



POLICE / PROSECUTOR UPDATE

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In the July issue of the PPU we looked at a U.S. Supreme Court case in which the court held that if police have probable cause to search a lawfully stopped vehicle, they may search all containers in the vehicle that could conceal the object of the search, even the belongings of a passenger. In August, the Court of Appeals decided whether the result would be the same where the search is based not on probable cause but rather on the consent of the driver.

The facts indicate that police stopped a van for a traffic infraction. There were four people in the van, three males and a female (the defendant). A computer check indicated that the driver had a number of prior charges but no outstanding warrants. He was asked for permission to search the vehicle. He asked what the officers were looking for, and they said they wanted to see if there were any drugs or guns in the van. The driver consented to the search. At that point all passengers exited the vehicle. During the search a purse was discovered on the floor behind the driver's seat where the defendant had been sitting. It belonged to the defendant. In the purse were found marijuana and methamphetamine.

There was no doubt that the police did not have probable cause to search the van or its contents. Therefore, the search of the purse could be justified only by authority of the driver's consent to search the van. The State argued that the search of the purse did not exceed the scope of the driver's consent as defined by the object of the search - drugs or guns. However, the question was not whether the purse was within the scope of the consent but whether the driver had actual or apparent authority to consent to a search of a passenger's purse.

With regard to *actual authority* to consent, a valid consent may be given by a third party who possesses common authority over the property at issue, which is generally shown by joint access or control of the property for most purposes. Here, there was no evidence that the driver in any way owned, used, possessed, or controlled the defendant's purse. Therefore, he did not have actual authority to consent to its search.

The State also argued that the driver had *apparent authority* to consent to the search of the purse. Apparent authority exists where the officers who conduct the search *reasonably believe* that the person from whom they obtained consent had the actual authority to grant the consent. Thus, the question became whether it was reasonable for the officers to believe that the driver had actual authority to consent to a search of the defendant's purse. The court said it was not. They knew that the purse was a woman's handbag, and the defendant was the only woman in the vehicle. Also, they found the purse on the floor in the back seat where the defendant was sitting. Therefore, the officers' belief was unreasonable, especially since "a purse is generally not an object for which two or more persons share common use or authority."

Also, because the apparent authority doctrine is only applicable when the facts believed by the officers would justify the search *as a matter of law*, "a mistaken belief as to the law, no matter how reasonable, is not sufficient." Therefore, even if the officers believed that the driver had authority to control or open the purse, the apparent authority doctrine would not apply.

Finally, the State urged that the defendant's consent was implied by her failure to object to the search. However, this argument failed because consent may not reasonably be implied from a passenger's silence or failure to object where the officers did not expressly or impliedly ask for the passenger's consent to search.

In conclusion, the court held that the consent of a driver to a warrantless search of his vehicle does not allow the police to search a passenger's purse found in the vehicle. (Comment: A purse is a very personal type of container for which it would not be reasonable to believe a male could consent to its search. It would seem to be a fair statement, though, that there could be many types of containers for which it might be reasonable to believe that the driver of a vehicle could legally consent to search in a situation such as this one).

State v. Friedel, 714 N.E.2d 1231 (Ind. Ct. App. 1999).