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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. When a defendant enters a plea of guilty does he waive his right to appeal a determination of guilt as well as a suppression motion?

B. STATEMENT OF THE CASE.

1. Procedure

On October 31, 2006, the Pierce County Prosecutor's Office charged DANIEL GERALD SNAPP, hereinafter "defendant," with twenty one counts of identity theft in the second degree and one count of theft in the first degree. CP 1-9. On November 16, 2007, the State filed an amended information charging defendant with six counts of identity theft in the second degree. CP 41-43.

Defendant filed a motion to suppress evidence on July 31, 2007. CP 13-31. The State filed an opposing reply brief on October 1, 2007. CP 32-37. A 3.6 hearing was held on October 3, 2007. RP¹ 3. The court denied defendant's motion to suppress evidence. CP 73-76; RP 41-43.

Defendant pleaded guilty to six counts of second degree identity theft. CP 45-53. Defendant had an offender score of 14. CP 45-53. On

¹ The verbatim record of proceedings shall be referred to as follows:
The first volume discussing the 3.6 motion shall be referred to as RP.
The sentencing record of proceedings shall be referred to as SRP.

November 16, 2007, defendant was sentenced to a confinement term of 25 months to be followed by 25 months in DOSA community custody. CP 45-53.

An appeal was not timely filed. CP 77. On February 29, 2008, the court granted defendant's motion to allow late filing of a notice of appeal. *See Court of Appeals Order Granting Appellant's Motion to Allow Late Filing of a Notice of Appeal*, dated February 29, 2008.

2. Facts of Plea

Around eight in the morning on July 22, 2006, Trooper Keith Pigott witnessed a blue Ford escort driving next to him. RP 4-5. He noticed debris hanging from the rear view mirror causing a windshield obstruction and that the seatbelt was patched together with something resembling a rock climbing carabiner. RP 5. Trooper Pigott dropped back behind the vehicle and turned his lights. RP 6.

The driver, later identified as defendant, pulled into a stall at the Silver Dollar Casino and Trooper Pigott noticed defendant dip his shoulder and lean forward as if to hide something. RP 7. Trooper Pigott contacted another trooper for assistance and asked defendant for his driver's license, registration, and insurance card. RP 8. Defendant gave Trooper Pigott his Washington State DOC inmate identification card. RP 9. Defendant then quickly opened his glove box, grabbed his registration

and quickly shut the door. RP 10. During this, Trooper Pigott saw a plastic baggie with white powder inside the glove box. RP 10.

Defendant's restlessness and fidgety, quick, jerky movements led Trooper Pigott to believe defendant was under the influence of drugs. RP 10.

Trooper Pigott had defendant exit the car. RP 11. After asking defendant if he had any weapons and patting him down, Trooper Pigott recovered two knives. RP 11. Trooper Pigott conducted field sobriety tests on defendant who exhibited signs of someone under the influence. RP 11-12. Trooper Pigott asked defendant if there were any drugs or paraphernalia in the car and defendant said there were no drugs, only a meth pipe. RP 12.

Trooper Ames arrived at the scene and removed the passenger, Angela Wilcox, from the car. RP 13-14. Ms. Wilcox was arrested for possession of marijuana. RP 14. Trooper Pigott retrieved the meth pipe from under the seat and arrested defendant for drug paraphernalia. RP 13. A driver's check on defendant also revealed his license was revoked in the first degree and he had a no-bail felony warrant. RP 13.

Trooper Pigott conducted a search of the vehicle incident to arrest. RP 14. He recovered a file folder full of papers and items containing persons' identities. RP 14-15. He also found a black CD wallet containing ID cards and credit cards of different people. RP 15. In

defendant's wallet, Trooper Pigott found three credit cards that did not belong to defendant. RP 16. Trooper Pigott looked in the back area of the vehicle and waited to retrieve a search warrant to go through it. RP 16. Defendant was transported and booked into Pierce County Jail. RP 16.

C. ARGUMENT.

1. DEFENDANT WAIVED HIS RIGHT TO APPEAL WHEN HE PLEADED GUILTY TO SIX COUNTS OF IDENTITY THEFT AND THEREFORE CANNOT RAISE ISSUES ON APPEAL RELATED TO HIS GUILT OR THE SUPPRESSION RULINGS.

Defendant is appealing the denial of his motion to suppress evidence during a CrR 3.6 hearing. *See* Appellant's Opening Brief. He contends that a handwritten statement in the prosecutor's recommendation paragraph allows him to bring the issue up on appeal. But, when a defendant knowingly and voluntarily pleads guilty, the law states that he cannot raise issues on appeal related to his guilt or the suppression rulings.

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. U.S. Const. amend. XIV; *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001); *Wood v. Morris*, 87 Wn.2d 501, 505, 554 P.2d 1032 (1976). Whether a plea is knowing, voluntary, and intelligent is determined from a totality of the

circumstances. *Wood*, 87 Wn.2d at 506; *State v. Branch*, 129 Wn.2d 635, 919 P.2d 1228, (1996).

If a defendant has received the information and pleads guilty pursuant to a plea agreement, there is a presumption that the plea is knowing, voluntary, and intelligent. *In re Personal Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191, *review denied*, 123 Wn.2d 1009, 869 P.2d 1085 (1994). “A defendant’s signature on the plea form is strong evidence of a plea’s voluntariness.” *State v. Branch*, 129 Wn.2d at 642; *State v. Stephan*, 35 Wn. App. 889, 893, 671 P.2d 780 (1983)(quoting *State v. Perez*, 33 Wn. App. 258, 261-262, 654 P.2d 708 (1982)(citing *In re Keene*, 95 Wn.2d 203, 206-207, 622 P.2d 13 (1981))).

On November 16, 2007, defendant pleaded guilty to six counts of identity theft in the second degree. CP 45-53. In his statement, defendant waived his right to appeal the determination of guilt. Defendant also gave up the right to appeal any supplemental hearings. Defendant’s statement on plea of guilty states “I understand I have the following important rights, and I give them all up by pleading guilty: ... (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.” CP 45-53.

There is language in the prosecutor’s recommendation paragraph which states “agreed defendant can appeal 3.6 motion.” CP 45-53. But, this language contravenes the law in this area. In pleading guilty, defendant waived his right to appeal his determination of guilt and any

pretrial hearings, including the 3.6 suppression motion hearing. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). The only issue defendant can raise on appeal is the voluntariness of his plea under *State v. Smith*. *State v. Smith*, 134 Wn.2d 849, 953 P.2d 810 (1998). Defendant has not chosen to do this as evident by defendant's assertions of error. See Appellant's Brief 1.

A prosecutor's recommendation to permit a defendant to appeal a suppression ruling post guilty plea cannot change the court's authority on appeal. The parties in *Smith* similarly understood that defendant wished to maintain his right to appeal the suppression ruling. Despite this intent, the court's hands were tied. However, unlike the case in *Smith*, the defendant in this case has not challenged the voluntariness of the plea and thus the plea must stand.

D. CONCLUSION.

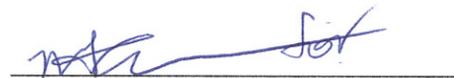
For the foregoing reasons, the State respectfully requests this Court to affirm defendant's convictions.

DATED: SEPTEMBER 22, 2008

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. 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 the date below.

9/23/08 
Date Signature

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