

IN THE  
**Supreme Court of the United States**

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WANDA L. EDWARDS,

*Petitioner,*

*v.*

SOUTH DAKOTA,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF SOUTH DAKOTA**

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**BRIEF IN OPPOSITION TO  
PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether there is a split among state high courts over the existence of a purse exception to the automobile exception and, if so, whether this split warrants this Court's attention at this time?

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## OPINION BELOW

The South Dakota Supreme Court's decision in *State v. Edwards*, 2024 S.D. 62, is reproduced in the appendix to Edwards' petition.

## STATEMENT OF THE CASE

This is a case about a purse that was searched pursuant to the automobile exception and incident to the arrest of the driver on drug charges. Specifically, it is a case about whether there is a purse exception to the automobile exception. In finding that there is not, the South Dakota Supreme Court's *Edwards* decision faithfully adhered to the majority opinion in *Wyoming v. Houghton*, 526 U.S. 295 (1999). Wanda Lynn Edwards wants not the majority opinion to control her case but the concurring opinion. The concurring opinion suggested there might be a purse exception if the owner maintains possession of the purse during the duration of a traffic stop. According to Edwards, three states (Idaho, North Dakota and Kansas) have adopted this purse exception, creating a split with four states (Minnesota, Nebraska, Ohio and South Dakota)<sup>1</sup> that have not. But Edwards' "split" is based on a construction of *Houghton* by purse exception states that has since been invalidated by this Court's decision in *Arizona v. Gant*, 556 U.S. 332 (2009). *Gant* rejected a purse exception and since then no state has endorsed it. Because there is no purse exception and no post-*Gant* split concerning the scope of a *Houghton*

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1. *State v. Barrow*, 989 N.W.2d 682 (Minn. 2023); *State v. Lang*, 942 N.W.2d 388 (Neb. 2020); *State v. Mercier*, 885 N.E.2d 942 (Ohio 2008).

or *Gant* search, Edwards' petition for a writ of *certiorari* should be denied.

#### **A. Factual History**

Edwards was the front-seat passenger in a car when it was pulled over for not having its headlights on. PETITIONER'S APPENDIX at 3a. Edwards was asked to step out of the vehicle after police arrested the driver for false impersonation and found methamphetamine and drug paraphernalia in his jacket pocket. PETITIONER'S APPENDIX at 3a. Edwards' purse was on her lap while she was seated in the car and she slipped it over her shoulder when she stepped out of the vehicle. PETITIONER'S APPENDIX at 5a. After Edwards refused to turn her purse over to a police officer, it was forcibly removed from her shoulder and searched. PETITIONER'S APPENDIX at 5a. The police found marijuana, traces of methamphetamine and drug paraphernalia in her purse. PETITIONER'S APPENDIX at 5a.

#### **B. Procedural History**

Edwards was charged with possession of a controlled substance, possession of marijuana, possession of drug paraphernalia and obstructing a law enforcement officer. PETITIONER'S APPENDIX at 5a. Edwards filed a motion to suppress the drugs and paraphernalia found in her purse. PETITIONER'S APPENDIX at 6a. After a suppression hearing, the trial court denied Edwards' motion, finding that Edwards' purse was subject to search once law enforcement found drugs and drug paraphernalia on the driver. PETITIONER'S APPENDIX at 8a. Edwards was convicted of the controlled substance

(methamphetamine), drug paraphernalia and obstruction charges. Edwards appealed the suppression issue.

The Supreme Court of South Dakota affirmed the order denying Edwards' motion to suppress, finding that this Court had never adopted a purse exception. *Edwards*, 2024 S.D. 62 at ¶ 22 n.3, PETITIONER'S APPENDIX at 12a. Edwards petitions this Court for review of the South Dakota Supreme Court's decision.

### **REASONS FOR DENYING THE PETITION**

The law is clear that if there is probable cause to search a vehicle for drugs then the police may search any container in the vehicle capable of holding drugs. *Houghton*, 526 U.S. at 301. It is equally clear that Edwards' purse was such a container. Because male and female "personal items" as well as drugs can be found in a backpack, attaché case, waist pack<sup>2</sup> or computer bag the same as a purse, the automobile exception permits the search of *any* container where the object of the search may be found. *Houghton*, 526 U.S. at 301, 302.

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2. *United States v. Walker*, 2024 WL 2091540, \*3 n. 4 (D.Kan.), examined whether a "fanny pack" on a male passenger was part of his person or outer clothing. *Walker* considered that for a container to be part of a person it cannot, like a purse or "fanny pack," be readily separable from the person but rather must be part of, within or under a person's clothing. *Walker*, 2024 WL 2091540 at \*3 n. 4, citing *United States v. Knapp*, 917 F.3d 1161, 1166 (10<sup>th</sup> Cir. 2019). Like a "fanny pack," a purse can be detached from a person without entering into, or requiring the removal of an item of, a person's clothing. *Barrow*, 989 N.W.2d at 687 (noting that "many bags could be considered 'purses,' such as backpacks, fanny packs, briefcases, and duffle bags").

But, relying on Justice Breyer’s concurring opinion in *Houghton*, Edwards seeks an exception for purses. Justice Breyer’s concurrence suggested that purses may be “special containers” that are entitled to enhanced privacy protections *vis-à-vis* other containers in a vehicle because they often contain “especially personal items.” Petition at 14, quoting *Houghton*, 526 U.S. at 308 (Breyer, J., concurring). According to Edwards, Idaho, North Dakota and Kansas have adopted this position respecting purses and Minnesota, Nebraska, Ohio and South Dakota have not. Edwards asks this Court to resolve this “split” in favor of a purse exception to the automobile exception.

This “split” is more notional than actual because the cases on the purse exception side of the “split” all predate *Gant*. Prior to *Gant* a police officer arresting the occupant of a car could freely “search the passenger compartment of [an] automobile” incident to the arrest of an occupant, including “the contents of any containers found within the passenger compartment.” *New York v. Belton*, 453 U.S. 454, 460 (1981). Because of concerns that the “expansive” scope of a *Belton* search “undervalue[d]” an individual’s interest in the privacy of containers within an automobile in certain circumstances, *Gant* imposed limitations on a *Belton* search. *Gant*, 556 U.S. at 345.

In *Gant*, a driver was arrested for driving with a suspended license. *Gant*, 556 U.S. at 335. While Gant sat handcuffed in the patrol car, the officer searched a jacket in the back seat of his car and found cocaine in a pocket. *Gant*, 556 U.S. at 335. In affirming the suppression of the cocaine, *Gant* identified two types of searches which can result from arresting the occupant of a vehicle – one where the offense of arrest supplies a reasonable basis

to believe the vehicle will contain evidence of the offense and one where it does not. *Gant*, 556 U.S. at 343-344. For the former type of search, police may conduct a full *Belton* search of “any area of the vehicle in which the evidence might be found,” including “not just the passenger compartment but every purse, briefcase, or other container within that space.” *Gant*, 556 U.S. at 345. *Houghton* and Edwards’ case fit squarely into the former category because both drivers were arrested on drug charges, which opened the door to a search of any containers from within the vehicle that might contain drugs. *Houghton*, 526 U.S. at 301, 302.

For the latter type of search, *Gant* ruled that police are authorized to search the vehicle “only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” *Gant*, 556 U.S. at 343. The *Gant* search belonged to the latter category because Gant was under arrest for driving with a suspended license. Consequently, the search of his jacket was unreasonable because driving without a license was “an offense for which police could not expect to find evidence in the passenger compartment.” *Gant*, 556 U.S. at 344.

The searches conducted in the Idaho and North Dakota cases that Edwards cites, like the search in *Gant*, fell into this latter category. In the Idaho case, the driver of a vehicle was pulled over for turn signal violations and arrested after police learned that he had outstanding felony arrest warrants. *State v. Newsom*, 979 P.2d 100 (Idaho 1998). The passenger, seated in the car with her purse in her lap, was asked to exit the vehicle. *Newsom*, 979 P.2d at 101. She tried to bring her purse

with her but an officer ordered her to leave it in the car. The police conducted a *Belton* search and found drugs in the passenger's purse. *Newsom*, 979 P.2d at 101. The *Newsom* court suppressed the drugs because the police had instructed her to leave her purse in the vehicle where it could be searched pursuant to *Belton*, effectively seizing it before they had probable cause to believe it contained relevant evidence.

In the North Dakota case, a driver was pulled over for driving without headlights and, as in *Newsom*, arrested on an outstanding warrant. *State v. Tognotti*, 663 N.W.2d 642, 643-644 (N.D. 2003). The passenger had left her purse in the car after being asked to step out of the vehicle, but no evidence was developed at the suppression hearing concerning whether she did so of her own accord or because the police had ordered her to leave her purse in the car. *Tognotti*, 663 N.W.2d at 650. The *Tognotti* court remanded the suppression question to the trial court for a determination of whether the passenger left her purse in the car voluntarily or at the direction of the police, suggesting that the evidence found in her purse should be suppressed in the latter circumstance. *Tognotti*, 663 N.W.2d at 650.

The holdings of both *Newsom* and *Tognotti* more or less anticipated the *Gant* problem of searching a container within a vehicle that could not reasonably be expected to contain evidence relevant to the offense for which the driver had been arrested. *Gant*, 556 U.S. at 344; *Houghton*, 526 U.S. at 302. Neither *Newsom* nor *Tognotti* exactly embraced a purse exception but rather distinguished those cases from *Houghton* on the facts. The *Newsom* and *Tognotti* courts found the facts that the

purses were on the passengers' persons rather than in the back seat, and that they may have relinquished possession of their purses only at the direction of the police, were material distinctions from *Houghton* warranting or potentially warranting suppression.

However, as *Gant* later made clear, *Newsom* and *Tognotti* need not have entertained such distinctions. *Newsom* and *Tognotti* engaged in such factual parsing simply because (unlike *Gant*) they had failed to heed *Houghton*'s direction that "the permissible scope of a warrantless car search 'is defined by the object of the search and the places in which there is probable cause to believe that it may be found.'" *Houghton*, 526 U.S. at 302, quoting *United States v. Ross*, 456 U.S. 798, 824 (1982). Under both *Houghton* and *Gant*, no search of either purse would have been permitted *ab initio* in *Newsom* and *Tognotti* because the police never had probable cause to believe they contained evidence relevant to the offense for which the driver had been arrested. *Gant*, 556 U.S. at 344. In other words, *Newsom* and *Tognotti* entertained a purse exception when they need not have and likely would not entertain a purse exception today in the wake of *Gant*.

The third state comprising Edwards' ostensible split, Kansas, has embraced a purse exception in two cases but, again, both cases were decided before *Gant*. In *State v. Boyd*, 64 P.3d 419 (Kan. 2003), a car was pulled over for a turn signal violation after it was seen leaving a house that police were surveilling for drug activity. The driver consented to a search of the vehicle. *Boyd*, 64 P.3d at 421. The passenger was told to exit the vehicle and leave her purse in the vehicle. *Boyd*, 64 P.3d at 421. After the police found a crack pipe in the center console, they searched

the passenger's purse and found a plastic bag containing crack cocaine. *Boyd*, 64 P.3d at 421. *Boyd* suppressed the drugs found in the purse because the passenger had been ordered to leave her purse in the car before the police had probable cause to suspect that drugs were in the car or arrest the driver for possession of drugs. *Boyd*, 64 P.3d at 427.

In *State v. Groshong*, 135 P.3d 1186 (Kan. 2006), a car was stopped for an inoperative taillight and its driver was found to have an outstanding warrant. *Groshong*, 135 P.3d at 1188. The passenger was ordered to exit the vehicle. Looking in through a window, the police saw a bag of marijuana on the floor of the car and commenced to search the vehicle. The passenger then asked for her purse and the police officer denied her request. *Groshong*, 135 P.3d at 1189. The police found marijuana and a pipe in the passenger's purse. *Groshong*, 135 P.3d at 1188. The *Groshong* court denied suppression of the marijuana from the passenger's purse because she had not asserted a privacy interest in the purse until after police had probable cause to search the vehicle and, consequently, any container inside it. *Groshong*, 135 P.3d at 1191. The *Groshong* court suggested that the outcome would have been different if the passenger had "asserted a privacy interest" in it by taking it with her before the police had probable cause to search the vehicle. *Groshong*, 135 P.3d at 1190-1191.

The problem with extracting a "split" from *Boyd* and *Groshong* is that, as noted above, both were decided before *Gant*. Kansas dealt with the problem of *Belton*'s overbreadth by creating a limited purse exception. *Gant* invalidated this approach. Instead of a categorical exception, *Gant* clarified that a purse will not be subject to

a *Belton* search if there is no reason to believe it contains evidence relevant to the offense of arrest. *Gant*, 556 U.S. at 344. *Boyd* and *Groshong* do not “split” from *Gant* for the obvious reason that they predate *Gant*. So where Kansas (or Idaho or North Dakota) stands on a purse exception in the post-*Gant* world of today is not known.

But, considering that *Gant* permits a full *Belton* search of “*every purse*” without qualification if there is probable cause to believe that it may contain evidence relevant to the offense of arrest of another occupant of the vehicle, it is likely that Kansas would not have decided *Boyd* and *Groshong* as it did.<sup>3</sup> *Gant*, 556 U.S. at 345 (emphasis added). This supposition is supported by the fact that *Gant*’s solution to the *Belton* overbreadth problem squares better with *Houghton*’s underpinnings than *Boyd*’s and *Groshong*’s purse exception.

Unlike a purse exception, *Gant* draws no “distinction[s] among packages or containers based on ownership,” whether driver or passenger, male or female.<sup>4</sup> *Houghton*,

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3. Of course, if Kansas (or any other state) is bound and determined to develop a purse exception, per *South Dakota v. Opperman*, 428 U.S. 364 (1976), it can interpret its state constitution to be more protective of purses than federal law.

4. Edwards introduces an unnecessary gender inequality dimension to this case with her argument that a man’s billfold unfairly receives greater protection than a woman’s purse. The comparison is not apt. A billfold, unlike a purse, is normally carried within a man’s clothing and, due to its compact size, is less likely than a purse to contain contraband or a weapon. *Barrow*, 989 N.W.2d at 688 (noting that the “definition of a ‘purse’ [c]ould extend to bags commonly worn by men and women, including backpacks, fanny packs, briefcases and duffle bags”). A more apt comparison would be to a clutch or coin purse which, like a billfold, has limited

526 U.S. at 302. *Gant* likewise draws no “distinction between ‘worthy’ and ‘unworthy’ containers.” *Ross*, 456 U.S. at 822; *Houghton*, 526 U.S. at 301. The *Gant* rule spares police officers from having to make “a showing of individualized probable cause for each” container in an automobile. *Houghton*, 526 U.S. at 302. Unlike a purse exception, the *Gant* rule does not encourage criminals to “hide contraband in a passenger’s belongings” in order to evade detection. *Houghton*, 526 U.S. at 305. *Gant* is mindful of the reality that probable cause to believe a passenger’s purse may contain evidence relevant to the offense of the arrest of the driver does not simply evaporate because a passenger unilaterally “asserts a privacy interest” in it. *Houghton*, 526 U.S. at 306 (passenger’s “presence in the car with the driver provided . . . reason to believe that the two were in league”).<sup>5</sup>

Finally, and most importantly, because a *Gant* search does not depend on variables or potentially contested facts like whether a passenger adequately asserted a privacy interest in her purse, whether police action led her to leave her purse in the car, or whether some non-purse container like a backpack is a *de facto* purse, *Gant*

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volume and can be carried within a woman’s clothing. Clutches or coin purses carried within a woman’s clothing would receive the same constitutional protection under *United States v. Di Re*, 332 U.S. 581, 587, 595 (1948), as a man’s billfold.

5. See also *Lang*, 942 N.W.2d at 400 (police officers could search a purse “that was inside the vehicle when officers developed probable cause to search the vehicle” even though “it was no longer inside the vehicle” at the time of the search); *Barrow*, 989 N.W.2d at 684, 688 (purse removed from car and placed on trunk lid by passenger subject to search because it “was inside the car at the time probable cause [to search the vehicle] arose”).

provides a brighter line rule for law enforcement than a purse exception. *Houghton*, 526 U.S. at 307; *Oliver v. United States*, 466 U.S. 170, 181 (1984)(disfavoring automobile exception encumbered by an intricate “set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions”).

Because of *Gant*, the existence of a purse exception is not the open constitutional question Edwards makes it out to be. *Gant* expressly reaffirmed the proposition from *Belton* and *Houghton* that a vehicle search extends to a purse provided there is reason to believe it contains evidence relevant to the offense of the arrest of an occupant of a vehicle. *Gant*, 556 U.S. at 345. To the extent Kansas, Idaho and North Dakota “split” with *Houghton* due to *Belton*’s overbreadth, it has been corrected by *Gant*. Since *Gant*, neither Kansas, North Dakota, Idaho nor any other state high court has endorsed a purse exception. This fact suggests that this Court can wait and see if a purse exception split materializes in the post-*Gant* legal landscape before revisiting *Houghton*.

\* \* \*

Given its faithful application of the majority opinion in *Houghton* to the matter of the suppression of the drugs and paraphernalia found in Edwards’ purse, the South Dakota Supreme Court’s decision is not in conflict with any decision of the federal courts of appeals or any precedent of this Court. While it is arguably in conflict with Kansas, this is not a split which warrants this Court’s attention because the Kansas decisions rest on a now-obsolete understanding of the scope of a *Belton* search.

## CONCLUSION

Edwards' petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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