

FILED  
COURT OF APPEALS

NOV 15 AM 11:42

NO. 34704-1-II

STATE OF WASHINGTON

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

---

STATE OF WASHINGTON,

Respondent,

v.

JASON HAMILTON HEWEY,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR COWLITZ COUNTY

The Honorable Jill Johanson

---

BRIEF OF APPELLANT

---

VALERIE MARUSHIGE  
Attorney for Appellant

2136 S 260<sup>th</sup> Street, BB304  
Des Moines, Washington 98198  
(253) 945-6389

pm 11-14-06

**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENTS OF ERROR</u> .....	1
<u>Issues Pertaining to Assignments of Error</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. <u>Procedural Facts</u> .....	2
2. <u>Substantive Facts</u> .....	3
C. <u>ARGUMENT</u> .....	5
THE TRIAL COURT ERRED IN DENYING HEWEY'S MOTION TO SUPPRESS EVIDENCE OBTAINED AFTER AN UNLAWFUL SEARCH AND SEIZURE .....	5
1. <u>Trooper Chapman unlawfully seized Hewey when he     unreasonably patted him down.</u> .....	6
2. <u>Trooper Chapman unlawfully searched the     backpack in the passenger     compartment.</u> .....	11
D. <u>CONCLUSION</u> .....	14

**TABLE OF AUTHORITIES**

Page

**WASHINGTON CASES**

<u>State v. Brown</u> , 154 Wn.2d 787, 117 P.3d 336 (2005) .....	6
<u>State v. Cole</u> , 73 Wn. App. 844, 871 P.2d 656 (1994), <u>review denied</u> , 125 Wn.2d 1003, 886 P.2d 1134 (1994) .....	7, 11
<u>State v. Collins</u> , 121 Wn.2d 168, 847 P.2d 919 (1993) .....	6, 8, 11
<u>State v. Hendrickson</u> , 129 Wn.2d 61, 917 P.2d 563 (1996) .....	5
<u>State v. Horrace</u> , 144 Wn.2d 386, 28 P.3d 753 (2001) .....	5
<u>State v. Johnson</u> , 128 Wn.2d 431, 909 P.2d 293 (1996) .....	6
<u>State v. Johnston</u> , 107 Wn. App. 280, 29 P.3d 775, <u>review denied</u> , 145 Wn.2d 1021, 41 P.3d 483 (2002) .....	12
<u>State v. Kennedy</u> , 107 Wn.2d 1, 726 P.2d 445 (1986) .....	6
<u>State v. Ladson</u> , 138 Wn.2d 343, 979 P.2d 833 (1999) .....	5, 6
<u>State v. Nelson</u> , 89 Wn. App. 179, 948 P.2d 1314 (1997) .....	7

**TABLE OF AUTHORITIES** (CONT'D)

	Page
 <u>WASHINGTON CASES</u>	
<u>State v. Parker</u> , 139 Wn.2d 486, 987 P.2d 73 (1999) .....	5
<u>State v. Stroud</u> , 106 Wn.2d 144, 720 P.2d 436 (1986) .....	12
<u>State v. Sweet</u> , 44 Wn. App. 226, 721 P.2d 560 (1986), <u>review denied</u> , 107 Wn.2d 1001 (1986) .....	6
 <u>FEDERAL CASES</u>	
<u>Terry v. Ohio</u> , 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) .....	5, 6
<u>Chimel v. California</u> , 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969) .....	12, 14
<u>State v. Belton</u> , 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981) .....	12
 <u>RULES, STATUTES, AND OTHERS</u>	
RAP 10.3 (a)(4) .....	2
Const. art. I, sect. 7 .....	5
U.S. Const. Fourth Amendment .....	5

A. ASSIGNMENTS OF ERROR

1. The trial court erred in entering conclusion of law three on appellant's motion to suppress evidence. CP 22-25.

2. The trial court erred in denying appellant's motion to suppress evidence obtained after an unlawful seizure of appellant.

3. The trial court erred in denying appellant's motion to suppress evidence obtained from an unlawful search incident to arrest.

Issues Pertaining to Assignments of Error

1. Did the trial court err in denying appellant's motion to suppress evidence obtained after an unlawful seizure of appellant who was detained for a traffic infraction then subsequently patted down when no articulable facts created an objectively reasonable belief that he was armed and dangerous?

2. Did the trial court err in denying appellant's motion to suppress evidence obtained from an unlawful search incident to arrest because appellant did not have ready access to, or immediate control of, the vehicle's passenger compartment?

B. STATEMENT OF THE CASE<sup>1</sup>

1. Procedural Facts

On December 22, 2005, the State charged appellant, Jason Hamilton Hewey, with one count of possession of methamphetamine and one count of possession of hydrocodone, in violation of the Uniform Controlled Substances Act, and a third count of making a false or misleading statement to a public servant. CP 5-6; RCW 69.50.4013(1)(2), RCW 9A.76.175. On February 14, 2006, the court held a CrR 3.6 hearing on Hewey's motion to suppress evidence and denied his motion on February 21, 2006.<sup>2</sup> 5RP<sup>3</sup> 70-71; CP 22-25. The State amended the information on March 14, 2006, changing the count of possession of hydrocodone to possession of dihydrocodeinone. CP 20-21. Hewey agreed to a stipulated trial before the Honorable Jill Johanson on March 28, 2006. CP 26-29. The court found Hewey guilty on all three counts and sentenced him to 18 months confinement for counts one and two and a concurrent sentence of 365 days with 360 days suspended for count three. CP 31-40. Hewey filed this timely appeal. CP 43.

---

<sup>1</sup> In accord with RAP 10.3 (a)(4), the Statement of the Case addresses facts and procedure relevant to the issues presented for review.

<sup>2</sup> The court's written findings of fact and conclusions of law, filed on March 28, 2006, is attached as an appendix.

<sup>3</sup> There are nine verbatim report of proceedings: 1RP - 12/20/05; 2RP - 12/27/05; 3RP - 1/17/06; 4RP - 2/14/06; 5RP - 2/21/06; 6RP - 3/7/06; 7RP - 3/14/06; 8RP - 3/21/06; 9RP - 3/28/06.

2. Substantive Facts

At the CrR 3.6 hearing on the defense motion to suppress evidence, Trooper Michael Chapman testified that he was working on December 19, 2005.<sup>4</sup> Chapman was parked on Ocean Beach Highway 4 when a pickup truck passed by and he saw that Jason Hewey, a passenger, was not wearing a seat belt. 4RP 17-18. Chapman stopped the truck and asked Hewey for identification, which Hewey could not provide, but he told Chapman that his name was Jamie Hewey. Chapman ran a check on the name and obtained information that Jamie Hewey was 6'1", 210 pounds, with brown eyes, and born in 1974. 4RP 19-21. Chapman became suspicious because Hewey appeared shorter and smaller, did not have brown eyes, and did not look 31 years old. 4RP 21-23. Hewey responded nervously when Chapman questioned him about his age, "I could see him almost adding up his age in his head." 4RP 26.

Suspecting that Hewey gave him false information, Chapman told Hewey to step out to the back of the truck to "better size him up." 4RP 26. Upon concluding that Hewey did not fit the description of Jamie Hewey, Chapman told Hewey to put his hands behind his back and searched him for "any weapons, needles, drugs -- his ID card." 4RP 27-

---

<sup>4</sup> Chapman recorded the investigatory stop on video which was played for the court during his testimony. 4RP 18.

28. Then Chapman put Hewey in the back of his a patrol car without using handcuffs because Hewey was fairly cooperative and "mellow." 4RP 29-31.

Thereafter, Chapman questioned the driver and other passenger about Hewey and they said they just picked him up at Fred Meyer and did not know him. 4RP 32. Chapman asked them about a backpack that he saw underneath Hewey's feet in the passenger compartment of the truck where he was sitting. When they denied owning the backpack, Chapman searched it "because it was in Hewey's possession." 4RP 32 - 33. Chapman found drug paraphernalia containing what he recognized as crystal methamphetamine residue and a bag of white pills. Chapman read Hewey his Miranda rights and took him to the jail at the Hall of Justice. 4RP 34-36.

The trial court denied the defense motion to suppress, concluding that the trooper had probable cause to make a custodial arrest and the evidence was lawfully obtained by search incident to arrest. 5RP 70-71. Consequently, Hewey agreed to a stipulated trial, where the court found him guilty of possession of controlled substances and giving a false or misleading statement to a public servant. 9RP 82-83. The stipulation of the parties included facts that Hewey falsely identified himself, the white

pills found in the backpack contained dihydrocodeinone, and a subsequent search at the jail uncovered five bags of methamphetamine. CP 26-29.

C. ARGUMENT

THE TRIAL COURT ERRED IN DENYING HEWEY'S MOTION TO SUPPRESS EVIDENCE OBTAINED AFTER AN UNLAWFUL SEARCH AND SEIZURE.

The trial court erred in denying Hewey's motion to suppress evidence obtained after an unlawful seizure of Hewey and a subsequent unlawful search incident to arrest. The court's error requires reversal and dismissal.<sup>5</sup>

The Fourth Amendment to the United States Constitution and article 1, sect. 7 of the Washington Constitution prohibit unreasonable searches and seizures. Terry v. Ohio, 392 U.S. 1, 16-19, 25-26, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); State v. Parker, 139 Wn.2d 486, 527, 987 P.2d 73 (1999). Warrantless searches and seizures are per se unreasonable. State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996). However, warrantless seizures may be reasonable under "a few jealously and carefully drawn" exceptions. State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). The State bears the burden of showing

---

<sup>5</sup> An appellate court reviews de novo conclusions of law pertaining to suppression of evidence. State v. Horrace, 144 Wn.2d 386, 392, 28 P.3d 753 (2001).

that a warrantless search falls under an established exception. State v. Johnson, 128 Wn.2d 431, 451, 909 P.2d 293 (1996).

When the initial seizure is unlawful, evidence obtained subsequent to the seizure must be suppressed. State v. Brown, 154 Wn.2d 787, 799, 117 P.3d 336 (2005) (citing State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986)). When an unconstitutional search or seizure occurs, all subsequent uncovered evidence becomes fruit of the poisonous tree and must be suppressed. State v. Ladson, 138 Wn.2d at 359-60.

1. Trooper Chapman unlawfully seized Hewey when he unreasonably patted him down.

An exception to the general rule that warrantless searches are per se unreasonable is the stop and frisk exception recognized in Terry v. Ohio, 392 U.S. at 30-31. In conducting a *Terry* stop, “the Fourth Amendment will be satisfied where the following requirements are met: (1) the initial stop must be legitimate; (2) a reasonable safety concern must exist to justify a protective frisk for weapons; and (3) the scope of the frisk must be limited to the protective purpose.” State v. Collins, 121 Wn.2d 168, 173, 847 P.2d 919 (1993). A valid investigatory stop does not automatically justify a subsequent frisk. A limited pat-down for weapons is justified, however, when an officer reasonably believes that the individual detained may be armed and dangerous. State v. Sweet, 44 Wn.

App. 226, 233, 721 P.2d 560 (1986), review denied, 107 Wn.2d 1001 (1986). In order to do a pat-down search of a person, the police must be able to point to specific and articulable facts creating an objectively reasonable belief that a suspect is armed and dangerous. State v. Nelson, 89 Wn. App. 179, 183, 948 P.2d 1314 (1997).

In State v. Cole, 73 Wn. App. 844, 850, 871 P.2d 656 (1994), review denied, 125 Wn.2d 1003, 886 P.2d 1134 (1994), this Court reversed the trial's court denial of Cole's motion to suppress evidence because Cole was unlawfully seized. Cole was a passenger in a car stopped for traffic violations. When the trooper approached the car, he noticed that Cole was not wearing his seat belt and decided to cite him for the infraction. The trooper asked for identification, which Cole could not provide, but Cole gave him his name and birth date. Id. at 845-46. The trooper then asked Cole to step out of the car and patted him down for weapons. While the trooper was running a radio check on Cole, he saw Cole pushing something under the patrol car with his foot. The trooper retrieved a glass pipe containing a white crystalline residue resembling cocaine. The trooper arrested Cole and during the search incident to arrest found a vial of white powder. Id. at 846. Cole was charged and convicted of possession of a controlled substance and drug paraphernalia. Id. at 847.

This Court determined that when Cole was told to step out of the car, the investigation escalated to a Terry stop, which was not warranted for an investigation of a traffic infraction and because the trooper had no suspicions. This Court concluded that a pat-down would have been justified “only if the trooper could have pointed to specific and articulable facts creating an objectively reasonable belief that a suspect is armed and presently dangerous.” Id. at 850. Accordingly, this Court held that because the seizure of Cole was unreasonable, evidence obtained after the seizure must be suppressed. Id.

In contrast, the Washington Supreme Court affirmed the trial court’s finding that reasonable safety concerns existed to justify the officer’s protective *Terry* frisk for weapons in State v. Collins, 121 Wn.2d at 177. Collins was stopped for a faulty brake light by patrol officers at approximately 4 a.m. One of the officers recognized Collins from an arrest on a felony warrant following a previous stop. The officer recalled that Collins had ammunition and a holster in his vehicle. Based on the officer’s earlier encounter with Collins, the officer ordered him out of the vehicle and conducted a pat-down for weapons. Discovering a hard object in Collins’ pocket, the officer reached into the pocket believing that it could be a weapon. When the officer retrieved a knife, a plastic bag containing a powdery substance fell out of the pocket. The officer

arrested Collins and the substance later tested positive for methamphetamine. Id. at 171-72.

The Supreme Court considered that the stop was made during darkness at a desolate time of day and the officer's knowledge that Collins had ammunition and a holster in his vehicle during the previous felony arrest. The Court concluded that the officers therefore had reasonable safety concerns that warranted a protective frisk for weapons thus the trial court properly denied Collins' motion to suppress. Id. at 174-77.

Here, Hewey was a passenger in a truck stopped by Trooper Chapman because he was not wearing a seat belt. Hewey could not provide any identification but he told Chapman that his name was Jamie Hewey and gave a birth date. 4RP 17-21. Chapman ran a check on the name and obtained information that Jamie Hewey was 6'1", 210 pounds, with brown eyes, and born in 1974. 4RP 19-21. Chapman returned to the truck and questioned Hewey who became nervous:

Well, the first thing is when I asked him how old he was, he repeated back to me, How old am I? And that is the typical question, and I could see him almost adding up his age in his head, and he says 30, and then he kind of paused -- 31 -- 31 -- and he says it three times before he comes up with 31, and the defendant here does not look 31 to me -- at the time, too, he did not look 31.

4RP 26.

Suspecting that Hewey gave him false information because he did not appear to fit the description, Chapman told Hewey to step out to the back of the truck. 4RP 21-26. Chapman testified that he wanted to "better size him up" by having Hewey stand:

Q. Now is he shorter than you or is he taller?

A. He is shorter than me.

Q. And you stand how tall?

A. 6 feet.

Q. Is he thinner than you, or is he heavier than you?

A. He's thinner than me. I'm 200 pounds.

....

Q. Now at this point did his answers change from previously?

A. Right, he said he was 225 in the car when we were sitting there, and now he's saying he's 190.

4RP 26-27.

Concluding that the information Hewey gave him was false, Chapman told Hewey to put his hands behind his back and searched him for "any weapons, needles, drugs -- his I.D card." 4RP 27-28. During redirect examination, Chapman reiterated that he patted Hewey down for weapons and drugs. 4RP 44.

Similar to Cole, there were no articulable facts creating a reasonable belief that Hewey was armed and dangerous. Chapman provided no testimony or evidence of any safety concerns during the investigatory stop. To the contrary, he explained that he did not even handcuff Hewey because he was cooperative and “mellow.” 4RP 29-31. Unlike the officers in Collins, Chapman had no justifiable reason for a protective frisk for weapons. Once Chapman had a good look at Hewey standing up, it was evident that Hewey did not fit the description of Jamie Hewey.<sup>6</sup> Chapman therefore had probable cause to arrest Hewey and take him to the jail for a photo I.D. Consequently, it was unnecessary and unreasonable to proceed further with a pat-down.

Hewey was unlawfully seized when Chapman patted him down because there were no articulable facts creating a reasonable belief that he was armed and dangerous. The evidence obtained after the unlawful seizure must therefore be suppressed. The trial court’s erroneous denial of Hewey’s motion to suppress the evidence requires reversal.

2. Trooper Chapman unlawfully searched the backpack in the passenger compartment.

The scope of a search incident to arrest extends as far as, but no farther than, the area into which the arrestee might reach to grab a weapon

---

<sup>6</sup> Hewey was 5’11”, 170 pounds, with hazel eyes, and born in 1980. CP 27.

or destroy evidence. Chimel v. California, 395 U.S. 752, 763, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969). When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. State v. Belton, 453 U.S. 454, 460, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981). The rationale for the search incident to arrest exception to the warrant requirement is that the exigencies of the situation surrounding a car search pursuant to a custodial arrest outweigh the privacy interests of the driver and passengers. State v. Stroud, 106 Wn.2d 144, 147, 720 P.2d 436 (1986). These exigencies include the danger that the suspect could destroy the evidence in the car, drive the car away, or grab a weapon secreted somewhere in the passenger compartment. Id.

In State v. Johnston, 107 Wn. App. 280, 29 P.3d 775, review denied, 145 Wn.2d 1021, 41 P.3d 483 (2002), this Court relied on Belton and Stroud to determine when a search incident to arrest is lawful:

The key question when applying *Belton* and *Stroud* is whether the arrestee had ready access to the passenger compartment at the time of arrest. If he could suddenly reach or lunge into the compartment for a weapon or evidence, the police may search the compartment incident to arrest. If he could not do that, the police may not search the compartment incident to arrest. Sometimes, this is referred to as having 'immediate control' of the compartment.

Id. at 285-86 (emphasis added).

This Court held that to justify the search incident exception to the warrant requirement, the arrestee must have ready access to, or immediate control of, the vehicle's passenger compartment at the time of arrest. Id. at 288.

Here, Hewey did not have ready access to, or immediate control of, the truck's passenger compartment when Trooper Chapman arrested him. Chapman asked Hewey to step out to the back of the truck because he did not fit the description of Jamie Hewey. 4RP 26. After having a good look at Hewey, Chapman concluded that Hewey gave him false information and placed him under custody, telling Hewey to put his hands behind his back, patting him down, and securing him in the patrol car without handcuffs. Chapman did not use handcuffs because Hewey was cooperative and posed no threat of danger. 4RP 27-31. Clearly, at the time of arrest, Hewey could not have suddenly reached or lunged into the passenger compartment for a weapon or evidence because he was at the back of truck and then locked in the patrol car.

Consequently, Chapman's warrantless search of the passenger compartment of the truck was unlawful and the evidence seized from the

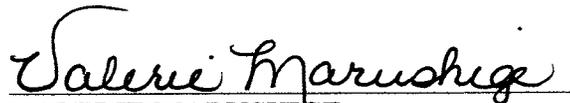
backpack must be suppressed.<sup>7</sup> The trial court's erroneous denial of Hewey's motion to suppress the evidence requires reversal.

D. CONCLUSION

For the reasons stated, this Court should reverse and dismiss Mr. Hewey's convictions for possession of controlled substances.

DATED this 14<sup>th</sup> day of November, 2006.

Respectfully submitted,

  
VALERIE MARUSHIGE  
WSBA No. 25851  
Attorney for Appellant

---

<sup>7</sup> It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants wherever reasonably practicable. This rule rests upon the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities. To provide the necessary security against unreasonable intrusions upon the private lives of individuals, the framers of the Fourth Amendment required the adherence to judicial processes wherever possible. And subsequent history has confirmed the wisdom of that requirement. A search or seizure without a warrant as an incident to a lawful arrest has always been considered to be a strictly limited right. It grows out of the inherent necessities of the situation at the time of the arrest. But there must be something more in the way of necessity than merely a lawful arrest. Chimel, 395 U.S. at 758-59.

## **APPENDIX**

FILED  
SUPERIOR COURT

2006 MAR 28 P 12: 29

COWLITZ COUNTY  
RONI A. BOOTH, CLERK

BY *[Signature]*

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

STATE OF WASHINGTON, )

Plaintiff, )

v. )

JASON HAMILTON HEWEY, )

Defendant, )

NO. 05-1-01641-5

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
ON DEFENDANT'S MOTION  
TO SUPPRESS

On February 14, 2006, the Honorable Jill Johanson, Superior Court Judge, presided over the defendant's motion to suppress. The court heard testimonies of witnesses, considered the evidence presented, and found the following:

**Findings of Fact**

1. On December 19, 2005, Trooper Chapman observed a GMC pickup pass him on SR-4, noticed there were three occupants in the vehicle, and saw the right passenger, the defendant, was not wearing his seatbelt.
2. Trooper Chapman initiated a traffic stop, observed the defendant pull the seatbelt over his shoulder, and contacted the defendant.
3. Upon contact, the defendant indicated that seatbelt had just popped off. Trooper Chapman saw a bag blocking the buckle and verified that the buckle was in proper working order.

*PA/delt*

(17)

- 1 4. When asked for his driver's license or identification, the defendant indicated he had no  
2 identification and wrote Jamie Lee Hewey Jr., DOB 09-02-1974, on a piece of paper for  
3 Trooper Chapman. Defendant also verbally indicated that he was Jamie Lee Hewey and  
4 that his date of birth was 09-02-1974.
- 5 5. Trooper Chapman ran Jamie Lee Hewey's information and was told by dispatch that  
6 Jamie Lee Hewey is 6-1" in height, is 210 lbs in weight, and has brown eyes.
- 7 6. Trooper Chapman immediately felt that the defendant did not match the description for  
8 Jamie Lee Hewey. The defendant appeared younger than 31 years of age, shorter than 6-  
9 1" in height, lighter than 210 lbs in weight, and had hazel eyes.
- 10 7. Trooper Chapman confronted the defendant about the color of his eyes and the defendant  
11 indicated that he had chameleon eyes that change colors. Defendant also appeared  
12 nervous when calculating his age and did not give a matching address for Jamie Hewey.
- 13 8. Trooper Chapman had defendant step out of and go to the rear of the vehicle, and  
14 estimated that defendant was about 5-10" in height and 170 lbs in weight. Trooper  
15 Chapman is 6-0" in height and 200 lbs in weight. Defendant is shorter and smaller than  
16 Trooper Chapman.
- 17 9. Trooper Chapman told defendant that he was being taken into custody because Trooper  
18 Chapman did not believe the defendant was Jamie Lee Hewey. Trooper proceeded to  
19 place defendant's hands behind his back, ask defendant if he had any weapons or drugs,  
20 pat defendant down, and place defendant in the back of his locked patrol vehicle without  
21 handcuffs.
- 22 10. Trooper Chapman then contacted the other two occupants in the vehicle and neither  
23 occupants knew the defendant's name. Trooper Chapman proceeded to conduct a search  
24 of the vehicle incident to defendant's arrest and located a black backpack that was located  
25

1 at the defendant's feet. The two remaining occupants indicated that the bag did not  
2 belong to them and did not know who was owner. Inside the backpack, Trooper  
3 Chapman found 2 scales, lots of empty baggies, a bag with 9 white pills, two unused  
4 syringes, and two glass pipes, one with methamphetamine residue.

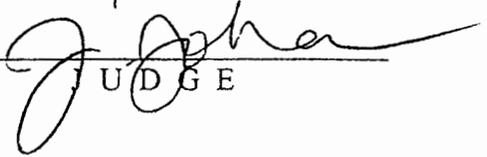
- 5 11. Trooper Chapman proceeded to read defendant his Miranda rights and defendant  
6 indicated his knowledge and understanding of his rights. Defendant denied ownership of  
7 the backpack and continued to claim he was Jamie Hewey. Trooper Chapman  
8 transported defendant to the Cowlitz County Jail.

### 10 Conclusions of Law

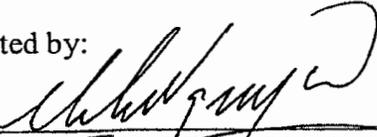
- 11 1. Trooper Chapman had probable cause to arrest defendant for making a false or  
12 misleading statement to an officer contrary to RCW 9A.76.175. Defendant did not match  
13 the height, weight, and eye color of the physical descriptions for the name he gave to  
14 Trooper Chapman. This is sufficient to establish probable cause for this offence.
- 15 2. The manifestations of the intent of the officer to place the defendant under arrest  
16 determine if the suspect was in "custody". Generally this intent is manifested by  
17 handcuffing the suspect, doing pat downs of the suspect, placing the suspect in a patrol  
18 vehicle, and telling the suspect that he or she is under arrest. Here, Trooper Chapman  
19 told defendant that he was being taken into "custody", did a pat down of defendant, and  
20 placed defendant in the back of a locked patrol car. A reasonable person in defendant's  
21 position would have believed he or she had been arrested.
- 22 3. Where a driver or passenger is arrested and removed from a vehicle, an officer may  
23 validly search the entire compartment area. But the search must occur immediately after  
24 an arrest. Defendant was contacted as a passenger in a vehicle for not wearing his  
25 seatbelt. He gave a name, but his physical descriptions did not match those associated  
with that name. He was removed from his vehicle, patted down, told he was being taken

1 into "custody", and restrained in the back of a police car. Under these circumstances, the  
2 Trooper was allowed to conduct a search incident to arrest. Trooper Chapman was  
3 allowed to search the passenger compartment of the vehicle from which defendant was  
4 removed.

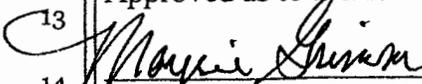
5 DATED this \_\_\_\_\_ day of 3/29/ 2006.

6  
7   
8 J U D G E

9 Presented by:

10   
11 MIKE NGUYEN, WSB # 31641  
Attorney for the State

12 Approved as to form:

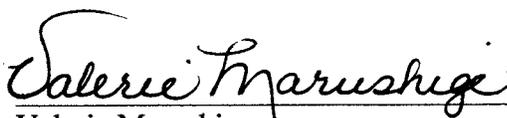
13   
14 MAYRIE GRIMM, WSBA # 36150  
15 Attorney for Defendant  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

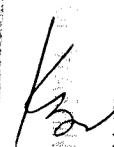
**DECLARATION OF SERVICE**

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached, to Susan I. Baur, Cowlitz County Prosecutor's Office, 312 SW First Street, Kelso, Washington 98626 and Jason Hewey, P.O. Box 1899, Airway Heights, Washington 99001.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14<sup>th</sup> day of November, 2006 in Des Moines, Washington.

  
\_\_\_\_\_  
Valerie Marushige  
Attorney at Law  
WSBA No. 25851

FILED  
COURT REPORTALS  
06 NOV 15 AM 11:42  
STATE OF WASHINGTON  
BY  DEPUTY