



## Administrative Office of the Courts

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### **Supreme Court stresses the importance of creating an adequate record to justify a warrantless search**

SANTA FE – The state Supreme Court today overturned a Clovis woman’s drug possession conviction because a warrantless search of her purse by police violated constitutional protections against unreasonable searches.

In a unanimous opinion, the Court reminded prosecutors and district courts of “their obligations to make a sufficient record when considering the propriety of warrantless searches and when taking judicial notice” of facts in a case.

The Court ordered the case back to the district court in Curry County to vacate Kaylee Ortiz’s felony conviction and sentence for possession of a controlled substance.

Clovis police arrested Ortiz on a warrant for criminal trespass. They handcuffed her and then searched a purse that had been hanging on her shoulder. Police found a small knife and two flashlights, one of which they opened and it contained a small baggie of methamphetamine. Ortiz was then charged with possession of a controlled substance. A jury convicted Ortiz in 2015, and she received a suspended sentence of 18 months of probation.

Under the law, warrantless searches are presumed to be unreasonable and the state has an obligation to prove they are reasonable under the circumstances. Court rulings over the years have recognized certain exceptions in which police may conduct a search without a warrant. In appealing her conviction, Ortiz contended that the state failed to prove the warrantless search of her purse was reasonable under one of those exceptions — a search following an arrest. The Supreme Court agreed.

“In this case, we hold that the State failed to meet its burden to demonstrate the reasonableness of the officers’ search of Defendant’s purse because the State failed to put forth any evidence that the purse was within the Defendant’s immediate control such that Defendant presented a danger of gaining possession of a weapon or was in a position to destroy evidence of her arrest,” the Court wrote in an opinion by Justice Julie J. Vargas. “Despite the State’s arguments to the

contrary, there is limited evidence in the record as to the location of the purse at the time of arrest, whether it was secured, its distance from Defendant, how she was handcuffed such that she would be able to access the purse, and whether and why the officers had concerns for their own safety or the destruction of evidence.”

The district court ruled that the search was proper. It also concluded that the methamphetamine would have been lawfully found when Ortiz was booked into jail and her purse inventoried by authorities, making the drug evidence admissible at trial under a legal principle known as the “inevitable discovery” doctrine. The district court took judicial notice of the jail’s inventory procedure in making its finding.

But the Supreme Court determined that the “district court did not properly take judicial notice of the jail’s inventory process because it failed to establish on the record how the inventory process is the subject of common and general knowledge or is well established and settled.”

As a result, the Court wrote, “there is no evidence in the record to establish the jail’s inventory process and whether it would have inevitably discovered the methamphetamine in Defendant’s purse. Further, there is no evidence that the jail’s procedures would have included a search of the flashlights found in Defendant’s purse during an inventory search.”

The Court’s opinion affirmed a decision of the state Court of Appeals, which had concluded that the drug evidence was inadmissible.

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To read the decision in *State v. Ortiz*, No. S-1-SC-37277, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/522033/index.do>