

THE ARIZONA SUPREME COURT TODAY ISSUED A DECISION ADDRESSING WHETHER A WARRANT AUTHORIZING THE SEARCH OF A HOME ALLOWED POLICE TO SEARCH A PURSE BELONGING TO A PERSON NOT NAMED IN THE WARRANT.

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State of Arizona v. Gilstrap

Supreme Court of the State of Arizona, August 20, 2014

The Arizona Supreme Court today issued a decision addressing whether a warrant authorizing the search of a home allowed police to search a purse belonging to a person not named in the warrant. The Court concluded that, under the facts presented, such search was permissible.

Police executed a warrant to search a Kingman, Arizona residence for drugs and drug paraphernalia. The warrant identified two individuals believed to be present. During execution of the warrant, Ms. Gilstrap, not named in the warrant, was at the residence taking a shower. Gilstrap was escorted to another room. An officer removed a purse from the bathroom and placed it in an adjoining bedroom. While searching that bedroom, another officer searched the purse, which contained Gilstrap's driver's license, baggies of marijuana, methamphetamine and methamphetamine residue, packages of red and blue baggies, and a scale. Gilstrap was charged with possession of methamphetamine for sale, possession of marijuana and possession of drug paraphernalia.

Gilstrap moved to suppress the evidence found in her purse because she was only on the premises "incidentally" and was not named in the warrant. Courts generally use one of three approaches when analyzing whether a premises search warrant allows the search of a visitor's belongings: the possession test; the relationship test; and the actual-notice test. Pursuant to the possession test, officers executing a warrant may search visitors' personal items that are not in their actual possession. The relationship test focuses on the relationship between the individual and the premises and permits a search if the individual has a special relation to the place such as a resident or co-owner as opposed to just a temporary status. The actual-notice test focuses on the notice given to police regarding an item's ownership before it is searched and permits the search of an item that may contain the object of a warrant unless the officers are put on notice that the item belongs to a non-resident. The trial court, noting that Arizona had not yet adopted any test, held the search was proper under either the possession test or the relationship test. The court of appeals affirmed, applying the same reasoning.

The Arizona Supreme Court granted review to articulate the test for Arizona, and adopted the possession test, based on its simplicity, precision and the guidance it provides to police and courts. Since Gilstrap did not physically possess her purse when the police officers found it, they were authorized to search it for the items listed in the warrant. The United States Supreme Court has previously held that a valid warrant authorizes the search of any container on the premises, but does not authorize the search of a person not named in the warrant.

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