

NO. 44079-2-II

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

JAMES MEYERS,

Appellant.

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ON APPEAL FROM THE  
SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR LEWIS COUNTY

The Honorable Nelson Hunt, Judge and  
the Honorable Richard Brosey, Judge

OPENING BRIEF OF APPELLANT

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Peter B. Tiller, WSBA No. 20835  
Of Attorneys for Appellant

The Tiller Law Firm  
Corner of Rock and Pine  
P. O. Box 58  
Centralia, WA 98531  
(360) 736-9301

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**A. ASSIGNMENTS OF ERROR**

1. The trial court erred when it denied the appellant's motion to suppress evidence obtained as result of a traffic stop.

2. The license plate display statutory scheme codified in RCW 46.16A.200(5)(a)(iii) and RCW 46.16A.200(7)(c), is unconstitutionally vague as applied to Mr. Meyers.

3. The court erred when it entered Finding of Fact 5. Clerks Papers 98-100.

4. The court erred when it entered Conclusion of Law 1.

5. The court erred when it entered Conclusion of Law 2.

6. The court erred when it entered Conclusion of Law 3.

7. The court erred when it entered Conclusion of Law 5.

8. The court erred when it entered Conclusion of Law 6.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Are RCW 46.16A.200(5)(a)(iii) and RCW 46.16A.200(7)(c), void for vagueness in violation of the Fourteenth Amendment to the United States Constitution and article I section 3 of the Washington State Constitution thereby requiring dismissal of the charge in this case? Assignment of Error 1-8.

## C. STATEMENT OF THE CASE

### 1. Procedural facts:

Appellant James Meyers was charged in Lewis County Superior Court with possession of a controlled substance (morphine) and driving with a suspended license in the third degree. Clerk's Papers [CP] 23-25.

On August 8, 2012, the Honorable Richard Brosey heard a CrR 3.6 suppression motion to determine the lawfulness of law enforcement's stop of Mr. Meyers' vehicle. RP (8/8/12) at 4-40.<sup>1</sup> The court denied Mr. Meyers' motion to suppress evidence and entered the following findings of fact and conclusions of law:

1. Officer William Phipps is a law enforcement officer employed by the Centralia Police Department who has training and experience in law enforcement and performs traffic patrol as part of his normal duties.
2. On May 20, 2012, at approximately 11:30 p.m., Officer Phipps was on routine patrol in a marked patrol vehicle in Centralia when he observed a van pull away from the curb on Yew Street and continue to travel on the main roadway on Yew Street.

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<sup>1</sup> The record of proceedings consists of six volumes:  
RP (May 31, 2012), arraignment;  
RP (July 12, 2012), hearing, (August 8, 2012), suppression hearing, (October 10, 2012), hearing;  
1RP (August 16, 2012), jury trial;  
2RP (August 16, 2012), jury trial;  
RP (August 30, 2012); and  
RP (October 10, 2012), sentencing.

3. Officer Phipps was driving behind the van in his patrol vehicle and looking straight ahead at the rear license plate area of the van. Officer Phipps observed that the trailer's ball hitch for the van was obscuring two of the seven characters of the van's rear license plate. The obstruction made it so that Officer Phipps could not tell what the license plate number was for the van as he was driving in his patrol vehicle.
4. The pictures that were admitted into evidence at the 3.6 hearing fairly and accurately depict the same van, license plate, and trailer ball hitch that Officer Phipps observed on the night in question. However, the angles from which the pictures are taken are not the same as the vantage point that Officer Phipps had while he was driving in his vehicle.
5. Based upon observing what he reasonably believed to be a traffic infraction based upon the illegible/obscured license plate. Officer Phipps made a traffic stop of the van and was able to identify the above named Defendant as the driver of the vehicle.
6. The Defendant was informed of the reason for the stop and also provided his driver's license as part of the traffic stop. Officer Phipps learned through dispatch that the Defendant had a suspended driver's license as well as an active warrant and placed the Defendant under arrest.
7. During a search incident to arrest of the Defendant's person, Officer Phipps located a single morphine pill, which is the evidence for the drug charge in this case.
8. The Defendant made statements regarding the morphine pill, however, because the State and the Officer concede that *Miranda* warnings were not

given, those statements were not used at trial and they are not discussed further here.

9. Earlier that evening there had been a report of a burglary in the same general area where the Defendant was stopped.
10. During the contact with the Defendant, the Defendant asserts that there was some conversation with Officer Phipps about a burglary that recently occurred in the area of the traffic stop. Officer Phipps does not recall the conversation occurring and the Court does not find the Defendant's assertion that the Officer said the reason for the stop was to investigate the burglary to be credible.

#### CONCLUSIONS OF LAW

1. RCW 46.16A.200(5)(a)(iii) requires that vehicle license plates be kept clean and be able to be plainly seen and read at all times. RCW 46.16A.200(7)(c) makes it unlawful to use holders, frames, or other materials that change, alter, or make a license plate or plates illegible. The obstruction of a license plate from view by a trailer ball hitch is a civil infraction.
2. Officer Phipps had a reasonable suspicion that the Defendant committed a traffic infraction prior to stopping the Defendant's vehicle. Specifically, Officer Phipps observed that the Defendant's rear license plate was illegible because it was obstructed by the vehicle's trailer ball hitch.
3. The basis for the traffic stop in this case was reasonable suspicion of a traffic infraction. There is no evidence suggesting that the traffic stop was a pretext stop.



4. The detention of the Defendant was only for as long as was necessary to obtain information necessary to the traffic stop pursuant to RCW 46.61.021(2).
5. The Defendant was lawfully arrested for driving with a suspended license and for having an active warrant.
6. The morphine pill that is the basis for the drug charge in this case was discovered as part of a lawful search incident to arrest of the Defendant's person.

CP 98-100.

Trial to a jury took place August 16, 2012, the Honorable Nelson Hunt presiding. 1RP at 3-37, 2RP at 41-78.

Neither exceptions nor objections were taken to the jury instructions by defense counsel. 2RP at 47.

The jury found Mr. Meyers guilty as charged. CP 69, 70. Defense counsel did not contest that Mr. Meyers was driving with a suspended license in the third degree. 2RP at 65. The court sentenced Mr. Meyers within the standard range. RP (10/10/12) at 6; CP 74-83.

Timely notice of appeal was filed October 10, 2012. CP 89-94. This appeal follows.

**2. Suppression Hearing:**

While on patrol at 11:30 p.m. on May 20, 2012, Centralia Police Officer William Phipps saw a white van parked on Yew Street in Centralia which was pulling away from the curb. RP (8/8/12) at 6. As he followed the

van, he observed that a ball hitch prevented him from seeing two characters on the van's license plate. RP (8/8/12) at 6. He stopped the van because he was unable to read two characters of the license plate. RP (8/8/12) at 8. The driver, James Meyers, had a suspended license, and Officer Phipps placed him under arrest. RP (8/8/12) at 9. He was searched incident to arrest and a pill which later tested positive for morphine was found in his pocket. RP (8/8/12) at 9.

**3. Trial Testimony:**

Officer Phipps was travelling on Mellon Street in Centralia, Lewis County, Washington at approximately 11:30 p.m. on May 20, 2012. 1RP at 7, 8, 9. He saw a van parked on Yew Street pull away from the curb and proceed northbound. 1RP at 9. Officer Phipps' patrol vehicle was directly behind the van. Officer Phipps stated that a ball trailer hitch attached to the back of the van obstructed his view of two of the numbers of the van's license plate. 1RP at 9, 15. Officer Phipps stopped the van and contacted Mr. Meyers. 1RP at 9, 10. Dispatch notified Officer Phipps that Mr. Meyers had a suspended license and the officer placed him under arrest. 1RP at 10. During a search incident to arrest Officer Phipps found a round blue pill in Mr. Meyers' right front pants pocket. 1RP at 10, 11. The pill was

subsequently tested at the Washington State Patrol Crime Lab and identified as morphine. 1RP at 18, 25.

A records custodian representative from the Department of Licensing stated that Mr. Meyers' license was suspended in 2010. 1RP at 37, 2RP at 42.

The defense rested without calling any witnesses. 2RP at 45.

#### **D. ARGUMENT**

##### **1. THE TRIAL COURT ERRED BY FAILING TO SUPPRESS THE FRUITS OF THE SEARCH OF MR. MEYER INCIDENT TO ARREST**

- a. The license plate display statute relied on by the officer for the stop of Mr. Meyers' van is unconstitutionally vague as applied to the facts of this case.**

Generally, warrantless searches and seizures are unconstitutional. *State v. Gatewood*, 163 Wn.2d 534, 539, 182 P.3d 426 (2008). An investigative stop, known as a *Terry* stop, is an exception that requires a reasonable, articulable suspicion, based on specific, objective facts, that the person seized has committed or is about to commit a crime. *Gatewood*, 163 Wn.2d at 539, 182 P.3d 426. Warrantless traffic stops are constitutional under article I, section 7 as investigative stops, but only if based upon at least

a reasonable articulable suspicion of either criminal activity or a traffic infraction, and only if reasonably limited in scope. *See Ladson*, 138 Wn.2d at 350, 351–52, 979 P.2d 833 (citing *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)); RCW 46.61.021(2); *cf. State v. Nichols*, 161 Wn.2d 1, 13, 162 P.3d 1122 (2007) (warrantless traffic stop is constitutional if based upon probable cause that a traffic infraction occurred). The narrow exception to the warrant requirement for investigative stops has been extended beyond criminal activity to the investigation of traffic infractions because of “the law enforcement exigency created by the ready mobility of vehicles and governmental interests in ensuring safe travel, as evidenced in the broad regulation of most forms of transportation.” *State v. Day*, 161 Wn.2d 889, 897, 168 P.3d 1265 (2007) (quoting *State v. Johnson*, 128 Wn.2d 431, 454, 909 P.2d 293 (1996)). The use of traffic stops must remain limited and must not encroach upon the right to privacy except as is reasonably necessary to promote traffic safety and to protect the general welfare through the enforcement of traffic regulations and criminal laws. *State v. Arreola*, 176 Wash.2d 284, 292-93, 290 P.3d 983 (2012).

Officer Phipps testified that he stopped Mr. Meyers’ van because he was unable to see two characters of the license plate when driving directly

behind the van because of a ball trailer hitch attached to the back of the van.

1RP at 9, 15. The officer relied on RCW 46.16A.200(5)(a)(iii) and RCW 46.16A.200(7)(c) in order to make the traffic stop. Conclusions of Law 1, 2, and 3. CP 100. RCW 46.16A.200(5)(a) provides:

(5)(a) **Display.** License plates must be: (i) Attached conspicuously at the front and rear of each vehicle if two license plates have been issued; (ii) Attached to the rear of the vehicle if one license plate has been issued; (iii) Kept clean and be able to be plainly seen and read at all times; and (iv) Attached in a horizontal position at a distance of not more than four feet from the ground. (b) The Washington state patrol may grant exceptions to this subsection if the body construction of the vehicle makes compliance with this section impossible.

RCW 46.16A.200(7) provides:

(b) Display a license plate or plates on any vehicle that have been changed, altered, or disfigured, or have become illegible;

(c) Use holders, frames, or other materials that change, alter, or make a license plate or plates illegible. License plate frames may be used on license plates only if the frames do not obscure license tabs or identifying letters or numbers on the plates and the license plates can be plainly seen and read at all times;[. . .]

The legislature's failure to define "plainly seen and read" and "at all times" in the phrase "be able to be plainly seen and read at all times" in RCW

46.16A.200(5)(a)(iii), and failure to define “illegible” in the phrase “other materials that change, alter, or make a license plate or plates illegible” in RCW 46.16A.200(7)(c) are unconstitutionally vague as applied to the facts of this case.

The Fourteenth Amendment to the United States Constitution provides in part that no “State (shall) deprive any person of life, liberty, or property, without due process of law . . .”• Article 1, § 3 of the Washington State Constitution likewise states that, “No person shall be deprived of life, liberty, or property, without due process of law.”• The State Constitution offers no greater protection than the federal Due Process Clauses of the Fourteenth Amendment. *State v. Manussier*, 129 Wn.2d 652, 679, 921 P.2d 473 (1996).

Under the due process clause of the Fourteenth Amendment, citizens must be afforded fair warning of proscribed conduct. *Rose v. Locke*, 423 U.S. 48, 49, 96 S. Ct. 243, 244, 46 L. Ed. 2d 185 (1975).

The court reviews the constitutionality of a statute de novo. *State v. Eckblad*, 152 Wn.2d 515, 518, 98 P.3d 1184 (2004). “A court will presume that a statute is constitutional and it will make every presumption in favor of constitutionality where the statute’s purpose is to promote safety and welfare,

and the statute bears a reasonable and substantial relationship to that purpose.”• *State v. Glas*, 147 Wn.2d 410, 422, 54 P.3d 147 (2002). The person asserting a vagueness challenge bears the heavy burden of proving the statute’s unconstitutionality beyond a reasonable doubt. *City of Spokane v. Douglass*, 115 Wn.2d 171, 177, 795 P.2d 693 (1990).

A statute can be unconstitutionally vague on its face in its entirety, or only in part, or as to certain applications. *Bellevue v. Miller*, 85 Wn.2d 539, 536 P.2d 603 (1975); *State v. Hood*, 24 Wn. App. 155, 157-158, 600 P.2d 636 (1979). “The test to be applied by the court in determining whether a statute is unconstitutional depends on the allegation made. Vagueness challenges to statutes that do not involve First Amendment rights generally are examined on an as-applied basis. *State v. Worrell*, 111 Wn.2d 537, 541, 761 P.2d 56 (1988).

“A vague statute violates due process.”• *Haley v. The Med. Disciplinary Bd.*, 117 Wn.2d 720, 739, 818 P.2d 1062 (1991). A statute is unconstitutionally vague if the statute does not (1) define the criminal offense with sufficient definiteness such that ordinary persons understand what conduct is proscribed (the “definiteness prong”) or (2) provide ascertainable standards of guilt to protect against arbitrary enforcement (the

“arbitrary enforcement prong”). *Douglass*, 115 Wn.2d at 178. To survive a vagueness challenge, a statute must satisfy both requirements. *State v. Halstien*, 122 Wn.2d at 117-18. The person challenging a statute on vagueness grounds must prove vagueness beyond a reasonable doubt. *State v. Coria*, 120 Wn.2d 156, 163, 839 P.2d 890 (1992); *Spokane v. Douglass*, 115 Wn.2d at 178. When a criminal statute fails to abide either of these requirements, the court will hold it void and reverse a conviction obtained under it. *State v. Smith*, 111 Wn.2d 1, 5, 759 P.2d 372 (1988).

The sufficient definiteness requirement protects individuals from being held criminally accountable for conduct where a statute is framed in terms so vague that persons of common intelligence must "necessarily guess at its meaning and differ as to its application." *State v. Eze*, 111 Wn.2d 22, 26, 759 P.2d 366 (1988) (citation omitted).

The second requirement, that of ascertainable standards, is intended to protect against "arbitrary, erratic, and discriminatory enforcement." *Spokane v. Douglass*, 115 Wn.2d at 180. See also *Kolender v. Lawson*, 461 U.S. 352, 358, 75 L. Ed. 2d 903, 103 S. Ct. 1855 (1983); *Tacoma v. Luvene*, 118 Wn.2d 826, 844, 827 P.2d 1374 (1992); *State v. Smith*, 111 Wn.2d 1, 4-5, 759 P.2d 372 (1988). When assessing the statute under this



prong of the vagueness test, a court examines the terms of the statute to determine if they contain adequate standards to guide law enforcement officials. *State v. Myles*, 127 Wn.2d 807, 812, 903 P.2d 979 (1995).

Here, the statute providing that a license plate must be “plainly seen and read at all times” and cannot be “illegible” is unconstitutionally vague under both prongs of the vagueness doctrine. The statute is unconstitutionally vague because it fails to provide adequate notice of the prohibited activity. The possibility of arbitrary enforcement stems from fact that visibility of a license plate depends entirely on the officer’s perspective. If he is close to a subject car from a high vantage point, or if he views the plate from an oblique angle, the plate may be visible. It is left to the discretion of the officer in question. The statute invites an inordinate amount of police discretion. If the statute does that, it is unconstitutional.

The terms as applied to Mr. Meyers’ conduct failed to provide any meaningful guidance as to what display of a license plate is prohibited and also leaves Mr. Meyers subject to arbitrary enforcement of the statute. The statute is defendant on an observer’s perspective. An officer directly behind a vehicle in a standard patrol vehicle may not be able to see a part of a license plate, but if an officer views the rear of the vehicle from an oblique angle, the entire plate may be visible. An officer in a vehicle that is higher than a

passenger car, such as a sports utility vehicle, would conceivably be able to view the entire plate. Similarly, a motorcycle officer, where the officer will sit higher than in a passenger car, may be able to have a clear view of the plate. Moreover, a motorist would be in violation of the statute if towing a trailer, motorcycle trailer, or boat trailer. An officer behind the vehicle would *a priori* be unable to see the plate because of the trailer, boat, or other towed object.

In summary, RCW 46.16A.200 can and has been arbitrarily applied and leaves people of common intelligence guessing as to its prohibitions. Therefore, the statute is void for vagueness.

**E. CONCLUSION**

This court should declare that RCW 46.16A.200 is unconstitutionally vague as applied in this case, does not provide fair notice to proscribed display of a license plate, and violates due process because of the potential for arbitrary enforcement. Mr. Meyers' convictions should be reversed.

DATED: May 17, 2013.

Respectfully submitted,  
THE TILLER LAW FIRM  
*Peter B. Tiller*

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PETER B. TILLER-WSBA 20835  
Of Attorneys for James Meyers

## CERTIFICATE OF SERVICE

The undersigned certifies that on May 17, 2013, that this Appellant's Opening Brief was sent by JIS link to Mr. David Ponzoha, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, a true and correct copy was hand delivered to Sara Beigh, Lewis County Prosecutor and a copy was mailed by U.S. mail, postage prepaid, to the appellant, Mr. James Meyers, c/o Matt Skinner, 1005 S. Gold St., Centralia, WA 98531.

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on May 17, 2013.

*Peter B. Tiller*

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PETER B. TILLER

## STATUTES

### ***RCW 46.16A.200***

License plates.

(1) **Design.** All license plates may be obtained by the director from the metal working plant of a state correctional facility or from any source in accordance with existing state of Washington purchasing procedures.

License plates:

- (a) May vary in background, color, and design;

(b) Must be legible and clearly identifiable as a Washington state license plate;

(c) Must designate the name of the state of Washington without abbreviation;

(d) Must be treated with fully reflectorized materials designed to increase visibility and legibility at night;

(e) Must be of a size and color and show the registration period as determined by the director; and

(f) Before July 1, 2010, may display a symbol or artwork approved by the former special license plate review board and the legislature. Beginning July 1, 2010, special license plate series approved by the department and enacted into law by the legislature may display a symbol or artwork approved by the department.

(2) **Exceptions to reflectorized materials.** License plates issued before January 1, 1968, are not required to be treated with reflectorized materials.

(3) **Dealer license plates.** License plates issued to a dealer must contain an indication that the license plates have been issued to a vehicle dealer.

(4)(a) **Furnished.** The director shall furnish to all persons making satisfactory application for a vehicle registration:

(i) Two identical license plates each containing the license plate number; or

(ii) One license plate if the vehicle is a trailer, semitrailer, camper, moped, collector vehicle, horseless carriage, or motorcycle.

(b) The director may adopt types of license plates to be used as long as the license plates are legible.

(5)(a) **Display.** License plates must be:

(i) Attached conspicuously at the front and rear of each vehicle if two license plates have been issued;

(ii) Attached to the rear of the vehicle if one license plate has been issued;

(iii) Kept clean and be able to be plainly seen and read at all times; and

(iv) Attached in a horizontal position at a distance of not more than four feet from the ground.

(b) The Washington state patrol may grant exceptions to this subsection if the body construction of the vehicle makes compliance with this section impossible.

(6) **Change of license classification.** A person who has altered a vehicle that makes the current license plate or plates invalid for the vehicle's use shall:

(a) Surrender the current license plate or plates to the department, county auditor or other agent, or subagent appointed by the director;

(b) Apply for a new license plate or plates; and

(c) Pay a change of classification fee required under RCW 46.17.310.

(7) **Unlawful acts.** It is unlawful to:

(a) Display a license plate or plates on the front or rear of any vehicle that were not issued by the director for the vehicle;

(b) Display a license plate or plates on any vehicle that have been changed, altered, or disfigured, or have become illegible;

(c) Use holders, frames, or other materials that change, alter, or make a license plate or plates illegible. License plate frames may be used on license plates only if the frames do not obscure license tabs or identifying

letters or numbers on the plates and the license plates can be plainly seen and read at all times;

(d) Operate a vehicle unless a valid license plate or plates are attached as required under this section;

(e) Transfer a license plate or plates issued under this chapter between two or more vehicles without first making application to transfer the license plates. A violation of this subsection (7)(e) is a traffic infraction subject to a fine not to exceed five hundred dollars. Any law enforcement agency that determines that a license plate or plates have been transferred between two or more vehicles shall confiscate the license plate or plates and return them to the department for nullification along with full details of the reasons for confiscation. Each vehicle identified in the transfer will be issued a new license plate or plates upon application by the owner or owners and the payment of full fees and taxes; or

(f) Fail, neglect, or refuse to endorse the registration certificate and deliver the license plate or plates to the purchaser or transferee of the vehicle, except as authorized under this section.

(8) **Transfer.** (a) Standard issue license plates follow the vehicle when ownership of the vehicle changes unless the registered owner wishes to retain the license plates and transfer them to a replacement vehicle of the same use. A registered owner wishing to keep standard issue license plates shall pay the license plate transfer fee required under RCW 46.17.200(1)(c) when applying for license plate transfer.

(b) Special license plates and personalized license plates may be treated in the same manner as described in (a) of this subsection unless otherwise limited by law.

(c) License plates issued to the state or any county, city, town, school district, or other political subdivision entitled to exemption as provided by law may be treated in the same manner as described in (a) of this subsection.

(9) **Replacement.** (a) An owner or the owner's authorized

representative shall apply for a replacement license plate or plates if the current license plate or plates assigned to the vehicle have been lost, defaced, or destroyed, or if one or both plates have become so illegible or are in such a condition as to be difficult to distinguish. An owner or the owner's authorized representative may apply for a replacement license plate or plates at any time the owner chooses.

(b) The application for a replacement license plate or plates must:

(i) Be on a form furnished or approved by the director; and

(ii) Be accompanied by the fee required under RCW 46.17.200(1)(a).

(c) The department shall not require the payment of any fee to replace a license plate or plates for vehicles owned, rented, or leased by foreign countries or international bodies to which the United States government is a signatory by treaty.

(10) **Periodic replacement.** License plates must be replaced periodically to ensure maximum legibility and reflectivity. The department shall:

(a) Use empirical studies documenting the longevity of the reflective materials used to make license plates;

(b) Determine how frequently license plates must be replaced; and

(c) Offer to owners the option of retaining the current license plate number when obtaining replacement license plates for the fee required in RCW 46.17.200(1)(b).

(11) **Periodic replacement -- Exceptions.** The following license plates are not required to be periodically replaced as required in subsection (10) of this section:

(a) Horseless carriage license plates issued under RCW 46.18.255 before January 1, 1987;

(b) Congressional Medal of Honor license plates issued under RCW 46.18.230;

(c) License plates for commercial motor vehicles with a gross weight greater than twenty-six thousand pounds.

(12) **Rules.** The department may adopt rules to implement this section.

(13) **Tabs or emblems.** The director may issue tabs or emblems to be attached to license plates or elsewhere on the vehicle to signify initial registration and renewals. Renewals become effective when tabs or emblems have been issued and properly displayed on license plates.



# TILLER LAW OFFICE

**May 17, 2013 - 4:30 PM**

## Transmittal Letter

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Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Shirleen K Long - Email: [slong@tillerlaw.com](mailto:slong@tillerlaw.com)