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Court of Appeals No. 37210-0-II

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

STATE OF WASHINGTON,

Plaintiff/Respondent,

v.

DANIEL GERALD SNAPP,

Defendant/Appellant.

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY _____
DEPUTY

BRIEF OF APPELLANT

**Appeal from the Superior Court of Pierce County,
Cause No. 06-1-05153-1
The Honorable Katherine M. Stolz, Presiding Judge**

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A. ASSIGNMENTS OF ERROR

1. The traffic stop was unlawful because the trooper lacked a reasonable, articulable suspicion that a traffic infraction had occurred.

2. The traffic stop was unlawful because the trooper subjectively intended to stop the car for reasons that did not provide lawful authority.

3. The warrantless search of Mr. Snapp's vehicle was not a valid search incident to arrest because Mr. Snapp had no immediate access to the car at the time he was arrested.

4. The trial court erred when it entered "Findings as to Disputed Facts" Numbers 1 through 5 and "Reasons for Admissibility or Inadmissibility of the Evidence" Numbers 1 through 3.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where the state failed to prove that the two pine tree air fresheners that hung from the rear view mirror, or the carabineer attached to the seatbelt, created a condition tht rendered the vehicle so unsafe as to endanger a person, was the trooper's traffic stop of the

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vehicle lawful? (Assignment of Error Number One)

2. Did the state fail to disprove that the alleged traffic violations were a pretext for the stop? (Assignment of Error Number Two)

3. Where Mr. Snapp had no immediate access to his car at the time he was arrested, handcuffed, and placed in the patrol car, and where the trooper testified he did not search the vehicle to prevent the possible destruction of evidence, or for officer safety purposes, was the search incident to arrest justified? (Assignment of Error Number Three)

C. STATEMENT OF THE CASE

1. *Procedural History*

On November 16, 2007, the defendant/appellant, Daniel Gerald Snapp, entered an Alford/Newton¹ plea to six counts of second degree identity theft. CP 45-53. On the same date the court imposed an

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North Carolina v. Alford, 400 U.S. 25, 915 S.Ct. 160, 27 L.Ed 2d (1970),
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agreed recommended sentence of twenty-five (25) months in the Department of Corrections and twenty-five (25) months DOSA community custody. CP 57-70.

Per written stipulation of the parties Mr. Snapp's guilty plea did not include a waiver of his right to appeal the trial court's ruling on his CrR 3.6 Motion to Suppress Evidence. CP 45-53; See Statement of Defendant on Plea of Guilty 6 (g) at p. 4. A Notice of Appeal was filed on January 3, 2008.

2. *Facts Pertaining to Criminal Rule 3.6 Hearing*

On October 3, 2007, a CrR 3.6 hearing was held before the Honorable Katherine M. Stolz.² 10-03-07 3-46. Mr. Snapp sought to suppress items confiscated in the search of the automobile he was driving. The court denied his Motion to Suppress. CP 73-76. The following are the undisputed facts in their entirety:

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The VRPs are unnumbered. For purposes of appellant's Brief the VRPs will be referenced by providing the date of the proceeding followed by the page number of the VRP.

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THE UNDISPUTED FACTS

- 1) On 07-22-06 Trooper Pigott observed a blue Ford Escort license 528 TVE being driven by the defendant with a female passenger. The trooper observed that two air fresheners were hanging from the rear view mirror. It was the trooper's opinion that the air fresheners were blocking the driver's view.
- 2) The trooper then noted that the seat belt/shoulder harness on the driver's side was "patched" together with a blue aluminum carabineer. It was the trooper's opinion that the carabineer was insufficient and that the equipment (seat harness) was defective.
- 3) The trooper activated his emergency lights and signaled the defendant's vehicle to stop.
- 4) The defendant turned into the parking lot of the Silver Dollar Casino and stopped.
- 5) The trooper observed the defendant lean forward and dip his right shoulder, as if he was placing an item under the seat, as he turned into the Casino parking lot. The trooper called for back up.
- 6) The trooper contacted the defendant and informed him of the

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reason for the stop. The trooper asked the defendant what he hid as he pulled into the lot. The defendant replied that he was reaching for a cigarette. The trooper asked for identification, registration and proof of insurance. The defendant identified himself as DANIEL GERALD SNAPP with a DOC inmate card. The defendant stated that he did not have a license. The defendant hastily opened and closed the glove box as he retrieved the vehicle registration. While the glove box was open the trooper notice a baggie of suspected methamphetamine inside.

7) The trooper observed that SNAPP appeared to be under the influence of a stimulant, possibly methamphetamine. The trooper asked if the defendant had any weapons. SNAPP produced a knife from his pocket. The trooper asked SNAPP if would exit the car and perform some physical tests. SNAPP agreed to the tests and performed the tests.

8) A second trooper arrived and the female, identified as Angela Wilcox, was placed in the second patrol vehicle.

9) The trooper asked SNAPP if there was "meth" in the glove box. SNAPP denied that there was meth in the car, but stated that there was

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a meth pipe.

10) The trooper cuffed SNAPP and placed him in his patrol vehicle.

11) The trooper contacted the female, Wilcox and asked her what was in the car. Wilcox stated that there was some marijuana in her purse and that SNAPP had hidden a meth pipe.

12) The trooper ran a records check. SNAPP had a no bail arrest warrant for Escape from DOC. SNAPP's driver's license was revoked in the first degree. SNAPP was advised that he was under arrest on the warrant, drug paraphernalia, and DHLS 1. SNAPP was advised of his rights. Wilcox was arrested for possession of marijuana.

13) The trooper then searched the vehicle incident to the arrest. The trooper found in the passenger compartment a blue accordion file containing items of identity theft: names, bank account numbers, addresses, dates of birth, social security cards, blank checks, and ID cards. In a black zippered folder the trooper found several ID cards, social security cards, and an enlarged copy of SNAPP's Washington identification card. In SNAPP's wallet the trooper located two credit cards, one in the name of Brandy Oman and a second in the name of

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Aimee Dryden.

14) The trooper noted that the back seat of the car folded down. The trooper folded the seat down and observed in the trunk area a large number of items. The trooper stopped his search and had the car impounded. Later, a search warrant was obtained for the items in the rear of the car. CP 73-76.

The disputed facts were as follows:

THE DISPUTED FACTS

- 1) The defense claims that the officer did not have probable cause to stop the vehicle for obstructed vision or defective equipment.
- 2) The defense claims that the search incident to arrest cannot be justified and that it exceeded the scope when the trooper looked into the blue accordion file and the zippered file. CP 73-76.

The trial court's factual findings as to the disputed facts and the court's reasons for its legal conclusions concerning the admissibility of the evidence were written thusly:

FINDINGS AS TO DISPUTED FACTS

- 1) The court finds that the trooper's description of the blue

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aluminum carabineer was credible.

2) The court finds that the trooper had probable cause to stop the defendant's vehicle for either an infraction or a warning.

3) The court finds that the trooper had probable cause to arrest on the DOC Escape warrant, DWLS 1, and the drug paraphernalia.

4) The courts finds that the trooper could properly search the passenger compartment of the vehicle incident to the arrest.

5) The court finds that the trooper could search any unlocked containers found in the passenger compartment.

REASONS FOR ADMISSIBILITY OR INADMISSIBILITY OF THE EVIDENCE

1) The court finds that the trooper had probable cause to stop the defendant's vehicle and that the subsequent arrest was valid.

2) The search of the vehicle followed a valid arrest and did not exceed the permitted scope.

3) The court finds the evidence found during the search to be admissible at trial. CP 73-76.

In addition to the facts listed above the following relevant uncontested evidence was presented at the CrR 3.6 hearing via Trooper Pigott's testimony:

- 1) No citations were issued to Mr. Snapp for either the alleged visual obstruction caused by the air fresheners or the alleged defective seatbelt. RP 10-03-07 16.
- 2) When Trooper Pigott searched inside the contents of the accordion file and the zipped wallet he was not specifically looking for weapons, nor was he concerned that either item contained evidence that could be immediately destroyed. RP 10-03-07 20.
- 3) Trooper Pigott did not observe that the seatbelt in question was torn or separated in any manner. He observed only that a small carabineer was attached to it. RP 10-03-07 24.
- 4) The baggie located inside the glove box of Mr. Snapp's vehicle did not contain any drugs or contraband. RP 10-03-07 26.

Mr. Snapp's uncontroverted testimony included the following facts:

- 1) The air fresheners in question were approximately two by four

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(2X4) inch “pine trees” which did not obstruct his view. RP 10-03-07

31.

2) The seatbelt in question was “automatic”, i.e. it retracts and crosses over the drivers chest automatically depending on whether the car door is opened or closed. RP 10-03-07 31. The seatbelt was functioning properly. RP 10-03-07 31.

D. ARGUMENT

I. THE TRAFFIC STOP OF MR. SNAPP’S VEHICLE WAS UNLAWFUL.

In the case at bar, the trial court did not find that the air fresheners created an obstruction or that the seatbelt was defective. Rather, the court found that it was Trooper Pigott’s “opinion” that these assertions were accurate. See Findings and Conclusions, Undisputed Facts Numbers 1 and 2, CP 73-76. Based on the trooper’s opinion, therefore, the trial court concluded that probable cause existed to stop the vehicle. The State’s argument that the stop was justified relied upon RCW 46.37.010 which makes it unlawful to drive an “unsafe” vehicle which may “endanger any person.” RCW 46.37.010

(1). See CP 32-37.

On appeal of a denial of a motion to suppress evidence a superior court's legal conclusions are reviewed de novo. State v. Johnson, 128 Wn.2d 431,443,909 P.2d 293 (1996). Appellate Courts must "independently evaluate the evidence to determine whether substantial evidence supports the findings and whether the findings support the conclusions." State v. Wayman-Burks, 114 Wash.App. 109,56 P.3d 598 (2002). The questions presented here are whether the trooper's "opinions" that driving infractions had occurred were supported by the evidence, whether the "opinions" supported the legal conclusions, and whether the stop was pretextual in nature.

a. The trooper lacked a reasonable, articulable suspicion that a traffic infraction had occurred.

Article I, Section 7 of the Washington State Constitution provides that "No person shall be disturbed in his private affairs, or his home invades, without authority of law." Wash. Const. Article I, Section 7. The Fourth Amendment to the Federal Constitution provides

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV.

Under the Fourth Amendment and Washington Constitution Article I, Section 7, searches conducted without authority of a search warrant are presumed to be unconstitutional. U.S. Const. Amend. IV; Wash. Const. Article I, Section 7; *State v. Wheless*, 103 Wn.App. 749,14 P.3d 184 (2000). Courts have outlined a small number of narrowly drawn and jealously guarded exceptions to the warrant requirement. *Wheless, Supra*. The burden is always on the State to prove one of these narrow exceptions. *State v. Kypreos*, 110 Wn.App. 612 at 624, 39 P.3d 371 (2002). Where the state asserts an exception, it must produce the facts necessary to support the exception. *State v. Johnston*, 107 Wn.App. 280 at 284,28 P.3d 775 (2001). *de novo*. *Kypreos*, at 616 (2002).

The Fourth Amendment and Wash. Const. Article I, Section 7

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apply to brief detentions that fall short of formal arrest. United States v. Brignoni-Ponce, 422 U.S. 873,878, 95 S.Ct. 2574, 45 L.Ed. 2d 607(1975), State v. Crane, 105 Wn.App. 301,311,19 P.3d 1100 (2001). In order to justify a brief investigative detention, the police must have a well-founded suspicion of criminal activity based on specific and articulable facts; there must be a substantial possibility that criminal conduct has occurred or is about to occur. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); State v. O’Cain, 108 Wn. App. 542,548,31 P.3d 733 (2001); see also State v. Brown, 154 Wn.2d 787 at 798, 117 P.3d 336 (2005).

Under an exception to the rule requiring a substantial possibility of criminal conduct, an officer is permitted to stop a moving vehicle for a traffic violation when he or she has a “reasonable articulable suspicion that a traffic infraction has occurred.” State v. Ladson, 138 Wn.2d 343 at 349,979 p.2d 833 (1999); State v. Duncan, 146 Wn.2d 166,43 P.3d 513 (2002).

In State v. Wayman-Burks, 114 Wn.App. 109.,56 P.3d 600 (2002), the defendant was stopped for a cracked windshield. A

subsequent search of the vehicle produced drug paraphernalia and a search of her person turned up heroin. The court stated in part:

A traffic detention is a seizure and must have been justified in its inception to be lawful. *State v. Tijerina*, 61 Wn.App. 628-29,811 P.2d 241 (citing *Terry v. Ohio*, 392 U.S. 1, 19-20,88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); *State v. Williams*, 102 Wn.2d 733,739,689 P.2d 1065 (1984)), review denied, 118 Wn.2d 1007 (1991). The detention must be based on “a well founded suspicion based on objective facts” that the person is violating the law. *State v. Sieler*, 95 Wn.2d 43,46,621 P.2d 1272 (1980; see *State v. Duncan*, 146 Wn.2d 166,43 P.3d 513 (2002) (*Terry* stop for traffic infraction is lawful).

Wayman-Burks, 114 Wn.App. at 112.

The statutory basis for the stop in Wayman-Burks and in the case at bench is set forth in RCW 46.37.010 (1) which states in part:

- 1) It is a traffic infraction for any person to drive or move or the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all time equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or in regulations issued by the chief of the Washington state patrol, or which is equipped in any manner in violation of this chapter or the state patrol’s regulations, or for any person to do any act required forbidden or fail to perform any act required under this chapter or the state patrol’s regulations. (Emphasis added.)

- 2) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

In Mr. Snapp's case no evidence was introduced of WSP's regulations. The state apparently relied on the section of the statute which prohibits driving a vehicle that is so unsafe it endangers persons. The court, however, made no finding that either the alleged visual obstruction or the seatbelt put the vehicle "in such unsafe condition as to endanger any person." The trooper did not issue an infraction for either alleged condition of the car. The court did not find that the trooper had a reasonable, articulable suspicion of such endangerment. CP 73-76.

In the absence of a finding of any of these points, this court must presume that the state failed to meet its burden. *State v. Armenta*, 134 Wn.2d 2,948 P.2d 1280 (1997), *State v. Byrd*, 110 Wn.App. 259,39 P.3d 1010 (2002). The traffic stop occurred without authority of law in violation of Wash. Const. Article I, Section 7 and the Fourth Amendment of the U.S. Constitution. Because of this, the arrest was

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invalid and the search unlawful. *State v. Johnson*, 128 Wn. 2d 431, 909 P.2d 293 (1996). Accordingly, the conviction must be reversed and the evidence suppressed.

b. The record fails to show that the two small air fresheners hanging from the rear view mirror constituted an obstruction of Mr. Snapp's view.

At the trial court, defense counsel argued that in addition to the general statute, RCW 46.37.010, RCW 46.61.615 (1) should apply. CP 13-31. RCW 46.61.615 (1) defines conditions that create obstructions thusly:

No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

The state failed to prove that Mr. Snapp's view was obstructed by the two small pine tree air fresheners under any reasonable interpretation of either RCW 46.37.010 and 46.61.615 (1). Moreover, the trial court failed to find that an obstruction existed. No obstruction type infraction was cited by Trooper Pigott, and the state failed to meet

its burden in this regard.

- c. The record fails to demonstrate that Mr. Snapp violated any laws pertaining to the use or condition of seatbelts.*

There is no question that Mr. Snapp was wearing his seatbelt at the time of the stop. The only question presented to the trial court concerning the seatbelt was whether Trooper Pigott lawfully stopped Mr. Snapp's vehicle based on the alleged seatbelt violation. In support of its contention that Mr. Snapp had in fact committed some seatbelt type infraction, the state again advocated that the violation fell under RCW 46.37.010. CP 32-37. The court did not, however, find that the small carabineer attached to the seatbelt defeated the seatbelt's efficiency or rendered it defective or unsafe. Moreover, the trooper testified that he had no recollection that the seatbelt had been torn or separated in any manner. RP 10-03-07 24. Nor were any WSP regulations that prohibited attaching a carabineer to a seatbelt introduced as evidence. The alleged seatbelt infraction was an improper reason for stopping Mr. Snapp's vehicle, and furthermore, no seatbelt infraction was proved by the state.

d. The traffic stop was pretextual.

Our Supreme Court has required courts evaluating a traffic stop to analyze both the objective circumstances and the officer's subjective intent in performing the stop. *State v. Ladson*, 138 Wn. 2d 343, 979 P.2d 833 (1999), *supra*. In *Ladson*, the court held that pretext stops—that is, stops performed for underlying reasons different than their stated purpose—are unlawful. In *Ladson*, officers selectively used traffic infractions to pull over suspected gang members whom they wished to question. Officers targeted the driver of a vehicle in which Mr. Ladson was a passenger. They followed the vehicle, looking for a legal justification for a stop, eventually determining that the vehicle's license tabs had recently expired. The driver was arrested, and a search revealed a firearm and drugs in Mr. Ladson's possession. The Supreme Court reversed the conviction. In reaching this result, the Court explained that

[T]he problem with a pretextual traffic stop is that it is a search or seizure which cannot be constitutionally justified for its true reason (i.e., speculative criminal investigation), but only for some other reason (i.e., to enforce traffic code) which is at once lawfully sufficient but not the real reason. Pretext is therefore

a triumph of form over substance; a triumph of expediency at the expense of reason. But it is against the standard of reasonableness which our constitution measure exception to the general rule, which forbids search or seizure absent a warrant. Pretext is result without reason... Article I, section 7, forbids use of pretext as a justification for a warrantless search or seizure because our constitution requires we look beyond the formal justification for the stop to the actual one. In the case of pretext, the actual reason for the stop is inherently unreasonable, otherwise the use of pretext would be unnecessary.

Ladson, at 351,353.

In Mr. Snapp's case, the record fails to show that an infraction was committed. He was cited for no infractions. The trial judge made no findings on the subject of Trooper Pigott's subjective intent. CP 73-76. Even if a traffic infraction had been committed, the inquiry into the lawfulness of the vehicle stop does not terminate there. Pretextual traffic stops, nonetheless, violate the Washington Constitution. State v. Ladson, supra.

In the absence of a finding that the deputy was not subjectively motivated by a desire to investigate suspicions unrelated to driving, this Court should presume that the state failed to meet its burden of disproving the pretext. Ladson, supra. Since the stop was pretextual,

it occurred without authority of law in violation of Wash. Const. Article I, Section 7 and the Fourth Amendment. Ladson, supra. Because of this, the arrest was invalid and the search unlawful. Johnson, supra. Accordingly, the conviction must be reversed and the evidence suppressed.

II. THE WARRANTLESS SEARCH OF THE VEHICLE WAS UNLAWFUL.

A warrantless search is per se unreasonable under both Article I, section 7 of the Washington Constitution and the Fourth Amendment to the United States Constitution unless it meet a specific exception to the warrant requirement. State v. Parker, 139 Wn.2d 486,496,987 P.2d 73 (1999).

Article I, section 7 grants greater protection to individuals against warrantless searches of their vehicles than does the Fourth Amendment. ³ State v. Glenn, 140 Wn.App. 627,633,166 P.3d 1235

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Article I, section 7 provides, “No person shall be disturbed in his private affairs, or his home invades, without authority of law.” The Fourth Amendment, in contrast, states that “no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” State v. Reep, 161 Wn.2d 898,167 P.3d 1156 (2007).

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(2007). This Court need not decide whether a warrantless search violates the Fourth Amendment if it first concludes the search contravenes the state constitution. Parker, 139 Wn.2d at 492; see State v. Johnson, 128 Wn. 2d 431, 443. 909 P.2d 293 (1996) (when party asserts state and Federal constitutional law violations, courts first interpret Washington Constitution “to develop a body of independent jurisprudence because considering the United States Constitution first would be premature.”).

A search incident to arrest is an exception to the warrant requirement. State v. Jones, 146 Wn.2d 328,335,45 P.3d 1062) (2002). The exception must be “jealously and carefully drawn, and must be confined to situations involving special circumstances.” State v. Boyce, 52 Wn.App. 274,279,758 P.2d 1017 (1988). The state bears the burden of establishing the “search incident to arrest” exception. State v. Potter, 156 Wn.2d 835,840,132 P.3d 1089 (2006).

In Washington, a valid search incident to arrest requires:

(1) a preceding lawful and complete arrest; (2) a search limited to areas within the immediate control of the arrestee at the time of arrest;

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and (3) no events occurring between the search and the arrest that render the search unreasonable. State v. O'Neill, 148 Wn.2d 564,585,62 P.3d 489 (2003); State v. Smith, 119 Wn.2d 675,681-682,835 P.2d 1025 (1992); State v. Quinlivan, 142 Wn.App. 960,176 P.3d 605 (2008).

The sole question in Mr. Snapp's case is whether the passenger compartment of his car was immediately accessible to him at the time he was arrested. See State v. Rathbun, 124 Wn.App. 372,378,101 P.3d 119 (2004) (proper question is whether vehicle was within the arrestee's immediate control when arrested, "not whether the arrestee had control over the vehicle at some point prior to his or her arrest.") State v. Rathbun, 124 Wn.App. 372,378,101 P.3d 119 (2004). If Mr. Snapp "could suddenly reach or lunge into the compartment for a weapon or evidence, the police may search the compartment incident to his arrest." State v. Johnston, 107 Wn.App. 280, 285-286,28 P.3d 775 (2001), review denied, 145 Wn.2d 1021 (2002).

Mr. Snapp was arrested, cuffed, and placed into the patrol car prior to the search of the car. He was arrested "on the warrant, drug

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paraphernalia, and DWLS 1" [and] "advised of his rights." CP 73-76.
"The trooper then searched the vehicle incident to the arrest." CP 73-76,

Notably, when questioned during the CrR 3.6 hearing, Trooper Pigott testified that he was not specifically concerned about locating weapons inside the file or wallet; nor was he concerned that items contained inside the accordion file or the zippered wallet could be destroyed by Mr. Snapp.

In summary, Mr. Snapp was not in close proximity to his car when he was arrested and did not have immediate access to the passenger compartment. The search, therefore, does fall within the "search incident to arrest" exception to the warrant requirement. This Court should reverse the trial court's denial of Mr. Snapp's motion to suppress evidence found in the passenger compartment of his car. Without the evidence the convictions for identity theft cannot stand. Reversal is, therefore, the appropriate remedy. *State v. Kinzy*, 141 Wn. 2d 373,393, 5 P.3d 668 (2000), cert.denied, 531 U.S. 1104 (2001).

E. CONCLUSION

For all of the foregoing reasons and conclusions Mr. Snapp respectfully requests that this Court reverse the trial court's denial of his motion to suppress evidence and dismiss his convictions for second degree identity theft.

Respectfully Submitted this 6th day of August, 2008.



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CERTIFICATE OF SERVICE

The undersigned certifies that on August 6, 2008, I delivered by U.S. mail to: the Pierce County Prosecutor's Office, County-City Building, 930 Tacoma Avenue South, Tacoma, Washington 98402, and to Daniel Gerald Snapp, DOC #801683, Airway Heights Corrections Center, Post Office Box 1899, Airway Heights, Washington 99001, true and correct copies of this Opening Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on August 6, 2008.


Norma Kinter

Snapp, Daniel Gerald - Opening Brief - COA No. 37210-0-II