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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LISA ANN ROSSER,

Defendant and Appellant.

A131162

(Sonoma County
Super. Ct. No. SCR588406)

I. INTRODUCTION

After the trial court denied appellant’s motion to suppress evidence, she pled no contest to possession of methamphetamine and resisting a peace officer in the performance of his duties. Appellant’s motion to suppress contested the search of a purse that she was reaching into when she was arrested. We agree with the trial court that this search incident to a lawful arrest did not violate the Fourth Amendment, and hence affirm the judgment of conviction.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *The Search of Appellant’s Purse*

During the afternoon of August 13, 2010, Sonoma County Deputy Sheriff Eric Gelhaus arrested a man in a southwestern residential area of Santa Rosa.¹ Gelhaus then asked “a couple of other deputies to come into the area to do an area check” for him. At that point, Gelhaus was approached by appellant, who asked him, in an “elevated”

¹ The facts relating to this search come from the testimony of Deputy Gelhaus, the only witness who testified at the suppression hearing.

manner of speaking, why the man had been arrested. After confirming that appellant was not related to the man, Gelhaus told her that the man would contact her from jail if he wanted to let her know what was going on with him.

Appellant was visibly upset and continued yelling about the man that had been arrested. It appeared that she was “trying to get the attention of people around and get them to come out.” She complained that the officers had no right to be at that location which she referred to as her property. At some point, Gelhaus asked appellant “if she was under the influence.” He did so because of her physical appearance, more specifically “[t]he appearance of her complexion, her skin. She was sweating. . . . and had what looked like sunken cheeks, to me.” In addition, “her volume, her voice, was increasing in volume. The head was turning side to side, like she wasn’t so much trying to yell at me, as to get other people’s attention and get them to come out.” Gelhaus asked appellant for her name, which she provided. Then appellant asked if Gelhaus wanted to see I.D. Gelhaus said he did, if she had it on her, at which point appellant turned and walked away.

Gelhaus told appellant not to walk off, but she kept going and walked in the direction of a nearby carport. Appellant returned with a purse, which she threw on the ground between herself and the deputy. Then she put both hands into the purse. Gelhaus, who was concerned that “she could be going for a weapon” told appellant to take her hands out of the purse. Appellant did not respond. Gelhaus testified that he told appellant to take her hands out of her purse at least two and maybe three times but that she continued “doing whatever she was doing inside the purse.” So, Gelhaus stepped onto the purse because, he testified, he “needed to get her hands out of there and stop her from pulling anything out of that purse.”

Appellant’s hands came out of the purse, and Gelhaus told her: “Don’t go back in there. Keep your hands where I can see them.” But appellant reached for the purse and so the officer grabbed one of her hands. Appellant pulled back and tried to turn away from Gelhaus, ignoring his repeated directions to put her hands behind her back. Gelhaus struggled with her as she tried to pull away and then forced her to the ground, placed his

knee between her shoulder blades and handcuffed her.² Appellant complained that Gelhaus had injured her back during the arrest. So he walked her to the patrol car, placed her in the back seat and called for an ambulance.

Meanwhile, another officer at the scene, Deputy Martin, retrieved appellant's purse, placed it on the trunk of Gelhaus' patrol car, and then searched it "within seconds" of appellant's arrest. In it, he found a "[m]ake up box pouch that had the methamphetamine in it." The officers took the drugs, along with some other "indicia," and then Deputy Martin returned appellant's purse to someone at the scene.

B. *The Present Case*

On November 8, 2010, an information was filed in Sonoma County Superior Court charging appellant with possession of methamphetamine in count one (Health & Saf. Code, § 11377, subd. (a)) and, in count two, with resisting a peace officer in the performance of his duties (Pen. Code, § 148, subd. (a)(1)). The information also alleged two prison term priors. Appellant was arraigned the same day, pled not guilty to both counts, and denied the priors. On December 3, 2010, appellant moved under Penal Code section 1538.5 to suppress the evidence seized from her purse at the time of her arrest.

On January 6, 2011, the trial court (the Honorable Arthur Wick) conducted a hearing on appellant's motion to suppress, at which Deputy Gelhaus was the sole witness. After hearing that testimony, the trial court stated that it appeared "that there was a lawful arrest that took place of the defendant based on her violation of Penal Code section 148," and that the only issue before it was the lawfulness of the search that was conducted "after the defendant was placed in a patrol car." Both the defense and the prosecution concurred. After some discussion, the matter was continued so that the parties could submit additional briefing on that issue.

² In response to a request from defense counsel, Gelhaus summarized the struggle as follows: "She pulled away. She turned. She didn't comply with my directions to put her hands behind her back. We moved, like I said, about ten feet or so from where I first had to take hold of her hand, where we ended up on the ground with her. She continued to move at that point until I got her handcuffed."

On January 18, 2011, the trial court filed an order denying appellant’s motion to suppress. The court’s analysis was prefaced with this statement: “The sole issue in this case is whether a suspect’s purse can be lawfully searched after the suspect has been arrested and secured in the rear of a patrol car? The simple answer to this question is ‘yes.’ ” In its order, the court summarized the law governing “searches incident to arrest.” It noted, among other things, that “[o]fficers who have made an arrest may, as a matter of routine, conduct a ‘search incident to arrest’” and that, in so doing, they “are not required to prove the arrestee might have possessed a weapon or evidence.” (Citing *United States v. Robinson* (1973) 414 U.S. 218, 235 (*Robinson*).

In upholding the search, the trial court reasoned that “Officers may also open and search all personal property and containers in the arrestee’s possession such as a wallet, *purse*, shoulder bag, backpack, hide-a-key box, cigarette box, *pillbox*, or envelope. [Citations.]” The court also concluded that it was “immaterial that, when the search began, the arrestee had been handcuffed, surrounded by officers, or was otherwise unable to control or even reach the place or thing that was searched. [Citations.]”

On February 7, 2011, appellant pled no contest to both counts (the first count having, at that time, been reduced to a misdemeanor). The court sentenced her to serve 30 days in a “work-release” program. Appellant filed a timely notice of appeal from the order denying her suppression motion.

III. DISCUSSION

A. *Standard of Review*

Our standard of review is well-established. “In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. [Citation.] We review the court’s resolution of the factual inquiry under the deferential substantial-evidence standard. [Citation.] The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review. [Citation.]” (*People v. Hoyos* (2007) 41 Cal.4th 872, 891; see also *People v. Carter* (2005) 36 Cal.4th

1114, 1140; *People v. Maury* (2003) 30 Cal.4th 342, 384; *People v. Ayala* (2000) 24 Cal.4th 243, 279; *People v. Camacho* (2000) 23 Cal.4th 824, 830.)

B. Guiding Principles

“One of the specifically established exceptions to the Fourth Amendment’s warrant requirement is ‘a search incident to lawful arrest.’ ([*Robinson, supra*,] 414 U.S. [at p.] 224) This exception ‘has traditionally been justified by the reasonableness of searching for weapons, instruments of escape, and evidence of crime when a person is taken into official custody and lawfully detained. [Citation.]’ (*United States v. Edwards* (1974) 415 U.S. 800, 802–803 (*Edwards*)). As the high court has explained: ‘When a custodial arrest is made, there is always some danger that the person arrested may seek to use a weapon, or that evidence may be concealed or destroyed. To safeguard himself and others, and to prevent the loss of evidence, it has been held reasonable for the arresting officer to conduct a prompt, warrantless “search of the arrestee’s person and the area ‘within his immediate control’” [Citations.] [¶] Such searches may be conducted without a warrant, and they may also be made whether or not there is probable cause to believe that the person arrested may have a weapon or is about to destroy evidence. The potential dangers lurking in all custodial arrests make warrantless searches of items within the “immediate control” area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved. [Citations.]’ (*United States v. Chadwick* (1977) 433 U.S. 1, 14–15 (*Chadwick*)).”³ (*People v. Diaz* (2011) 51 Cal.4th 84, 90, fn. omitted.)

C. Analysis

In the present case, appellant does not dispute that her arrest was lawful. Nor does she directly dispute the settled rule, stated above, that a search incident to an arrest may be conducted “whether or not there is probable cause to believe that the person arrested may have a weapon or is about to destroy evidence.” (*Chadwick, supra*, 433 U.S. at p.

³ *Chadwick* was overruled in part on another ground in *California v. Acevedo* (1991) 500 U.S. 565, 579.

14; *Diaz, supra*, 51 Cal.4th at p. 90.) Instead, her sole contention is that the search of her purse was not incident to her lawful arrest because she was handcuffed in the back of the patrol car when the search was conducted.

“[W]arrantless searches of luggage and other property seized at the time of an arrest cannot be justified as incident to that arrest either if the ‘search is remote in time or place from the arrest,’ [citation] or no exigency exists. Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest.” (*Chadwick, supra*, 433 U.S. at p. 15.)

In the present case, the trial court concluded that the fact that appellant was in the back of the patrol car when the search occurred is not dispositive because the purse was in her possession when she was arrested. We agree. The evidence shows that appellant had both hands inside her purse and had repeatedly refused to remove them when the arrest was initiated. Therefore, the purse was in use by, and immediately associated with, the person of the arrestee at the time of the arrest. In light of these circumstances, the *Chadwick* limitation on searches of property not immediately associated with the person of the arrestee has no application here.

Our conclusion is supported by relevant California authority involving searches of purses in the possession of the arrestee. (See, e.g., *People v. Harris* (1980) 105 Cal.App.3d 204, 216 (*Harris*); *People v. Flores* (1979) 100 Cal.App.3d 221, 230; *People v. Belvin* (1969) 275 Cal.App.2d 955 (*Belvin*); see also *People v. Ingham* (1992) 5 Cal.App.4th 326, 331.) As the *Harris* court explained: “*Chadwick* centered upon, and its holding was limited to, personal property *not* immediately associated with the person of the arrestee, rather than a woman’s purse which under California law is considered a normal extension of a person subject to search. [Citations.]” (*Harris, supra*, 105 Cal.App.3d at p. 216.) Similarly, the *Belvin* court found that “defendant’s purse, apparently in use by her at the time of her arrest, legally amounted to an extension of her

person and could be searched on her arrest. Whether the search of the purse took place before or after defendant's physical removal to another room we consider wholly fortuitous." (*Belvin, supra*, 275 Cal.App.2d at p. 959.) Appellant simply ignores these cases notwithstanding the fact that many of them were cited in the order denying her suppression motion.

Professor LaFave, in his treatise on searches and seizures, devotes a sentence and a footnote to searches of purses incident to arrest. He states: "[T]he *Robinson* search-incident-to-arrest authority was deemed to extend to . . . containers such as a purse which are 'immediately associated' with the person." (4 LaFave, *Search and Seizure* (4th ed., 2004) § 5.5(a), p. 216; *id.* 2011-2012 Supp., p. 52, fn. omitted.)⁴

Furthermore, as the People contend on appeal, the California Supreme Court has recently confirmed that a delayed search of an item that is immediately associated with the arrestee's person may be justified as incident to a lawful custodial arrest without consideration as to whether an exigency for the search exists. (*Diaz, supra*, 51 Cal.4th 84.) *Diaz* involved a post-arrest search of a cell phone found on the defendant's person. (*Id.* at p. 89.) On appeal from the denial of his motion to suppress, the defendant argued that the search of his cell phone " 'was too remote in time' to qualify as a valid search incident to his arrest. In making this argument, he emphasize[d] that the phone 'was exclusively held in police custody well before the search of its text message folder.' " (*Id.* at p. 91.) In rejecting this argument, the *Diaz* court focused on one "key" question, "whether defendant's cell phone was 'personal property . . . immediately associated with [his] person' [citation] . . ." As the court explained, "[i]f it was, then the delayed warrantless search was a valid search incident to defendant's lawful custodial arrest. If it was not, then the search, because it was ' 'remote in time [and] place from the arrest,' "

⁴ The footnote appended to that sentence cites six non-California appellate decisions and one additional federal appellate decision supporting this summary of the law. See also 4 Witkin, *Cal. Criminal Law* (3d ed., 2000) *Illegally Obtained Evidence*, § 149. No contrary authority is cited by LaFave.

‘cannot be justified as incident to that arrest’ unless an ‘exigency exist[ed].’ [Citation.]” (*Id.* at p. 93.)

Ultimately, the *Diaz* court held that the cell phone was immediately associated with the defendant’s person and, therefore, the warrantless search of the cell phone was valid. (*Diaz, supra*, 51 Cal.4th at p. 93.) As support for this conclusion, the court compared the cell phone to items in other leading cases that have considered this search exception: “[T]he cell phone ‘was an item [of personal property] on [defendant’s] person at the time of his arrest and during the administrative processing at the police station.’ In this regard, it was like the clothing taken from the defendant in *Edwards* and the cigarette package taken from the defendant’s coat pocket in *Robinson*, and it was unlike the footlocker in *Chadwick*, which was separate from the defendants’ persons and was merely within the ‘area’ of their ‘immediate control.’ (*Chadwick, supra*, 433 U.S. at p. 15.) Because the cell phone was immediately associated with defendant’s person, [the officer] was ‘entitled to inspect’ its contents without a warrant (*Robinson, supra*, 414 U.S. at p. 236) at the sheriff’s station 90 minutes after defendant’s arrest, whether or not an exigency existed.” (*Diaz, supra*, 51 Cal.4th at p. 93, fn. omitted.)

Applying *Diaz* to the present case, the key question is whether appellant’s purse was “immediately associated” with her “person” when she was arrested. (*Diaz, supra*, 51 Cal.4th at p. 93.) In its order denying the suppression motion, the trial court found that Deputy Gelhaus detained and arrested appellant at the point when she ignored his instructions and “thrust her hands into the purse.” This finding, supported by the evidence summarized above, establishes that appellant’s purse was immediately associated with her person when she was arrested. Therefore, the search of the purse was lawful whether or not an exigency still existed. (*Diaz, supra*, 51 Cal.4th at p. 93.)

Appellant does not address the *Diaz* decision in her opening brief. Instead, she insists that the search of her purse violates the principles summarized in *Chimel v. California* (1969) 395 U.S. 752 (*Chimel*), and she repeatedly criticizes the trial court and the People for failing to apply *Chimel* to this case. In *Chimel*, police went to the defendant’s home to execute an arrest warrant and then, over defendant’s objection, they

searched his entire home, including the attic and garage, and seized evidence which was subsequently used to convict him of burglary. The *Chimel* court held that, assuming the defendant's arrest was lawful, the warrantless search of his home was not. (*Id.* at pp. 755-768.)

The *Chimel* court rejected, among other things, the contention that the search of defendant's home was justified as incident to his arrest. (*Chimel, supra*, 395 U.S. at pp. 762-763.) The court identified two historical justifications for this exception to the warrant requirement: (1) "it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape" and (2) "it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." (*Id.* at p. 763.) These justifications, the court found, applied to a search of both the arrestee's person and the area "within his immediate control." (*Ibid.*) There was, however, no "comparable justification" for "routinely searching any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." (*Ibid.*)

Appellant fails to persuade us that *Chimel* supports her claim of error. *Chimel* involved the warrantless search of a person's entire home. In that context, the *Chimel* court found that the two historical justifications underlying the search incident to arrest exception did not justify a search of areas outside the defendant's immediate control. The court did not, however, hold or intimate, that an arresting officer must have probable cause to believe that one of those historical justifications apply in order to search the person or the area within his or her control at the time of the arrest.

Appellant contends that the United States Supreme Court has interpreted *Chimel* to preclude a warrantless search incident to an arrest once the arrestee has been restrained and can no longer pose a danger or access evidence at the scene of the arrest. To support this contention, she relies primarily on *Arizona v. Gant* (2009) 556 U.S. 332 (*Gant*), a case involving the vehicular search incident to an arrest exception to the warrant

requirement. (See also *Thornton v. United States* (2004) 541 U.S. 615; *New York v. Belton* (1981) 453 U.S. 454.) *Gant* “adopted a new, two-part rule under which an automobile search incident to a recent occupant’s arrest is constitutional (1) if the arrestee is within reaching distance of the vehicle during the search, or (2) if the police have reason to believe that the vehicle contains ‘evidence relevant to the crime of arrest.’ [Citation.]” (*Davis v. United States* (2011) 564 U.S. ____ [131 S.Ct. 2419, 2425].)

Arguably, the *Gant* rule might have some application outside the context of vehicular searches, for example, in cases involving a “search of the area within an arrestee’s immediate control” (*Diaz, supra*, 51 Cal.4th at p. 96, fn. 9.) However, that rule clearly does not apply to searches of an arrestee’s person or of items immediately associated with that person. (*Ibid.*) Here, as we have already explained, appellant’s purse was immediately associated with her person at the time of her arrest. Therefore, any arguable delay in searching that item during the period it took to physically restrain appellant did not invalidate the search incident to her lawful arrest. (*Diaz, supra*, 51 Cal.4th 84.)

In her reply brief, appellant contends that *Diaz* is not relevant here because “the item that was seized and searched without a warrant was a purse that had been, before her arrest, within appellant’s immediate control, not on her person.” We disagree. The evidence supports the conclusion that appellants’ hands were in her purse when she was arrested. As such, the purse was physically connected to her person and was materially indistinguishable from an item of clothing, or a cigarette package or cell phone stored in a pocket of clothing. (See *Edwards, supra*, 415 U.S. at pp. 802-803; *Robinson, supra*, 414 U.S. at p. 224; *Diaz, supra*, 51 Cal.4th at p. 93.)

All of appellant’s arguments rest on the erroneous factual contention that her purse was not immediately associated with her person. Thus, for example, her heavy reliance on *People v. Leal* (2009) 178 Cal.App.4th 1051 (*Leal*), is misplaced. In *Leal*, police went to the defendant’s home to execute misdemeanor arrest warrants and arrested him at his front door. Then, after placing defendant in the back of a patrol car, police proceeded to conduct a warrantless search of his house and found a firearm with its serial numbers

removed. (*Leal, supra*, 178 Cal.App.4th at pp. 1056-1057.) The *Leal* court held that “[t]he search of defendant’s residence was entirely at odds with *Chimel* and with basic Fourth Amendment principles. It is bedrock Fourth Amendment law that the police may not rummage through a person’s home without a warrant.” (*Leal, supra*, 178 Cal.App.4th at p. 1066.)

The *Leal* court relied on the rule that “ ‘[o]nce an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest.’ ” [Citation.]” (*Leal, supra*, 178 Cal.App.4th at p. 1060.) The court acknowledged that the gun was found in a location that was within the defendant’s immediate control at the time he was arrested, but concluded that the warrantless search of the defendant’s home could not be justified as an incident of his arrest. The court reasoned that, because the gun was not under the defendant’s “immediate control when he was confined in a police car in handcuffs at some distance from the premises,” the historical reasons justifying a warrantless search of the area within the defendant’s control no longer applied. (*Id.* at p. 1060.)

Appellant contends that *Leal* is “directly relevant to the present case, despite minor factual differences.” We strongly disagree. Like *Chimel, supra*, 395 U.S. 752, but unlike the present case, *Leal* addressed the warrantless search of a home. As the *Leal* court observed, “ ‘[w]ith few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.’ [Citation.]” (*Leal, supra*, 178 Cal.App.4th at p. 1059.)

More to the present point, *Leal did not* involve a search of property immediately associated with the person of the arrestee. In that distinct context, the court found that the delayed warrantless search of the defendant’s home after he was placed in a patrol car outside his home could not be justified as a search incident to an arrest. Here, by contrast, appellant’s hands were inside her purse when she was arrested and the search of that purse was incident to her arrest, notwithstanding that officers had to restrain her in the back of a patrol car before the search could be completed a few moments later.

A separate and independent reason supports our conclusion that the trial court's order should be affirmed: the doctrine of "inevitable discovery."

If Deputy Martin had not searched appellant's purse after she was arrested under section 148, handcuffed and placed in the patrol car, clearly that purse would have been taken to the police station with her and examined then and there as a "booking search." That being the case, the drugs contained in the container in her purse would certainly have been found at the police station.

As this court held in *People v. Barnett* (1980) 113 Cal.App.3d 563: "Defendant's contention concerning the unreasonableness of the booking search of her purse, which revealed [a victim's] wallet, is untenable. . . . This court (Div. Three) in *People v. Bundesen* (1980) 106 Cal.App.3d 508, pointed out, at page 515, that booking searches have been repeatedly upheld to maintain jail security, to discover evidence pertaining to the crime charged, and to safeguard the arrestee's personal belongings, and concluded at page 516: 'In order to sustain appellant's contention on appeal this court must hold that *Chadwick* and the California cases which have relied upon *Chadwick* impliedly invalidate booking searches of all closed containers. *Chadwick* requires law enforcement officers to obtain a warrant only if the officers "have reduced luggage or other personal property *not immediately associated with the person of the arrestee* to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence" [Citation.] It can hardly be argued that a wallet is not closely associated with the person of the arrestee. It therefore appears that *Chadwick* and the California Supreme Court cases which relied upon *Chadwick* . . . have not impliedly overruled booking searches at least to the extent the booking search is of personal property "immediately associated with the person of the arrestee" (*Chadwick, supra*, at p. 15)' *Here, defendant's purse was personal property immediately connected with defendant and properly searched to disclose evidence of the crime charged.*" (*Barnett, supra*, 113 Cal.App.3d at pp. 575-576, italics added.)

Under this law and the record in this case, the doctrine of "inevitable discovery" applies here. Simply stated, this means that, even if there had been no search of

appellant's purse while she was handcuffed in the patrol car, the drugs contained therein would inevitably have been discovered when that purse was searched at the police station. Such a search would certainly have taken place, especially considering the relevant facts, e.g., appellant's repeated attempts, contrary to Deputy Gelhaus's warnings, to access her purse and his actions, because of that, to separate her from that purse. (See, regarding the "inevitable discovery" doctrine: *People v. Clark* (1993) 5 Cal.4th 950, 994, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421; *Green v. Superior Court* (1985) 40 Cal.3d 126, 136-139; 4 Witkin, Cal. Criminal Law (4th ed., 2000 and 2011 Supp.) Illegally Obtained Evidence, § 27.)

For all these reasons, we conclude that appellant's motion to suppress the drugs recovered from her purse was properly denied.

IV. DISPOSITION

The judgment is affirmed.

Haerle, J.

I concur:

Lambden, J.

I concur on the basis of the analyses in *United States v. Edwards* (1974) 415 U.S. 800 and *People v. Barnett* (1980) 113 Cal.App.3d 563:

Kline, P.J.