

## People v. Ermi

(2013) 216 Cal.App.4th 277

### Issue

During a probation search of a male probationer's home, under what circumstances may officers search a woman's purse?

### Facts

Oxnard police officer Paul Knapp went to the apartment of Ronald Williams to conduct a probation search. Williams' girlfriend, Brandy Ermi, was living with him in the one-bedroom apartment, and both Williams and Ermi were present when Officer Knapp arrived.

While searching the bedroom, the officer noticed a woman's purse on a chair. Ermi said the purse belonged to her, and asked if she could take it because she needed to retrieve some medicine. Because Knapp did not want Ermi reaching in the purse, he told her that he would look through it and give her the medication.

Inside the purse was a small makeup bag. When Knapp pulled it out, Ermi claimed the makeup bag was not hers and, in fact, she didn't even know how it had gotten into her purse. Knapp opened the bag and found a vial of methamphetamine and a meth pipe. Continuing the search of the bedroom, he found sales paraphernalia and more methamphetamine. Both Ermi and Williams were arrested. (This case pertains solely to Ermi's appeal of her conviction after the trial court denied her motion to suppress the evidence in her purse.)

### Discussion

Although Officer Knapp had the legal authority to conduct a probation search of Williams' apartment, Ermi argued that he did not have authority to search her purse. The court disagreed.

While conducting a probation or parole search of a residence, officers may search personal property (e.g., purses, wallets, handbags, backpacks, luggage) if they reasonably believed the probationer or parolee controlled or accessed it. This is true even if someone else also had control or access.<sup>1</sup> Furthermore, unless there was reason to believe otherwise, officers may presume that the probationer or parolee had access or control of all personal property in a room to which he had access or control.<sup>2</sup>

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<sup>1</sup> See *People v. Baker* (2008) 164 Cal.App.4th 1152, 1159 ["When executing a parole or probation search, the searching officer may look into closed containers that he or she reasonably believes are in the complete or joint control of the parolee or probationer."]; *People v. Smith* (2002) 95 Cal.App.4th 912, 919 [the issue is whether the purse was under the probationer's control "or one to which he at least had access"]; *U.S. v. Bolivar* (9th Cir. 2012) 670 F.3d 1091, 1095 [officers "need only 'reasonable suspicion' that an item is owned, possessed, or controlled by the parolee or probationer."]. ALSO SEE *People v. Schmitz* (2012) 55 Cal.4th 909, 930 ["Regardless of actual ownership, it was objectively reasonable for the officer to believe that the parolee was able to reach back to hide contraband inside the shoes."].

<sup>2</sup> See *People v. Britton* (1984) 156 Cal.App.3d 689, 701; *Russi v. Superior Court* (1973) 33 Cal.App.3d 160 [pouch lying on the floor of the probationer's bedroom]; *People v. Icenogle* (1977) 71 Cal.App.3d 576 [dresser in parolee's one-bedroom apartment]; *People v. Burgener* (1986) 41 Cal.3d 505 [trash under the kitchen sink]; *People v. Palmquist* (1981) 123 Cal.App.3d 1 [refrigerator in the kitchen; overruled on other grounds in *P v. Williams* (1999) 20 C4 119, 135].

Ermi argued that the presumption did not apply here because Officer Knapp must have known that the purse belonged to her, and that Williams had no right to access or control it. But the court pointed out that the legality of the search does not depend on who owned the property, but whether the probationer (or parolee) had access or control. And here, said the court, it was apparent that the purse was a “repository over which [Williams] had control or access” because it “was on a chair in the middle of a cluttered bedroom that Williams shared with appellant.” Consequently, Ermi’s conviction was affirmed.

### Comment

As noted, officers may ordinarily presume that a probationer or parolee had sole or joint control or access over personal property in his home. The question arises: If the probationer or parolee was a passenger in a vehicle, does the presumption of control or access extend to personal property in the vehicle? The answer is yes, at least as to property in the passenger compartment. This is because, as the California Supreme Court recently observed in a parole search case, “a standard five-passenger automobile generally affords ready access to areas in both the front and back seats.”<sup>3</sup> The court added, however, that officers might not be permitted to search a purse that was closed and “closely monitored” by a woman who was not on parole.<sup>4</sup> This makes sense because, under such circumstances, it is likely that the male probationer or parolee would have had neither access nor control. (A search of the purse might, however, be permitted if officers saw the probationer or parolee make a furtive gesture toward the purse, in which case it might be reasonable to believe he had hidden contraband inside and therefore had access.)

One other thing: There are some older cases in which the courts ruled that, even if the probationer or parolee had control or access over personal property, officers could not search it if he obviously did not own it. For example, in 1980 the court in *People v. Veronica* ruled that officers who were conducting a probation search of a home could not search the purse of the probationer’s wife because “there was simply nothing to overcome the obvious presumption that the purse was hers, not his.”<sup>5</sup> Although these cases have not been expressly overturned, they are contrary to the current law because, as noted, the issue is not who *owns* the property that was searched but whether the probationer or parolee had *access or control*. Furthermore, as the court in *Ermi* observed, if personal property could be searched only if the probationer owned it, probationers would be able “to flout a probation search condition by hiding drugs in a cohabitant’s purse or any other hiding place associated with the opposite gender.” POV

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<sup>3</sup> *People v. Schmitz* (2012) 55 Cal.4th 909, 925.

<sup>4</sup> At p. 932 [“In this respect, an open shoe differs markedly from a purse, which is likely to be more closely monitored by its owner or otherwise secured.”]. ALSO SEE *People v. Baker* (2008) 164 Cal.App.4th 1152, 1159 [search of purse was unlawful because its owner, Wendy Baker, was “sitting in the front passenger seat and the distinctly feminine purse was located at her feet.”].

<sup>5</sup> (1980) 107 Cal.App.3d 906. ALSO SEE *People v. Alders* (1978) 87 Cal.App.3d 313, 317-18 [“there was no reason to suppose that a distinctly female coat was jointly shared by her and [the probationer].”]; *People v. Baker* (2008) 164 Cal.App.4th 1152, 1160 [“Here, there is nothing to overcome the obvious presumption that the purse belonged to the sole female occupant of the vehicle who was not subject to a parole-condition search.”].