

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

JAMIE BANKS-HARVEY,

Defendant-Appellant.

Case No. 2016-0930

**On Appeal from the Twelfth
District Court of Appeals**

**Court of Appeals Case No.
CA2015-08-073**

STATE OF OHIO'S MEMORANDUM IN OPPOSITION TO JURISDICTION

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

The Appellee, the State of Ohio, herein responds to Appellant, Jaime Banks-Harvey, on the issue of jurisdiction, pursuant to S.Ct.Prac.R. 3.2(A). This is not a case of public or great interest. Appellant is not a public figure, nor is this case in the public eye. In addition, this case does not pose any substantial constitutional questions that would affect the public. Moreover, this Court should not grant leave to appeal this case because Appellant's propositions of law simply lack merit.

II. STATEMENT OF THE CASE

On January 12, 2015, in Warren County, Ohio, Appellant was indicted and charged with four counts: (1) Possession of Heroin, in violation of R.C. 2925.11(A), a fifth-degree felony; (2) Possession of Cocaine, in violation of R.C. 2925.11(A), a fifth-degree felony; (3) Possession of Drug Paraphernalia, in violation of R.C. 2925.14(A), a fourth-degree misdemeanor; and (4) Possession of Drug Abuse Instruments, in violation of R.C. 2925.12(A), a second-degree misdemeanor. *Id.* All counts were related to items located during a search of her purse at the time of her arrest for an outstanding warrant.

On May 1, 2015, Appellant moved to suppress the evidence found as a result of the search of her purse, located in the automobile Appellant was driving at the time of the search. Motion to Suppress, T.d. 14, pp. 1 & 4. On May 11, 2015, the Warren County Court of Common Pleas held a suppression hearing. Motion to Suppress Hearing, T.p.

On behalf of the State, Trooper Matthew Keener testified that on October 21, 2014, he was conducting regular patrol in the City of Franklin, Warren County, Ohio, when he observed an automobile driven by Appellant traveling at a high rate of speed. *Id.* at 6-7. Trooper Keener

explained that he checked Appellant's speed twice and discovered she was traveling 53 m.p.h. in a 35 m.p.h. zone. *Id.* at 7.

Trooper Keener pulled the vehicle over and made contact with Appellant. *Id.* at 8. Trooper Keener learned that Appellant was not the owner of the vehicle, but that the owner was Charles David Hall, who was also the front seat passenger. *Id.* at 9; State's Exhibit 5, 16:21:15-16:21:22. Trooper Keener learned that the back passenger was Ms. Holcomb. Motion to Suppress Hearing, T.p., p. 9. When Trooper Keener asked Appellant for a driver's license, Appellant told the trooper that she did not have a driver's license. State's Exhibit 5, 16:18:28-16:18:37. Trooper Keener observed Appellant reach into her purse that was between the driver's seat and the passenger's seat. Motion to Suppress Hearing, T.p., p. 9. Appellant produced a State of Ohio Identification Card. *Id.*

Trooper Keener removed Appellant from the car and conducted a pat-down search for weapons after Appellant consented. *Id.* at 10. Trooper Keener placed Appellant in the back of his cruiser while he ran her information through the Law Enforcement Automated Data Systems (LEADS). *Id.* Trooper Keener testified that Appellant's purse was left in the vehicle at that time. *Id.*

Trooper Keener explained that whenever a person's identifying information is run through LEADS and that person has an active arrest warrant, the officer's computer will display a flashing red alert. *Id.* When Trooper Keener ran Appellant's information through LEADS, he received a flashing red alert; he also confirmed that Appellant's driver's license was suspended. *Id.* at 10 & 12.

At that time, Appellant was sitting in the back of Trooper Keener's cruiser, but she was not handcuffed. *Id.* at 10. Further, the Lebanon Communication Center and the highway

patrol's dispatch contacted him to inform him that there was a felony arrest warrant for Appellant out of Montgomery County for Possession of Heroin. *Id.* at 10 & 11-12. Trooper Keener explained that once he has received an initial hit for an arrest warrant, he then confirms the existence of the warrant. *Id.* at 10. In this case, his dispatch contacted the Montgomery County Communications Center to confirm that the warrant was still active. *Id.* at 10-11. Trooper Keener testified that such confirmations take between five and ten minutes. *Id.* at 11.

While he was waiting on confirmation of Appellant's warrant, Trooper Keener ran Ms. Holcomb's information through LEADS and discovered that Ms. Holcomb had a warrant out of the Village of Carlisle. *Id.* Ms. Holcomb's warrant was also drug-related. State's Exhibit 5, 16:27:15-16:27:30. Trooper Keener also ran Mr. Hall's information and discovered that Mr. Hall had a valid driver's license and no warrants. Motion to Suppress, T.p., p. 12.

Trooper Keener made contact with Mr. Hall and told him that Appellant and Ms. Holcomb had active drug-related warrants for their arrest. State's Exhibit 5, 16:26:10-16:27:30. Trooper Keener asked Hr. Hall why he had allowed Appellant to drive. Motion to Suppress Hearing, T.p. p. 12. Mr. Hall explained that he knew Appellant had a suspended license but that he had an injured hand and she was driving him to a hospital. *Id.* at 12-13. Trooper Keener asked Mr. Hall for consent to search the vehicle, but Mr. Hall refused. *Id.* at 13. Trooper Keener testified that, at this time, he and Officer O'Neal both observed a clear gel cap on the passenger floor board of the car. *Id.*

Trooper Keener returned to Appellant and asked her about her heroin use because of the warrant. *Id.*; State's Exhibit 5, 16:24:50-16:25:10. He asked Appellant if there was anything illegal in the vehicle, but Appellant denied that. State's Exhibit 5, 16:25:40-16:25:50. Trooper Keener told Appellant that Mr. Hall seemed nervous. State's Exhibit 5, 16:25:40-16:25:50. At

that time, Trooper Keener received confirmation of the Montgomery County warrant. Motion to Suppress Hearing, T.p., p. 13. Trooper Keener explained that he took Appellant into “investigative detention custody” so Montgomery County could retrieve Appellant based on the warrant. *Id.* at 13-14. In other words, Trooper Keener intended to take Appellant with him and keep her in custody until she was transferred to Montgomery County. *Id.* at 14.

Trooper Keener testified that when he processes a suspect that he has taken into custody, he retrieves the suspect’s property. *Id.* In this case, Trooper Keener retrieved Appellant’s purse from the space between the driver’s seat and the passenger’s seat of Mr. Hall’s vehicle. *Id.* Further, before retrieving the purse, Trooper Keener asked Mr. Hall whether the purse belong to Appellant, and Mr. Hall indicated that it did. *Id.*

Trooper Keener testified that after retrieving the purse, he placed it on the hood of his cruiser and conducted an inventory search of it. *Id.* at 14-15. During the search, Trooper Keener discovered a baggy with ten yellow pills; three needles of which one was one-quarter filled with a brown liquid; three clear capsule filled with a brown powder; and three clear capsules filled with white powder. *Id.* at 15. Trooper Keener testified that upon observing these items, he suspected that the brown powder and brown liquid were heroin and he suspected the white powder was either heroin or cocaine. *Id.*

Trooper Keener testified that shortly after he started searching Appellant’s purse, Officer O’Neal told the trooper that Officer O’Neal had observed a gel capsule on the passenger floor board of the car. *Id.* at 13 & 19. According to the trooper’s cruiser camera, Officer O’Neal approached the trooper and told him that he was “pretty sure” he had seen an “open cap” or a “heroin cap” in the floorboard of the car. State’s Exhibit 5, 16:35:00-16:35:40. Trooper Keener responded, “Okay,” and continued inventorying the contents of Appellant’s purse. State’s

Exhibit 5, 16:35:00-16:35:40. Trooper Keener testified that when Officer O'Neal relayed this information, Trooper Keener was already aware of the clear gel cap because he had previously observed it when talking to Mr. Hall. Motion to Suppress Hearing, T.p., p. 19. Trooper Keener testified that after Officer O'Neal had observed the gel cap, Officer O'Neal then searched the vehicle. *Id.* Officer O'Neal discovered three clear gel capsules and a needle under the back seat where Ms. Holcomb had been sitting. *Id.*

During cross-examination, the following exchange occurred.

[Defense Counsel]: Okay. When you went and got the bag, the intent was to discover evidence in the bag, I assume, right?

[Trooper Keener]: It's her property, it's going with her to jail. That was the intent to more explore the inventory, to insure that there's nothing illegal in there before she gets to the jail, because at that point it would be a conveyance, if she was to take her purse. If I release that purse to Montgomery County Sheriff's Office, then they have to deal with it and take it to the jail and the chain of custody.

[Defense Counsel]: So, it was or was not a search with the background being to see if there is any criminality, is that true?

[Trooper Keener]: To see if there was evidence of the crime?

[Defense Counsel]: Yes.

[Defense Counsel]: Yes, sir.

Id. at 29-30.

On re-direct examination, Trooper Keener testified that it is the Ohio State Highway Patrol's written policy that when a female suspect is detained, the female suspect's property goes with her, and it is searched before being placed in a cruiser. *Id.* at 35. Trooper Keener testified that such property is searched for weapons. *Id.* Trooper Keener testified that Appellant never told her not to retrieve her purse. *Id.* at 35-36. The trooper testified that there was no discussion about the purse. *Id.* at 36.

After the hearing, the State filed a memorandum in opposition of Appellant's suppression motion. State's Memorandum in Support of its Opposition to Defendant's Motion to Suppress, T.d. 17. In its memorandum, the State reiterated that the trial court should deny Defendant's suppression motion based on three exceptions to the warrant requirement: "search-incident-to-arrest, plain view, and inventory search, the last two of which lead to inevitable discovery." *Id.* at 1.

In its memorandum, the State acknowledged the United States Supreme Court's holding in *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710, 173 L. Ed. 2d 485 (2009), but argued that Trooper Keener's search of Appellant's purse was a valid search incident to arrest. *Id.* at 2. The State argued that even if the trial court applied *Gant*, the search was still lawful. *Id.* Officer O'Neal observed a cap of heroin in plain view in the vehicle. *Id.* With this plain view observation, Officer O'Neal had probable cause to search the vehicle including any container found therein, meaning Officer O'Neal could have lawfully searched Appellant's purse had it been left in the vehicle inevitably leading to the discovery of the incriminating evidence in this case. *Id.*

The State argued that even if the trial court rejected its probable cause argument, the search was still valid because the evidence would have been inevitably discovered as the result of a lawful inventory search of Appellant's purse. *Id.* The State argued that Trooper Keener testified it is a standard procedure that, when a female suspect is arrested, her property will accompany her. *Id.* at 2-3. And Trooper Keener testified that such property must be searched for contraband. *Id.* at 3. Thus, the purse was subject to a valid inventory search because Appellant and the purse were being transported to a jail. *Id.* The State argued that this inventory search had "nothing to do with the vehicle." *Id.* at 2-3.

In resolving Appellant's suppression motion, the trial court found that the search was valid based upon inevitable discovery under the automobile exception to the warrant requirement. In arriving at its conclusion, the trial court rejected several other theories of admissibility.

First, the trial court applied *Gant* and determined that the search was not a valid search incident to arrest. Decision and Entry Denying Motion to Suppress, T.d. 18, pp. 3-5. In resolving the State's plain view argument, the trial court found that Trooper Keener gave no testimony that supported the idea that, when he observed Appellant retrieve her identification card from the purse, he observed anything of an incriminating nature in the purse. *Id.* at 5-6. Thus, the trial court rejected the plain view argument. *Id.* at 6.

The trial court then addressed the inventory search argument, and found that the vehicle was neither taken into custody nor towed. *Id.* at 6. Because the vehicle was not impounded, the trial court rejected the inventory search argument. *Id.*

In arriving at the conclusion that the purse would have been validly searched pursuant to the automobile exception, and therefore the contraband would be inevitably discovered, the trial court found that Officer O'Neal had observed a suspicious gel cap in the vehicle and had informed Trooper Keener of this observation. *Id.* The trial court determined that Officer O'Neal's observation and the suspicious behavior of the vehicle's occupants was sufficient to give the officers probable cause to search the vehicle under the automobile exception. *Id.* "Because the officers had observed contraband and conducted a lawful search of the vehicle based on this probable cause, the search of [Appellant's] purse was within the scope of that search and the drugs, therefore, would have been inevitably discovered." *Id.* at 8. Thus, the trial court denied Appellant's suppression motion. *Id.*

Appellant pled no contest to all of the counts contained in the indictment. Change of Plea and Entry, T.d. 19, p. 1. The trial court sentenced Appellant to three years of community control. Judgment Entry of Sentence, T.d. 24, p. 1. Appellant then appealed the trial court's decision on the motion to suppress to the Twelfth District Court of Appeals.

The court of appeals affirmed the trial court's decision, although it did so on different grounds. See *State v. Banks-Harvey*, 12th Dist. Warren No. CA2015-08-073, 2016-Ohio-2894. The court of appeals found that the inventory exception to the warrant requirement justified Trooper Keener's search of Appellant's purse, and that the trial court had erroneously relied upon the inevitable discovery doctrine. *Id.* at ¶ 21. Rather, "Trooper Keener's un rebutted testimony articulating the existence of a standardized inventory search procedure of the Highway Patrol was sufficient." *Id.* at ¶ 28. The court of appeals also found that the government's interests justifying inventory searches were satisfied, as the trooper had an interest in searching the purse for weapons and contraband before placing it in his cruiser. *Id.* at ¶ 29. Likewise, the inventory of items within the purse protected the government against claims of lost, stolen, or damaged property. *Id.*

Appellant now appeals to this Court, arguing that the adoption of a policy by the Highway Patrol to inventory an arrested person's belongings does not authorize the warrantless entry into a vehicle to retrieve those items and search them. In other words, Appellant relies upon the fact that a vehicle was involved in this case to suggest that *Arizona v. Gant* controls over the well-established inventory search exception where a person and his personal belongings are taken out of the vehicle and into custody.

III. ARGUMENT

Appellant's proposition of law has already been settled. A valid inventory search where a suspect is being taken into custody is a well-established exception to the warrant requirement and reasonable under the Fourth Amendment. See *Illinois v. Lafayette*, 462 U.S. 640, 648, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983) (holding that it is not unreasonable for police, as part of the routine procedure incident to incarcerating and arrested person, to search any container or article in his possession, in accordance with established inventory procedures). The United States Supreme Court has explained that the search of the personal items of a suspect when taking him or her into custody is reasonable because it advances reasonable government interests in (1) protecting the arresting officer from dangerous instrumentalities; (2) protecting against claims of lost, stolen, or damaged property; and (3) securing the property from unauthorized interference. *South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976); see also *Colorado v. Bertine*, 479 U.S. 367, 372-73, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987).

In *Illinois v. Lafayette*, the United States Supreme Court held that the search of a shoulder bag was a valid inventory search because it is reasonable for police to search the personal effects of a person under lawful arrest as part of the routine administrative procedure at a police station incident to booking and jailing the suspect. *Lafayette* at 646; see also *State v. Straight*, 9th Dist. No. 12541, 1986 Ohio App. LEXIS 8384, pp. *1-*5 (Sept. 17, 1986), and *State v. Woodward*, 11th Dist. No. 2009-A-0047, 2010-Ohio-2949, ¶¶11-35. To expand on that concept, the Court in *Bertine* explained that its "opinion in *Lafayette* * * * did not suggest that the station-house setting of the inventory search was critical to [its] holding in that case." *Bertine* at 373. Rather, the Court noted, the same governmental interests were served by an inventory search at the station house and at the roadside. *Id.*, comparing *Lafayette*. "[R]easonable police regulations

relating to inventory procedures administered in good faith satisfy the Fourth Amendment, even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure.” *Id.* at 374.

The court of appeals was correct in finding that Trooper Keener’s search of Appellant’s purse constituted a valid inventory search. At the suppression hearing, Trooper Keener explained that it is the highway patrol’s written policy that when a female suspect is arrested, her purse accompanies her. Trooper Keener also explained that such items are searched for weapons before being placed in a trooper’s cruiser. He further explained that such items are inventoried before being received at a jail. If he did not inventory the purse before turning it over, then any contraband found by the jail would result in a conveyance charge. Given Trooper Keener’s testimony, his search of the purse constituted a valid inventory search of Appellant’s purse.

The converse of the court of appeals’ holding would lend to an *unreasonable* result. The United States Supreme Court has noted that “[i]t would be unreasonable to hold that the police, having to retain [a] car in their custody for such a length of time [in the case of an impound], had no right, even for their own protection, to search it.” *Opperman* at 373, citing *Cooper v. California*, 386 U.S. 58, 61-2, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967). Likewise, it would be unreasonable to hold that a police officer, having to detain an arrestee and her property for transfer to the county requesting her detainment, has no right, even for his own protection, to search the property before placing it in his vehicle with the arrestee.

Additionally, the contraband in Appellant’s purse would have been inevitably discovered when Appellant and her purse were processed into the Montgomery County Jail because any jail in the state would have conducted a routine inventory search of the purse. Therefore, the State

adduced sufficient evidence to support inevitable discovery as well, and the trial court properly denied Appellant's motion to suppress.

IV. CONCLUSION

For all of the foregoing reasons, this Court should decline jurisdiction of this matter and dismiss the appeal, affirming the sound decision of the Twelfth District Court of Appeals. Appellant's propositions of law lack merit. Moreover, the Appellant has neither raised a substantial constitutional question nor presented an issue of public or great general interest.

Respectfully Submitted,

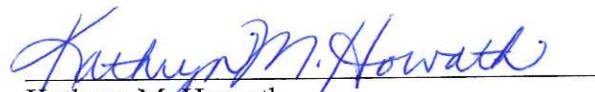
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was sent via regular U.S. mail to Counsel for Appellant, Eric M. Hedrick, Assistant State Public Defender, 250 East Broad Street, Ste. 1400, Columbus, Ohio 43215, on this the 6th day of July 2016.



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