

May 24, 2011

## **A Woman's Purse and its Contents Protected from Search**

By Collins & Collins

It is well established that a woman's purse is protected against unlawful search and seizure. Time and time again, the courts have ruled that "a purse is the type of container with which a person possesses the highest expectation of privacy."

The limits of these protections were tested in the recent New Mexico Court of Appeals case of *State v. Tiffany Bond*. In the *Bonds* case, the defendant was convicted on one count of possession of a controlled substance, fourth degree felony. The defendant had entered a conditional plea reserving her right to challenge the legality of the search and seizure of the evidence against her.

In a nutshell, Ms. Bond was a passenger in a stolen vehicle. The stolen car was tracked by GPS and pulled over. During the ensuing investigation, the police officer turned his sights on Ms. Bond's purse. Ms. Bonds acknowledged that the purse was hers but disavowed ownership of a smaller black bag in the purse which was visible to the officer. Due to Ms. Bond's denial of ownership of the black bag, the officer removed it from her purse, searched it and found the meth with which she was charged.

The defendant on appeal argued that she had not consented to the search of her purse and therefore the search and seizure of the black bag was illegal under the 4th Amendment and Article II, Section 10 of the New Mexico Constitution. The state did not deny that there had been no consent to search the purse or the black bag. However, the state argued that because Ms. Bonds had disavowed ownership, no consent to the search was necessary to search the black bag. To hedge its bets, the State argued in the alternative that the search was legal under the "plain view doctrine."

The Court of Appeals disagreed on both grounds stating the search was illegal under the 4th Amendment. As such, the Court found it unnecessary to enlist the broader protections of New Mexico's Constitution.

### DISCLAIMER

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.albuquerquecriminallawyerblog.com/>

The Court began with the basic premise that warrantless searches are presumed unreasonable with the burden on the State to prove the search reasonable. The Court shot down the argument of the State that denial of ownership necessarily waives the need for consent. The Court recognized case law to the contrary. However, in this case, the Court recognized that the denial of ownership was likely simply an attempt by the defendant to escape responsibility for the drugs in case they were discovered. The Court also recognized that disavowal of ownership of the black bag did not waive protections over the purse itself from which the bag was seized.

The Court finally addressed the State's "plain view" arguments in short order. The plain view doctrine requires that the evidence be not only plainly visible to the officer but also that the incriminating nature of the evidence be plainly apparent. Clearly, a black bag by itself does not and should not elicit suspicion sufficient for search and seizure and the Court ruled as much.

In short, a suspect admitting ownership of a purse but denying ownership to the contents does not give an officer the right to search the contents. It is not hard to imagine how a contrary ruling would lead to significant abuses by law enforcement.

**DISCLAIMER**

**Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958**

<http://www.albuquerquecriminallawyerblog.com/>