

NO. 34704-1-II  
Cowlitz Co. Cause NO. 05-1-01641-5

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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**STATE OF WASHINGTON,**

Respondent,

v.

**JASON HAMILTON HEWEY,**

Appellant.

FILED  
COURT OF APPEALS  
DIVISION II  
OCT 11 2007  
BY \_\_\_\_\_  
STATE OF WASHINGTON  
DEPUTY

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**BRIEF OF RESPONDENT**

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## **I. ISSUES**

- 1. CAN AN OFFICER LAWFULLY STOP A PASSENGER IN A MOVING VEHICLE FOR FAILING TO WEAR HIS OR HER SEATBELT?**
- 2. CAN AN OFFICER LAWFULLY ARREST A PASSENGER FOR FAILING TO IDENTIFY HIMSELF OR HERSELF OR FOR GIVING FALSE INFORMATION DURING A TRAFFIC INFRACTION INVESTIGATION?**
- 3. CAN AN OFFICER LAWFULLY SEARCH A PASSENGER'S PERSON AND THE VEHICLE INCIDENT TO THE PASSENGER'S ARREST?**

## **II. SHORT ANSWERS**

- 1. YES. AN OFFICER CAN LAWFULLY STOP A PASSENGER IN A MOVING VEHICLE FOR FAILING TO WEAR HIS OR HER SEATBELT.**
- 2. YES. AN OFFICER CAN LAWFULLY ARREST A PASSENGER FOR FAILING TO IDENTIFY HIMSELF OR HERSELF OR FOR GIVING FALSE INFORMATION DURING A TRAFFIC INFRACTION INVESTIGATION.**
- 3. YES. AN OFFICER CAN LAWFULLY SEARCH A PASSENGER'S PERSON AND THE VEHICLE INCIDENT TO THE PASSENGER'S ARREST.**

## **III. FACTS**

On December 19, 2005, Trooper Michael Chapman of the Washington State Patrol was parked on Ocean Beach Highway and observed the appellant, a passenger in a moving pickup, not wearing his

seatbelt. RP 17-18. Trooper Chapman stopped the pickup and its three occupants, the appellant, the front right passenger, and two other occupants. RP 18, 22. Trooper Chapman contacted the appellant and asked for identification. The appellant had no identification and verbally identified himself as being Jaime Hewey. Trooper Chapman checked the name and was informed that Jamie Hewey stood 6'1, weighed 210 pounds, was born in 1974, and had brown eyes. RP 19-21. Trooper Chapman felt the appellant was shorter than 6'1, weighed less than 210 pounds, did not have brown eyes, and did not look 31 years old. Trooper Chapman stands 6 feet, weighs 200 pounds, and is bigger than the appellant. RP 21-23. The appellant also did not give a matching address for Jamie Hewey, appeared nervous when asked to calculate his age, and initially indicated that he weighed 225 pounds. RP 23, 25-27.

Trooper Chapman believed the appellant was giving a false name and commanded the appellant to step out of and go to the back of the pickup truck so that Trooper Chapman could better size up the appellant. The appellant was shorter and thinner than Trooper Chapman. The appellant then indicated that he was 190 pounds. RP 26-27. Trooper Chapman concluded that the appellant did not fit the description for Jamie Hewey and told the appellant to put his hands behind his back so that he could take the appellant into custody for giving false information. The

appellant was not free to leave, not free to talk to the other occupants in the pickup, and not free to do anything other than obey Trooper Chapman's commands. Trooper Chapman searched the appellant for weapons, needles, drugs, and identification. RP 27-28. After the search, Trooper Chapman placed the appellant in the backseat of his patrol vehicle without handcuffs. Trooper Chapman only handcuffs people he arrests in thirty percent of the cases. Trooper Chapman did not handcuff the appellant as he was cooperative and mellow. The appellant was not free to leave and the door was locked. RP 29-31.

Trooper Chapman then contacted the other two occupants in the pickup. They informed Trooper Chapman that they had just picked up the appellant at Fred Meyer, did not know the appellant, and did not own the backpack that was laying at the appellant's feet in the passenger compartment of the pickup. RP 32-33, 39. Trooper Chapman searched the backpack incident to the appellant's arrest for false information and found two pipes with crystal methamphetamine residue and a bag of white pills. Trooper Chapman recognizes the crystal residue as being methamphetamine residue. Trooper Chapman read the appellant his Miranda rights and transported the appellant to the jail. RP 33-36.

On January 17, 2006, Judge Jill Johanson of the Cowlitz County Superior Court presided over the appellant's motion to suppress hearing

and heard testimonies concerning the events of December 19, 2006. RP 9-44. On February 21, 2006, Judge Johanson denied the appellant's motion and found (1) that Trooper Chapman had probable cause to arrest the appellant for making a false or misleading statement to an officer because the appellant did not match the height, weight, or eye color of Jamie Hewey, (2) that Trooper Chapman placed the appellant under a custodial arrest because Trooper Chapman told the appellant that he was being taken into custody, patted down the appellant, and placed the appellant in a locked patrol vehicle, and (3) that Trooper Chapman lawfully searched the passenger compartment of the pickup incident to the appellant's arrest because the passenger compartment was where Trooper Chapman initially contacted the appellant prior to removing and arresting the appellant. RP 70-71.

#### IV. ARGUMENTS

##### 1. **TROOPER CHAPMAN LAWFULLY STOPPED THE APPELLANT FOR NOT WEARING HIS SEATBELT.**

An officer stopping a vehicle and detaining its occupants constitutes a seizure, *State v. Takesgun*, 89 Wash.App. 608, 610 (1998), and to be lawful, it must have been justified at its inception and reasonable in scope. *State v. Henry*, 80 Wash.App. 544, 549-50 (1995). An officer's decision to stop an automobile is reasonable where the officer has

probable cause to believe that a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 810 (1996). Pursuant to RCW 46.61.688(3), every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner. Trooper Chapman had grounds to stop the pickup because he observed the appellant not wearing his seatbelt while riding in the moving pickup. Operating or riding in a motor vehicle without wearing safety belt is a traffic infraction. RCW 46.61.688(5). Thus, Trooper Chapman's initial stop of the vehicle was lawful. The appellant does not challenge the initial traffic stop.

**2. TROOPER CHAPMAN HAD PROBABLE CAUSE TO ARREST THE APPELLANT FOR FAILING TO IDENTIFY HIMSELF OR FOR GIVING FALSE INFORMATION BECAUSE THE APPELLANT DID NOT MATCH THE PHYSICAL DESCRIPTION OF THE NAME HE HAD GIVEN TO TROOPER CHAPMAN.**

An officer stopping any person for a traffic infraction is permitted to detain that person for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person's license, insurance identification card, and the vehicle's registration, and complete and issue a notice of infraction. RCW 46.61.021(2). Any person requested to identifying himself to an officer pursuant to an investigation of a traffic infraction has a duty to identify

himself and give his current address. RCW 46.61.021(3). The requirement that one identify himself or herself pursuant to an investigation of a traffic offense includes passengers of a vehicle stopped for a traffic infraction where the officer has an independent basis, such as a safety belt violation, for requesting a passenger's identification. *State v. Chapin*, 75 Wash.App. 460, 464 (1994).

Any person who willfully fails to fulfill the statutory duty to identify himself or herself when requested to do so as part of an investigation for a traffic infraction is guilty of a misdemeanor. RCW 46.61.022. A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. Material statement means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties. RCW 9A.76.175. Probable cause to arrest exists when the arresting officer is aware of facts and circumstances, based on reasonably trustworthy information, sufficient to cause a reasonable officer to believe a crime has been committed. At the time of the arrest, the arresting officer need not have evidence to prove each element of the crime beyond a reasonable doubt. The officer is required only to have knowledge of facts sufficient to cause a reasonable person to believe that an offense has been

committed. *State v. Potter*, 156 Wn.2d 835, 840 (2006) and *State v. Maddox*, 152 Wn.2d 499, 505 (2004).

Noticing that the appellant, a passenger, was not wearing his seatbelt, Trooper Chapman had the authority to detain the appellant for a reasonable period of time necessary to identify the appellant. The appellant had no identification and verbally identified himself as being Jamie Hewey. Trooper Chapman believed the appellant gave a false name because he did not match the physical descriptions for Jamie Hewey. The appellant was shorter than 6'1, weighed less than 210 pounds, did not have brown eyes, and did not appear to be 31 years old. The appellant also did not give a matching address for Jamie Hewey and appeared nervous when asked to calculate his age. Therefore, Trooper Chapman had probable cause to arrest the appellant for either failing to identify himself as part of an investigation for a traffic infraction or for making a false or misleading material statement to a public servant. The court found there was probable cause to arrest the appellant and the appellant does not challenge the existence of probable cause to arrest.

**3. TROOPER CHAPMAN LAWFULLY SEARCHED THE APPELLANT’S PERSON AND THE VEHICLE INCIDENT TO HIS ARREST OF THE APPELLANT FOR EITHER FAILING TO IDENTIFY HIMSELF OR GIVING FALSE INFORMATION.**

Absent an exception to the warrant requirement, a warrantless search is impermissible under both Article 1, Section 7 of the Washington Constitution and the Fourth Amendment to the United States Constitution. *State v. Johnson*, 128 Wn.2d 431, 446-47 (1996). Evidence seized during an illegal search may be suppressed under the exclusionary rule as “fruit of the poisonous tree.” *State v. Ladson*, 138 Wn.2d 343, 359 (1999). A search incident to arrest is a well-recognized exception to the warrant requirement. *State v. Stroud*, 106 Wn.2d 144 (1986).

In *State v. Cass*, 62 Wash.App. 793 (1991), the court was asked “whether a police officer may search a vehicle incident to the lawful arrest of a passenger, but not the driver of the vehicle,” *Id.* at 794, and the court held that “the police can search a vehicle under these circumstance.” *Id.* at 794. In *Cass*, the officer stopped a vehicle to arrest a passenger for an outstanding warrant and searched the vehicle incident to the passenger’s arrest. *Id.* at 794. The search uncovered controlled substances and the driver, Lou Cass, was arrested for and subsequently convicted of possession of a controlled substance. *Id.* at 794. The court held that the

search of the vehicle was permissible and affirmed the trial court's denial of the defendant's motion to suppress. *Id.* at 798.

In *State v. Chelly*, 94 Wash.App. 254 (1999), an officer stopped a vehicle for a burnt out brake light. *Id.* at 256. One of the passengers, Martinez, had no identification, appeared nervous, and provided the officer with a false name and date of birth. Suspecting that Martinez was providing a false name, the officer removed Martinez from the vehicle and did a warrant's check. Ultimately, the officer was able to determine Martinez's true name, confirmed several outstanding warrants for Martinez's arrest, and arrested Martinez on the outstanding warrants. *Id.* at 256-257. Following the arrest, the officer searched the vehicle and found drugs in the vehicle. The driver was charged with possession of the drugs. *Id.* at 257. The court found that the officer had probable cause to arrest Martinez and that the search of the vehicle incident to Martinez's arrest was lawful. *Id.* at 261-263.

As in *Cass* and in *Chelly*, the arrest of the appellant was supported by probable cause and the search of the appellant's person and the vehicle incident to his arrest was lawful. There was probable cause to arrest the appellant as indicated above and the appellant was placed under custodial arrest when Trooper Chapman ordered him out of the vehicle, told him that he was being taken into custody, ordered him to put his hands behind

his back, patted him down for drugs or weapons, and placed him in the back of a locked patrol vehicle. The appellant was not free to leave. Therefore, Trooper Chapman was entitled to search the appellant's person and the vehicle incident to his arrest for either failing to identify himself or giving false information.

The appellant's reliance on *State v. Cole*, 73 Wn.App. 844 (1994), is misplaced because the facts are distinguishable from the present case. In *Cole*, a passenger, who was not wearing his seatbelt, had no identification and verbally provided his name and date of birth. The passenger was then removed from the vehicle and patted down for weapons. *Id.* at 846-847 and 849. The court held that removing the passenger and patting him down was an unlawful escalation of an infraction investigation into a Terry stop because the passenger had fulfilled his requirement to identify himself. *Id.* at 849. In the present case, the appellant gave a false name, thus, Trooper Chapman had probable cause to arrest the defendant and is entitled to search the appellant's person and the vehicle incident to his arrest. The appellant did not fulfill his requirement to identify himself and there is probable cause to arrest the appellant, which was lacking in *Cole*; thus, *Cole* is not applicable to the present case. Therefore, Trooper Chapman's search of the appellant's person and the vehicle was lawful as it was incident to the

appellant's arrest for either failing to identify himself or giving false information.

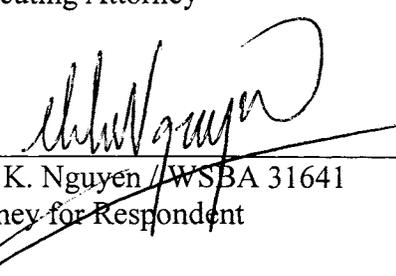
V. CONCLUSION

The appellant's appeal should be denied because Trooper Chapman had probable cause to arrest the appellant and lawfully searched the appellant's person and the vehicle incident to his arrest of the appellant for failing to identify himself or for giving false information.

Respectfully submitted this 7 day of March 2007.

SUSAN I. BAUR  
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By

  
\_\_\_\_\_  
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COURT OF APPEALS, STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,	)	NO. 34704-1-II
	)	Cowlitz County No.
Appellant,	)	05-1-01641-5
	)	
vs.	)	CERTIFICATE OF
	)	MAILING
JASON HAMILTON HEWEY,	)	
	)	
Respondent.	)	
_____	)	

I, Audrey J. Gilliam, certify and declare:

That on the 7 day of March, 2007, I deposited in the mails of the United States Postal Service, first class mail, a properly stamped and address envelope, containing Brief of Respondent addressed to the following parties:

Court of Appeals  
950 Broadway, Suite 300  
Tacoma, WA 98402

Valerie Marushige  
Attorney at Law  
2136 S. 260<sup>th</sup> St., #BB304  
Des Moines, WA 98198

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

Dated this 7 day of March, 2007.

  
\_\_\_\_\_  
Audrey J. Gilliam