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No. 66543-0-I

IN THE COURT OF APPEALS IN THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Plaintiff/Respondent

v.

JAMI S. HOWE,

Defendant/Appellant.

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STATE OF WASHINGTON  
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SUPPLEMENTAL BRIEF OF APPELLANT

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Corey Parker, WSBA #40006  
Attorney for Appellant  
7162 Beverly Blvd # 103  
Los Angeles, CA 90036

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### **A. SUPPLEMENTAL ISSUE PRESENTED**

Does *State v. Snapp* apply to Ms. Howe's case? If so, is reversal required?

### **B. STATEMENT OF THE CASE**

On April 16, 2012, this Court entered an Order Requesting Additional Briefing addressing the impact of *State v. Snapp*, No's. 84223-0 & 84569-7, filed April 5, 2012, on the issues in Jami Howe's ("Ms. Howe's") appeal. Appellant previously addressed the CrR 3.6 hearing in the Opening Brief. Appellant, therefore, submits the following in regard to the application of *State v. Snapp* to Ms. Howe's case. The Statement of the Case is set forth in the Appellant's Opening Brief. Briefs are incorporated by reference herein.

### **C. ARGUMENT**

***STATE V. SNAPP* APPLIES TO MS. HOWE'S CASE AND WASHINGTON STATE'S EXCLUSIONARY RULE REQUIRES SUPPRESSION OF ALL EVIDENCE FOUND DURING THE SEARCH OF MS. HOWE'S VEHICLE INCIDENT TO THIS ARREST.**

"The Law in Washington is that a new rule for the conduct of criminal prosecutions applies retroactively to all cases, state or federal, pending on direct review or not yet final." *State v. Kilgore*, Wn. App. 817,

832 172 P.3d 373 (2007). Thus, because Ms. Howe's case is pending on direct review, *State v. Snapp* applies.

The trial court concluded that the detective searched Ms. Howe's vehicle incident to her arrest for the charge of delivery of a controlled substance. CP 60. Ms. Howe had been arrested, handcuffed, and placed in the patrol car prior to the search. At that point no concern should have existed about officer safety or destruction of the evidence when the detective searched inside the vehicle and located the cloth bag behind the driver's seat, which contained three baggies of suspected methamphetamine leading to the possession of a controlled substance with intent to manufacture or deliver and delivery of a controlled substance charges of which Ms. Howe was convicted.

In *Arizona v. Gant*, the US Supreme Court held:

A warrantless automobile search incident to arrest of a recent occupant of the vehicle is proper under the Fourth Amendment to the United States Constitution only (1) when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search or (2) when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

In *State v. Snapp*, the Washington State Supreme Court rejected the second exception aforementioned in *Gant* referred to as the *Thornton* exception because it does not apply under article I, section 7 of the Washington State Constitution. The court held the following:

The issue we must decide is whether an equivalent to *Gant's* second exception, referred to here as *Thornton* exception, applies under article I, section 7 of the Washington State Constitution. We conclude that no such exception is permissible under article I, section 7. Accordingly, we reverse the Court of Appeals in both cases, reverse the defendants' convictions, and remand these cases for further proceedings consistent with our decision herein. *Snapp*, No's. 84223-0 & 84569-7.

In *Snapp*, the Washington State Supreme Court held that contrary to the urgency attending the search incident to arrest to preserve officer safety and prevent destruction or concealment of evidence, there is no similar necessity associated with a warrantless search based upon either a reasonable belief or probable cause to believe that evidence of the crime of arrest is in the vehicle.

The Court in *Snapp* corroborated its reasoning in part by citing *State v. Buelna Valdez*, 167 Wn.2d 761, 224 P.3d 751(2009). The Court stated the following:

When a search can be delayed to obtain a warrant without running afoul of concerns for the safety of the officer or to preserve evidence of the crime of arrest from concealment or destruction by the arrestee (and does not fall within another applicable exception), the warrant *must be obtained*. *Buelna Valdez*, 167 Wn.2d at 773.

With respect to the lawfulness of the search of the vehicle incident to Ms. Howe's arrest, the facts of Ms. Howe's case are very similar to those of *Snapp*. In *Snapp*, Mr. Snapp's vehicle was searched incident to his arrest for a warrant for the crime of escape, and for possession of drug paraphernalia and DWLS. Mr. Snapp was handcuffed and placed in the

patrol car prior to the search. The State charged Mr. Snapp with several counts of second degree identity theft and one count of first degree identity theft. Snapp moved to suppress the evidence gathered during the warrantless search, arguing that the search was unlawful. The trial court denied the motion. The court concluded that the search of the vehicle was a valid search incident to arrest.

The State filed an amended information charging Snapp with six counts of second degree identity theft and Snapp entered an *Alford-Newton* plea, pleading guilty to all six counts but with a reservation of his right to appeal the denial of his CrR 3.6 motion to suppress. He appealed and the Court of Appeals affirmed. The Court of Appeals held that Trooper Pigott lawfully arrested Mr. Snapp for use of drug paraphernalia and then searched the vehicle for evidence related to this crime of arrest. Therefore, the court concluded, under *Gant's Thornton* exception the warrantless search was lawful. *State v. Snapp*, 153 Wn. App. 485, 219 P.3d 971 (2009).

On review, the Washington State Supreme Court first turned to the issue of whether the *Thornton* exception existed under article I, section 7. Article I, section 7 provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." A privacy interest in vehicles and their contents is recognized under article I, section

7. *State v. Afana*, 169 Wn.2d 169, 176, 233 P.3d 879 (2010); *State v. Patton*, 167 Wn.2d 379, 219 P.3d 651 (2009). The Court determined that the *Thorton* exception was not permissible under article I, section 7. The Court then considered whether one of the narrowly drawn exceptions to the warrant requirement applied and whether there was a safety risk or if the vehicle contained evidence of the crime of arrest that could be concealed or destroyed, and whether these concerns existed at the time of the search. The court concluded that these concerns did not exist.

Accordingly, The Court provided the following rationale:

An arrestee in handcuffs in the backseat of a patrol car is hardly in a position to grab a weapon or gain possession of evidence of the crime in the vehicle and conceal or destroy it.

In the case at bar, the detective had information from an informant that Ms. Howe had provided him drugs in exchange for cash. The detective pulled over Ms. Howe's vehicle, arrested Ms. Howe, handcuffed her and placed her in the back of his patrol vehicle. He then searched incident to the arrest and found a baggie containing a small amount of suspected methamphetamine in Ms. Howe's purse. Behind the driver's seat of the car, he found a cloth bag containing methamphetamine; plastic baggies, and a digital scale.

Based on the Washington State Supreme Court's ruling in *Snapp*, whether or not it was reasonable to believe evidence relevant to the crime

of arrest might be found in the vehicle as drawn out in the *Thorton* exception is irrelevant because the Washington State Supreme Court has rejected it as an exception to the warrant requirement under article I, section 7 of the Washington State Constitution. The State has provided no alternative narrowly drawn exception to the warrant requirement to justify searching Ms. Howe's vehicle without a warrant. Like *Snapp*, in Ms. Howe's case there were no exigent circumstances, there were no safety concerns and there was no realistic chance of the evidence being destroyed. Therefore, pursuant to article I, section 7 of the Washington State Constitution and *Snapp*, a warrant was required to search Ms. Howe's vehicle lawfully under these circumstances. No search warrant was executed in this case and therefore all evidence was seized unlawfully.

While the Federal exclusionary rule under the Fourth Amendment establishes the "minimum" exclusionary rule (see *State v. White*, 97 Wn.2d, 92, 109, 640 P.2d 1061 (1982)), Washington's article I, section 7 exclusionary rule is more stringent than the Federal rule and is more protective of the privacy rights of Washington citizens. Hence, if evidence derived from an unlawful search must be suppressed under the Fourth Amendment, then it must also be suppressed under article I, section 7.

**D. CONCLUSION**

Under *State v. Snapp*, and for all of the foregoing reasons and conclusions, Ms. Howe respectfully requests that this court vacate her convictions and remand for entry of an order of dismissal on all counts.

Respectfully Submitted this 6th Day of May, 2012

Corey Evan Parker  
Corey Evan Parker  
WSBA #40006  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

The undersigned certifies that on May 6, 2012, he sent by U.S. mail this Supplemental Brief to the following parties: Mary Kathleen Webber, Snohomish County Prosecutor's Office, MSC 504 Everett, WA 98201-4061 and by U.S. mail to Jami Howe, 11221 W Monte Vista Rd. Avondale, AZ 85392.

Corey Evan Parker  
Corey Evan Parker  
WSBA #40006  
Attorney for Appellant

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