's purse, the officer considered the fact that Mercier was in the back of the police cruiser, had been and was going to continue to be in close proximity to himself and other officers, and was going to be given back her purse. Accordingly, he decided to search the purse for the safety of the officers, in addition to the previously articulated reasons.<sup>6</sup>

The officer admitted that he did not remember patting down Mercier, however, he did state that because he is a male officer and Mercier is female, he would not have patted her down anyway. He would have called for a female officer.<sup>7</sup> Additionally, the officer stated that while he could not recall checking Mercier for weapons, it might have been a different officer on the scene who checked since she was already in the back of a police cruiser when he searched her purse.<sup>8</sup>

### **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

**PROPOSITION OF LAW NO. 1: A PURSE WORN OR CARRIED BY AN AUTOMOBILE PASSENGER MAY BE SEARCHED, IF LEFT IN THE PASSENGER COMPARTMENT OF AN AUTOMOBILE THAT IS SUBJECT TO SEARCH, AND EVEN IF THE PASSENGER'S PERSON IS NOT SUBJECT TO SEARCH.**

The Fourth Amendment protects the right of people to be free from unreasonable searches and seizures. Courts must "evaluate the search and seizure [at question] under traditional standards of reasonableness by assessing, on the one hand, the degree to which

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<sup>5</sup>T.p. 13.

<sup>6</sup>T.p. 12-13.

<sup>7</sup>T.p. 19.

<sup>8</sup>T.p. 20.

it intrudes upon an individual's privacy and, on the other, the legitimate governmental interests."<sup>9</sup> It cannot be contested in the present case that officers had probable cause to believe that there were illegal drugs in Hagedorn's car. He had in fact, just minutes before police stopped him, completed a drug deal of approximately a half a pound of marijuana from his car. The Supreme Court has held time and time again that "contraband goods concealed and illegally transported in an automobile...may be searched for without a warrant" where probable cause exists.<sup>10</sup> In additional cases, the Court held that such a search, one in which an officer has probable cause to search a lawfully stopped vehicle, justifies a search of *every part of that vehicle and its contents* that may conceal the object of the search.<sup>11</sup>

The Court further clarified its position in *Wyoming v. Houghton*, which held that "police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search."<sup>12</sup> Throughout the opinion the Court discussed the difference between searching a passenger's person and searching a passenger's belongings. The Court first noted that "passengers, no less than drivers, possess a reduced expectation of privacy with regard to the property they transport in cars";<sup>13</sup> and that "the degree of intrusiveness of a package search upon personal privacy

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<sup>9</sup>*Wyoming v. Houghton* (1999) 526 U.S. 295,300, 119 S.Ct. 1297, 1304, 143 L.Ed.2d 408, citing, *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 652-653, 115 S.Ct. 2386, 132 L.Ed.2d 564.

<sup>10</sup>*Carroll v. United States* (1925), 267 U.S. 132, 153, 45 S.Ct. 280, 69 L.Ed. 543.

<sup>11</sup>*Id.* at 301, quoting, *United States v. Ross* (1982), 456 U.S. 798, 825, 102 S.Ct. 2157, 72 L.Ed.2d 572.

<sup>12</sup>*Houghton* at 307, 119 S.Ct. 1297. See, also, *Ross*, *supra*.

<sup>13</sup>*Id.* at 296, 119 S.Ct. 1297, citing, *Cadewell v. Lewis*, 417 U.S. 583, 509, 94 S.Ct. 2464, 41 L.Ed.2d 325.

and personal dignity is substantially less than the degree of intrusiveness of the body searches at issue in *United States v. Di Re*.<sup>14</sup>

Similarly, Ohio case law, and specifically this Court, have found that when a purse is left unattended, it more resembles a typical container, and thus a search of a person would not extend to an unattended purse (and thus a search of an unattended purse does not constitute the search of a person); however, when the purse is in the hand of the owner, a search of the purse would be analogous to a search of the pockets in men's clothing.<sup>15</sup> In this case, Mercier's purse was in fact unattended. It was left in the front passenger area of the car, after both occupants were asked to step out of the vehicle. At no time was the purse taken off Mercier's person for the search. In other words, the purse was not pulled out of her hand, nor ripped from her arm. Mercier left the purse in the vehicle when she exited, at no time inquiring as to whether she could (or should) bring the purse with her, nor did she ask to have an officer retrieve it for her.

While, the ownership of the purse was not in question, the purse was unattended in the passenger compartment of a vehicle in which the driver had been arrested for selling illegal contraband. While Hagedorn handed officers some contraband when originally stopped, Officer Zumbiel testified that he believed additional contraband could have been hidden in Mercier's purse.<sup>16</sup> Therefore, because the officers had probable cause to believe

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<sup>14</sup>*Id.*, 119 S.Ct. 1297. See *United States v. Di Re*, 32 U.S. 581, 68 S.Ct. 338, 92 L.Ed. 210. See, also, *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238.

<sup>15</sup>See *State v. Robinson* (1998), 131 Ohio App.3d 356, 722 N.E.2d 572. See, also, *State v. McAfee* (1985), 26 Ohio App.3d 99, 26 O.B.R. 274, 498 N.E.2d 204.

<sup>16</sup>T.p. 13.

there was additional contraband in Mr. Hagedorn's vehicle a search of the entire automobile and its contents, including unattended containers, was justified.

However, even if this Court was to determine that the purse was not unattended, the search was still permissible. In *Wyoming*, the United States Supreme Court consistently distinguished between the search of a purse and the search of a pocket in one's clothing, allowing the search of the purse even if the person who owned the purse could not be searched. The Court criticized the dissent's rationale, which would prevent a container (in this case a purse), "obviously owned by the passenger" from being searched so long as the passenger *says* he or she owned the item.<sup>17</sup>

Mercier now contends that by simply placing the purse on the passenger's lap while riding in the automobile the purse is transformed from a container within the automobile to part of the passenger's person, thus escaping search. Accepting this argument would be to sanction the exact result that the Court in *Wyoming* was attempting to prevent (the ability to hide contraband just by placing it in a container on the lap of a passenger - the obvious ownership rationale). To support her contention, Mercier compares a woman's purse to a man's billfold. Noting the fact that a man's wallet is kept in a much more intimate place (the back pocket of trousers), while the woman's purse is held in the hand or on the arm, Mercier contends that in all other ways the two are similar. And, thus a woman carrying a purse should be provided the same freedom from search of personals as a man carrying a wallet in his pocket.

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<sup>17</sup>*Houghton* at 306, 119 S.Ct. 1297, footnote 2. emphasis in original.

However, besides the fact that the manner in which purses are carried gives them a diminished expectation of privacy as compared to a man's wallet carried in the back pocket, there are serious concerns in allowing a purse to escape search just because a woman places it on her lap while in a vehicle.<sup>18</sup> It is generally understood that purses are not wallets, but contain wallets. And, as stated by Mercier purses typically conceal an array of items the carrier wishes to keep with her at all times. These items, unlike a wallet however, may include weapons such as guns or knives, or even contraband (all of which are virtually impossible to conceal in a man's billfold, in a back pocket of a pair of trousers). During the motion, Officer Zumbiel testified that in addition to searching for additional contraband, one of the reasons he searched Mercier's purse was for officer safety. He mentioned that he was going to be giving the purse back to Mercier, and because she was in the back of a cruiser and was (and was going to continue to be) in close proximity with himself and fellow officers, he searched the purse for weapons as well as contraband.<sup>19</sup>

In this case, Mercier left her purse unattended in a vehicle that was not hers, and the driver of which had already been arrested. The vehicle was going to be impounded and the purse delivered back to Mercier. Therefore, under department policy as well as for officer safety, the unattended purse was searched. Because the purse was not part of Mercier's person, was in a car that was lawfully stopped, and police had probable cause to search for contraband, the purse was validly searched as a container which may have contained contraband. Thus, the trial court's order overruling Mercier's Motion to Suppress should be sustained.

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<sup>18</sup>See *Houghton*, supra.

<sup>19</sup>T.p. 13.

**PROPOSITION OF LAW NO. 2: THE SEARCH OF MERCIER'S PURSE WAS PERMITTED BY PRECEDENT OF THE UNITED STATES SUPREME COURT, AND POLICE DID NOT EXCEED THE PERMISSIBLE SCOPE OF THEIR SEARCH.**

To reiterate, it is well accepted that "contraband goods concealed and illegally transported in an automobile...may be searched for without a warrant" where probable cause exists.<sup>20</sup> And furthermore, such a search, one in which an officer has probable cause to search a lawfully stopped vehicle, justifies a search of *every part of that vehicle and its contents that may conceal the object of the search.*<sup>21</sup> Additionally, as Mercier states, the *Houghton* decision itself limits a search of containers to those containers that *may conceal* the "object of the search."<sup>22</sup>

Both Mercier's purse, as well as the Advil bottle could have concealed illegal drugs (and in fact, did). The officer was searching for illegal contraband. While Mr. Hagedorn sold only marijuana, once officers have probable cause that a car contains contraband, they may search the entire automobile and all containers within for additional contraband. The search of the Advil bottle falls within the category of a container that *may* have contained or concealed contraband (in this case marijuana), and thus, the officer was not required to shake the bottle before opening it.

Accordingly, Mercier's second proposition of law lacks merit and is properly overruled.

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<sup>20</sup>*Carroll* at 153, 45 S.Ct. 280.

<sup>21</sup>*Id.* at 30, quoting, *Ross* at 825, 102 S.Ct. 2157.

<sup>22</sup>*Houghton* at 307. See *Ross* at 825. See, also, *California v. Acevedo* (1991), 500 U.S. 565, 572, 111 S.Ct. 1982, 114 L.Ed. 2d 619.

**CONCLUSION**

This case presents no issues of public or great general interest and does not raise a constitutional question. The First District Court of Appeals correctly affirmed the judgment of the trial court and jurisdiction should therefore be denied.

Respectfully,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to, Jeffrey A. Burd (0066516), Attorney at Law, 10999 Reed Hartman Highway, Suite 229, Cincinnati, Ohio 45242 counsel of record, this 19 day of June, 2007.



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