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DIVISION II

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

STATE OF WASHINGTON, RESPONDENT

v.

DANIEL GERALD SNAPP, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Katherine M. Stolz

No. 06-1-05153-1

SUPPLEMENTAL BRIEF OF RESPONDENT

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

1. Whether the officer had probable cause to stop the vehicle the defendant was driving where material was obstructing the driver's view and the officer could see that the seatbelt system had been modified?

2. Whether the stop was legitimately for an infraction and not pretextual?

3. Whether, even if the search of the vehicle incident to the driver's arrest was unlawful, the evidence obtained was properly admitted where the officer acted in good faith under the then existing case law when he conducted the search?

B. STATEMENT OF THE CASE.

1. Procedure

The State provides this Supplemental Brief of Respondent in response to the court's June 25, 2009, order requesting additional briefing.

2. Facts

The relevant facts are contained in the trial court's findings of fact and conclusions of law. CP 73-76. See Appendix A.

C. ARGUMENT.

1. THE STOP WAS VALID AS THE OFFICER HAD PROBABLE CAUSE TO STOP DEFENDANT.

- a. The officer had a reasonable articulable suspicion that the defendant was violating the law.

An investigative *Terry* stop is among the specific exceptions to the warrant requirement and is based upon less evidence than is needed for

probable cause to make an arrest. *State v. Dorey*, 145 Wn. App. 423, 429, 186 P.3d 363 (2008) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968)); *State v. Day*, 161 Wn.2d 889, 896, 168 P.3d 1265 (2007). Under *Terry*, law enforcement officers may stop and question a suspect if they have a reasonable, articulable suspicion that criminal activity or a traffic infraction has occurred or is about to occur. *State v. Mendez*, 137 Wn.2d 208, 223, 970 P.2d 722 (1999); *State v. Day* 161 Wn.2d 889, 896, 168 P.3d 1265 (2007).

A detention must be (1) justified at its inception, and (2) reasonably related in scope to the circumstances that justified the interference in the first place. *State v. Ladson*, 138 Wn.2d 343, 350, 979 P.2d 833 (1999) (citing *Terry*, 392 U.S. at 20).

For a Terry stop for an infraction to be justified at its inception, an officer must have a reasonable suspicion based on “specific objective facts” that the person stopped is engaged in a traffic violation. *Day*, 161 Wn.2d at 896.

When reviewing the merits of an investigatory *Terry* stop, a court must evaluate the totality of circumstances presented to the investigating officer. *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991). Subsequent evidence that the officer was in error regarding some of his facts will not render a *Terry* stop unreasonable. *State v. Seagull*, 95

Wn.2d 898, 908, 632 P.2d 44 (1981) (“The Fourth Amendment does not proscribe ‘inaccurate’ searches only ‘unreasonable’ ones”).

Here, there were specific objective facts that the driver committed at least one, and probably two infractions. The driver’s seatbelt was held together with unapproved equipment. RP 23, ln. 4 to p. 25, ln. 14.

RCW 46.37.010(1) provides:

- (1) It is a traffic infraction for any person to drive or move, or for a vehicle owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles that:
 - (a) Is in such unsafe condition as to endanger any person;
 - (b) Is not at all times equipped with such lamp and other equipment in proper working condition and adjustment required by this chapter or by rules issued by the Washington state patrol;
 - (c) Contains any parts in violation of this chapter or rules issued by the Washington state patrol.

RCW 46.37.510 establishes minimum requirements for seat belts, and also authorizes the state patrol to adopt and enforce additional standards. RCW 46.37.005 specifically authorizes the Washington state patrol to adopt federal standards relating to motor vehicle equipment, which the State Patrol did. WAC 204-10-021. That WAC provision refers to the equipment requirements in 49 CFR 571. 49 CFR 571.209 and .210 establish the standards for seat belt equipment.

A review of 49 CFR 571.209 (2008) quickly makes clear that a

seat belt repaired with a decorative carabiner is non-compliant. Metal hardware must have been tested for corrosion resistance and passed; and that hardware designed to receive the ends of two seat belt assemblies shall meet specified testing requirements for tension force strength. *See* 49 CFR 571.209, S4.3(a)(2), S4.3(c)(2). Additionally, there are separate requirements that that entire safety belt assembly be tested and meet certain performance standards. *See*, 49 CFR 571.209, S4.4. Here, where the seatbelt was a home made fix, it could not meet the testing requirements for the whole seatbelt assembly.

The trooper also noticed that the drivers view was obstructed by something hanging from the mirror. RP 17, ln. 21 to p. 18, ln. 5. Driving a vehicle with something obstructing one's view of the windshield is unsafe and therefore also a violation of RCW 46.37.010(1)(a).

Additionally, the vehicle may not have obstructions of the driver's view out the windshield.

No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

RCW 46.37.410(2). However, in *State v. Wayman-Burks* the court held that a crack in the windshield was not "material upon the [...] windshield." *State v. Wayman-Burks*, 114 Wn. App. 109, 112, n. 1, 56

P.3d 598 (2002). The court nonetheless upheld the search because the crack was an equipment defect under RCW 46.37.010(1). *Wayman-Burks*, 114 Wn. App. at 112-113.

In the present case, the defendant was pulled over after Trooper Pigott noticed what he believed to be traffic infractions. First, Trooper Pigott observed something hanging from the rear view mirror of the defendant's vehicle, which he believed obstructed the driver's view, and therefore made the vehicle unsafe to drive. RP 5, ln. 13-17; p. 17, ln. 21-24. He also noticed that "something was amiss with the seat belt system on the driver's side" and upon closer inspection found it was patched together with a little aluminum D-clip like a carabiner, but not as strong as a carabiner. RP 5, ln. 20 to p. 6, ln. 5; p. 23, ln. 4 to p. 25, ln. 14. Trooper Pigott was concerned that such a makeshift seatbelt would be unable to support someone's weight if an accident were to occur. RP 18, ln. 18-22; p. 24, ln. 19 to p. 25, ln. 6.

These observations led Trooper Pigott to form a reasonable and articulable suspicion that the defendant was violating the law by committing an infraction. Trooper Pigott also stated that he has stopped many people for such violations in the past. RP 17, ln. 25 to p. 18, ln. 5.

In the present case, Trooper Pigott had an objectively reasonable belief that the defendant was violating the law with an unsafely obstructed

windshield and a deficient seatbelt, endangering himself and others.

b. The stop was not pretextual.

A pretextual traffic stop occurs when an officer stops a vehicle, not to enforce the traffic code, but rather to conduct an investigation unrelated to driving. *Ladson*, 138 Wn.2d at 349-51. A warrantless traffic stop based on mere pretext violates Article I Section 7 of the Washington State Constitution because it does not fall within any exception to the warrant requirement, and therefore lacks the authority of law necessary to intrude upon a citizen's privacy interests. *Ladson*, 138 Wn.2d at 358.

In determining whether a stop is pretextual, the Supreme Court advised that the court must consider both (1) the subjective intent of the officer, and (2) the objective reasonableness of the officer's behavior. *Ladson*, 138 Wn.2d at 358-59. In considering those factors, the court looks to the totality of the circumstances to be considered. *Ladson*, 138 Wn.2d at 358-59. If the stop is pretextual, all subsequent evidence obtained from the stop must be suppressed. *Ladson*, 138 Wn.2d at 359.

Here, the court made findings regarding the officer's intent in pulling the defendant over for the traffic violation. In Undisputed Fact 1) it states, "It was the trooper's opinion that the air fresheners were blocking the driver's view". CP 73. In Undisputed Fact 2) it states: "It was the trooper's opinion that the carabineer [sic] was insufficient and that the

equipment (seat harness) was defective”. CP 73.

These findings are supported by substantial evidence. The record shows that the stop was initiated by a State Trooper who was assigned to “Traffic Law Enforcement.” RP 4, ln. 22-23. He was on routine patrol the morning of the stop, which was conducted at eight o’clock in the morning. RP 4, ln. 24-25. Trooper Pigott was traveling eastbound, as was the defendant’s vehicle. RP 5, ln. 8-12. His attention was first drawn to something “hanging from the rear-view mirror,” and then upon closer observation he noticed “some thing was amiss with the seat belt system on the driver’s side.” RP 5, ln. 15-25. He then got a closer look at the seat belt by moving alongside the vehicle and saw that it was “patched together with an aluminum – we’ll call it a carabiner, like, a rock-climber carabiner, a little clip, a D-clip.” RP 5, ln. 20 to p. 6, ln. 7.

At that point he determined to make a stop and dropped back behind the vehicle and activated his emergency lights. RP 6, ln. 8-13. When asked why he stopped the defendant, he answered, “For the debris hanging from his rear-view mirror which is a violation and for defective equipment.” RP 17, ln. 23-24. When asked if he had ever stopped anybody for having their windshield obstructed he answered, “Many times.” RP 17, ln. 25 to p. 18, ln. 2. The trooper stated that typically he would not issue citations when he stops someone for these violations, but

instead he would “give a warning and tell them that it [seatbelt] needs to be fixed and hopefully get that resolved that way.” RP 18, ln. 3-11.

Once he initiated the stop, he continued to investigate the faultiness of the restraint system, noting that it was not at the “standard of original specifications,” and in his opinion would not be adequate to support a person’s weight if they were involved in a collision. RP 18, ln. 18-22; p. 25, ln. 1-6. The trooper noted that he did not take a picture of it because he “didn’t know that it was going to turn into what it turned into.” RP 24, ln. 15-18.

In its ruling, the trial court looked at the totality of the circumstances. *See*, RP 42. The court noted that the trooper had a very clear description of the seatbelt “which means he probably had a very good look at it.” RP 42, ln. 4-7. The court found that the trooper had a reason to stop the car which “presumably, would have - - under normal circumstances, the driver would have been given some warnings. You need to get your seat belt repaired. You need to remove the shrubbery out of the window...” RP 42, ln. 9-15. She noted however, that the defendant didn’t have a driver’s license, he engaged in furtive movements and that was a warrant for his arrest and things just “snowballed” from there. RP 42, ln. 18-23. The court believed it was a legitimate stop, motivated by the infraction violations and safety, and not for another pretextual purpose.

Accordingly, the court denied the motion to suppress. RP 42, ln. 23-24.

The officer had a valid reason for the stop. He did not articulate that he was worried about investigating something other than the infractions for which he stopped the defendant.

This case is far different from *Ladson*. In *Ladson*, the officers were on “Proactive gang patrol.” *Ladson*, 138 Wn.2d at 346. The officers were not making routine traffic stops while on gang patrol. *Ladson*, 138 Wn.2d at 346. Rather, they used traffic infractions as a means to pull over people in order to initiate contact and questioning. *Ladson*, 138 Wn.2d at 346. In the case of Ladson’s stop, the officers recognized Fogle (the driver) from an unsubstantiated street rumor that Fogle was involved with drugs. *Ladson*, 138 Wn.2d at 346. The officer tailed the vehicle looking for a legal justification to stop the car, and pulled it over for expired license plate tabs. *Ladson*, 138 Wn.2d at 346. The officers did not deny that the stop was pretextual. *Ladson*, 138 Wn.2d at 346.

The Supreme Court held that the stop was pretextual because the reason for the stop was “investigation”, and does not fall under the warrant exception. *Ladson*, 138 Wn.2d at 357.

To the State’s knowledge, no published decision to date addresses the burden of proof when the defendant raises the issue of pretext. The

State asks this court to adopt the approach outlined in *State v. Ochoa*¹ 206 P.3d 143, 155 -156 (N.M.App.,2008), *cert. granted*, No. 31,430 (2008), which follows general pretext jurisprudence and involves initial burden and rebutting presumptions:

First, the trial court must determine whether there was reasonable suspicion or probable cause for the stop. *Id.* at 402-03. As usual, the State has the burden of proof to justify the stop under an exception to the warrant requirement. *See Rowell*, 2008-NMSC-041, 10, 144 N.M. 371, 188 P.3d 95. If the stop can be justified objectively on its face and the defendant argues that the seizure was nevertheless unreasonable because it was pretextual under the New Mexico Constitution, then the district court must decide whether the officer's "motive for [the stop] was unrelated to the objective existence of reasonable suspicion or probable cause." *Leary & Williams, supra*, at 1038. The defendant has the burden of proof to show pretext based on the totality of the circumstances. If the defendant has not placed substantial facts in dispute indicating pretext, then the seizure is not pretextual. If the defendant shows sufficient facts indicating the officer had an unrelated motive that was not supported by reasonable suspicion or probable cause, then there is a rebuttable presumption that the stop was pretextual. *See id.* The burden shifts to the state to establish that, based on the totality of the circumstances, even without that unrelated motive, the officer would have stopped the defendant. *See id.*

¹ In *Ochoa*, the New Mexico Court considered for the first time whether it would adopt the federal approach to traffic stops and reject a pretext analysis, as outlined in *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769, 135 L.Ed.2d 89 (1996). The court held that it would not follow the United States Supreme Court precedent, and instead, relying heavily on *Ladson, supra*, the court held that inquiry into pretext was required under the New Mexico constitution. 206 P.3d at 149-150, 153, 155. The court then turned to the burden of proof for this analysis and looked to the approach followed in Maryland, as outlined in *State v. Heath*, 929 A.2d 390 (Del. Super. 2006).

State v. Ochoa, 206 P.3d 143, 155 -156 (N.M.App.,2008). Here, the defendant has failed to establish his *initial burden* of pretext and the inquiry should end here.

The defendant complains that the court's findings are lacking with respect to pretext. But, courts have declined to presume that omission of the finding constitutes a finding of failure of proof. See *State v. Armenta*, 134 Wn.2d at 14 n. 9, 948 P.2d 1280 (recognizing, but finding inapplicable, exception from rule of presumption of negative finding where there is ample evidence to support the missing finding and the findings, viewed as a whole, demonstrate that the absence of the specific finding was not intentional); *State v. Souza*, 60 Wn. App. 534, 541-43, 805 P.2d 237 (1991). The remedy for missing but necessary findings of fact and conclusions of law is ordinarily remand for entry of the additional findings on the existing record. *In re Breedlove*, 138 Wn.2d 298, 311, 979 P.2d 417 (1999). However, here the court's findings adequately address the issue before it. Accordingly, remand is unwarranted in this case.

2. THE TROOPER ACTED IN GOOD FAITH WHEN HE
CONDUCTED A SEARCH OF THE VEHICLE
INCIDENT TO ARREST OF THE DRIVER

The court may affirm on any ground the record adequately supports, even if the trial court did not consider that ground. *State v.*

Costich, 152 Wn.2d 463, 477, 98 P.3d 795 (2004).

There is no basis to suppress the evidence found during the search of the defendant's vehicle because the officer acted "under authority of law" and in reliance upon presumptively valid case law. In this circumstance, the "good faith" exception to the exclusionary rule applies under both the Fourth Amendment and Article 1, § 7 of the Washington constitution.

a. The Fourth Amendment Good Faith Exception To The Exclusionary Rule Applies.

Absent an exception to the warrant requirement, a warrantless search is impermissible under the Fourth Amendment to the U.S. Constitution. The exclusionary rule is "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect" by excluding evidence that is the fruit of an illegal, warrantless search. *United States v. Calandra*, 414 U.S. 338, 347, 94 S. Ct 613, 38 L.Ed.2d 561 (1974) (emphasis added). Evidence derived directly or indirectly from illegal police conduct is an ill-gotten gain, "fruit of the poisonous tree," that should be excluded from evidence. *Wong Sun v. United States*, 371 U.S. 471, 484-85, 83 S. Ct 407, 9 L.Ed.2d 441 (1963). Nevertheless, the United States Supreme Court has recognized that evidence obtained after an illegal search should not be excluded if it was not obtained by the exploitation of the initial illegality. *Wong Sun*, 371 U.S. at 488.

Consistent with these basic principles, the United States Supreme Court in *Michigan v. DeFillippo*, 443 U.S. 31, 38, 99 S. Ct. 2627, 61 L.Ed.2d 343 (1979), held that an arrest (and a subsequent search) under a statute that was valid at the time of the arrest remains valid even if the statute is later held to be unconstitutional.

In *DeFillippo*, the Court stated:

At that time [of the underlying arrest], of course, there was no controlling precedent that this ordinance was or was not constitutional, and hence the conduct observed violated a presumptively valid ordinance. A prudent officer, in the course of determining whether respondent had committed an offense under all the circumstances shown by this record, should not have been required to anticipate that a court would later hold the ordinance unconstitutional.

DeFillippo, 443 U.S. at 37-38.

Police are charged to enforce laws until and unless they are declared unconstitutional. The enactment of a law forecloses speculation by enforcement officers concerning its constitutionality -- with the possible exception of a law so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws. Society would be ill-served if its police officers took it upon themselves to determine which laws are and which are not constitutionally entitled to enforcement. *DeFillippo*, 443 U.S. at 37-38 (emphasis added). The Court further noted that:

[T]he purpose of the exclusionary rule is to deter unlawful police action. No conceivable purpose of deterrence would be served by suppressing evidence which,

at the time it was found on the person of the respondent, was the product of a lawful arrest and a lawful search. To deter police from enforcing a presumptively valid statute was never remotely in the contemplation of even the most zealous advocate of the exclusionary rule.

DeFillippo, 443 U.S. at 38 (footnote 3, emphasis added). The Court did recognize a “narrow exception” to the good faith exception when the law is “so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws.” *DeFillippo*, 443 U.S. at 37-38. However, in *DeFillippo* the Supreme Court held that narrow exception did not apply and upheld the arrest, search, and subsequent conviction of the defendant even though the statute which justified the stop was subsequently deemed to be unconstitutional. *DeFillippo*, 443 U.S. at 40.

The only difference between *DeFillippo* and the present case is that in *DeFillippo* the Court was addressing an arrest based on a presumptively valid statute that was later ruled unconstitutional, whereas here the situation involves a search upheld as constitutional by well-established and long-standing judicial pronouncements. This distinction does not justify a different result. Law enforcement officers should be entitled to rely on established case law – from both the federal and state courts – in determining what searches are deemed constitutional. Indeed, in the area of search and seizure, it is generally the courts that establish the “rules,” not the legislative bodies. Judicial decisions, particular those of the Supreme Court, as to the constitutionally permissible scope of searches

and seizures are clearly entitled to respect, deference, and reliance by officers in the field.

Prior to *Gant*, both the federal and state courts had unequivocally endorsed the constitutional validity of the vehicle searches incident to arrest. See, *State v. Vrieling*, 144 Wn.2d 489, 28 P.3d 762 (2001); *United States v. Caseres*, 533 F.3d 1064, 1071 (9th Cir. 2008); *United States v. Weaver*, 433 F.3d 1104, 1107 (9th Cir. 2006). Both cases interpret: *Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034, 23 L.Ed.2d 685 (1969); *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed.2d 768 (1981). This is made explicitly clear in *Gant* which recognized that the Court's prior opinions have "been widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search. . ." and that "lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police entitlement rather than as an exception." *Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710, 173 L.Ed.2d 485 (2009).

Likewise, the constitutionality of the search incident to arrest rule was repeatedly confirmed by the Washington Supreme Court over the past 23 years. See, e.g., *Vrieling*, 144 Wn.2d 489; *State v. Parker*, 139 Wn.2d 486, 489, 987 P.2d 73 (1999); *State v. Johnson*, 128 Wn.2d 431, 441, 909 P.2d 293 (1996); *State v. Fladebo*, 113 Wn.2d 388, 779 P.2d 707 (1989).

There can be little doubt that officers relied on these specific judicial pronouncements when conducting vehicle search. Indeed, the majority opinion in *Gant* emphasized that officers had reasonably relied on pre-*Gant* precedent, and were immune from civil liability for searches conducted in reasonable reliance on the Court's previous opinions. *Gant*, 129 S. Ct. at 1722, n.11.

Accordingly, this case does not fit within the narrow exception recognized in *DeFillippo* when the law is "so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws." The pre-*Gant* cases may now be viewed as flawed, but the repeated judicial reliance on them for almost 30 years demonstrates that the search incident to arrest rule was neither grossly nor flagrantly unconstitutional.

Finally, the basic purpose of the exclusionary rule is not furthered in any way by suppression of the evidence in this case. As the Court in *DeFillippo* noted, no conceivable deterrent effect would be served by suppressing evidence which, at the time it was found, was the product of a lawful search. Prior to April 21, 2009, officers understood that they could search a vehicle incident to the arrest of a recent occupant. After April 21, 2009, the *Gant* opinion – and the associated threat of suppression of evidence and potential civil liability – will provide appropriate deterrent effect to such searches. But the retroactive application of the exclusionary rule has no deterrent value at all.

At least one federal court has expressly recognized the application of the “good faith” doctrine to *Gant* cases. See, *United States v. Grote*, Slip. Op. No. CR-08-6057-LRS, ___ F.Supp.2d ___, 2009 WL 2068023 (E.Dist. Wash. June 16, 2009). However, another has rejected the application of the good faith doctrine to *Gant* cases. *United States v. Buford*, Slip. Op. No. 3:09-00021, ___ F. Supp.2d ___ 2009 WL 1635780 (M.D.Tenn.) (Middle Dist. Tenn. June 11, 2009). It is worth noting that the court in *Buford* failed to consider the United States Supreme Court authority in *DeFillippo*, while the analysis in *Grote* is more rigorous.

In sum, the United States Supreme Court has recognized that the application of the exclusionary rule serves no purpose when officers relied in good faith on a presumptively valid statute. This same reasoning should apply to judicial opinions of long-standing duration. Pursuant to the *DeFillippo* “good faith” exception, the evidence obtained during the search in the present case should not be suppressed, and the defendant’s motion for reconsideration should be denied.

c. The Evidence Should Not Be Suppressed Under Article 1, § 7 Because The Search Was Conducted “Under Authority Of Law” And Pursuant To A Presumptively Valid Case Law.

There is no basis to suppress the evidence under Article 1 § 7. This is because the pre-*Gant* search was conducted pursuant to authority of law and presumptively valid judicial opinions. See, *State v. Johnson*,

128 Wn.2d 431, 446-47, 909 P.2d 293 (1996) (holding that search of a vehicle incident to arrest of an occupant is one of the exceptions to the warrant requirement under Article I, section 7).

In a recent series of cases, the Washington Supreme Court has adopted the “good faith” exception to the exclusionary rule analysis set forth in *Michigan v. DeFillippo*, *supra*. For example, in *State v. Potter*, 156 Wn.2d 835, 132 P.3d 1089 (2006), the defendants maintained that they were unlawfully arrested for driving while their licenses were suspended because, subsequent to their arrests, the State Supreme Court held that the statutory procedures by which the Department of Licensing suspended licenses were unconstitutional. The defendants in **Potter** contended that under article I, section 7, evidence of controlled substances found in their vehicles during searches incident to their arrests had to be suppressed as a result of the illegal arrests.

In a unanimous decision, the Supreme Court applied the *DeFillippo* rule under article I, section 7, and held that an arrest under a statute valid at the time of the arrest remains valid even if the basis for the arrest is subsequently found unconstitutional. *Potter*, 156 Wn.2d at 843, 132 P.3d 1089. The Court stated:

In [*White*,] we held that a stop-and-identify statute was unconstitutionally vague and, applying the United States Supreme Court’s exception to the general rule from *DeFillippo*, excluded evidence under that narrow exception for a law “so grossly and flagrantly unconstitutional” that any reasonable person would see its flaws.

Potter, 156 Wn.2d at 843 (quoting *State v. White*, 97 Wn.2d 92, 103, 640 P.2d 1061 (1982) (quoting *DeFillippo*, 443 U.S. at 38)). Under the facts presented in *Potter*, there were no prior cases holding that license suspension procedures in general were unconstitutional, and thus there was no basis to assume that the statutory provisions were grossly and flagrantly unconstitutional. Accordingly, applying *DeFillippo*, the Court affirmed the defendants' convictions despite the fact that the statutory licensing procedures at issue had subsequently been held to be unconstitutional. *Potter*, 156 Wn.2d at 843.

Similarly, in *State v. Brockob*, 159 Wn.2d 311, 341-42, 150 P.3d 59 (2006), a defendant contended that his arrest for driving while his license was suspended and a search incident to that arrest were unlawful for the same reason claimed in *Potter*. The Court rejected the defendant's argument, stating that:

White held that police officers may rely on the presumptive validity of statutes in determining whether there is probable cause to make an arrest unless the law is “so grossly and flagrantly unconstitutional’ by virtue of a prior dispositive judicial holding that it may not serve as the basis for a valid arrest.”

Brockob, 159 Wn.2d at 341 n. 19 (quoting *White*, 97 Wn.2d at 103 (quoting *DeFillippo*, 443 U.S. at 38)). As in *Potter*, the Court held that the narrow exception for grossly and flagrantly unconstitutional laws did not apply “because no law relating to driver's license suspensions had

previously been struck down.” *Brockob*, 159 Wn.2d at 341, n. 19.

Potter and *Brockob* have had the effect of overruling *White* (unanimously, in *Potter*) insofar as *White* can be read to reject the *DeFillippo* good faith reliance on a presumptively valid statute.

Applying the analysis from *DeFillippo*, *Potter*, and *Brockob*, the good faith exception to the exclusionary rule applies under Art. 1 § 7.

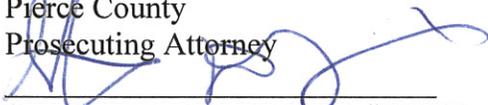
D. CONCLUSION.

The officer had a valid basis to stop the defendant for an infraction where the officer had a reasonable suspicion based on objective facts that the defendant was driving with an unlawful seatbelt assembly, and also where the driver’s view was obstructed, making the operation of the vehicle unsafe. The stop was not pretextual where the officer conducted it to warn or cite the defendant regarding his infraction violations. Even if the search of the vehicle incident to the arrest of the driver was unlawful, the trial court properly declined to suppress the evidence where the officer acted in good faith on well established, then existing case law.

Accordingly, the appeal should be denied and the conviction affirmed.

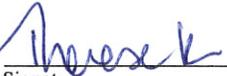
DATED: July 24, 2009.

GERALD A. HORNE
Pierce County
Prosecuting Attorney


STEPHEN TRINEN, WSB # 30925
Deputy Prosecuting Attorney

Certificate of Service:

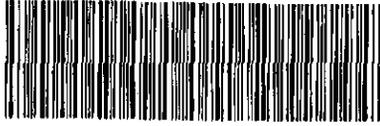
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

7-24-09  _____
Date Signature

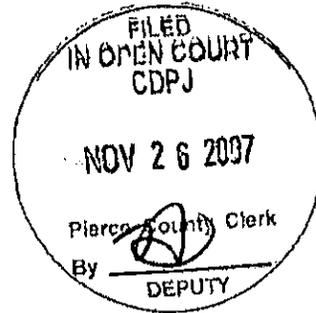
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APPENDIX "A"

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06-1-05153-1 28697424 FNFL 11-27-07



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-05153-1

vs.

DANIEL GERALD SNAPP,

FINDINGS AND CONCLUSIONS ON
ADMISSIBILITY OF EVIDENCE CrR
3.6

Defendant.

THIS MATTER having come on before the Honorable Katherine M. Stolz on the 3rd day of October, 2007, and the court having rendered an oral ruling thereon, the court herewith makes the following Findings and Conclusions as required by CrR 3.6.

THE UNDISPUTED FACTS

- 1) On 7/22/06 Trooper Pigott observed a blue Ford Escort license 528 TVT 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 carbineer. It was the trooper's opinion that the carbineer 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.

1 5) The trooper observed the defendant lean forward and dip his right shoulder, as if he was
2 placing an item under the seat, as he turned into the Casino parking lot. The trooper called for
3 back up.

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

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

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

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

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

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

22 12) The trooper ran a records check. SNAPP had a no bail arrest warrant for Escape from DOC.
23 SNAPP's driver's license was revoked in the first degree. SNAPP was advised that he was under
24

1 arrest on the warrant, drug paraphernalia, and DWLS 1. SNAPP was advised of his rights.

2 Wilcox was arrested for possession of marijuana.

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

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

12
13 THE DISPUTED FACTS

- 14 1) The defense claims that the officer did not have probable cause to stop the vehicle for
15 obstructed vision or defective equipment.
16
17 2) The defense claims that the search incident to arrest cannot be justified and that it
18 exceeded the scope when the trooper looked into the blue accordion file and the zippered
19 file.

20 FINDINGS AS TO DISPUTED FACTS

- 21 1) The court finds that the trooper's description of the blue aluminum carbineer was
22 creditable.
23
24 2) The court finds that the trooper had probable cause to stop the defendant's vehicle for
25 either an infraction or a warning.

«CAUSE_NUM»

- 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 court 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.

DONE IN OPEN COURT this 26th day of November, 2007

Katherine M. Stolz

 JUDGE
 KATHERINE M. STOLZ

Presented by:

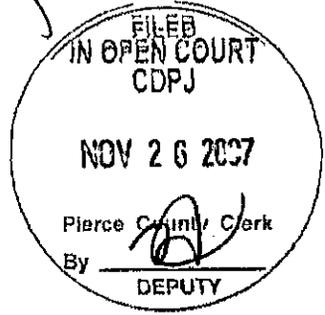
Tom L. Moore

 Tom L. Moore
 Deputy Prosecuting Attorney
 WSB # 17542

Approved as to Form:

Harry S. Steinmetz

 Harry S. Steinmetz
 Attorney for Defendant
 WSB #



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