

SUPREME COURT OF NORTH DAKOTA

State v. Tognotti

663 N.W.2d 642 (N.D. 2003) · No. No. 20030015 · Decided June 17, 2003

SUMMARY

The Supreme Court of North Dakota considered whether police may search a nonarrested passenger's purse during a vehicle search incident to the arrest of another occupant. The court held that such a search is permissible when the purse was voluntarily left in the vehicle, but not when the officer directed the passenger to leave it there. The court reversed the suppression order and remanded for a limited evidentiary hearing on whether the officer gave that instruction.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Maring, Justice; Gerald W. Vande Walle, Chief Justice; Carol Ronning Kapsner, Justice; William A. Neumann, Justice; Dale V. Sandstrom, Justice
JURISDICTION	North Dakota
DECIDED	June 17, 2003
DOCKET	No. 20030015
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed from an order granting Tognotti's motion to suppress evidence in a prosecution for possession of drug paraphernalia.
STANDARD OF REVIEW	The Supreme Court deferred to the trial court's factual findings and resolved evidentiary conflicts in favor of affirmance, affirming unless the decision lacked sufficient competent evidence or was against the manifest weight of the evidence. Questions of law were fully reviewable.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	State of North Dakota v. Jessica Lynn Tognotti

TOPICS

- search and seizure
- fourth amendment
- suppression of evidence
- warrant requirement
- appellate procedure

PRACTICE AREAS

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether, incident to the valid arrest of one occupant of a vehicle, an officer may search a purse belonging to a nonarrested occupant when the purse was in the vehicle at the time of the arrest and was voluntarily left there.
2. Whether the Fourth Amendment permits the officer to search the nonarrested occupant's purse when the officer instructed the occupant to leave it in the vehicle.
3. Whether the trial court's factual finding that Tognotti left her purse in the vehicle at the officer's direction was supported by sufficient competent evidence.

HOLDINGS

1. Incident to a valid arrest of an occupant of a vehicle, the arresting officer may search the contents of a nonarrested occupant's purse when the purse was in the vehicle at the time of the arrest and the occupant voluntarily left it in the vehicle.
2. If an officer instructs a nonarrested occupant to leave her purse in the vehicle, the officer may not search the purse incident to the arrest of another occupant; such a search violates the occupant's Fourth Amendment rights.
3. The trial court's finding that Tognotti left her purse in the vehicle at the officer's direction was unsupported by the record and against the manifest weight of the evidence; the issue required a limited evidentiary hearing.

KEY QUOTATIONS

“We hold that, incident to a valid arrest of an occupant in a vehicle, the arresting officer can search the contents of a nonarrested occupant's purse, if the purse was in the vehicle at the time of the arrest and the occupant was not instructed by the officer to leave it in the vehicle upon exiting.” (at 643)

“There is no automatic search rule for companions of an arrestee.” (at 648)

“We conclude the factual issue whether Officer Wahl instructed Tognotti to leave her purse in the vehicle or whether she voluntarily left it there when the officer asked her to exit the vehicle is both relevant and dispositive of the motion to suppress evidence in this case.” (at 650)

FACTUAL BACKGROUND

At approximately 10:15 p.m., Officer Todd Wahl stopped a vehicle driven by Jessica Tognotti because its headlights were off. After checking the occupants' identities, the officer discovered an outstanding child-support warrant for passenger Wendell Decoteau, arrested him, and placed him in the patrol car. The officer asked Tognotti and her husband to exit and searched the vehicle, including Tognotti's purse, which was on the driver's-side front seat; the purse contained suspected methamphetamine residue and drug paraphernalia. The record did

not establish whether Tognotti voluntarily left the purse in the vehicle or did so because the officer instructed her to leave it there.

PROCEDURAL HISTORY

After an officer arrested a passenger in Tognotti's vehicle, he searched the vehicle, including Tognotti's purse, and found suspected drug paraphernalia. The trial court granted Tognotti's suppression motion, finding the search impermissible under *State v. Gilberts*. The North Dakota Supreme Court reversed and remanded for a limited evidentiary hearing concerning whether Tognotti voluntarily left the purse in the vehicle or was instructed to leave it there.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was instructed to hold a limited evidentiary hearing on whether Officer Wahl instructed Tognotti to leave her purse in the vehicle or whether she voluntarily left it there, and then redetermine the motion to suppress. If the purse was voluntarily left in the vehicle, the search was permissible; if the officer ordered her to leave it, the motion to suppress should be granted.

CASES CITED

- *State v. Gilberts*, 497 N.W.2d 93 (N.D. 1993)
- *State v. Haverluk*, 2000 ND 178, 617 N.W.2d 652
- *State v. Gregg*, 2000 ND 154, 615 N.W.2d 515
- *State v. Lanctot*, 1998 ND 216, 587 N.W.2d 568
- *Chimel v. California*, 395 U.S. 752, 763 (1969)
- *New York v. Belton*, 453 U.S. 454, 457-61 (1981)
- *State v. Erbele*, 554 N.W.2d 448, 451 (N.D. 1996)
- *State v. Wanzek*, 1999 ND 163, 598 N.W.2d 811
- *Wyoming v. Houghton*, 526 U.S. 295, 302-06 (1999)
- *State v. Ray*, 260 Neb. 868, 620 N.W.2d 83, 89 (2000)
- *State v. Lopez*, 198 Ariz. 420, 10 P.3d 1207, 1210-11 (App. 2000)
- *State v. Matejka*, 241 Wis. 2d 52, 621 N.W.2d 891, 896 (2001)
- *State v. Steele*, 613 N.W.2d 825, 830 (S.D. 2000)
- *State v. Parker*, 88 Wash. App. 273, 944 P.2d 1081, 1085 (1997)
- *People v. McMillon*, 892 P.2d 879, 884 (Colo. 1995)
- *People v. Mitchell*, 36 Cal. App. 4th 672, 42 Cal. Rptr. 2d 537, 540 (1995)
- *State v. Moore*, 619 So. 2d 376, 377 (Fla. Dist. Ct. App. 1993)
- *State v. Heitzmann*, 2001 ND 136, 632 N.W.2d 1

- State v. Newsom, 132 Idaho 698, 979 P.2d 100, 102 (1998)
- State v. Grant, 361 N.W.2d 243, 247 (N.D. 1985)
- State v. Boyd, 275 Kan. 271, 64 P.3d 419, 427 (2003)
- State v. Seitz, 86 Wash. App. 865, 941 P.2d 5, 8 (1997)
- State v. Holland, 135 Idaho 159, 15 P.3d 1167, 1171 (2000)

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