[Cite as *State v. Green*, 2023-Ohio-4503.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

KLARYSA GREEN,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 CO 0012

Criminal Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case No. 21 CR 628

BEFORE:
Carol Ann Robb, David A. D'Apolito, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. Vito J. Abruzzino, Prosecuting Attorney, *Atty*. *Shelley M. Pratt*, Assistant Prosecuting Attorney, Columbiana County Prosecutor's Office*,* for Plaintiff-Appellee and

Atty. Lydia Evelyn Spragin, for Defendant-Appellant.

Dated: December 8, 2023

Robb, J.

{¶1} Defendant-Appellant Klarysa Green appeals after pleading no contest in the Columbiana County Common Pleas Court. She contends the court erred in denying her motion to suppress, claiming no exceptions to the warrant requirement applied to the search of a bag she attempted to carry away from the scene of an investigatory stop during which the driver was arrested. The state argues the bag was properly searched under the automobile exception and/or the search incident to arrest exception. For the following reasons, the trial court's decision is affirmed.

STATEMENT OF THE CASE

{¶2} Appellant was indicted on drug offenses arising out of an April 4, 2021 investigatory stop of her and her driver. (12/15/21 Ind.). She filed a motion to suppress evidence found in a bag she attempted to carry away from the scene. At the suppression hearing, the state supplied dash cam and body cam videos for the court's review. A Salem police officer testified he was behind a vehicle that pulled over and parked on the side of the road in front of a house, at which point the driver got out of the car and rummaged in the trunk. The officer recognized the driver as a person who had no operator's license. (Tr. 11). There was no front seat passenger, but Appellant was sitting in the back seat of the vehicle; the officer recognized her as well. (Tr. 12-13).

{¶3} After passing the car, the officer looped around through an alley running between houses. While confirming through his official database that the driver's license was suspended, the officer saw a pedestrian with a dog approach the vehicle. (Tr. 12). This pedestrian "was known for being involved in drug use and known to congregate in known drug areas." (Tr. 13). The officer witnessed a "hand-to-hand transaction" whereby Appellant and the pedestrian each handed something to the other; the officer suspected the exchange of narcotics for money. (Tr. 13-14). The officer then overheard the pedestrian declare as he walked away, "The cops are back there so be careful." (Tr. 15).

{¶4} The officer activated his lights and approached the vehicle. The driver got out of the driver's seat and started to walk but was told to remain in the vehicle. The driver insisted he was not driving. He refused to put the window down more than a few inches and was reluctant to provide his personal information, even though the officer

already called him by his name; he alternately ignored the officer and spoke very quietly as if to purposely delay the officer. (Tr. 16). On the video, the driver can be seen conferring with Appellant; she would intermittently speak to the driver and then face the opposite side of the car while using her phone. The driver took out a cigarette, used his phone, and started playing music while the officer was attempting to hear him speak his social security number. The driver avoided looking at the officer, which the officer noted while opining he was "acting weird."

{¶5} The video shows Appellant in the backseat of a two-door car with the front passenger seat folded forward. The officer noticed a small black backpack between Appellant's legs. (Tr. 17-18). The officer asked Appellant for her Social Security number, which she provided. A back-up K-9 unit arrived on scene while the officer was ordering the driver out of the vehicle. The driver was very resistant during the pat down and kept moving his hands. He then fought when the officer attempted to handcuff him.

{¶6} Appellant can be seen on video reaching toward the officer's face or toward the driver while they struggled in the driver's door opening. (Ex. A, cruiser cam at 8:47). The other officer assisted. Driver's continued struggle caused the group to stumble further into the roadway. They ended up on the ground behind the vehicle.

{¶7} While the officers continued the struggle to handcuff the driver on the ground, Appellant got out of the car, looked at the officers in the scuffle, reached back into the car for the black bag, started to leave, reached in again for another item, walked around the front of the vehicle, started to cross the street, and then retrieved something from the ground where the driver had been protesting. When she first started exiting the car, the officer instructed her to stop and sit on the ground, but she ignored him. (Tr. 18, 49). When she reached back in the car, the officer yelled, "Klarysa, get out of the car and sit on the ground." She refused to comply. (Tr. 18-19, 49, 55-56). When the officer was able to leave the driver on the ground with the back-up officer, he approached Appellant in the street. He decided to arrest her for obstructing official business for refusing his commands while he was involved in a physical altercation with a driver, noting she took him away from his official task. (Tr. 20-21).

{¶8} Appellant yelled and swore at the officer after he grabbed her arm and told her to turn around. She tensed her arms so he had difficulty putting them behind her

back. She kept yelling that she was now willing to go sit in the grass. To avoid another physical struggle, the officer persuaded her to let him put her in handcuffs before she went to sit down. As he cuffed her, the officer slid the backpack down her arms, and it dropped on the street next to the front tire. He then escorted her to the curb and ordered her to sit while he completed the apprehension of the driver. (Tr. 20).

{¶9} The back-up officer had the K-9 perform a "free air cursory sniff" of the exterior of the vehicle starting at the driver's side. The dog signaled a positive indicator for drugs at the passenger side (where Appellant had just exited). (Tr. 21, 37). The K-9 officer testified Appellant declared, "[the] dog didn't hit on the car." (Tr. 60). This officer entered the vehicle, smelled burnt marijuana, and saw a "marijuana roach inside the cigarette holder." (Tr. 60). He pointed out he only had the dog perform the sniff on the vehicle, not on other objects (such as Appellant's bag). (Tr. 60-61). The video showed this dog's sniff circuit took less than seven seconds.

{¶10} The original officer then searched Appellant's bag and found 17 grams of a crystalline substance (which turned out to be methamphetamine, weighing more than five times the bulk amount), a pill (which turned out to be buprenorphine), scales, and drug paraphernalia. (Tr. 22).

{¶11} After the suppression hearing, the state's post-hearing brief argued the bag was properly searched without a warrant under the search incident to arrest exception and the automobile exception. In response to the first argument, Appellant argued the bag was no longer in her control and thus claimed the officer was required to have a reasonable belief he would find evidence related to her arrest for obstructing official business. On the automobile exception, she argued the bag was not in the vehicle when the officers searched it and noted the dog did not hit on the bag next to the car.

{¶12} The trial court overruled the motion to suppress. Focusing on the automobile exception, the court pointed out it was uncontested there was probable cause to believe the vehicle contained contraband. The court explained the exception allowed a search of the vehicle along with its containers, even if owned by a passenger, and the movement of items from the vehicle before the search would not defeat the exception.

{¶13} Appellant later entered a no contest plea to aggravated drug possession and aggravated drug trafficking, with the state agreeing to dismiss a drug paraphernalia

charge. The court set a sentencing date and ordered a presentence investigation. (10/24/22 J.E.). Appellant failed to appear for sentencing, and a bench warrant was issued. She was thereafter sentenced to four to six years in prison. (2/3/23 J.E.).

{¶14} The within timely appeal followed. The praecipe and the motion for transcripts ensured the suppression hearing was transcribed. The negotiation of the no contest plea preserved the suppression issue for our review. *State v. Obermiller*, 147 Ohio St.3d 175, 2016-Ohio-1594, 63 N.E.3d 93, ¶ 55-56 (guilty plea waives suppression issues). "A trial court's decision to deny a motion to suppress involves a mixed question of law and fact: legal questions are reviewed de novo, but factual issues are rarely disturbed as the trial court is the fact-finder at the suppression hearing and occupies the best position to evaluate witness credibility." *State v. Albright*, 7th Dist. Mahoning No. 14 MA 0165, 2016-Ohio-7037, ¶ 58, citing *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, ¶ 100.

ASSIGNMENTS OF ERROR

{¶15} Appellant's brief addresses the following two related assignments of error,[1] which are supported by the same arguments in the body of her brief:

"The Trial Court committed reversible error by denying Ms. Green's Motion to Suppress the search of her black handbag (also referred to as a backpack) * * *."

"The trial court abused its discretion when it denied the motion to suppress evidence and did not apply the exclusionary rule."

[1] The table of contents of the brief previews a third assignment of error, stating the court "failed to place the plea offered to Ms. Green (Tr. PP. 6-8) on the record" and quoting Crim.R. 11(F). However, there is no mention of this topic anywhere in the body of the brief as required by App.R. 16(A)(7). The state assumes this assignment of error would have argued the negotiated plea was not entered at a hearing, pointing out the plea was entered on the record at a hearing in open court. (10/24/23 J.E.). Yet, it would appear this assignment of error intended to refer to a plea offer made prior to the suppression hearing, which Appellant rejected. The existence of an offer was placed on the record at the beginning of the hearing on pages 6 through 8, as recommended (but not required) in *Missouri v. Frye*, 566 U.S. 134, 146, 182 L.Ed.2d 379, 132 S.Ct. 1399 (2012) (to avoid post-conviction arguments on ineffective assistance of counsel during plea rejection). As the issue is not briefed, it would appear counsel merely failed to delete the sentence from the table of contents after realizing the cited Crim.R. 11(F) applies only to "a negotiated plea" with an "underlying agreement upon which the plea is based" rather than a rejected offer. *See, e.g., State v. Sumner*, 12th Dist. Butler No. CA2017-04-054, 2018-Ohio-450, ¶ 12 ("As no plea agreement was reached by the parties and appellant did not enter a plea to the charges, the trial court was not required by Crim.R. 11(F) to place the state's plea offer on the record.").

{¶16} The officer had more than reasonable suspicion that the person he saw driving had no license because he checked this fact through official channels while watching from the alley (which is also when he observed a hand-to-hand transaction between Appellant and a known drug user). *See Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979) (reasonable suspicion a driver is unlicensed or an occupant is subject to seizure justifies stopping a vehicle). The occupants of a vehicle can be ordered out of the vehicle during an investigatory stop. *Maryland v. Wilson*, 519 U.S. 408, 413-415, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997) (danger to an officer during a traffic stop is greater when there are passengers); *Pennsylvania v. Mimms*, 434 U.S. 106, 110-111, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). Reasonable suspicion of other criminal activity allows officer to prolong a traffic stop for a reasonable time in order to conduct an investigation, including to summon a K-9 unit. *See, e.g., State v. Vega*, 154 Ohio St.3d 569, 2018-Ohio-4002, 116 N.E.3d 1262, ¶ 17-18. *See also State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 61 ("right to frisk is virtually automatic when individuals are suspected of committing a crime, like drug trafficking, for which they are likely to be armed").

{¶17} Here, the investigation was not delayed by a call for the K-9 unit, which arrived on scene while the driver was refusing to provide information and claiming he was not driving. There was also reasonable suspicion of drug activity based on the totality of the circumstances. *Compare Rodriguez v. United States*, 575 U.S. 348, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015) (a traffic stop may not be extended in order to conduct a dog sniff, absent reasonable suspicion). We additionally note the sniff could not be immediately conducted due to the driver's and then the passenger's behavior.

{¶18} "Once a law enforcement officer has probable cause to believe that a vehicle contains contraband, he or she may search a validly stopped motor vehicle based upon the well-established automobile exception to the warrant requirement." *State v. Moore*, 90 Ohio St.3d 47, 51, 734 N.E.2d 804 (2000) (the smell of marijuana establishes probable cause to search under the automobile exception to the warrant requirement), citing *Maryland v. Dyson*, 527 U.S. 465, 466, 119 S.Ct. 2013, 2014, 144 L.Ed.2d 442 (1999). When a trained narcotics dog gives an alert that illegal drugs are present, an officer has probable cause to search the vehicle if the totality of the circumstances would

lead a reasonably prudent person to believe a search would reveal contraband. *Florida v. Harris*, 568 U.S. 237, 248, 133 S.Ct. 1050, 185 L.Ed.2d 61 (2013).

{¶19} Appellant does not dispute the officer had reasonable suspicion to stop the vehicle for investigation of the traffic violation and to thereafter investigate drug activity by the passenger. We recap the facts set forth in our Statement of the Case above. The officer saw a person known to lack a license driving; he confirmed the driver's license was suspended before making the stop. The officer also saw a hand-to-hand transaction between Appellant (who was sitting in the backseat of a car with no front seat passenger) and a pedestrian (who was a known drug user). He also heard the pedestrian warn the occupants of the vehicle about the police being close. The driver was non-compliant in providing information to the officer and would not roll his window down more than a few inches. The driver acted nervous and exhibited strange behavior. At times, the driver would ignore the officer's presence and went about his personal business (such as attempting to light his cigarette, using his phone, and playing music). The video shows the driver would also confer with Appellant, who would turn her back toward the officer as she seemingly sent messages on her phone. The officer feared the driver was purposely delaying for some reason. (In fact, one could reasonably fear others were being summoned as a distraction or for retrieval purposes.) After being ordered out of the vehicle, the driver started complying with pat-down instructions but then made furtive movements with hands, refusing the instructions to keep them on the car roof and attempting to reach in the vehicle.

{¶20} The driver then resisted being handcuffed, physically fighting with the officers. At one point during the driver's resistance by the open driver's door, Appellant can be seen reaching toward the driver and the officer from the back seat. After the officers stumbled into a lane of traffic and fell to the ground behind the vehicle in a physical struggle with the driver, Appellant exited the vehicle from the passenger side, looked at them on the ground, reached into the car for the black backpack and another item, and started leaving the scene with the items she removed from the vehicle. She disobeyed multiple commands to stop and to sit in the grass. The officer had to leave his back-up officer, who was holding the resisting driver, in order to retrieve Appellant (and the items she collected). While the driver was loaded into a cruiser, the K-9 officer gave a positive

signal for drugs at the door where Appellant exited. In starting the vehicle search, the officers saw a marijuana roach and noticed the smell of burnt marijuana; the search of the bag (left on the street next to the car) immediately followed.

{¶21} In addition to the lack of dispute on reasonable suspicion to detain the occupants for an investigation, it is also not disputed the officers had probable cause to search the vehicle under the totality of the circumstances. Moreover, probable cause to search the bag is acknowledged during Appellant's argument that the officers were first required to obtain a search warrant under the circumstances.

{¶22} Specifically, Appellant challenges the trial court's decision that her bag was validly searched under the automobile exception to the search warrant requirement by emphasizing the bag was no longer in the vehicle when it was physically seized from her. She notes she never opened the bag in the officer's presence. She says there were no exigent circumstances with regard to the bag because she was handcuffed 10-15 feet away from it (while arguing other exceptions to the warrant requirement were inapplicable, such as the general exigency exception). *See Moore*, 90 Ohio St.3d at 52 (stating the inherent mobility of the automobile creates the exigency and then addressing the search of a person under a general exigency exception where there is an imminent danger that evidence will be lost or destroyed); *Dyson*, 527 U.S. at 466-467 (the automobile exception "has no separate exigency requirement"), citing *Pennsylvania v. Labron*, 518 U.S. 938, 940, 116 S.Ct. 2485, 135 L.Ed.2d 1031 (1996) (the vehicle's ready mobility is inherently the exigency).

{¶23} The well-established automobile exception to the warrant requirement was created based on the ready mobility of automobiles and the lesser expectations of privacy surrounding an automobile. *California v. Carney*, 471 U.S. 386, 391, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985). Where "probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *Vega*, 154 Ohio St.3d 569 at ¶ 13 (allowing officer to open sealed envelopes, reversing suppression by lower courts), quoting *United States v. Ross*, 456 U.S. 798, 825, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) (allowing search of container in trunk).

{¶24} There is no "distinction among packages or containers based on ownership. When there is probable cause to search for contraband in a car, it is reasonable for police officers * * * to examine packages and containers without a showing of individualized probable cause for each one." *Id.* at ¶ 14, quoting *Wyoming v. Houghton*, 526 U.S. 295, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999).

{¶25} In *Houghton*, the United States Supreme Court allowed an officer who observed a syringe in the driver's shirt pocket to search the car and the passenger's purse. *Houghton*, 526 U.S. 295 (reversing suppression by the state supreme court). "A criminal might be able to hide contraband in a passenger's belongings as readily as in other containers in the car, * * * perhaps even surreptitiously, without the passenger's knowledge or permission." *Id.* at 305. A "passenger's property" exception to car searches would encourage "passenger-confederates to claim everything as their own." *Id.* Therefore, "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." *Id.* at 307 (distinguishing a full body search of a passenger from a belongings search).

{¶26} As for the removal of a bag from the car during the stop, where a driver exits a vehicle with a purse, the purse can still be searched under the automobile exception if there is probable cause to search the vehicle for contraband. *State v. Wilcox*, 5th Dist. Tuscarawas No. 12AP040028, 2012-Ohio-4582, ¶ 41-43.

{¶27} In another case, a driver sold marijuana to a confidential informant while the defendant waited in the front passenger seat. *State v. Mercier*, 1st Dist. Hamilton No. C-060490, 2007-Ohio-2017. When the vehicle was stopped, the passenger was seen holding a purse. Intending to perform an automobile search with probable cause, the officers ordered the occupants from the vehicle and instructed them to leave their belongings in the car. The officers searched the passenger's purse and opened containers inside the purse. *Id.* at ¶ 8. The First District rejected arguments that the passenger's purse was part of her person. *See id.* at ¶ 9. The court applied the holding in *Houghton*. Finding a passenger cannot alter the facts presented to the police at the time of the stop by removing a purse from a vehicle, the court also opined, "We do not

believe that a passenger should be able to thwart a search by grabbing her purse and holding it when a car is stopped by police." *Id.*[2]

{¶28} Also applying *Houghton*, the Ohio Supreme Court affirmed the decision, upholding validity of the search of the passenger's purse under those circumstances. *State v. Mercier*, 117 Ohio St.3d 1253, 2008-Ohio-1429, 885 N.E.2d 942.

{¶29} Contrary to Appellant's argument, a passenger's removal of bags from a driver's vehicle that is subject to search does not destroy the automobile exception as applied to bags claimed by the passenger (here, a passenger who was also being investigated for drug trafficking). As the trial court observed, the purpose of the automobile exception would be thwarted by passengers throwing items from the vehicle while the officer is dealing with the driver.

{¶30} Moreover, Appellant was subject to detention due to the reasonable suspicion of drug trafficking, and she attempted to leave the scene while ignoring commands to stop and reached into the vehicle after alighting from it without permission in order to grab a bag that had been between her legs when the officer stopped the vehicle. The bag Appellant attempted to carry away from the seized automobile was validly searched under the automobile exception.

{¶31} We conclude the analysis of her first argument by explaining why Appellant's comparison of her purse to a footlocker in *Chadwick* is unavailing. In that case, agents followed a rail passenger with a suspicious "footlocker" to a waiting vehicle and seized the container after it was placed in the trunk. *United States v. Chadwick*, 433 U.S. 1, 53 L.Ed.2d 538, 97 S.Ct. 2476 (1977). The agents did not open the container until much later, after transporting it to a federal building. Pointing to the lack of exigency, the Court concluded the search of the locked container was not justified under the automobile exception (noting the greater expectations of privacy in personal luggage) and found the search incident to arrest exception was inapplicable as the opening of the container was remote in time and place from the arrest. *Id*. at 11-15.

[2] The First District additionally said an officer can search the passenger compartment and any containers including a passenger's purse, if they were in an arrested driver's immediate control. *Id.* at ¶ 17, citing *New York v. Belton*, 453 U.S. 454, 69 L.Ed.2d 768, 101 S.Ct. 2860 (1981) (as a search incident to arrest, police "may examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach").

{¶32} *Chadwick* is distinguishable because it involved a limited situation where officers had specific probable cause for one container (not for the entire automobile); it is also distinguishable as it involved the government's distant relocation of the bag and a later search. In any case, a main principle expressed in and evolving from *Chadwick* was abrogated when the Court ruled the police are permitted to search a container found in an automobile without a warrant if their search is supported by probable cause. *California v. Acevedo*, 500 U.S. 565, 573, 579 114 L.Ed.2d 619, 111 S.Ct. 1982 (1991) (police were not required to obtain a warrant to open a bag in a movable vehicle regardless of whether their probable cause extended to the entire car).

{¶33} Alternatively, the state maintains its argument that the bag was properly searched under the search incident to arrest exception to the warrant requirement. Appellant argues this exception does not apply because the bag was no longer in her reach by the time it was opened by the officer and there was no reason to believe it contained evidence related to her arrest, citing a distinct doctrine applied in the *Gant* case. See *Arizona v. Gant*, 556 U.S. 332, 333-334, 173 L.Ed.2d 485, 129 S.Ct. 1710 (2009) (search of automobile occurring after traffic arrest where officer did not testify about probable cause to search automobile for drugs, clarifying *Belton*). However, the state's alternative argument on the search incident to arrest exception was not based on a sweep of a vehicle's passenger compartment incident to the arrest of a former vehicle occupant. *Compare Id.* The arrest at issue for purposes of the search incident to arrest exception is the arrest of Appellant for obstructing official business; she attempted to leave the scene with items from the vehicle in contravention of direct commands during the officers' physical struggle with the driver. The search here relates to the bag Appellant was carrying on her back at the moment of her arrest.

{¶34} "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, *a search incident to the arrest requires no additional justification*." (Emphasis added.) *United States v. Robinson*, 414 U.S. 218, 235, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973) (search incident to arrest does not violate the Fourth Amendment even where the officer had no reason to suspect that a defendant is armed or where no further evidence of the crime in question could have been obtained by the search). "[A] full search of the person incident to a lawful

custodial arrest is not only an exception to the warrant requirement of the Fourth Amendment but is also a 'reasonable' search under that amendment." *State v. Mathews*, 46 Ohio St.2d 72, 74, 346 N.E.2d 151, 153 (1976) (a lawful arrest allows a custodial search of the purse clutched under the arrestee's arm, which was under her immediate control at the time of her arrest), citing *Robinson*, 414 U.S. 218.

{¶35} The formal arrest need not precede the search as long as the arrest followed soon after the challenged search of the detainee's person and the fruits of the search are not part of the probable cause for the arrest. *Rawlings v. Kentucky*, 448 U.S. 98, 111, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980). The key is not whether an arrest took place but whether probable cause supported an arrest prior to the search and whether an arrest followed the search without delay. *Id.*

{¶36} Under the search incident to arrest exception to the warrant requirement, an officer who lawfully arrests a suspect is permitted to perform a warrantless search of suspect's person and the area within his immediate control at the time of the arrest. *State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, 45 N.E.3d 127, ¶ 182, citing *Chimel v. California*, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). A search incident to arrest may extend to the personal effects of an arrestee. *See also State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949, ¶ 13. This search permissibly includes containers on the arrestee's person. *Robinson*, 414 U.S. at 223-24. This exception recognizes the need to protect arresting officers and the interest in safeguarding evidence the arrestee could otherwise conceal or destroy. *Adams*, 144 Ohio St.3d 429 at ¶ 182. Nevertheless, "the right to search incident to arrest exists even if the item is no longer accessible to the arrestee at the time of the search." *Id*.

{¶37} In other words, the officer need not let the arrestee continue to hold the container while he conducts the search of it in order for the scenario to fall within the search incident to arrest exception. "A proper search incident to arrest does not dissipate merely because the container is removed from the arrestee before the search is conducted. To hold otherwise would essentially eliminate the search incident to arrest exception to the warrant requirement in cases like this as a law enforcement officer would only be entitled to conduct a search while the arrestee maintained control of the container." (Citations omitted.) *State v. Schwab*, 7th Dist. Mahoning No. 08 MA 78, 2009-

Ohio-1312, ¶ 21, quoting *State v. Sharpe*, 7th Dist. Harrison No. 99CA510 (June 30, 2000).

{¶38} As the officer pointed out, Appellant disobeyed his commands during a valid investigatory detention of her, which disobedience occurred during his physical struggle with the driver. She refused to stop when directed, reached back into the vehicle for items twice, walked away from the scene and began to cross the street at which point she decided to retrieve an item that dropped on the ground. The officer had to leave the other officer with a struggling driver in order to ensure Appellant stayed at the scene with the collected items. She was also resistant to his orders after he grabbed her arm to ensure she did not flee.

{¶39} Appellant had the bag on her back at the time the officer arrested her for obstructing official business. The officer's removal of the bag from the arrestee in order to handcuff her did not eliminate his ability to search the bag incident to her arrest after he finished dealing with the non-compliant driver. As Appellant had immediate control of the bag at the time of her arrest, it was validly searched under the search incident to arrest exception to the warrant requirement. *Robinson*, 414 U.S. at 223-24; *Adams*, 144 Ohio St.3d 429 at ¶ 182. Accordingly, the overruling of Appellant's suppression motion was proper both under the search incident to arrest exception and under the automobile exception applied by the trial court, as analyzed above.

{¶40} For the foregoing reasons, Appellant's assignments of error are overruled, and the trial court's decision is affirmed.

D'Apolito, P.J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.