

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 7, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1563-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NENA KIBBLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

FINE, J. Nena F. Kibble appeals her conviction, entered on a guilty plea, of possessing cocaine. See §§ 161.16(2)(b)(1) & 161.41(3m), STATS. (1993–94).¹ She claims that the trial court erred in not granting her motion to suppress.² We affirm.

¹ Wisconsin's drug laws are now found in Chapter 961, STATS. (1995-96).

The facts material to this appeal are not in dispute. Kibble was a passenger in a car that was stopped by police officers. The officers arrested the driver. The lawfulness of the stop and the driver's arrest are not contested on this appeal. After the officers arrested the driver, one of them asked Kibble to get out of the car. When she started to take her purse with her, the officer told her to leave it on the front seat. The officer then searched the car's interior and the purse, in which he found marijuana and cocaine. Neither officer searched Kibble for weapons. Kibble claims that her rights under the Fourth Amendment were violated by the search of her purse.³ We disagree.

Under the Fourth Amendment, a search incident to an arrest is lawful if the search is of an area from which the person being arrested might at the time of arrest have access to a weapon or evidence that can be destroyed, irrespective of whether the area being searched is actually accessible at the time of the search. *New York v. Belton*, 453 U.S. 454, 460–462 (1981); *State v. Fry*, 131 Wis.2d 153, 174–175, 388 N.W.2d 565, 574 (1986), *cert. denied*, 479 U.S. 989; *cf. State v. Murdock*, 155 Wis.2d 217, 231, 455 N.W.2d 618, 624 (1990) (search of residence). Moreover, it makes no difference whether the arrest is for a traffic offense or something more serious. *Whren v. United States*, ___ U.S. ___, ___, 116 S. Ct. 1769, 1773–1777, 135 L.Ed.2d 89, 96–101 (1996) (traffic arrest—proposition not questioned).

² A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. Section 971.31(10), STATS.

³ Kibble does not assert that the search was invalid under Wisconsin's analogue to the Fourth Amendment, Article I, Section 11 of the Wisconsin Constitution. The Fourth Amendment and Article I, Section 11 of the Wisconsin Constitution are consistent with one another and are coextensive. *State v. Fry*, 131 Wis.2d 153, 171–176, 388 N.W.2d 565, 573–575 (1986), *cert. denied*, 479 U.S. 989.

Among the places that can be lawfully searched incident to a legal arrest are containers inside the automobile, irrespective of whether they are open or closed. *Belton*, 453 U.S. at 461 n.4, 461–462. Significantly, in both *Belton* and *Fry*, as here, the persons arrested no longer had actual access to the interior of the car being searched at the time of the search, *Belton*, 453 U.S. at 455–456, 466, (Brennan, J., dissenting); *Fry*, 131 Wis.2d at 186, 388 N.W.2d at 579 (Bablitch, J., dissenting). Indeed, the officers in *Fry* searched a locked glove compartment while the persons arrested were handcuffed, seated in squad cars, and guarded by police officers. *Ibid.*

Kibble argues that if she had taken the purse with her, the officer would not have been permitted to search it unless he had reason to suspect that she might be armed. *See Terry v. Ohio*, 392 U.S. 1, 27 (1968). Thus, she contends that the officer searched her purse unlawfully because she left it on the seat pursuant to his direction. Traffic stops are dangerous for police officers. *Maryland v. Wilson*, ___ U.S. ___, ___, 117 S. Ct. 882, 885, 137 L.Ed.2d 41, 46–47 (1997). Thus, we question whether the prerequisites to a *Terry*-frisk need be present before an officer arresting a driver may assure him- or herself that a passenger is not armed. *See Maryland v. Buie*, 494 U.S. 325, 334 (1990) (approving, as an incident to an arrest, warrantless protective sweep of places in home “from which an attack could be immediately launched”). We need not decide this issue here, however. The simple fact is that the purse was in the car when the car and any containers in the car were subject to a lawful search. The police officers did not violate Kibble's constitutional rights.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

