



In this interlocutory appeal, Appellant-Defendant Ciara Miller challenges the trial court's denial of her motion to suppress certain evidence. Upon appeal, Miller alleges that the evidence was procured in violation of her rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On May 28, 2008, Indianapolis Metropolitan Police Officer Brent McFerran attempted to serve a warrant at an apartment complex in the 8800 block of East 42nd Street. As Officer McFerran and two other officers walked around a building, they observed a large gathering of persons around a vehicle. Officer McFerran observed the gathering begin to disperse, at which point he saw Miller drop a white purse inside of the vehicle. Officer McFerran asked those present, including the female sitting in the vehicle's driver's seat, for identification. This female, who said she was Miller's cousin, gave the officers permission to look inside the vehicle but stated that the white purse was Miller's.

Officer McFerran performed a search of the vehicle. Upon performing the search, Officer McFerran picked up Miller's purse, which was lying just inside the driver's side door, and to the left, "right by" the driver's seat and the door jamb. Tr. p. 9. Miller's purse, which was approximately fourteen inches in diameter, was open. Officer McFerran saw a baggie containing a green, leafy substance, alleged to be marijuana, inside of the purse.

On May 21, 2008, the State charged Miller with Class A misdemeanor possession of marijuana. On June 16, 2008, Miller moved to suppress all evidence seized pursuant to the alleged search of her purse. Following a July 28, 2008 suppression hearing, the trial court denied Miller's motion. On July 29, 2008, following Miller's petition, the trial court certified the denial of Miller's motion to suppress for interlocutory appeal. On September 22, 2008, this court accepted jurisdiction.

### **DISCUSSION AND DECISION**

Upon appeal, Miller claims that the alleged marijuana was procured in violation of her rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution.<sup>1</sup> Miller argues, and the State concedes, that Officer McFerran's discovery of the alleged marijuana cannot be justified on the basis of a valid consent search because the driver's consent to search the vehicle did not extend to Miller's purse. *See State v. Friedel*, 714 N.E.2d 1231, 1241-43 (Ind. Ct. App. 1999) (holding that a driver's consent to search a vehicle does not extend to the search of a passenger's purse). At issue, therefore, is whether Officer McFerran's discovery of the alleged marijuana falls within the plain view exception to the warrant requirement.

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<sup>1</sup> While Miller separately identifies the Search and Seizure Clause of the Indiana Constitution, Article 1, Section 11, and its reasonableness requirement, she does not present any claim or argument that Section 11 requires a different analysis or yields a different result than that produced under the federal Fourth Amendment. Because Miller cites no separate argument specifically treating and analyzing a claim under the Indiana Constitution distinct from her Fourth Amendment analysis, we resolve her claim on the basis of federal constitutional doctrine only. *See Myers v. State*, 839 N.E.2d 1154, 1158 (Ind. 2005).

We review de novo a trial court's ruling on the constitutionality of a search or seizure. *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008). However, we give deference to a trial court's determination of the facts, which will not be overturned unless clearly erroneous. *Id.* Thus, we do not reweigh the evidence, but consider conflicting evidence most favorably to the trial court's ruling. *Id.*

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV (quoted in *Warner v. State*, 773 N.E.2d 239, 245 (Ind. 2002)). Searches and seizures “conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.” *Warner*, 773 N.E.2d at 245 (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993) (internal citations omitted)).

One such exception is the plain view exception, which provides that if police are lawfully in a position from which to view the object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant. *Id.* (citing *Horton v. California*, 496 U.S. 128, 135-37 (1990)).

In contesting the applicability of the plain view exception, Miller argues that her purse, as it was positioned in the vehicle where Officer McFerran first saw it, exhibited no immediately apparent incriminating character, and further, that Officer McFerran did not have a lawful right of access to it. Although the incriminating nature of the purse's

contents and Officer McFerran's lawful access to them became apparent once Officer McFerran picked up the purse and viewed its contents, Miller argues that this action constituted a separate search, placing the discovery of the purse's contents outside of the plain view doctrine.

It is well-recognized that a separate search occurs, and the plain view doctrine does not apply, when during an otherwise permissible observation or search, the object at issue is manipulated by investigating authorities in order to expose its incriminating character. In *Shultz v. State*, 742 N.E.2d 961, 965 (Ind. Ct. App. 2001), *trans. denied*, this court determined that an investigating officer was permitted to shine his flashlight upon a defendant's vehicle, which was sitting in or near his driveway, in search of its vehicle identification number ("VIN"), and that such activity did not implicate, much less violate, the defendant's Fourth Amendment rights. 742 N.E.2d at 964. This court further concluded, however, that the officer's subsequent use of a glove to wipe dirt off of the wheel well to reveal part of the VIN, exposing otherwise concealed information, did constitute a separate search in violation of the defendant's Fourth Amendment rights. *Id.*

*Shultz* relied heavily upon *Arizona v. Hicks*, 480 U.S. 321, 324-25 (1987), wherein the United States Supreme Court determined that an investigating officer, who was performing a valid exigent-circumstances search in an apartment, was within the bounds of this search to record readily apparent serial numbers located on a turntable inside the apartment. The Supreme Court further concluded, however, that the officer's moving the turntable on mere reasonable suspicion grounds, exposing to view otherwise concealed

information, constituted a separate search and violated the defendant's Fourth Amendment rights. *Id.* at 324-25.

While it is apparent from both *Schultz* and *Hicks* that manipulating an object may constitute a separate search precluding the application of the plain view doctrine, in both of those cases, the manipulation of the object at issue had as its purpose the further investigation of that object. It makes sense, therefore, that such manipulation constituted a separate search.

Here, in contrast, nothing from the record indicates that Officer McFerran's picking up the purse while searching the vehicle was in a separate effort, unrelated to the authorized search of the vehicle, to investigate the purse. As the *Hicks* court observed, a separate search occurs when an investigating officer takes action "unrelated to the objectives of the authorized intrusion" which exposes otherwise concealed information. 480 U.S. at 325. The record demonstrates that Officer McFerran simply moved the purse, which was positioned between the driver's side door jamb and the driver's seat, incident to his valid search of the vehicle, presumably for purposes of facilitating this search. Apart from his "picking up" the purse, no evidence suggests that Officer McFerran manipulated it in any way. *See Bond v. United States*, 529 U.S. 334, 338-39 (2000) (distinguishing "feel[ing] the bag in an exploratory manner," which constituted a search, from mere "touching" and "handling" of bag). In sum, we are unpersuaded that the mere fact of Officer McFerran's handling an open purse, in a manner facilitating his authorized search of the vehicle where it was located, demonstrated that he separately searched the purse. *See Matson v. State*, 844 N.E.2d 566, 571 (Ind. Ct. App. 2006),

(concluding, albeit under “open view” analysis, that no search occurred when officers, who had valid consent to enter area, removed defendant’s open bag—in which he had an expectation of privacy—and observed a gun inside), *trans. denied*.

Having concluded that Officer McFerran’s picking up the purse did not constitute a separate search, we address the elements of the plain view doctrine, namely whether Officer McFerran was lawfully in a position to view the alleged marijuana, whether its incriminating character was immediately apparent, and whether Officer McFerran had a lawful right of access to it. *Warner*, 773 N.E.2d at 245. At the time in question, Officer McFerran was conducting a valid consent search of the vehicle. The purse was a full fourteen inches in diameter, and it was open. Upon carrying out his authorized vehicle search, Officer McFerran picked the purse up, whereupon it displayed a baggie of what Officer McFerran, having been trained in the detection of marijuana, believed to be marijuana. Given these facts, which satisfy the above elements, we conclude that Officer McFerran’s discovery of the alleged marijuana fell under the “plain view” exception to the warrant requirement, and that the trial court did not abuse its discretion in denying Miller’s motion to suppress.<sup>2</sup>

The judgment of the trial court is affirmed.

CRONE, J., and BROWN, J., concur.

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<sup>2</sup> Without deciding the issue, we question whether an individual who leaves her open purse in another person’s vehicle has a reasonable expectation of privacy to the purse’s contents.