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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

THERESA ANN JONES,

Defendant and Appellant.

G046175

(Super. Ct. No. 11CF2202)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard M. King, Judge. Reversed and remanded.

Arielle Bases, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Theresa Ann Jones challenges her conviction for possession of a controlled substance, cocaine. She contends the court wrongly denied her motion to suppress the cocaine. The Attorney General concedes the error. We reverse.

FACTS

Defendant was a passenger in an SUV that the police pulled over for a traffic violation. The driver told the officer his driver's license had been suspended. The officer asked where the driver was coming from. The driver replied he had just left a gas station. But the officer had seen the SUV leave the parking lot of a motel known for drug sales. The officer ordered the driver to step out of the vehicle, and obtained his consent to search it.

The police "escorted" defendant from the SUV to the back seat of the patrol car, leaving her purse in the SUV. To avoid impounding the SUV, the officer asked the driver if some licensed driver could drive it home. The driver replied defendant could drive it. The officer asked another police officer to find defendant's driver's license. That officer took defendant's purse from the SUV's passenger seat, opened it, removed a wallet, and looked inside. She found a plastic baggie containing 0.3 grams of cocaine.

Defendant was charged with one count of possessing a controlled substance. (See Health & Saf. Code, § 11350, subd. (a).) She moved to suppress the cocaine as the result of an illegal search. (See Pen. Code, § 1538.5.) The court denied the motion. It found the officer had reason to suspect the purse would contain illegal drugs. It further found the police would have inevitably discovered the cocaine during an inventory search.

Two weeks later, defendant pleaded guilty. The court determined incarceration in state prison was inappropriate. It sentenced defendant to serve 268 days in county jail.

DISCUSSION

“On appeal from the denial of a motion to suppress [citation], our standard of review is settled. We defer to the trial court’s express or implied factual findings if supported by substantial evidence, but independently apply constitutional principles to the trial court’s factual findings in determining the legality of the search.” (*People v. Baker* (2008) 164 Cal.App.4th 1152, 1156 (*Baker*).)

The Fourth Amendment guarantees individuals the “right . . . to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” (U.S. Const., 4th Amend.) A warrantless search is unreasonable per se unless it falls within one of the “specifically established and well-delineated exceptions.” (*Katz v. United States* (1967) 389 U.S. 347, 357.) No exception applies here.

First, “the so-called ‘automobile exception’” does not apply to the search of defendant’s purse. (*Baker, supra*, 164 Cal.App.4th at p. 1157; accord *California v. Acevedo* (1991) 500 U.S. 565, 566.) That exception “permits a warrantless search of an automobile and its contents if their search is supported by probable cause.” (*Baker*, at p. 1157.) No probable cause existed here. The Attorney General concedes “the officers did not articulate any suspicion, furtive movements, or other circumstances that could establish probable cause which would have permitted the search of the car and its contents.” The Attorney General does not suggest — contrary to the court’s implicit conclusion — the driver’s claim of having just left a gas station constituted probable cause to search the car and its contents.

Nor is the search justified by the inevitable discovery doctrine. (See *Nix v. Williams* (1984) 467 U.S. 431, 443-444.) An inventory search would have occurred only if the police had impounded the vehicle. (*People v. Torres* (2010) 188 Cal.App.4th 775, 786-787.) But the police wanted to avoid impounding the vehicle, and intended to release it to defendant as long as she was a licensed driver. The officer could have allowed defendant to retrieve her license — the police lacked any reason to search her purse for it. It is circular logic to reason (1) impounding the vehicle would justify searching the purse (during an inventory search), and (2) searching the purse (and finding cocaine) would justify impounding the vehicle. The Attorney General offers no defense of the inevitable discovery theory.

Finally, the police lacked consent to search the purse. The police may obtain consent from “a third party who possesses common authority” over the property. (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 179.) But as the Attorney General acknowledges, *Baker* “is on point.” On facts similar to those here, *Baker* held “there could be no reasonable suspicion that the purse belonged to the driver, that the driver exercised control or possession of the purse, or that the purse contained anything belonging to the driver.” (*Baker, supra*, 164 Cal.App.4th at p. 1159.) *Baker* continued: “a purse is not generally an object for which two or more persons share common use or authority. [Citation.] Here, there is nothing to overcome the obvious presumption that the purse belonged to the sole female occupant of the vehicle” (*Id.* at p. 1160.) The same is true here.

DISPOSITION

The judgment is reversed. The matter is remanded to the court with directions to grant defendant's motion to suppress.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.