No. 24-863

In the Supreme Court of the United States

WANDA LYNN EDWARDS, PETITIONER

v.

STATE OF SOUTH DAKOTA

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

South Dakota's brief in opposition rests entirely on its misunderstanding of *Arizona v. Gant*, 556 U.S. 332 (2009). The state claims (Opp. 9-11) that *Gant* held that if officers may lawfully search a vehicle, they may search anything within the vehicle, including purses held by passengers. From there, the state reasons that there is no split, because *Gant* undermined decisions holding that authorization to search a vehicle does not allow officers to rummage through purses that passengers carry. The state doesn't contest the critical importance of the question presented; doesn't dispute that this case is an excellent vehicle for resolving it; and doesn't meaningfully argue the merits.

The problem is that the state misreads *Gant*, which doesn't undermine longstanding precedent protecting a vehicle's passengers from warrantless searches. In *United States v. Di Re*, 332 U.S. 581, 587 (1948), the Court held that officers may not search a vehicle passenger just because the officers may lawfully search the vehicle. And in *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979), the Court held that officers do not have probable cause to search a person based merely on the person's proximity to wrongdoing. The Court preserved those rules in *Wyoming v. Houghton*, 526 U.S. 295, 303 (1999).

Gant didn't abrogate those decisions. Indeed, the state *concedes* as much by acknowledging the "constitutional protection" passengers' pockets receive under *Di Re*. Opp. 10 n.4. Rather, *Gant* limited when officers may conduct a warrantless vehicle search, and to what extent, when officers arrest an occupant. *See* 556 U.S. at 335. It said nothing about a passenger's clothing or whether a passenger's held purse receives the

same constitutional protection. Thus, *Gant* provides no support for the state's claim that its officers could search the purse Ms. Edwards carried just because she was a passenger in a car with a suspicious driver.

Without its misplaced reliance on *Gant*, the state's argument that there is no certworthy split crumbles. State high courts have divided 3–4 over whether law enforcement may conduct a warrantless search of a purse that a passenger is holding or wearing, just because the officers may lawfully search the car. *Gant* doesn't address warrantless searches of passengers, much less passengers' purses, and it does nothing to resolve the conflict.

The state doesn't dispute that the question presented is important or that this case is an excellent vehicle for resolving it. Passenger purse searches affect many individuals, and they implicate the Fourth Amendment's core protections. What's more, the South Dakota Supreme Court's decision threatens constitutional rights in a way that uniquely disadvantages women. Treating carried purses differently from pockets creates unwarranted gender disparities and contravenes this Court's admonition that the Fourth Amendment does not distinguish between "worthy" and "unworthy" containers, *United States v. Ross*, 456 U.S. 798, 822 (1982). The question presented is particularly important to Ms. Edwards, because a holding in her favor would result in vacatur of her convictions.

On the merits, the state primarily asserts (Opp. 10-11) that officers prefer a bright-line rule. But the state's interest accounts for only part of the Fourth Amendment's reasonableness test. On the other side of the scales, when officers rip a passenger's purse

from her and search it, the intrusion is severe, and her privacy interest is significant. As with passengers' clothing, the balance of interests weighs against searching purses held by passengers.

The state's stark misunderstanding of *Gant* and this Court's precedent protecting passengers further counsels in favor of granting certiorari, so that states do not continue to violate constitutional rights. The Court should grant review.

ARGUMENT

I. State high courts have divided over whether officers who may lawfully search a vehicle may search a purse that a passenger is holding, and *Gant* doesn't address that question.

State high courts have divided over whether officers may search a purse carried by a passenger during a lawful warrantless vehicle search. Three state supreme courts hold that a purse carried by a passenger is a "kind of 'outer clothing,'" *Houghton*, 526 U.S. at 308 (Breyer, J., concurring), that officers may not search as part of the vehicle search. Four state supreme courts disagree. *Gant* did not address, much less resolve, that conflict. *Gant* limited when officers may search a vehicle incident to an occupant's arrest. It did not alter the protections passengers and their belongings receive during lawful warrantless vehicle searches, or address whether a purse is part of a passenger's clothing and thus subject to those same protections.

A. *Gant* does not undermine the split.

The state's argument that *Gant* affects the search of a passenger and her belongings misunderstands

this Court's caselaw. As the Petition explained (at 8-9), passengers are not subject to search as part of a lawful warrantless vehicle search, because officers do not acquire probable cause to search a passenger merely because of her proximity to another occupant's wrongdoing. *Gant* limited when officers could invoke the warrant exception for searches incident to arrest; it did not address whether—much less purport to hold that—passengers may be searched. In fact, there were no passengers in the car in *Gant*.

1. The Court's precedent permits warrantless vehicle searches in limited circumstances. The "automobile exception," *California v. Acevedo*, 500 U.S. 565, 566 (1991), allows a warrantless vehicle search where officers have probable cause to believe the vehicle contains evidence of contraband. *See Carroll v. United States*, 267 U.S. 132, 149 (1925). And the search incident to arrest exception permits a warrantless vehicle search pursuant to a lawful custodial arrest. *See New York v. Belton*, 453 U.S. 454, 460 (1981).

But passengers aren't subject to search just because they are sitting near a driver who is. In *Ybarra*, the Court articulated a fundamental Fourth Amendment principle: "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." 444 U.S. at 91. Thus, the authority to conduct a warrantless vehicle search doesn't confer authority to search a passenger or her pockets. *See Di Re*, 332 U.S. at 587.

Houghton preserved that rule. *See* 526 U.S. at 303. But the Court held that officers may search a purse in the car that belongs to the passenger but is away from the passenger, because such a search does

not implicate the same privacy interests as a search of a passenger's outer clothing. *Id.* at 302-03.

2. *Gant* limited when officers can search a vehicle incident to an occupant's arrest. Officers arrested a driver for driving on a suspended license, handcuffed him, and put him in the patrol car. *Gant*, 556 U.S. at 335. Officers then "searched his car and discovered cocaine in the pocket of a jacket on the backseat." *Id.* This Court held that the warrantless search was unreasonable because the exception was designed to protect officers and preserve evidence, but the driver could not have "retrieve[d] weapons or evidence at the time of the search." *Id.* at 335, 338, 351. The Court thus held that "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Id.* at 351.

Gant limits *when* officers may conduct a warrantless vehicle search. It says nothing about searching the vehicle's passengers or their clothing, or whether a purse counts as clothing. The state disagrees, pointing to the statement that officers may search "not just the passenger compartment but every purse, briefcase, or other container within that space." Opp. 5 (quoting *Gant*, 556 U.S. at 345). But those words restated precedent without altering it. In concluding that the state had "seriously undervalue[d] the privacy interests" at stake, *Gant*, 556 U.S. at 344-45, the Court noted the *Houghton* rule that purses away from passengers may be searched during a lawful warrantless vehicle search. The Court did not overrule *Ybarra*, *Di Re*, or *Houghton*. Indeed, the state concedes as much when it cites *Di Re* as good law. *See* Opp. 10 n.4.

The state argues (Opp. 4, 7-10) that *Gant* will cause state high courts in the split to overrule their holdings that a lawful warrantless vehicle search does not authorize searches of purses carried by passengers. But because *Gant* doesn't address the question presented, it doesn't undermine those decisions. And state high courts are unlikely to read one sentence in *Gant*, about how unreasonable it was to allow unlimited vehicle searches incident to arrest, as curtailing passengers' Fourth Amendment rights.

B. Three state high courts hold that officers may not search a purse a passenger is holding as part of a warrantless vehicle search, because purses are like clothing.

In Kansas, North Dakota, and Idaho, police officers may not search a passenger's purse on her person as part of a lawful warrantless vehicle search. *Gant* doesn't undermine these decisions.

1. In *State v. Boyd*, 64 P.3d 419, 427 (Kan. 2003), the Kansas Supreme Court held that where officers direct a passenger to leave her purse in the vehicle and the passenger does so, "a subsequent search of the purse as part of a search of the vehicle violates the passenger's Fourth Amendment right against unreasonable search and seizure." The court reasoned that "[t]he heightened privacy interest … is sufficient to tip the balance from governmental interest in effective law enforcement, which outweighed the privacy interest in *Houghton* where the purse was voluntarily left in the back seat unclaimed." *Id.*

The state concedes (Opp. 11) that the Kansas and South Dakota high court decisions conflict, but argues (Opp. 9-10) that the Kansas Supreme Court would reach a different conclusion after *Gant*. As discussed

(at 5-6), that argument fails because *Gant* addressed when a vehicle search is lawful, while leaving in place protections for passengers. The Kansas Supreme Court correctly reasoned that a passenger's purse was entitled to the same protection from search "afforded to her person." *Boyd*, 64 P.3d at 427.

2. Similarly, in *State v. Tognotti*, 663 N.W.2d 642, 650 (N.D. 2003), the North Dakota Supreme Court held that while an officer may search a purse that a passenger voluntarily leaves in the car, "the Fourth Amendment is violated when an officer directs that a purse be left in the vehicle and … search[es] the purse," because the purse is "like the clothing the person is wearing."

The state says *Tognotti* would come out differently after *Gant* because the North Dakota Supreme Court "anticipated the *Gant* problem." Opp. 6. That's incorrect. The court permitted a search of a purse that a passenger voluntarily left in the car, but reasoned that a purse a passenger carries is like outer clothing, *Tognotti*, 663 N.W.2d at 650—a proposition that, again, *Gant* did not address.

3. In *State v. Newsom*, 979 P.2d 100, 102 (Idaho 1998), the Idaho Supreme Court held that a search of a passenger's purse was unlawful when the passenger had not left her purse in the car voluntarily, because the "purse was entitled to as much privacy and freedom from search and seizure as the passenger herself." As in *Tognotti*, the reasoning in *Newsom* turned on treating a passenger's purse like her clothing. *Contra* Opp. 6-7. And since *Gant*, the Idaho Supreme Court has cited *Newsom* as good law. *See State v. Maloney*, 489 P.3d 847, 854 (Idaho 2021).

C. By contrast, four state high courts hold that police may search a passenger's purse as part of a lawful warrantless vehicle search.

The South Dakota Supreme Court acknowledged the opposing view, App. 8a n.1, but instead joined the Supreme Courts of Minnesota, Nebraska, and Ohio in holding that officers may search a purse held by a passenger as part of a lawful warrantless vehicle search.

1. In a 3–1 divided opinion, the South Dakota Supreme Court concluded that even though Ms. Edwards held her purse, it "was not entitled to a heightened expectation of privacy and was subject to the same search conditions as any other container found inside of the vehicle that was capable of concealing contraband." App. 5a, 13a-14a.

2. The Minnesota Supreme Court also upheld, as part of a vehicle search, a search of a purse the passenger carried. *See State v. Barrow*, 989 N.W.2d 682, 683-84 (Minn. 2023). The Minnesota Supreme Court rejected the passenger's analogy to *Di Re* and held that because the purse was "a container that was inside the car at the time probable cause arose, and her purse could contain marijuana, the officer was permitted to search the purse under the automobile exception." *Id.* at 686, 688.

3. The Nebraska Supreme Court likewise permits a search of a purse held by a passenger as part of a lawful vehicle search. *See State v. Lang*, 942 N.W.2d 388, 400-01 (Neb. 2020).

4. The Ohio Supreme Court takes the same view. *See State v. Mercier*, 885 N.E.2d 942, 942 (Ohio 2008).

II. The question presented is important, and this case is an ideal vehicle for resolving it.

A. Searches of held purses threaten core constitutional rights for many individuals. Officers pull over millions of motorists yearly and frequently have probable cause to search those vehicles. Searching a passenger's purse merely because the driver is suspicious is exactly the type of rummaging at will that sparked the Revolution and inspired the Fourth Amendment. Pet. 23-24.

The South Dakota Supreme Court's rule is particularly constitutionally problematic because it arbitrarily gives men's belongings greater protection than women's. Over time, men have tended use pockets, whereas women have transitioned to handbags. Yet the Fourth Amendment protects women from having their purses ripped from them, just as it protects men from officers' rummaging in their pockets. Pet. 25-27.

This case is an ideal vehicle because the issue is dispositive. If the Court rules for Ms. Edwards, her suppression motion will be granted and her convictions vacated.

B. The state doesn't dispute that the question presented is important. But it argues (Opp. 9 n.4) that there is no gender disparity because a woman's clutch would be protected if it were in her pocket. That argument just concedes the point: in the state's view, pockets—a way to carry belongings historically used by men and today more functional for men, *see* Pet. 25-26—receive greater protections than a primary means women use to carry belongings on their person.

The state also suggests (Opp. 9 n.4) that the respective sizes of pockets and purses matter. That

argument lacks merit. The state cites no caselaw considering the size or number of coat pockets as part of the constitutional analysis. And the Court rejected a similar argument in *Di Re*, when it held that officers may not search the front-seat passenger without probable cause, even though "the contraband sought [was] a small article which could easily be concealed on the person." 332 U.S. at 586. The same is true here.

III. The South Dakota Supreme Court's decision is wrong.

A. A search of a purse that an automobile passenger is holding is like a search of the passenger's pockets, and thus is similarly protected from warrantless search under the Fourth Amendment.

1. On one side of the ledger, the intrusion on an individual's privacy is great. Purse searches implicate the "central concern underlying the Fourth Amendment—the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." *Gant*, 556 U.S. at 345. A search of a purse held by a passenger is like a search of the passenger's outer clothing—"a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience." *Houghton*, 526 U.S. at 303 (quoting *Terry v. Ohio*, 392 U.S. 1, 24-25 (1968)).

2. On the other side of the ledger, requiring a warrant to search a passenger's purse carried on her person does not hinder legitimate governmental interests. The state argues that drivers could "hide contraband in a passenger's belongings." Opp. 10 (quoting *Houghton*, 526 U.S. at 305). But *Houghton* emphasized the driver's ability to hide contraband "surreptitiously, without the passenger's knowledge

or permission." 526 U.S. at 305. That concern is weak when the passenger is holding the purse, meaning the driver could not easily surreptitiously access it.

3. Like with a search of outer clothing, *id.* at 303, the significant intrusion on the individual's privacy outweighs the lesser need to promote governmental interests.

B. The state's counterarguments fail. *First*, the state contends that the search is lawful because "the automobile exception permits the search of *any* container where the object of the search may be found." Opp. 3. That's wrong, as the state's own concessions reveal. The state acknowledges that a passenger's pockets receive "constitutional protection" from a lawful warrantless vehicle search. *See* Opp. 10 n.4. The question is whether a purse that a passenger carries is different from her pockets under the Fourth Amendment. Under the proper test for reasonableness, *see Houghton*, 526 U.S. at 299-300, purses on one's person are analogous to pockets, and are similarly protected from search. *Supra* pp. 10-11.

Second, the state asserts (Opp. 10-11) that the search is lawful because law enforcement needs a bright-line rule. But the governmental interest accounts for just one side of the balancing test. *See Houghton*, 526 U.S. at 299-300. On the other side, ripping a purse away from a passenger and searching it constitutes a severe intrusion. Thus, the balance weighs in favor of not permitting the search. Indeed, *Gant* rejected a bright-line rule permitting all vehicle searches incident to arrest, instead limiting when officers may search and requiring officers to consider context. 556 U.S. at 335. That's because the Founders "designed our Constitution to place obstacles in the

way of a too permeating police surveillance, which they seemed to think was a greater danger to a free people than the escape of some criminals from punishment." *Di Re*, 332 U.S. at 595.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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