

IN THE SUPREME COURT OF THE STATE OF NEVADA

TINA LYNNE KAIBAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39035

FILED

APR 10 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced appellant Tina Lynne Kaiban to serve a prison term of 12-30 months, and ordered her to pay a fine of \$1,000.00.

Kaiban's sole contention is that the district court erred in denying her pretrial motion to suppress evidence seized at the time of her arrest.<sup>1</sup> Kaiban argues that: (1) the driver's consent to the search of the vehicle, in which she was a passenger, did not necessarily include consent to search her purse; and (2) the police officers did not have probable cause to believe there were drugs in the vehicle, and therefore, no justification existed to search the vehicle without a warrant. We disagree.

Warrantless searches are per se unreasonable unless the search falls under one of few exceptions.<sup>2</sup> This court has stated that both

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<sup>1</sup>Kaiban entered a conditional guilty plea which preserved her right to appeal the district court's denial of the motion to suppress. See NRS 174.035(3).

<sup>2</sup>See Alward v. State, 112 Nev. 141, 151, 912 P.2d 243, 249-50 (1996).

probable cause and exigent circumstances must exist to justify the warrantless search of a vehicle.<sup>3</sup> When probable cause exists to believe that drugs may be inside the vehicle, “it is reasonable for police officers . . . to examine packages and containers without a showing of individualized probable cause for each one. A passenger’s personal belongings . . . are ‘in’ the car, and the officer has probable cause to search for contraband in the car.”<sup>4</sup> An exigent circumstance exists when the occupants of the vehicle have been arrested, thereby causing “the vehicle to be ‘left on the roadside subject to a police inventory search and later impoundment.’”<sup>5</sup> In Fletcher v. State, this court further explained the exigency: “It would be unreasonable to require the police to remain at the scene of the arrest pending the arrival of a warrant or assign an officer to accompany the tow truck to an impound yard pending the arrival of a warrant.”<sup>6</sup>

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<sup>3</sup>Barrios-Lomeli v. State, 113 Nev. 952, 957, 944 P.2d 791, 793-94 (1997); accord State v. Harnisch, 114 Nev. 225, 228-29, 954 P.2d 1180, 1183 (1998) (holding that the Nevada Constitution requires both probable cause and exigent circumstances in order to justify a warrantless search of a vehicle, even though federal constitutional law had abandoned the exigency requirement). See also Carroll v. United States, 267 U.S. 132, 153-54 (1925).

<sup>4</sup>Wyoming v. Houghton, 526 U.S. 295, 302 (1999); see also United States v. Ross, 456 U.S. 798, 824-25 (1982). The Supreme Court in Houghton held that “police officers with probable cause to search a car may inspect passengers’ belongings found in the car that are capable of concealing the object of the search.” 526 U.S. at 307.

<sup>5</sup>Hughes v. State, 116 Nev. 975, 980, 12 P.3d 948, 951 (2000) (quoting Fletcher v. State, 115 Nev. 425, 430, 990 P.2d 192, 195 (1999)).

<sup>6</sup>115 Nev. at 430, 990 P.2d at 195.

We conclude that the district court did not err in denying Kaiban's pretrial motion to suppress evidence seized at the time of her arrest.<sup>7</sup> Kaiban was a passenger in a vehicle stopped by police because it had no front or rear license plates. The driver of the vehicle did not have a valid driver's license, insurance, or registration for the vehicle. The police officer noticed that the driver's eyes were red, and the officer also smelled alcohol on the driver. The officer performed a field sobriety test, during which the driver told the officer that he smoked marijuana the night before. The driver consented to a search of the vehicle and was taken into custody.

Meanwhile, another officer arrived at the scene and conducted a wants and warrant check on Kaiban, which indicated that "she could possibly have a misdemeanor warrant." A pat-down search of Kaiban revealed "a glass pipe with a white, powdery residue inside, indicative of drug use." Kaiban was then taken into custody for possession of drug paraphernalia. When asked if she had any other contraband, Kaiban stated that there were more drugs in the vehicle. With Kaiban secured in a patrol car, the subsequent search of the vehicle uncovered methamphetamine hidden in Kaiban's purse. Therefore, we conclude that

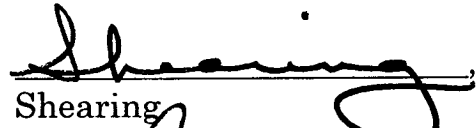
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<sup>7</sup>See State v. Johnson, 116 Nev. 78, 80-81, 993 P.2d 44, 45-46 (2000) (holding that findings of fact in a suppression hearing are reviewed under a deferential standard and will not be disturbed on appeal if supported by substantial evidence) (citing Rice v. State, 113 Nev. 425, 427, 936 P.2d 319, 320 (1997); Hayes v. State, 106 Nev. 543, 550 n.1, 797 P.2d 962, 966 n.1 (1990)); see also New York v. Belton, 453 U.S. 454 (1981) (when an officer has made a lawful custodial arrest of an occupant of a vehicle, the officer may, as a contemporaneous incident of that arrest, search the passenger compartment of the vehicle, including any containers found within the passenger compartment).

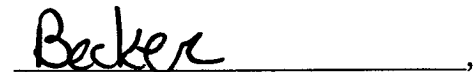
substantial evidence was proffered by the State at the suppression hearing to believe that probable cause and exigent circumstances were present, thus justifying the warrantless search of the vehicle.<sup>8</sup>

Having considered Kaiban's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

Shearing  
 J.  
Leavitt

 J.  
Becker

cc: Hon. Steven R. Kosach, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>8</sup>We therefore decline to address Kaiban's argument that the driver's consent to the search of the vehicle could not include her purse, where the drugs were found, because he did not have common authority over her purse and could not consent to such a search.