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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 37393-9-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

CHARLOTTE JUNE BLISS,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 06-1-02880-7
The Honorable Rosanne Buckner & John Hickman, Judges

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR	1
	A. Assignments of Error.....	1
	B. Issues Pertaining to the Assignments of Error.....	1
II.	STATEMENT OF THE CASE	1
III.	ARGUMENT & AUTHORITIES.....	4
IV.	CONCLUSION.....	8

TABLE OF AUTHORITIES

CASES

<u>State v. Gocken</u> , 71 Wn. App. 267, 857 P.2d 1074 (1993)	5
<u>State v. Kennedy</u> , 107 Wn.2d 1, 726 P.2d 445 (1986)	7
<u>State v. Mendez</u> , 137 Wn.2d 208, 970 P.2d 722 (1999)	4
<u>State v. Tijerina</u> , 61 Wn. App. 626, 811 P.2d 241 (1991)	5
<u>Washington v. Lambert</u> , 98 F.3d 1181 (9th Cir. 1996)	5, 6, 7

OTHER AUTHORITIES

RCW 46.20.349	4
U.S. Const. Amd. 4	5, 7
Wash. Const. article 1, section 7	5

I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred when it denied Charlotte Bliss's motion to suppress.
2. In denying Bliss's motion to suppress, the trial court erred when it concluded that the arresting officer acted reasonably when he conducted a traffic stop in order to determine whether the vehicle's driver was Charlotte Bliss.

B. Issues Pertaining to the Assignments of Error

1. Is an investigatory traffic stop justified when the officer has a description of a warrant suspect, but only a general similarity has been established between the suspect and the driver of the vehicle? (Assignment of Error 1 & 2)

II. STATEMENT OF THE CASE

Gig Harbor Police Officer Garrett Chapman was on routine patrol just after midnight on June 23, 2006. (05/09/07 RP 7-8; 02/12/08 RP 82) As he approached a stop sign, he observed a white van driving through the intersection in front of him. (05/09/07 RP 9-10; 02/12/08 RP 83) His headlights momentarily lit the van, and Chapman got a glimpse of the driver. (05/09/07 RP 11) He

testified that the driver appeared to be a light-skinned female.
(05/09/07 RP 11)

He turned to follow the van, then ran a records check of the van's license plate. (05/09/07 RP 11-12; 02/12/08 RP 83) The records check revealed that the registered owner, Charlotte Bliss, had two outstanding criminal warrants. (05/09/07 RP 14-15, 16; 02/12/08 RP 83) The check did not indicate any problems with the van's registration or Bliss's driver's license. (05/09/07 RP24-25)

Chapman initiated a traffic stop based only on the fact of the outstanding warrants. (05/09/07 RP 16, 25; 02/12/08 RP 83) He confirmed that the driver was Charlotte Bliss, and placed her under arrest pursuant to the warrants. (05/09/07 RP 17-18; 02/12/08 RP 84) During a search incident to arrest, Chapman found a brown handbag behind the front passenger seat. (05/09/07 RP19; 02/12/08 RP 85) Inside the bag Chapman found two small plastic bags containing a white powder substance, a glass pipe with burn residue, and a lighter. (05/09/07 RP 19-20; 02/12/08 RP 85-86)

The State charged Bliss by Information with one count of unlawful possession of a controlled substance—methamphetamine (RCW 69.50.4013). (CP 6) The trial court denied Bliss's CrR 3.6 motion to suppress the methamphetamine. (CP 7-12, 18-24;

05/09/07 RP 71-72) The first trial ended in a mistrial due to juror misconduct. 10/17/07 RP 168, 171)

At the second trial, Chapman testified that, when he informed Bliss that he had found suspected methamphetamine in her van, Bliss appeared to hyperventilate and complained that she was having trouble breathing. (02/12/08 RP 87) Chapman called for medical aid. Medics arrived and examined Bliss, but did not transport her to the hospital. (02/12/08 RP 87) The State also presented evidence that the white substance tested positive for methamphetamine. (02/13/08 RP 123, 124)

Bliss testified that the brown bag and the items within it did not belong to her. (02/13/08 RP 137) She testified that she had been moving and that several of her friends, who were helping her move, had been using her van. (02/13/08 RP 135) Additionally, she described how she has suffered panic attacks in the past, and began to have an attack when Chapman told her about the methamphetamine. (02/13/08 RP 133, 137)

The jury convicted Bliss as charged. (02/14/08 RP 195; CP 104) The trial court sentenced Bliss to a standard range sentence. (02/22/08 RP 3, 9; CP 108, 110) This appeal timely follows. (CP 117)

III. ARGUMENT & AUTHORITIES

When reviewing the denial of a motion to suppress, the trial court's conclusions of law are reviewed *de novo*. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999) (citing State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996)).

In this case, Officer Chapman ran a records check and discovered that the van's registered owner, a white female named Charlotte Bliss, had two outstanding criminal warrants. (05/09/07 RP 14-15; CP 43-44) Despite evidence that Chapman could not have possibly seen the driver of the van as it passed, the trial court found that Chapman observed that the driver was a light-skinned female. (05/09/07 RP 45-46; CP 45) The trial court then concluded:

[I]t is not a violation, under the Fourth Amendment to stop the vehicle under these circumstances to decide if the driver matched the person with the outstanding arrest warrants. The officer has to make an inquiry to see if she cannot be excluded.

[T]he officer acted reasonably in stopping the vehicle [and] arresting the defendant and properly discovered the methamphetamine.

(CP 45-46) The trial court was incorrect.

RCW 46.20.349 allows a police officer "who has received notice of the suspension or revocation of a driver's license from the

department of licensing” to “stop any motor vehicle identified by its vehicle license number as being registered to the person whose driver’s license has been suspended or revoked.” But in this case, there was no indication that Bliss’s driver’s license was suspended or revoked. (05/09/07 RP24-25) Accordingly, this statute did not give Chapman authority to conduct a traffic stop in this case.

The Fourth Amendment of the United States Constitution and article 1, section 7 of the Washington State Constitution protect individuals from unreasonable searches and seizures by the government. State v. Gocken, 71 Wn. App. 267, 274, 857 P.2d 1074 (1993). A traffic stop is a seizure, and, to be lawful, it must be justified in its inception and reasonable in its scope. State v. Tijerina, 61 Wn. App. 626, 628-29, 811 P.2d 241 (1991) (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)).

The Fourth Amendment requires that a person must closely resemble or reasonably match the description of the suspect **before** their liberty is restrained. For example, in Washington v. Lambert, 98 F.3d 1181, 1183 (9th Cir. 1996), police had received a general description of two African-American suspects, one short

and one tall, who were being sought for nineteen armed robberies. Washington and his co-defendant, Hicks, were both African-American, but otherwise did not match the description of the suspects very closely. 98 F.3d at 1183-84. The Ninth Circuit held that, though Washington and Hicks matched the general description of the robbery suspects, this coincidence was not sufficient to justify an intrusive investigatory stop under the Fourth Amendment. 98 F.3d at 1191.

In this case, the records check indicated the registered owner of the van was a 40-year-old white female with blond hair, measuring five-feet-six-inches tall and weighing 140 pounds. (CP 44; 05/09/07 RP 15) Officer Chapman saw Bliss for at most a few seconds when she drove past him on a dark road at a distance of 30 to 40 feet while traveling at approximately 25 miles per hour. (05/09/07 RP 23, 26, 27, 32) He testified the driver "looked like" a female and "appeared" to be a light-skinned. (05/09/07 RP 11, 33) Chapman was only able to see the driver from the shoulders and up, so he was unable to observe her height, weight or eye color. (05/09/07 RP 11, 32)

The information Chapman had available to him at the time he initiated the stop was simply insufficient to establish that the

driver of the van closely or reasonably matched the physical description of the registered owner. The driver and the warrant suspect had a general similarity based on the officer's testimony, but this is not sufficient to justify an intrusive investigatory stop. Washington, 98 F.3d at 1191; U.S. Const. Amd. 4.

Because the initial stop was unlawful, the subsequent search and fruits of the search are inadmissible as fruits of the poisonous tree. State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986) (citing Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L.Ed.2d 441 (1963); State v. Larson, 93 Wn.2d 638, 611 P.2d 771 (1980)). Therefore, the trial court should have granted Bliss's motion to suppress and should have excluded the items found in the brown bag.

IV. CONCLUSION

Because Officer Chapman did not see Bliss well enough to have made a reasonable comparison between the driver of the vehicle and the description of the registered owner of the vehicle, the traffic stop and subsequent search were improper. All evidence obtained as a result of the search should have been suppressed, and Bliss's conviction should be reversed.

DATED: August 23, 2008



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CERTIFICATE OF MAILING

I certify that on August 23, 2008, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: (1) Kathleen Proctor, DPA, Prosecuting Attorney's Office, 930 Tacoma Ave. S., Rm. 946, Tacoma, WA 98402; and (2) Charlotte Bliss, 292963 Highway 101, Quilcene, WA 98376.



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