



The search of an arrestee's purse does not qualify as a search of the arrestee's person for Fourth Amendment purposes.



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In *United States v. Knapp*, ___ F.3d ___, 2019 WL 1030173 (10th Cir. Mar. 5, 2019), the United States Court of Appeals for the Tenth Circuit was presented with two questions of first impression: (1) Does the search of a purse carried by an arrestee at the time of her arrest qualify as a search of the arrestee's person for Fourth Amendment purposes, and (2) is a warrantless search of the purse that the arrestee was allegedly carrying at the time of her arrest justified as a search incident to arrest as being within an area within her immediate control? The Tenth Circuit answered, "No" to both of these questions. The relevant, undisputed facts are as follows.

Defendant Stacy Jo Knapp called the police to report a theft at a grocery store in Gillette, Wyoming. Officers responded to the call, apprehended the theft suspect, and took a statement from Ms. Knapp in the grocery store. During their investigation, officers gave police dispatch Ms. Knapp's name. Dispatchers discovered that Ms. Knapp had an outstanding warrant for her arrest and informed Officer Zachary Parker. By then, Ms. Knapp had already left the grocery store, and so, Officer Parker went to the grocery store parking lot to find her.

Officer Parker found Ms. Knapp in the driver's seat of a parked pickup truck outside of the store. Officer Parker instructed Ms. Knapp that she could not leave because he had to arrest her. Ms. Knapp exited the truck and followed Officer Parker back into the grocery store. Ms. Knapp voluntarily retrieved her purse from the seat of the truck when she followed Officer Parker back to the grocery store.

Because the officers were still concluding their theft investigation, Officer Parker asked Ms. Knapp to sit on a chair outside a bank office located within the store. Once Ms. Knapp sat down, Officer Parker moved her purse, which was closed by a zipper, a few chairs away from her. Ms. Knapp, then, asked her friend (who was also present) to take her purse so that she would not have to take it to jail. This request raised the officers' suspicions. When her friend - who was originally willing to take her purse - declined after being warned by Officer Jacob Foutch that taking it could be illegal, Ms. Knapp tried to have her boyfriend take it or leave it in the truck that she had been driving.

However, Officer Parker refused to let her leave her purse in the truck. Officer Parker then asked for her consent to search the purse, but Ms. Knapp refused. Thereafter, the officers placed Ms. Knapp in handcuffs behind her back, and Officer Foutch led her outside while Officer Parker carried the purse.

The officers and Ms. Knapp walked to Officer Parker's patrol vehicle, and Ms. Knapp stood in front of the hood facing Officer Foutch. Officer Parker placed the purse on the hood of his patrol car. At that time, Ms. Knapp

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stood near the bumper of the patrol car while the purse was on the hood near the windshield (about three to four feet from Ms. Knapp), and Ms. Knapp stood handcuffed facing away from the car and towards Officer Foutch. Ms. Knapp's friend was on the opposite side of the patrol vehicle.

After Officer Foutch threatened that she would be guilty of a felony for bringing drugs to a detention center, Ms. Knapp told him that she was carrying a pistol in her purse. At that point, the officers searched the purse and found her pistol. When they searched the purse, three officers were present.

Ms. Knapp was subsequently charged with one count of unlawfully possessing a firearm after a felony conviction. Thereafter, Ms. Knapp moved to suppress the firearm on Fourth Amendment grounds, arguing that the search was unreasonable and that her statement acknowledging the presence of the firearm was inadmissible derivative evidence. The Government argued that the search was proper under the search incident to arrest and inevitable discovery exceptions to the Fourth Amendment's warrant requirement.

Without reaching the inevitable discovery issue, the United States District Court for the District of Wyoming concluded that the search incident to an arrest exception applied, and the District Court denied Ms. Knapp's motion to suppress. The District Court, noting that the case presented a "difficult choice," held that the search satisfied both the spatial and temporal proximity requirements essential for a search incident to arrest. The District Court reasoned that Ms. Knapp's purse was approximately three feet away from her when it was searched, and thus, she could have gained access to it. The District Court further reasoned that, any delay between the arrest and the search (some 12 to 13 minutes), was necessitated by the officers conducting a theft investigation and allowing Ms. Knapp to make arrangements for her truck; there were no other intervening events separating the arrest from the search.

Ms. Knapp entered a conditional appeal to the charge of being a felon in possession of a firearm, reserving the right to challenge the District Court's denial of her motion to suppress. On appeal, Ms. Knapp argued: (1) the search of her purse was not truly incident to her arrest given intervening events, and (2) the search incident to arrest exception does not apply because: (a) the police chose to put Ms. Knapp in proximity with her purse, and (b) Ms. Knapp could not have accessed the purse's contents at the time of the search. The Government responded by noting that, given a lawful arrest, Ms. Knapp's first argument was an attack on the District Court's contrary factual finding. The Government further responded that law enforcement officers did not artificially create the circumstances justifying a search of the purse incident to arrest, and law enforcement officers properly searched the purse incident to an arrest because the purse was on Ms. Knapp's person at the time of the arrest.

The Tenth Circuit began its opinion by noting that the Fourth Amendment generally requires law enforcement officers to obtain a warrant prior to conducting a search, but the Tenth Circuit further noted that several exceptions to the warrant requirement exist. One of those exceptions allows arresting officers to search the person of the accused when legally arrested. The Tenth Circuit stated that case law has developed that allows not only the search of the arrestee's person but also the area within the arrestee's "immediate control." This authority is justified by the need to disarm the suspect and to preserve evidence. The Tenth Circuit noted that whether a search is of the person or of the area within the arrestee's "immediate control" (i.e., the area from within which he might gain possession of a weapon or destructible evidence) is a critical distinction because searches of areas within an arrestee's immediate control must be justified on a case-by-case basis by the need to disarm or to preserve evidence. Searches of a person lawfully arrested need not be justified on a case-by-case basis. Because the validity of Ms. Knapp's arrest was not at issue, the appeal turned on (1) whether the search of her purse was one of her person and (2) if the search was not of her person, whether the search was justified because it was within the area from within which she might have gained possession of a weapon or destructible evidence.

As for the first issue, the Tenth Circuit concluded that the search of her purse was not a search of her person for several reasons. First, the Tenth Circuit opined that the animating reasons supporting arresting officers' unqualified authority to search an arrestee's person are less salient in the context of visible, handheld containers such as purses. Second, given that handheld containers such as purses are easily dispossessed, classifying such containers as potentially part of an arrestee's person would necessitate unworkable determinations about what the arrestee was holding at the exact time of her arrest. Third, a holding to the contrary would erode the distinction between the arrestee's person and the area within her immediate control.

Accordingly, the Tenth Circuit rejected the Government's argument that Ms. Knapp's purse was akin to her clothing that the United States Supreme Court has considered to be a part of the arrestee's person that may be searched incident to a lawful arrest. The Tenth Circuit held that the Government's position risked expanding the Supreme Court's limited exception to grant unqualified authority to search an arrestee's grab area. The better formulation, the Tenth Circuit believed, would be to limit such searches to an arrestee's clothing, including containers concealed under or within her clothing. Visible containers in an arrestee's hand-such as Ms. Knapp's purse-are best considered to be within the area of an arrestee's immediate control and must be justified on a case-by-case basis according to the Tenth Circuit.

As for the second issue, the Tenth Circuit determined that the warrantless search of Ms. Knapp's purse was not justified under the circumstances. The Tenth Circuit highlighted that this question depended on whether the purse was within the area that the arresting officers could reasonably have believed that the arrestee could have accessed at the time of the search.

In this case, the Tenth Circuit found that it was unreasonable for the law enforcement officers to have believed that Ms. Knapp could have gained possession of a weapon or destroyed evidence within her purse at the time of the search. In making this determination, the Tenth Circuit looked to the following factors to determine whether an area searched is within an arrestee's grab area: (1) whether the arrestee is handcuffed; (2) the relative number of arrestees and officers present; (3) the relative positions of the arrestees, officers, and the place to be searched; and (4) the ease or difficulty with which the arrestee could gain access to the searched area. Although an officer's exclusive control of an arrestee's article is not dispositive of the permissibility of the search, the degree to which arresting officers have separated an article from an arrestee at the time of the search is an important consideration.

In this case, not only were Ms. Knapp's hands cuffed behind her back, Officer Foutch was next to her, and two other officers were nearby. Moreover, the purse was closed and was three to four feet behind her. Notably, officers had maintained exclusive possession of the purse since placing her in handcuffs. Accordingly, although the District Court noted that the purse was approximately three feet away from her at the time of the search and that Ms. Knapp was not otherwise restrained by the police officers, the Tenth Circuit held that the District Court's finding that Ms. Knapp could, nevertheless, have opened the purse and could have retrieved the firearm from within was erroneous.

Because the search of Ms. Knapp's purse was not one of her person and because the search of her purse was not actually supported by any justifications established by the Supreme Court, the Tenth Circuit held that the search incident to an arrest exception did not apply. Accordingly, the Tenth Circuit reversed the District Court's order denying Ms. Knapp's motion to suppress.