

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Banks-Harvey*, Slip Opinion No. 2018-Ohio-201.]

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**SLIP OPINION NO. 2018-OHIO-201**

**THE STATE OF OHIO, APPELLEE, v. BANKS-HARVEY, APPELLANT.**

**[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Banks-Harvey*, Slip Opinion No. 2018-Ohio-201.]**

*A law-enforcement agency's policy that an arrestee's personal effects must accompany the arrestee to jail cannot, on its own, justify the warrantless retrieval of an arrestee's personal effects from a location that is protected under the Fourth Amendment to the United States Constitution.*

(No. 2016-0930—Submitted April 6, 2017—Decided January 16, 2018.)

APPEAL from the Court of Appeals for Warren County,

No. CA2015-08-073, 2016-Ohio-2894.

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**O'NEILL, J.**

{¶ 1} This case addresses whether a law-enforcement agency's policy that an arrestee's personal effects must accompany the arrestee to jail can, on its own, justify the warrantless retrieval of an arrestee's personal effects from a location that is protected under the Fourth Amendment to the United States Constitution. We hold that it cannot. We further hold that a search of personal effects obtained as a

result of following such a policy is not a valid inventory search. We further conclude that in this case, the exclusionary rule applies to require the suppression of the evidence obtained during the unconstitutional search. Accordingly, we reverse the judgment of the court of appeals, which upheld the trial court's denial of the appellant's motion to suppress the evidence found during the search of her purse, and we vacate the appellant's convictions and sentence.

### **Facts and Procedural History**

{¶ 2} This case arises out of a lawful traffic stop. On October 21, 2014, an Ohio State Highway Patrol trooper stopped the appellant, Jamie Banks-Harvey, for speeding. The stop was video and audio recorded, but because of the way the cars were positioned, the vehicle the appellant was driving cannot be seen in the video after she pulled over. The vehicle had three occupants, the appellant, her boyfriend, Charles Hall, who owned the vehicle, and Shannon Holcomb. When the trooper asked the appellant for her driver's license, she told him that she did not have one. Instead, the appellant reached into her purse, retrieved her state of Ohio identification card, and gave it to the trooper. She explained that she was driving Hall's vehicle because Hall had hurt his hand and she was taking him to get medical attention. The appellant also told the trooper that she and Hall lived together.

{¶ 3} The trooper requested licenses from Hall and Holcomb, but neither of them were carrying their licenses, so he collected their Social Security numbers for identification purposes. The trooper asked the appellant to step out of the vehicle. He performed a pat-down search of the appellant and placed her in the back seat of his cruiser. The appellant did not have her purse with her when she was placed in the trooper's cruiser; it remained in Hall's vehicle. The trooper's computer alerted him that the appellant possibly had an outstanding warrant for her arrest for possession of heroin in Montgomery County and that Holcomb possibly had an outstanding warrant for her arrest for possession of drug paraphernalia in Warren County. Hall, the vehicle owner, had no outstanding warrants for his arrest.

{¶ 4} A local police officer arrived on the scene while the trooper was waiting for confirmation of the warrants. The trooper told the officer that the appellant and Holcomb both had outstanding warrants for their arrest and that Hall, the vehicle owner, did not. The trooper then approached Hall and told him that both the appellant and Holcomb had drug-related warrants for their arrest. He asked Hall whether the appellant and Holcomb used heroin regularly, and he told Hall that it was within his discretion to impound Hall's vehicle but that he had not yet decided whether he would do so. Then he asked if he and the officer could search Hall's vehicle. Hall did not grant consent. Upon confirmation of the warrants, the trooper arrested Holcomb and put her in the back of his cruiser with the appellant. At this point, both the appellant and Holcomb were under arrest on the outstanding warrants and were going to be taken to jail.

{¶ 5} The trooper then entered Hall's vehicle, retrieved the appellant's purse, placed it on the hood of his cruiser, and searched it. As he searched the purse, the trooper laid the items from the purse on the hood of his cruiser. The appellant's purse contained, among other things, a baggie with ten yellow pills, three needles, one of which contained brown liquid, three clear capsules filled with brown powder, and three clear capsules filled with white powder. The trooper showed the officer the drugs he had found in the appellant's purse, and then the officer said that he might have observed a capsule in Hall's vehicle. The officer then searched the vehicle and found clear capsules and a needle. No one was arrested or charged based upon anything found in the search of Hall's vehicle. Hall's vehicle was not impounded, and Hall was permitted to drive it away.

{¶ 6} The appellant was charged with felony possession of drugs and misdemeanor possession of drug paraphernalia and drug-abuse instruments based on the items found in her purse. She filed a motion to suppress the evidence, arguing that the search of her purse violated her rights under the Fourth Amendment to the United States Constitution. In its response to the motion to suppress, the

appellee, the state of Ohio, argued that the evidence found in the appellant's purse should not be suppressed, because it fell within at least one of the following three exceptions to the Fourth Amendment's search-warrant requirement: (1) search-incident-to-arrest exception, (2) plain-view exception, and (3) inventory-search exception.

{¶ 7} The trial court rejected each of the three rationales the state put forth to justify the warrantless search of the appellant's purse. The court held that under *Arizona v. Gant*, 556 U.S. 332, 351, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), the search of the appellant's purse was not a lawful search incident to arrest. The court found that the trooper retrieved and searched the purse after he had handcuffed and secured the appellant in his vehicle and so she was not within reach of her purse when he retrieved and searched it.

{¶ 8} The trial court held that the plain-view exception, under *Minnesota v. Dickerson*, 508 U.S. 366, 375, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993), did not justify the search of the appellant's purse, because there was no testimony to suggest that the appellant's purse possessed an incriminating character that was immediately apparent. And the trial court rejected the state's argument that this was a valid inventory search under *South Dakota v. Opperman*, 428 U.S. 364, 372, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976), because the car that contained the appellant's purse was not impounded.

{¶ 9} Despite rejecting the state's arguments, the trial court nevertheless denied the appellant's motion to suppress. The trial court concluded that regardless of the fact that the trooper did not have probable cause to search the vehicle at the time he searched the appellant's purse, the *officer* had probable cause to search the car based on *his* observation of the capsule in the car and the suspicious behavior of the occupants. Thus, the court held, the contraband in the appellant's purse would inevitably have been discovered in the search of the vehicle. *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982).

{¶ 10} Following the trial court's denial of her motion to suppress, the appellant pled no contest to the charges. On August 7, 2015, she was sentenced to three years of community control, and she is subject to a one-year prison sentence if she violates the community-control sanctions. She was also ordered to, among other things, complete inpatient drug treatment and to serve 90 days of electronically monitored house arrest after her release from the drug-treatment facility.

{¶ 11} The appellant appealed her convictions, arguing that the trial court had erred in denying her motion to suppress. She maintained her argument that the evidence had been seized in violation of her Fourth Amendment rights. The state disagreed, arguing that the trial court had not erred in denying the appellant's motion to suppress because (1) the drugs would inevitably have been discovered in a search of the vehicle, (2) the drugs were discovered during a valid inventory search of the purse, and (3) the drugs would inevitably have been discovered during an inventory search of the purse at the jail.

{¶ 12} The appellate court upheld the reasonableness of this search under the Fourth Amendment, but its reasoning was different than the trial court's. The appellate court rejected the trial court's conclusion that the evidence would inevitably have been discovered during a valid search of the vehicle. The court found that the state had not produced any evidence to establish that the officer was pursuing a line of investigation involving Hall's car prior to the search of the appellant's purse. The appellate court noted that the officer did not testify at the hearing and that the recording offered by the state established that the trooper found the syringes and drugs in the appellant's purse before the officer informed the trooper that he had seen a capsule in Hall's car. Nonetheless, the appellate court upheld the denial of the motion to suppress, concluding that the retrieval of the appellant's purse from the car was done pursuant to a standard Ohio State Highway Patrol policy and that the drugs and drug paraphernalia found in the appellant's

purse were admissible as the fruits of a valid inventory search of the purse once it was in police custody.

{¶ 13} This court accepted the appellant's appeal on the following proposition of law:

Because the mere adoption of a policy by the Highway Patrol to retrieve and inventory the belongings of an arrested person cannot authorize unconstitutional police action, the warrantless entry into a car to retrieve the purse of an already-arrested person and the subsequent warrantless removal and search of that purse violates the Fourth Amendment and Section 14, Article I of the Ohio Constitution.

The state asserts the following proposition of law:

When conducted pursuant to standard policy or procedure, the seizure and search of an arrestee's purse before the arrestee is taken to jail or incarcerated falls within the inventory search exception to the warrant requirement and does not violate the Fourth Amendment of the United States Constitution or Article I, Section 14 of the Ohio Constitution. When the State's evidence establishes that the seizure and search fall within the inventory search exception and further establishes that the contraband found in the purse would have been inevitably discovered in a lawful search of the vehicle and/or a search of the arrestee's belongings at the jail, a trial court properly does not suppress the evidence.

*See* 146 Ohio St.3d 1502, 2016-Ohio-5792, 58 N.E.3d 1173.

**Standard of Review of a Ruling on a Motion to Suppress**

{¶ 14} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. An appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence. *See State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). But the appellate court must decide the legal questions independently, without deference to the trial court’s decision. *Burnside* at ¶ 8.

**The Fourth Amendment**

{¶ 15} The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

{¶ 16} This court has held that in felony cases, Article I, Section 14 of the Ohio Constitution provides the same protection as the Fourth Amendment to the United States Constitution. *State v. Jones*, 143 Ohio St.3d 266, 2015-Ohio-483, 37 N.E.3d 123, ¶ 12.

{¶ 17} The Fourth Amendment proscribes all unreasonable searches and seizures. *Ross*, 456 U.S. at 825, 102 S.Ct. 2157, 72 L.Ed.2d 572. It is a restraint on the government. “[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” (Footnote omitted.) *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

{¶ 18} When a defendant moves to suppress evidence recovered during a warrantless search, the state has the burden of showing that the search fits within one of the defined exceptions to the Fourth Amendment's warrant requirement. *Athens v. Wolf*, 38 Ohio St.2d 237, 241, 313 N.E.2d 405 (1974).

{¶ 19} Here, the state asserts that the search of the appellant's purse in this case fits within the inventory-search exception to the Fourth Amendment's warrant requirement. We disagree for the reasons explained below.

### **Inventory-Search Exception**

{¶ 20} The inventory-search exception is a well-defined exception to the Fourth Amendment's warrant requirement. *Illinois v. Lafayette*, 462 U.S. 640, 643, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983). An inventory search is not subject to the Fourth Amendment's warrant requirement or a probable-cause review, because it is a search that is made for administrative reasons and is unrelated to a criminal investigation. *State v. Mesa*, 87 Ohio St.3d 105, 109, 717 N.E.2d 329 (1999) (upholding the search of an armrest console as part of the inventory search of a lawfully impounded vehicle).

{¶ 21} As a practical matter, the personal effects with a person at the time of his or her arrest must be stored while the person is in jail. And because the police are potentially responsible for the items, they are permitted to search and inventory the personal effects that come into their custody. *Colorado v. Bertine*, 479 U.S. 367, 373, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987) (upholding the search of a backpack in a vehicle as part of an inventory search of a lawfully impounded vehicle). This administrative search and inventory is intended to help guard against claims of theft or careless handling and also protects the police from dangerous instruments. *Id.* *Accord Illinois v. Lafayette*, 462 U.S. 640, 647, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983) (upholding the inventory search of an arrestee's shoulder bag conducted at the police station). Even if less intrusive means of protecting property are available, such as sealing items in a plastic bag and placing them in a secured locker rather



than searching and inventorying them, it is not unreasonable for police, as part of routine procedure incident to incarceration, to search any article or container in the arrestee's possession in accordance with established inventory procedures. *Lafayette* at 647-648.

{¶ 22} Based on the trooper's testimony at the suppression hearing, the trial court found that it is the policy of the Ohio State Highway Patrol to transport an arrestee's property with the arrestee, but no written policy was offered as evidence at the hearing. The question in this case is not whether the purse was taken from the car pursuant to a standardized law-enforcement policy, but whether such a policy was sufficient justification for the warrantless retrieval of the purse from the car. We conclude that it was not and therefore that the subsequent search of the purse did not qualify as a valid inventory search, because the purse had not lawfully come into the custody of the police.

{¶ 23} Certainly we take no issue with the reasonableness of an administrative policy requiring the search and inventory of personal items that necessarily come into police custody as a result of an arrest. Indeed, R.C. 2981.11 requires law-enforcement agencies to keep safe any lawfully seized property that comes into their custody. However, this is not a case in which personal items came into the custody of the police as an incident of lawful police conduct. In this case, the trooper retrieved a personal item belonging to an arrestee from a place that is protected under the Fourth Amendment (the car). At the time the trooper retrieved the appellant's purse, her identity had already been confirmed and she was handcuffed and under arrest in the trooper's vehicle. Neither her purse, nor the vehicle that contained her purse, came into police custody as a result of her arrest. On these facts, the state has failed to show that this search fits under the inventory-search exception to the Fourth Amendment's warrant requirement.

{¶ 24} We note that had the trooper obtained the purse in a legal way, such as retrieving it from the car at the appellant's request, we would have been

compelled to reach a different result. Likewise, if the appellant had been arrested on the street with her purse on her person, we would have been compelled to reach a different result. But a law-enforcement policy that an arrestee’s personal effects go with them to jail, does not, by itself, authorize an officer to retrieve the arrestee’s personal effects from a place that is protected under the Fourth Amendment.

**Exclusionary Rule**

{¶ 25} The Fourth Amendment says nothing about suppressing evidence obtained in violation of its protections. Nevertheless, the United States Supreme Court created the exclusionary rule, which precludes the use in a criminal proceeding of evidence obtained in violation of the Fourth Amendment, “to ‘compel respect for the constitutional guaranty.’ ” *Davis v. United States*, 564 U.S. 229, 236, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011), quoting *Elkins v. United States*, 364 U.S. 206, 217, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960). The purpose of the rule is not to redress the constitutional injury but to deter future constitutional violations. *Id.* at 236-237; *State v. Johnson*, 141 Ohio St.3d 136, 2014-Ohio-5021, 22 N.E.3d 1061, ¶ 40. When suppression would not yield “appreciable deterrence,” application of the exclusionary rule is unwarranted. *United States v. Janis*, 428 U.S. 433, 454, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976). The state argues that the exclusionary rule should not be applied in this case for two reasons: one, the contraband would inevitably have been discovered and two, the trooper acted in good faith.

The state’s inevitable-discovery argument

{¶ 26} The state asserts that the contraband in the appellant’s purse would inevitably have been discovered in the subsequent search of Hall’s vehicle and/or at the Montgomery County jail when the appellant was booked. We disagree.

{¶ 27} This court adopted the inevitable-discovery exception to the exclusionary rule in *State v. Perkins*, 18 Ohio St.3d 193, 480 N.E.2d 763 (1985). Under that exception, illegally obtained evidence may be admitted in a proceeding

once the state establishes that the evidence would inevitably have been discovered in the course of a lawful investigation. *Id.* at paragraph one of the syllabus, following *Nix v. Williams*, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). If the state can establish by a preponderance of the evidence that it would inevitably have discovered the information by lawful means, “then the deterrence rationale [for the exclusionary rule] has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense.” (Footnote omitted.) *Nix* at 444. The prosecution has the burden of demonstrating a reasonable probability that the evidence would have been discovered apart from the unlawful conduct. *Perkins* at 196.

{¶ 28} The state argues that the local police officer’s observation of an empty capsule on the vehicle’s floorboard provided probable cause to believe the vehicle contained contraband and, thus, to conduct a warrantless search of the vehicle under the automobile exception to the warrant requirement. *See Carroll v. United States*, 267 U.S. 132, 155-156, 45 S.Ct. 280, 69 L.Ed. 543 (1925) (warrantless search of an automobile is not unreasonable under the Fourth Amendment when officers have probable cause to believe the vehicle contains contraband). That search, the state maintains, would inevitably have uncovered the contraband in the appellant’s purse. The record in this case suggests otherwise.

{¶ 29} It was only *after* the trooper removed the appellant’s purse from the vehicle, began to search it, and stated that he had found narcotics in it that the local officer approached the trooper and told him that he was “pretty sure” he had observed a capsule on the vehicle’s floorboard. While the local officer remained with the trooper outside his vehicle, the trooper relayed to dispatch his discovery of heroin, three caps, a crack pipe, and yellow pills in the appellant’s purse.

{¶ 30} Even assuming that the local officer’s observation of the capsule afforded him probable cause to search the vehicle, the inevitable-discovery exception would not apply if the local officer based his decision to search the

vehicle on knowledge of the contraband found in the unlawful search of the appellant's purse. *See State v. Sharpe*, 174 Ohio App.3d 498, 2008-Ohio-267, 882 N.E.2d 960 (2d Dist.) (inevitable-discovery doctrine not applicable when search warrant that justified search was based on facts discovered when officers previously entered and searched home without a warrant); *State v. Porter*, 178 Ohio App.3d 304, 2008-Ohio-4627, 897 N.E.2d 1149, at ¶ 44 (recognizing the danger of allowing law-enforcement officers "to exploit their own illegal conduct in order to engage in an 'alternative line of investigation' "). In the context of the related independent-source exception to the exclusionary rule, the United States Supreme Court has held that a search pursuant to a warrant is not an independent source of evidence, so as to avoid application of the exclusionary rule, if the decision to seek the warrant was prompted by an officer's observations during a prior, unlawful entry, or if information from the unlawful entry affected the magistrate's decision to issue the warrant. *Murray v. United States*, 487 U.S. 533, 542, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988).

{¶ 31} There is no evidence that the local officer would have conducted a search based on his observation of the empty capsule absent awareness that the trooper had found drugs and drug-related contraband in his unlawful search of the appellant's purse, in large part because the local officer did not testify at the suppression hearing. The Twelfth District noted that the local officer informed the trooper about his observation of the capsule *after* the trooper discovered the drugs and drug paraphernalia in the appellant's purse. 2016-Ohio-2894, 64 N.E.3d 570, ¶ 7. And the dashboard-camera video establishes that the local officer was aware of the trooper's discovery of drugs and drug paraphernalia in the appellant's purse before he began a search of the vehicle. The local officer can be heard on the video suggesting a search of the vehicle several minutes after learning of the contraband in the appellant's purse and just before the trooper asks the owner of the vehicle whether there is anything else in the vehicle he needs to know about. The trooper's

testimony and the dashboard-camera video—the only evidence the state presented at the suppression hearing—fail to demonstrate by a preponderance of the evidence a reasonable probability that the local officer would inevitably have discovered the contraband in the appellant’s purse apart from the trooper’s removal and search of the purse in violation of the appellant’s Fourth Amendment rights. On these grounds, we conclude that the state did not meet its burden of proving the applicability of the inevitable-discovery exception to the exclusionary rule.

The state’s good-faith argument

{¶ 32} The state also asserts that the exclusionary rule should not apply because the trooper was acting in good faith and in accordance with a written Ohio State Highway Patrol policy and not with the intent of performing an evidentiary search when he retrieved the appellant’s purse. Again, we disagree.

{¶ 33} When an officer acts with an objectively reasonable, good-faith belief that his or her conduct is lawful, the deterrence rationale for the exclusionary rule loses force. *Davis*, 564 U.S. at 241, 131 S.Ct. 2419, 180 L.Ed.2d 285, citing *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). The United States Supreme Court has applied the good-faith exception to searches conducted in objectively reasonable, good-faith reliance on an invalid search warrant issued by a detached and neutral magistrate, *Leon* at 922-923, to searches conducted in reasonable reliance on subsequently invalidated statutes, *Illinois v. Krull*, 480 U.S. 340, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987), to searches conducted in reasonable reliance on erroneous information in a warrant database, *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995), and *Herring v. United States*, 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009), and to searches conducted in reasonable reliance on binding judicial precedent, *Davis* at 241.

{¶ 34} This court recently applied the good-faith exception to evidence obtained from the warrantless attachment of a GPS device to a suspect’s vehicle when, based on the state of the law at the time, the officer had an objectively

reasonable belief that his actions did not violate the suspect’s Fourth Amendment rights. *Johnson*, 141 Ohio St.3d 136, 2014-Ohio-5021, 22 N.E.3d 1061, at ¶ 50. But even more recently, we refused to apply the good-faith exception when an officer’s search of a vehicle in which the defendant sat was not objectively reasonable under the Fourth Amendment. *State v. Leak*, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821, ¶ 37.

{¶ 35} In *Leak*, an officer arrested the defendant, who was sitting in the passenger seat of a legally parked vehicle, on an outstanding warrant and secured him in the back of the officer’s patrol car. The officer then called a tow truck and, purportedly pursuant to standard police procedure, conducted an inventory search of the vehicle. The record, however, contained no evidence that the defendant owned the vehicle. The lead opinion in *Leak* reasoned that testimony about a police procedure for conducting inventory searches was not sufficient to establish the reasonableness of the search if impoundment of the vehicle itself was unlawful. *Id.* at ¶ 29. Ultimately, the court held, “The fact that the arresting officer used established police procedure to conduct the inventory search does not overcome the unlawfulness of the impoundment in the first place. This is precisely the type of governmental intrusion the Fourth Amendment seeks to prohibit.” *Id.* at ¶ 37 (lead opinion).

{¶ 36} Here, the trooper testified that it was standard Highway Patrol procedure for a trooper to transport a female arrestee’s purse with her to jail, but he also admitted that he could have left the appellant’s purse with her boyfriend. The trooper stated that there is a written Highway Patrol policy to search a purse that a trooper will take into his or her cruiser. He did not, however, state that the standard procedure to transport a female arrestee’s purse with her was reduced to a written policy. That is the extent of the evidence regarding the existence or content of a Highway Patrol policy; the state did not introduce a written policy. Even assuming that there is a written policy to not only search a purse that is to be transported with

an arrestee, but also to retrieve an arrestee's purse, the existence of such a policy is insufficient to establish the reasonableness of the search under the Fourth Amendment when the retrieval itself is unlawful. *See Leak*, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821, ¶ 29.

{¶ 37} Courts use an objective standard for judging officers' good faith when applying the good-faith exception to the exclusionary rule. *Leon*, 468 U.S. at 919, 104 S.Ct. 3405, 82 L.Ed.2d 677, fn. 20. The United States Supreme Court has stated, with respect to the applicable standard:

We emphasize that the standard of reasonableness we adopt is an objective one. Many objections to a good-faith exception assume that the exception will turn on the subjective good faith of individual officers. "Grounding the modification in objective reasonableness, however, retains the value of the exclusionary rule as an incentive for the law enforcement profession as a whole to conduct themselves in accord with the Fourth Amendment." *Illinois v. Gates*, 462 U.S. [213,] 261, n. 15, 103 S.Ct. [2317, 76 L.Ed.2d 527] (WHITE, J., concurring in judgment); see *Dunaway v. New York*, 442 U.S. [200,] 221, 99 S.Ct. [2248, 60 L.Ed.2d 824] (STEVENS, J., concurring). The objective standard we adopt, moreover, requires officers to have a reasonable knowledge of what the law prohibits. *United States v. Peltier*, 422 U.S. 531, 542, 95 S.Ct. 2313, 2320, 45 L.Ed.2d 374 (1975).

*Id.*

{¶ 38} We do not question the objective reasonableness of a policy that requires a trooper to transport with an arrestee any personal property, including a purse, that is on the arrestee's person at the time of the arrest. But the appellant's

purse was not on her person; it was in the vehicle. The trooper testified that he relied on standard Highway Patrol procedure to *retrieve* the purse from the vehicle. Even so, such a policy is insufficient to justify an objectively unreasonable intrusion into a place protected by the Fourth Amendment.

**Conclusion**

{¶ 39} Under the Fourth Amendment, a warrantless search is per se unreasonable unless it falls into one of the few well defined exceptions to the Fourth Amendment’s warrant requirement. *State v. Kessler*, 53 Ohio St.2d 204, 207, 373 N.E.2d 1252 (1978). When a motion to suppress evidence obtained in a warrantless search is filed, the state has the burden of establishing that one of the exceptions applies. *Id.* We do not question the reasonableness of an administrative policy that requires troopers to search and inventory personal effects that lawfully come into their custody when a person is arrested. However, when a law-enforcement officer relies solely on his or her department’s policy to retrieve personal effects from a place that is protected by the Fourth Amendment, those items have not lawfully come into the custody of the officer. Therefore, the search of the appellant’s purse in this case does not fall within the inventory exception to the Fourth Amendment’s warrant requirement. Accordingly, we reverse the court of appeals’ judgment, and we vacate the appellant’s convictions and sentence, which were based solely on the evidence found in her purse.

Judgment reversed  
and convictions and sentence vacated.

FRENCH and FISCHER, JJ., concur.

KENNEDY, J., concurs in judgment only, with an opinion.

O’DONNELL, J., dissents, with an opinion.

DEWINE, J., dissents, with an opinion joined by O’CONNOR, C.J.



**KENNEDY, J., concurring in judgment only.**

{¶ 40} I agree with the lead opinion that the inventory search conducted here was a pretextual investigatory search for contraband and that the state failed to prove that the trooper acted in good faith, which if proved would have barred application of the exclusionary rule. However, because of the breadth of the lead opinion and because the lead opinion, in my view, does not address the narrow questions before us, I concur in judgment only and write separately.

{¶ 41} I agree with the statement in Justice DeWine’s dissenting opinion that the Fourth Amendment protects people, not property, against arbitrary invasions by the government. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). Moreover, “the Fourth Amendment does not require that every search be made pursuant to a warrant. It prohibits only ‘unreasonable searches and seizures.’ ” *Coolidge v. New Hampshire*, 403 U.S. 443, 509-510, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) (Black, J., concurring in part and dissenting in part). “[W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case.” *Cooper v. California*, 386 U.S. 59, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967).

{¶ 42} “With respect to noninvestigative police inventories \* \* \*, the policies underlying the warrant requirement \* \* \* are inapplicable.” *South Dakota v. Opperman*, 428 U.S. 364, 370, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976), fn. 5. Inventory searches are not conducted for the purpose of discovering evidence of a crime, and the “officer [performing an inventory search] does not make a discretionary determination to search based on a judgment that certain conditions are present.” *Id.* at 383, (Powell, J., concurring). In *Opperman*, the United States Supreme Court upheld an inventory search of a vehicle as a reasonable exception to the Fourth Amendment warrant requirement based on the caretaking function of law enforcement.

{¶ 43} “[I]nventory procedures serve to protect an owner’s property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger.” *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987). So long as law-enforcement officers follow a standardized policy and they do not act in bad faith or for the sole purpose of investigation, an inventory search is valid. *Id.*

{¶ 44} The United States Supreme Court extended the caretaking-inventory-search exception to the search of an arrestee and his possessions incident to incarceration in *Illinois v. Lafayette*, 462 U.S. 640, 648, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983). In *Lafayette*, the defendant was arrested for disturbing the peace and was brought to the police station for the booking process. After being instructed to empty his pockets, the defendant removed a package of cigarettes from his shoulder bag and placed the bag on the counter. Thereafter, the booking officer removed the remaining contents of the shoulder bag and found ten amphetamine pills. The defendant was charged with possession of a controlled substance. At the suppression hearing, relying on *Opperman*, the state argued that the search was a valid inventory search. The trial court granted the defendant’s motion to suppress, and the court of appeals affirmed. The Illinois Supreme Court declined to review the case.

{¶ 45} In reversing the Illinois appellate court, the United States Supreme Court held that “it is not ‘unreasonable’ for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures.” *Lafayette* at 648. The United States Supreme Court “has recognized that the ‘governmental interests underlying a station-house search of the arrestee’s person and possessions may in some circumstances be even greater than those supporting a search immediately following arrest.” *Maryland v. King*, 569 U.S. 435, 456, 133 S.Ct. 1958, 1974, 186 L.Ed.2d 1 (2013), citing *Lafayette* at 645. When a person is

formally processed into police custody, “ ‘the law is in the act of subjecting the body of the accused to its physical dominion.’ ” *King* at 449-450, quoting *People v. Chiagles*, 237 N.Y. 193, 197, 142 N.E. 583 (1923) (Cardozo, J.).

{¶ 46} The difference between an investigative search and an inventory search is that an inventory search serves an administrative or caretaking function, *see Opperman*, 428 U.S. at 369-371, 96 S.Ct. 3092, 49 L.Ed.2d 1000. And “reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment.” *Bertine*, 479 U.S. at 374, 107 S.Ct. 738, 93 L.Ed.2d 739.

{¶ 47} The state argues that the evidence would inevitably have been discovered as a result of the officer’s alternative line of investigation, i.e., his search of the car based on the capsule in the car. However, I agree with the appellate court’s holding that the state failed to prove the “alternative line of investigation” requirement of the inevitable-discovery doctrine. 2016-Ohio-2894, 64 N.E.3d 570, ¶ 20.

{¶ 48} Relying, however, on the uncontroverted testimony of the trooper that the Highway Patrol has a standardized policy regulating an inventory search performed incident to incarceration and its finding that the trooper’s search was executed in conformance with the policy, the appellate court held the search valid. 2016-Ohio-2894, 64 N.E.3d 570, at ¶ 28. I disagree.

{¶ 49} This case presents two interrelated questions. The first question is whether it is reasonable, within the context of the Fourth Amendment, for a law-enforcement officer to execute a standardized procedure or policy permitting an inventory search incident to incarceration when the officer has no intention of taking the arrested person to a station house for booking and incarceration. The second question is whether it is reasonable, within the context of the Fourth Amendment, for a law-enforcement procedure or policy to give an officer discretionary authority to take an arrestee’s personal effects, which were not in the

arrestee’s possession at the time of arrest and were safely secured, to the station house in order to subject those personal effects to an inventory search incident to incarceration. I would hold that both are unreasonable under the Fourth Amendment.

{¶ 50} The law-enforcement community-caretaking function is centered on the interest of public safety. *Opperman*, 428 U.S. at 368, 96 S.Ct. 3092, 49 L.Ed.2d 1000. To be sure, law-enforcement officers frequently engage in “community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973). The United States Supreme Court has recognized the caretaking function of law enforcement in relation to motor vehicles, *see id.*, and in rendering emergency aid, *see Mincey v. Arizona*, 437 U.S. 385, 392, 98 S.Ct. 2408, 57 L.Ed.2d 290; *Michigan v. Fisher*, 558 U.S. 45, 47, 130 S.Ct. 546, 175 L.Ed.2d 410 (2009). The three main objectives of inventory searches are “to protect an owner’s property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger.” *Bertine*, 479 U.S. at 372, 107 S.Ct. 738, 93 L.Ed.2d 739. However, the Fourth Amendment prohibits the unreasonable exercise of the community-caretaking function, even when “conducted pursuant to a standardized policy,” because such protection “is part and parcel of the Fourth Amendment’s guarantee against unreasonable searches and seizures.” *United States v. Sanders*, 796 F.3d 1241, 1250 (10th Cir.2015).

{¶ 51} When the trooper initially placed appellant, Jamie Banks-Harvey, in the backseat of his patrol car, her purse remained with her live-in boyfriend in his vehicle. After the trooper got confirmation that there was a warrant out of Montgomery County for appellant’s arrest, he removed her from the patrol car, told her there was a warrant for her arrest, handcuffed her, and immediately returned her to the patrol car.

{¶ 52} However, the trooper did not intend to book appellant in at the station house. When asked at the suppression hearing what he intended to do with appellant after he got confirmation of the warrant, the trooper testified, “I was going to take her into investigative detention custody” until Montgomery County law-enforcement officers arrived to “extradite her.” In an attempt to justify his intrusion into appellant’s purse on the basis of an inventory search incident to incarceration, the trooper testified that he had wanted to prevent appellant from illegally conveying illegal substances into the jail and he wanted to keep the Montgomery County Sheriff’s Office from having to “deal with it” and to avoid “chain of custody” problems. It was only after the trooper conducted what the appellate court described as an inventory search incident to incarceration and discovered the evidence at issue in this case that he intended to book her in on local charges.

{¶ 53} Additionally, in response to the state’s questioning, the trooper indicated that it is standard procedure when a female is taken into custody for the trooper to retrieve and take her purse. However, that standard procedure was plainly not hard and fast, because he subsequently admitted that he could have left appellant’s purse with her live-in boyfriend in his vehicle.

{¶ 54} While the “reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative ‘less intrusive’ means,” *Lafayette*, 462 U.S. at 647, 103 S.Ct. 2605, 77 L.Ed.2d 65, a valid seizure must be supported by probable cause or *be consistent with the community-caretaking role of law enforcement*, see *Opperman*, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000. Because the trooper was not going to book appellant in at a station house and because appellant’s purse was safe with her live-in boyfriend in his vehicle and the Highway Patrol’s policy permitted the trooper to leave the purse with the boyfriend, the community-caretaking function was not triggered.

{¶ 55} To be sure, if the arrest of appellant would have caused her purse to be abandoned in a public or semipublic area or the matter of ownership of the purse

was in doubt or the identity of appellant was in dispute, the trooper would have had a duty to retrieve and safeguard the purse. *See United States v. Perea*, 986 F.2d 633 (2d Cir.1993) (a duffel bag that a defendant was transporting while riding in a taxi was subject to impoundment and an inventory search upon the defendant's arrest); *see also State v. Scroggins*, 297 Minn. 144, 148, 210 N.W.2d 55 (1973) (search of arrestee's pockets proper to ensure accurate preincarceration identification). But our determination whether a search and seizure was reasonable turns on the specific facts and circumstances of the particular case. *See Cooper*, 386 U.S. 59, 87 S.Ct. 788, 17 L.Ed.2d 730.

{¶ 56} Even when a standardized procedure or policy permits an inventory search of an arrested person's effects incident to incarceration, it is unreasonable, within the context of the Fourth Amendment, for a law-enforcement officer to execute that inventory search when he is not taking the arrested person to a station house for booking and incarceration. Moreover, it is unreasonable, within the context of the Fourth Amendment, for a law-enforcement procedure or policy to give an officer discretionary authority to take personal effects that are not in an arrestee's possession at the time of arrest and are safely secured be retrieved and taken to the station house, where they will be subject to an inventory search. Therefore, based on the facts of this case, I would find the inventory search incident to incarceration at issue here unreasonable.

{¶ 57} As the lead opinion points out, even when an inventory search incident to incarceration is unreasonable, absent a showing that the law-enforcement officer acted in bad faith or for the sole purpose of investigation, and so long as the officer followed a standardized caretaking policy or procedure, evidence obtained in the inventory search will not be suppressed.

{¶ 58} The trooper here testified that he searched appellant's purse to safeguard her possessions, to look for weapons for officer safety considerations, and to look for evidence of a crime. Categorically, therefore, the trooper's search

of appellant's purse to ferret out evidence of a crime was per se invalid. *Id.* In evaluating the trooper's other stated motives, we look to what the United States Supreme Court has said on the subject of evaluating an officer's good faith:

“[O]ur good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal” in light of “all of the circumstances.” [*United States v. Leon*, 468 U.S. [897], at 922, n. 23, 104 S.Ct. 3405 [82 L.Ed.2d 677 (1984)]. These circumstances frequently include a particular officer's knowledge and experience, but that does not make the test any more subjective than the one for probable cause, which looks to an officer's knowledge and experience, *Ornelas v. United States*, 517 U.S. 690, 699-700, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996), but not his subjective intent, *Whren v. United States*, 517 U.S. 806, 812-813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

*Herring v. United States*, 555 U.S. 135, 145-146, 129 S.Ct. 695, 703, 172 L.Ed.2d 496 (2009). Applying this standard to this case, the trooper did not act in good faith when he searched and seized the defendant's purse for purposes of safeguarding her possessions or to ensure officer safety.

{¶ 59} With regard to safeguarding appellant's possessions, the trooper had no intention of booking her in on the active warrant, and the purse was in a safe location when he retrieved it. The trooper testified that he had taken her purse from the car because she had no relation to the vehicle and the purse might contain a “cell phone, jewelry, something in there that could get stolen.” However, if safeguarding her possessions was the trooper's true motive, then he would have

asked appellant or her live-in boyfriend whether any other property in the vehicle belonged to her, and he did not do that.

{¶ 60} Lastly, officer safety is of paramount importance, and all law-enforcement officers should employ their training and experience to first ensure their own safety as they protect and serve the citizens of their communities. However, in this case, appellant was handcuffed and contained in the back seat of the patrol car when the trooper retrieved her purse. Officers may conduct a constitutionally sound search of a vehicle “incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” *Arizona v. Gant*, 556 U.S. 332, 343, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). Therefore, officer safety was not a legitimate reason for the inventory search here.

{¶ 61} An inventory search executed in bad faith or for the sole purpose of investigation is not a valid inventory search, *see Bertine*, 479 U.S. at 372, 107 S.Ct. 738, 93 L.Ed2d 739, and a pretextual search for evidence “is not an inventory search,” *State v. Robinson*, 58 Ohio St.2d 478, 480, 391 N.E.2d 317 (1979). By his own admission, the trooper retrieved appellant’s purse from her live-in boyfriend’s vehicle to look for evidence of a crime. Having no valid exceptions to the Fourth Amendment warrant requirement, the trooper relied on an inventory search incident to incarceration as a pretext to search appellant’s purse for evidence of a crime.

{¶ 62} A trooper’s subjective belief that the Highway Patrol policy permits an inventory search incident to incarceration is not objectively justified when the trooper has no intention of taking appellant to a station house for booking and incarceration. Moreover, a trooper’s subjective belief that the Highway Patrol policy gave him discretionary authority to ensure that the purse of a female arrestee went with her to the station house is not objectively justified when the purse was in a secure location. A reasonably well-trained officer would know that the United



States Supreme Court decision in *Lafayette*, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65, does not support the inventory search as it was conducted here.

{¶ 63} As guardians of the Constitution, the judiciary must protect the people’s right to live free from unconstitutional government intrusions by carefully applying the Supreme Court’s “jealously and carefully drawn exceptions to the warrant requirement,” *United States v. Jones*, 635 F.2d 1357, 1360 (8th Cir.1980), and by carefully reviewing administrative searches to ensure that they were executed in good faith and in line with the community-caretaking function, *Bertine* at 372. “There is always a temptation in criminal cases to let the end justify the means, but as guardians of the Constitution, we must resist that temptation.” *State v. Gardner*, 135 Ohio St.3d 99, 2012-Ohio-5683, 984 N.E.2d 1025, ¶ 24, citing *United States v. Mesa*, 62 F.3d 159, 163 (6th Cir.1995).

{¶ 64} The exclusionary rule exists to deter police misconduct. *Davis v. United States*, 564 U.S. 229, 236-237, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). Regarding the rule, the United States Supreme Court has stated: “[T]he significant costs of this rule have led us to deem it ‘applicable only \* \* \* where its deterrence benefits outweigh its substantial social costs.’ \* \* \* ‘Suppression of evidence \* \* \* has always been our last resort, not our first impulse.’ ” *Utah v. Strieff*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 2056, 2061, 195 L.Ed.2d 400 (2016), quoting *Hudson v. Michigan*, 547 U.S. 586, 591, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006).

{¶ 65} Here, because the search of appellant’s purse was not executed pursuant to a standardized procedure or policy in good faith and was executed for the sole purpose of investigation, I am compelled to apply the exclusionary rule. For all the foregoing reasons, I concur in judgment only.

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**O’DONNELL, J., dissenting.**

{¶ 66} Respectfully, I dissent.

{¶ 67} I would dismiss this case as having been improvidently allowed because the Ohio State Highway Patrol policy is not in evidence, the case is factually specific, and no general rule of law can be formulated from its resolution.

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**DEWINE, J., dissenting.**

{¶ 68} The retrieval of Jamie Banks-Harvey’s purse from a car was not an illegal seizure, and the subsequent inventory search of the purse was not an illegal search. Thus, her motion to suppress was properly denied. Because the lead opinion concludes differently—and misapplies Fourth Amendment law on the way—I respectfully dissent.

{¶ 69} For the most part, the lead opinion takes no issue with the Ohio State Highway Patrol trooper’s actions in this case. The lead opinion agrees that the stop of the car driven by Banks-Harvey and her subsequent arrest for an outstanding warrant were lawful. Further, the lead opinion recognizes that an inventory search is a “well-defined exception to the Fourth Amendment’s warrant requirement.” Lead opinion at ¶ 20. And according to the lead opinion, “it is not unreasonable for police, as part of routine procedure incident to incarceration, to search any article or container in the arrestee’s possession in accordance with established inventory procedures.” Lead opinion at ¶ 21. The lead opinion doesn’t even question the trooper’s assertion that there was a standard policy to take a purse along with an arrestee to jail.

{¶ 70} In the end, the lead opinion’s determination that the search of Banks-Harvey’s purse violated the Fourth Amendment hinges on one fact—that the purse was removed from a car prior to the inventory search. With little, if any, analysis, the lead opinion concludes that the trooper did not have lawful custody of the purse when he conducted the inventory search, because he retrieved the purse “from a place that is protected by the Fourth Amendment.” Lead opinion at ¶ 39. The problem with the reasoning is that it is contrary to well-established Fourth

Amendment jurisprudence and misses the real question: Was taking the purse from the car an illegal seizure?

**The car is a nonstarter**

{¶ 71} The fallacy in the lead opinion’s reasoning is laid bare by reference to the Fourth Amendment itself: “The *right of the people* to be secure in *their* persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated \* \* \*.” (Emphasis added.) Two concepts bear emphasis. First, the amendment protects the right of the people, not the property. That principle is reflected in the oft-quoted line from *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967): “[T]he Fourth Amendment protects people, not places.” The second point relevant here is that the amendment protects people’s rights in their—not others’—effects. *See generally Minnesota v. Carter*, 525 U.S. 83, 92, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998) (Scalia, J., concurring). In other words, contrary to the lead opinion’s assertion, it matters not whether the car was protected under the Fourth Amendment—it wasn’t—but whether the trooper’s retrieval of Banks-Harvey’s purse somehow violated any interest of hers in the car.

{¶ 72} In *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978), the court considered whether a search of a car violated the rights of passengers who did not own the car. The court concluded that the passengers could claim no violation of their Fourth Amendment rights because they had no possessory interest in the car or expectation of privacy in the places searched. *Id.* at 148. Although here, Banks-Harvey was the driver of the car, rather than a passenger, *Rakas*’s analysis applies. The car was not Banks-Harvey’s; it belonged to Charles Hall. According to Hall, he had allowed Banks-Harvey to drive the car only because he had hurt his hand. Like the passengers in *Rakas*, Banks-Harvey had neither a possessory interest in the car nor an expectation of privacy in the car.

**The focus should be on the purse**

{¶ 73} By directing its focus onto the car, the lead opinion blurs the real object of interest—the purse. There is no question that Banks-Harvey had a possessory interest in her own purse. The question is whether that interest was infringed upon by the trooper. In other words, was there an unreasonable seizure or an unreasonable search of the purse? I would hold that there was neither. The removal of the purse from the car was not a “seizure” under the Fourth Amendment. And even if it were a seizure, the removal of the purse from the car would not have been unreasonable. Moreover, the subsequent inventory search of the purse was lawful.

{¶ 74} The Fourth Amendment proscribes unreasonable searches and seizures. While the prohibition against unreasonable searches protects “the interest in maintaining personal privacy,” the prohibition against unreasonable seizures protects “the interest in retaining possession of property.” *Texas v. Brown*, 460 U.S. 730, 747, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983) (Stevens, J., concurring). “[N]ot every governmental interference with a person’s property constitutes a seizure of that property under the Constitution.” *United States v. Va Lerie*, 424 F.3d 694, 702 (8th Cir.2005). Rather, “[a] ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.” *United States v. Jacobsen*, 466 U.S. 109, 113, 80 L.Ed.2d 85, 104 S.Ct. 1652 (1984).

{¶ 75} Although caselaw from the United States Supreme Court on what constitutes a seizure of property is scant, *id.* at fn. 5, lower federal courts have provided some guidance. In determining whether the removal of a checked or stowed bag from a bus amounts to “meaningful interference,” courts have focused on the duration of the bag’s detention and the distance that the bag was moved, the extent of the owner’s possessory interest at the time of the removal, and whether the owner’s movement was impeded by the removal. Thus, in *United States v.*

*Gant*, 112 F.3d 239 (6th Cir.1997), the Sixth Circuit Court of Appeals held that the removal of a bag from an overhead compartment on a bus so that it could be examined by a drug-sniffing dog was not a seizure. In concluding that police had not meaningfully interfered with the owner's possessory interest in the bag, the court noted that it had been moved only a short distance for a brief time, that the removal had occurred after the bag was left unattended by the owner, so the owner's access had not been impaired, and that, absent the subsequent indication by the dog that the bag contained drugs, the owner's travel would not have been interrupted. *Id.* at 242. The Eighth Circuit Court of Appeals similarly determined that removal of a checked bag from a bus to take it to the bus terminal to seek consent for a search did not amount to meaningful interference to trigger a violation of the Fourth Amendment. *Va Lerie*.

{¶ 76} In this case, the trooper retrieved Banks-Harvey's purse to bring it with her to the jail. At the time he retrieved the purse, Banks-Harvey's possessory interest in it was diminished; she had lost access to her purse when she was put in the cruiser. And the retrieval of the purse did not impede Banks-Harvey's movement. She had already been detained. Indeed, it is hard to see how the trooper "meaningfully interfered" with Banks-Harvey's possessory interest when his intent in retrieving the purse was to be sure that it went with her to the jail. I would conclude that his retrieval of the purse was not a seizure under the Fourth Amendment.

{¶ 77} Setting aside the question whether there was a seizure here, I would conclude that, in any event, there was no unreasonable seizure. The trooper's testimony that he acted pursuant to standard procedure that a purse goes with an arrestee was not disputed. The policy makes sense. A purse could hold identification, money, medication, or other items needed at the jail. And taking and inventorying an arrestee's purse and its contents protects police from claims that the purse was left in an unsafe place and was stolen. *See also United States v.*

*Perea*, 986 F.2d 633, 643 (2d Cir.1993), quoting *Cabbler v. Superintendent, Virginia State Penitentiary*, 528 F.2d 1142, 1146 (4th Cir.1975) (“When a person is arrested in a place other than his home, the arresting officers may ‘impound the personal effects that are with him at the time to ensure the safety of those effects or to remove nuisances from the area’ ”).

{¶ 78} In her opinion concurring in judgment only, Justice Kennedy refers to the trooper’s comment that he did not intend to take Banks-Harvey to the station himself. Instead, he was going to hand her over to law-enforcement officers from Montgomery County. Nonetheless, this detail about the planned transport of Banks-Harvey does not change the fact that the trooper retrieved the purse so it could accompany her to jail. The fact that a law-enforcement officer from Montgomery County, instead of the trooper, might actually drive Banks-Harvey to the police station does not make unreasonable the policy that a purse accompanies an arrestee.

{¶ 79} The opinion concurring in judgment only also challenges the reasonableness of a policy that requires that personal effects go with an arrestee when the effects were not with the person when he or she was arrested and when they are in a secure location. The opinion emphasizes that the purse was in the car with Hall, Banks-Harvey’s live-in boyfriend. It may well be that in this case, Banks-Harvey’s purse would have been secure if left behind, but the point of a policy is to give troopers guidelines so that they don’t have to undertake the responsibility of assessing the security of an item on a case-by-case basis. “ “[A] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.” ’ ” *Illinois v. Lafayette*, 462 U.S. 640, 648, 77 L.Ed.2d 65, 103 S.Ct. 2605 (1983), quoting *New York v. Belton*, 453 U.S. 454, 458, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), quoting *Dunaway v. New York*, 442 U.S. 200, 213-214, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979). And

surely it is not unreasonable to have a policy that generally recognizes that a person's effects are more secure with the person than with someone else, even if that someone else is a live-in boyfriend. Moreover, as the opinion concurring in judgment only acknowledges, "the 'reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative "less intrusive" means.'" ¶ 54 (Kennedy, J., concurring in judgment only), quoting *Lafayette* at 647.

**The inventory search of the purse was lawful**

{¶ 80} Because he properly took the purse from the car, the question becomes whether it was lawful for the trooper to search it without a warrant. As acknowledged in the lead opinion, an inventory search of personal effects is a recognized exception to the requirement that searches be conducted pursuant to warrants. *See Lafayette* at 643.

{¶ 81} In *Lafayette*, the defendant was arrested in a theater for disturbing the peace. At the police station, an officer conducted a search of a shoulder bag the defendant had carried with him to the station and discovered drugs. The court concluded that the search of the bag "in accordance with established inventory procedures" had been reasonable. *Id.* at 648. The court cited a "range of governmental interests" supporting the search. *Id.* at 646. These interests include deterring theft and false claims of theft, keeping dangerous items away from the arrestee, and confirming the arrestee's identity. *Id.*

{¶ 82} Here, the trooper testified that his inventory search of Banks-Harvey's purse was performed pursuant to written policy. Although the policy itself was not entered into evidence, no one challenges its existence. Although the trooper searched the purse on the hood of his cruiser rather than at the police station as in *Lafayette* that difference is of no significance. The United States Supreme Court's "opinion in *Lafayette* \* \* \* did not suggest that the station-house setting of the inventory search was critical to [its] holding in that case." *Colorado v. Bertine*,

479 U.S. 367, 373, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987). What matters instead is that the inventory is done in support of the governmental interests cited above.

{¶ 83} The concurring opinion proclaims that the trooper’s search of the purse was “per se invalid” because he conceded that in addition to searching the purse to safeguard its contents and to make certain it did not contain weapons, he looked for evidence of a crime. ¶ 58 (Kennedy, J., concurring in judgment only). True, an inventory search, even when done according to a standard policy, is not reasonable if it is done in bad faith or for the sole purpose of investigation. *Bertine* at 372. But “a legitimate non-pretextual inventory search is not made unlawful simply because the investigating officer remains vigilant for evidence during his inventory search.” *United States v. Khoury*, 901 F.2d 948, 959, citing *United States v. Orozco*, 715 F.2d 158, 161 (5th Cir.1983). Here, despite the attempts to cast aspersions on the trooper’s motivation, there is no evidence that the trooper’s primary purpose was other than to secure the purse so that it could accompany Banks-Harvey to the station. That he was also on the lookout for illegal items does not render the inventory search unreasonable. I would conclude that the inventory search here was reasonable.

### Conclusion

{¶ 84} Because I would hold that the removal of the purse from the car and the subsequent inventory search were lawful, I respectfully dissent.

O’CONNOR, C.J., concurs in the foregoing opinion.

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David P. Fornshell, Warren County Prosecuting Attorney, and Kirsten A. Brandt, Assistant Prosecuting Attorney, for appellee.

Timothy Young, Ohio Public Defender, and Eric M. Hedrick, Assistant Public Defender, for appellant.



January Term, 2018

Michael DeWine, Attorney General, Eric E. Murphy, State Solicitor, and Peter T. Reed, Deputy Solicitor, urging affirmance for amicus curiae, Ohio Attorney General.

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