

No. 45443-2-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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CITY OF VANCOUVER

Respondent

vs.

BRINESH PRASAD

Petitioner

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OPENING BRIEF OF PETITIONER

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## **I. INTRODUCTION**

Brinsh Prasad (Petitioner) seeks reversal of his conviction at bench trial in Clark County District Court, for the crime of Driving While License Suspended or Revoked in the Second Degree, RCW 46.20.342(1)(b), (hereafter referred to as DWS II). He claims that he was denied his right to confront witnesses against him, in violation of the Sixth Amendment to the United States Constitution, and Article I, Section 22 of the Washington State Constitution, by admitting into evidence exhibit 1, which was an unsigned, uncertified letter from an unknown person at DOL, which purported to prove the driver's license status of someone with a similar name as the Defendant.

Petitioner strenuously objected at trial to admission of the letter, and assigned error to its admission on RALJ Appeal before the Clark County Superior Court.

The trial court ruled against Petitioner and admitted the letter, exhibit 2, and the Superior Court on RALJ appeal ignored the issue.

## **II. ASSIGNMENT OF ERROR AND ISSUES**

### **Assignment of Error**

Assignment of Error Number 1. The trial court erred in admitting

exhibit # 2, a “diligent search” letter offered to prove the status of the driver’s privilege of the person named in the letter.

### **Issues Relating to Assignments of Error**

Issue Number 1: In a prosecution for Driving While License Suspended or Revoked in the Second Degree, does admission of an unsigned, uncertified “diligent search” letter, purportedly from the Washington Department of Licensing, offered to prove the status of a driver’s privilege, violate the Defendant’s right to confront witnesses against him, in violation of the Sixth Amendment to the United States Constitution and violate the Defendant’s right to “meet the witnesses against him face to face” under Article I, Section 22 of the Washington State Constitution?

### **III. STATEMENT OF THE CASE**

At trial, the City of Vancouver called only two witnesses, Vancouver Police Officer Brown, and the Department of Licensing (hereafter DOL) “Custodian of Records,” Mike McQuade. The City offered only three exhibits, all of which were admitted into evidence: Exhibit 1, (Appendix Item # 1) an uncertified “Notice of Revocation” letter;

Exhibit 2, (Appendix item # 2) an improperly certified “diligent search” letter;

Exhibit 3, (Appendix item # 3) an uncertified “Abstract of Driving Record.”

**A. Officer Brown’s testimony** established the following:

On March 24, 2012, He observed a vehicle being driven in Vancouver at 112<sup>th</sup> Avenue and Burton Road. RP p. 19, l. 20-21. He “ran a record check” as to the owner of the vehicle (correctly **excluded** as substantive evidence by the trial court.) RP p. 21, l. 7-9. 3. He was informed by someone, somehow, that the owner of the vehicle’s driver’s privilege was revoked. RP 21, l. 7-13. (Again, correctly **excluded** as substantive evidence by the trial court, see colloquy at RP p. 20, l. 7-25, RP p. 21, l. 1-25, RP p. 22, l 1-17.)

Officer Brown asked the driver only if his name was “Brinesh.” The driver said “yes.” RP p. 23, l. 23-25. Brown testified that the Defendant displayed a driver’s license, with the name “Brinesh Prasad.” RP p. 24, l. 16-25. However, the Court did not admit this testimony as substantive evidence. RP p. 24, l. 16-24. There was no substantive evidence admitted at trial that the Defendant in court, and the person driving a motor vehicle on March

24, 2012 was named Brinsh Prasad. The trial court ruled that any such testimony, based upon the driver's license, was not admitted as substantive evidence:

Q: What did that driver's license say?

RB: Again, move to strike. Just to – assume the same ruling that –

Judge: Yeah. Overruled the objection. Again this isn't substantive evidence." RP p. 24, l. 18-22.

The license bore a picture which "matched" the driver RP p. 26, l. 1-2. There was no testimony as to any identifying information on the driver's license, such as driver's license number, State of issue, date of issue, date of birth, address, gender, height, weight, eye color, hair color, or race, which would connect it with any DOL records. Officer Brown identified the Defendant in court as the person who had been driving the car, and who had received the citation. RP p. 26, l. 12-25.

**B. Mike McQuade's testimony** consisted of:

He is a "custodian of records" for the Washington Department of Licensing, RP p. 33, l. 24-25, p. 34, l. 1- 2.

Despite his self-proclaimed title as “custodian of records,” he did not claim to have ever had custody of any of the exhibits admitted into evidence. He had not brought any of the exhibits in the case to court from the Department of Licensing, and had no idea how they had come into the possession of the City Prosecutor. RP p. 37, l. 15-25; p. 38, l. 1-20. He gave no testimony that any of the exhibits were true and accurate copies of any record of DOL, nor that he had ever seen the exhibits before being handed them in court, nor that he had ever compared them to any record of DOL, nor that any of them had ever been attached to any other exhibit, nor that any of the exhibits were duly certified, or under seal. While he initially testified that he had seen the City’s exhibits before, it became apparent that he meant that he has seen similar types of documents before, but not with the name Brinesh Prasad on them. RP p. 35, l. 24-25, p. 36, l. 1-3.

Exhibit 2 carried an odd quasi-certification, whereby someone named Shannon Smiley certified that he or she is a custodian of official driving records of the Department of Licensing, that are maintained within the Department of Licensing.

He or she does not certify that he or she is familiar with the records in question, has ever seen the records in question, nor that he or she has any knowledge whatsoever of the records in question. He or she does not certify that exhibit 2 is one of those "official" records, nor that it is a true, accurate copy of any record of the Department of Licensing. Most significantly, he or she does not certify that he or she is the person who made the alleged "diligent search", nor does any aspect of the exhibit identify who supposedly did make a diligent search, nor what that search consisted of. Mr. McQuade, the fungible DOL witness dispatched to trial, did not know Shannon Smiley. RP p. 45, l. 21-25; p. 46, l. 1-5.

Despite proper objections, accompanied by numerous trial briefs and citation to authority, the trial court admitted all of the City's exhibits, issued oral Findings of Fact and Conclusions of Law, RP p. 83, l. 5-25; p. 84, l.1, found the Petitioner guilty, and entered Judgment and Sentence (Appendix Item # 4).

On RALJ appeal to Superior Court, Judge John F. Nichols affirmed the conviction. In his two rulings, and despite the fact that the right of confrontation was one of the issues raised before him, he never discussed the admissibility of Exhibit 2 as relates to the right to confront witnesses.

On Petitioner's Motion for Discretionary Review, the Honorable Eric B. Schmidt, Commissioner of the Washington Court of Appeals, Division II, granted discretionary review on the issue of the admissibility of Exhibit 2, the "diligent search" letter:

"In light of State v. Jasper, 174 Wn. 2d 96, 116, 271 P. 3d 876 ( 2012) and Melendez -Diaz v. Massachusetts, 557 U. S. 305, 328, 129 S. Ct. 2527, 174 L. Ed. 2d 314 ( 2009), it is questionable whether the presence at trial of McQuade, a Department of Licensing records custodian but not the custodian who certified Prasad' s records, is sufficient to satisfy Prasad' s right of confrontation. And this issue is one of public interest as to the requirements for proving a driver's license status. Discretionary review of this issue is granted under RAP 2. 3(d)(3). Discretionary review of all Prasad's other issues is denied.

As stated above, the trial court admitted two other documents purporting to emanate from DOL: exhibit 1, a "Notice of Revocation letter," and exhibit 3, an "Abstract of Driving Record." Neither of these documents were authenticated nor certified, nor under any semblance of a government seal. Commissioner Schmidt denied discretionary review as to the admissibility of these exhibits, although they, even more than exhibit 2, constitute statements which were immune from cross examination.

Petitioner filed a motion seeking modification of the Commissioner's ruling, so as to grant review of other issues erroneously ruled upon by the trial court and the RALJ court.

That motion was denied by a panel of the Court of Appeals on March 6, 2014.

#### **IV. ARGUMENT**

##### **1. ARGUMENT ON ASSIGNMENT OF ERROR NUMBER ONE AND ISSUE NUMBER ONE.**

The Sixth Amendment to the United States Constitution provides in part:

“In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him...”

Article I, Section 22 of the Washington State Constitution provides in part:

“SECTION 22 RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right... to meet the witnesses against him face to face...”

By admitting exhibit 2, the “diligent search” letter (as well as exhibits 1 and 3), the Clark County District Court denied Petitioner his right to confront witnesses against him, under both the United States Constitution and the Washington State Constitution. The Superior court on RALJ Appeal condoned this denial, by ignoring it.

For purposes of this analysis, the federal and state constitutional provisions are construed as providing the same protection, and therefore the argument is presented here under the Sixth Amendment authorities. State v. Lui, \_\_\_\_ Wn.2d \_\_\_\_, 315 P.3d 493 (2014).

Exhibit 2 constitutes testimonial hearsay, which was clearly inadmissible under the United States Constitution's Sixth Amendment Confrontation clause quoted above.

In the context of a prosecution for Driving While License Suspended/Revoked, the Department of Licensing's practice of submitting testimonial "diligent search" letters under the guise of "public records" has been roundly rejected by Division One of the Court of Appeals and the Washington Supreme Court. State v. Jasper, 158 Wn. App. 518, 523, 245 P.3d 228 (2010) *affirmed at* 174 Wn. 2d 96, 271 P.3d 876 (2012).

Exhibit 2 contains no signature, nor any identification of who the declarant is. This exact form of document is testimonial, and expressly inadmissible under Crawford v. Washington, 541 U.S. 36, 50, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), and State v. Jasper, *supra*.

The “diligent search” letter, as admitted in this case, even if it were properly certified and under seal, has no independent existence other than for presentation in court to prove that a person’s license or privilege to drive is suspended or revoked. It is “testimonial” in the most obvious sense of the word. It purports to prove that some competent person at DOL in fact engaged in a thorough, diligent search of the correct database, identified the correct defendant on trial, correctly interpreted the applicable record of license status on the appropriate day, and correctly communicated the resulting opinion.

What is incredibly frustrating is that no-one signed the letter, or even purported to be its author. Shannon Smiley did not do so. He or she merely advised the reader of the proud accomplishment of being a custodian of official DOL records.

Admission of government documents prepared for trial violates the Sixth Amendment right to confrontation of witnesses. Here, the declarant is unidentified, and may not even exist. Perhaps that is why the City Prosecutor conceded that Exhibit 2 was inadmissible, and (mis)informed the trial court that he would not be offering Exhibit 2 as evidence. RP p. 9, l. 12-22.

Mr. McQuade, the City's DOL witness, was not the declarant. He was sent to play the role of the Witness against the Petitioner, but knew nothing about the production of the letter, nor what type of search was allegedly conducted by the anonymous author.

It is surprising that the DOL still issues such a document, since this exact form was rejected as constitutionally inadmissible in State v. Jasper, supra.

Crawford v. Washington, supra, substantially altered the landscape of hearsay and cross examination in state and federal courts. Prosecutors and public agencies are still struggling with the aftermath of the case and the subsequent expansion of Crawford in Melendez-Diaz v. Massachusetts, \_\_\_ U.S. \_\_\_, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009).

Melendez-Diaz held that supposed "government records" which in actuality are merely testimony from a government employee are inadmissible, because the declarant cannot be cross-examined, or confronted by the defendant. State v. Jasper, supra, followed Crawford and Melendez-Diaz by applying those cases to so-called "records" of the Washington Department of Licensing identical to Exhibit 2.

The exhibits admitted by the District Court did not even qualify as “public records” as defined by RCW 5.44.040. They were not duly certified, nor did they bear a proper DOL seal.

The trial court committed Constitutional error by admitting Exhibit 2.

The recent case of State v. Lui, supra, while factually distinguishable, supports Petitioner’s argument.

In Lui, the issue was whether or not an expert witness can testify in court as to his or her own opinion, which is based upon scientific testing results done by other persons who are not called as witnesses. The Supreme Court held that the lab technicians who run standard scientific tests on a substance, arriving at objective test results which are relied upon by the testifying expert, are not the “witnesses against the Defendant” who must testify and be subject to cross examination at trial.

An expert who testifies as to a conclusion, based upon the scientific data produced by the lab technicians is the actual witness against the defendant, and who must be present and subject to cross examination in order to satisfy the Sixth Amendment right to confrontation.

“We examine the plain language of the confrontation right: an accused person’s right to confront “the witnesses

against him." Reading these words in light of the founders' intent, the practice of other jurisdictions, and the trajectory of Supreme Court confrontation clause jurisprudence leads us to adopt a rule that an expert comes within the scope of the confrontation clause if two conditions are satisfied: first, the person must be a "witness" by virtue of making a statement of fact to the tribunal and, second, the person must be a witness "against" the defendant by making a statement that tends to inculcate the accused." (page number in Washington 2d not available yet.)

Although Lui by its very terms applies to expert testimony, none of which was presented in the Prasad trial, it is clear that the "diligent search" letter would satisfy both tests. One, it contains a statement of fact directed to the tribunal; and two, it clearly and unequivocally inculcates the person whom it refers to as having a suspended or revoked driving privilege, an essential element of the charge.

The prosecution endeavored to establish that the driving privilege of some person named Brinesh Prasad was suspended or revoked as of a certain day. Some unknown person at the Department of Licensing claims to have verified this fact by diligently searching DOL records. Some unknown person, perhaps the same, or perhaps a different person, generated a letter as to the results of the alleged diligent search. Neither of them was in court to be

cross-examined as to the diligence of the search, nor the accuracy of the result.

Shannon Smiley did not claim to have done the search, but instead claimed that she is a custodian of official records, although he or she did not claim that the “diligent search letter” was one of such records. (It is not, under State v. Jasper, *supra*)

He or she was not in court to be cross examined, although it would be pointless since she didn’t say anything of relevance or materiality in her pseudo-certification.

Mike McQuade didn’t know who Shannon Smiley was, and could not be cross examined as to who had done the alleged search, and how, nor to the accuracy of the results. He had never seen the City's exhibits until shown them at trial.

No one at all testified that the DOL records pertained to the Petitioner who was on trial. See State v. Huber, 129 Wn. App. 499, 119 P.3d 388 (2005), (identity of names is insufficient to prove identity of persons) and see State v. Hunter, 29 Wn. App. 218, 627 P.2d 1339 (1981), (in which the defendant’s own parole officer identified him as being the same person to whom a judgment and sentence applied.)

The Department of Licensing is an integral cog in the machinery of DWS prosecutions. DOL holds all the evidence as to the driver's license status of an accused. Perhaps because of the burden of dispatching witnesses to courts all over the state, DOL has apparently deputized a cadre of purported "custodians of the records," to show up in court in order to pantomime compliance with the Sixth Amendment.

Under basic evidence practice, the function of a "custodian of records" is to authenticate a business or public record. Duly certified public records, however, assuming they are under the proper statutory seal (which none of the exhibits were) are self-authenticating. ER 902(a) and (d). No custodian of records is needed in court to authenticate a true public record.

The problem here is that someone, a prosecutor perhaps, or maybe a staff attorney for DOL, must have misread State v. Jasper, *supra*, and concluded that that case required live **authentication** testimony. Hence, the DOL response to Jasper was to continue to submit the inadmissible and testimonial "diligent search" letters as proof, but with the added baggage of a "custodian" such as Mr. McQuade, who had never seen the unsigned document before, did

not know who the author was, knew nothing of how it was compiled, and could not possibly testify, nor be cross-examined as to the conclusions contained in the document.

## V. CONCLUSION

The Court of Appeals should reverse the conviction. It was based upon inadmissible evidence. Because there was insufficient evidence to support the conviction without the inadmissible exhibit # 2, this Honorable Court should further order that the case be dismissed.

Dated the 10 day of March, 2014.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Roger A. Bennett", written over a horizontal line.

Roger A. Bennett  
Attorney for Petitioner  
WSBA # 6536

## VI. APPENDIX

Item # 1, Exhibit 1, notice of revocation letter

Item # 2, Exhibit 2, "diligent search" letter

Item # 3, Exhibit 3, abstract of driving record

Item # 4, Judgment and Sentence

## APPENDIX ITEM

1. Plaintiff's Exhibit # 1, a notice of revocation letter.



STATE OF WASHINGTON  
DEPARTMENT OF LICENSING  
PO Box 9030 - Olympia, Washington 98507-9030

09/06/2011

**Notice of Revocation**

**CERTIFIED**

3CRA  
PRASAD, BRINESH  
9492 SW MAPLEWOOD DR APT D39  
TIGARD OR 97223-0000

Lic. # PRASAB\*363QK

On 10/06/2011 at 12:01 a.m. we will revoke your driving privilege for 1 year for being in physical control or driving under the influence of alcohol or any drug. RCW 46.20.3101.

**What do I have to do?**

Any Washington driver license or permit, including occupational (ORL) or ignition interlock licenses (IIL), will not be valid and must be returned to Department of Licensing, PO Box 9030, Olympia, WA 98507-9030.

**How do I get my license back?**

If nothing else on your driving record prevents it, you will be eligible to get a license on 10/06/2012. To get one you must do all of the following:

- File proof of financial responsibility until 10/06/2015. An SR-22 is the most common method. RCW 46.29.450
- Pass all required tests, pay a reissue fee, and any other required licensing fees.

**What other options are available?**

You may be able to get an ORL, IIL, or other temporary restricted license during this revocation. You can also contest this action by submitting a Driver's Hearing Request form or written request along with \$200 (unless you provide proof of indigence), postmarked within 20 days from the date of your arrest. Failure to submit a complete and timely request will be considered a waiver of your right to a hearing. You'll find all the necessary forms on our website.

We suggest that you always check the status of your driving privilege before you drive. Find out more at [www.dol.wa.gov](http://www.dol.wa.gov) or by calling Customer Service at 360-902-3900.

Driver Records

*The Department of Licensing certifies that this document was mailed via U.S. post office on 09/06/2011 to the person named herein at the address shown, which is the last address of record with the Department.*

*We are committed to providing equal access to our services.  
If you need accommodation, please call 360-902-3900 or TTY 360-664-0116.*

Exhibit 1

## APPENDIX ITEM

2. Plaintiff's Exhibit # 2, a  
"diligent search" letter.



STATE OF WASHINGTON  
DEPARTMENT OF LICENSING  
P. O. Box 9030 • Olympia, Washington 98507-9030

January 2, 2013

sls

The information in this report pertains to the driving record of:

Lic. #: PRASAB\*363QK  
Name: PRASAD, BRINESH  
9492 SW MAPLEWOOD DR APT D39  
TIGARD OR 97223

Birthdate: November 12, 1964  
Eyes: BRN Sex: M  
Hgt: 6 ft 00 in Wgt: 180 lbs  
License Issued: December 30, 2010  
License Expires: November 12, 2015

After a diligent search, our official record indicates that the status on March 24, 2012, was:

**Personal Driver License Status:**

**Commercial Driver License Status:**

- Revoked

**The following also applied:**

- Subject was not eligible to reinstate on the date of arrest.

**PDL Attachments:**

**CDL Attachments:**

- Notice of PDL Revocation, October 6, 2011

**Attachments:**

- Abstract of Driving Record



Having been appointed by the Director of the Department of Licensing as legal custodian of driving records of the State of Washington I certify under penalty of perjury that such records are official, and are maintained within the Department of Licensing.

*Shannon Smiley*

Custodian of Records  
Place: Olympia, Washington  
Date: January 02, 2013

We are committed to providing equal access to our services.  
If you need accommodation, please call 360-902-3900 or TTY 360-664-0116.

Exhibit 2

## APPENDIX ITEM

3. Plaintiff's Exhibit # 3, an abstract of driving record.

Driving Record

Abstract of Complete Driving Record

This information was obtained through the IDIPS Help Desk application and is current as of 1/2/2013 2:22:47 PM

Driver Information	
PIC	PRASA-B-363QK
Name	Prasad, Brinesh
DOB	11/12/1984
Gender	Male

Driver License Status	
Status	Revoked DWLS/R 2nd Degree
Issued	12/30/2010
Expires	11/12/2015
Original issue date	10/16/1996

Reinstatement		
<b>Requirements</b>		<b>Fees</b>
Retest - written and drive		\$150 Reissue
Financial responsibility (SR-22) until 12/13/2016		\$50 Probationary
Alcohol report		
Additional requirements may apply		Additional licensing/testing fees may apply

Violation date	Violation #	Description	Court finding	Court name	Court type	BAC	Licensing state	Exempt veh	Veh type
8/6/2011		Refused the breath/blood test	Conviction 10/6/2011	Wa Dmv	Federal				
8/6/2011	120480182	Registration violation - no tabs	Conviction 9/26/2012	Clark Co	District				
8/6/2011	120480181	Driving under the influence and refuse breath/blood test	Conviction 9/4/2012	Clark Co	District				
7/10/2009	IN130664	Speeding (37 mph in a 25 mph zone)	Conviction 8/12/2009	Clark Co	District				

Driving Record History									
Action date	Reason	Action taken	Eligibility date	Release date	Violation date	Violation #	DUI/BAC detail	Licensing state	
10/25/2012	Ignition interlock required for 1 year	No Action	12/13/2013	12/13/2014		120480181			
10/6/2011	Refuse the breath/blood test	Revoked	10/6/2012	10/6/2015	8/6/2011		.00	01	
12/13/2012	Probationary license status set based on court conviction or deferred prosecution for dui or physical control	No Action	12/13/2013	12/13/2016	8/6/2011				
12/13/2012	Driving under the influence; driver credited for time served on admin side	Revoked	12/13/2013	12/13/2016	8/6/2011	120480181	.00	00	
11/14/2011	Failure to make required payment of fine and costs	Suspended	11/14/2011	9/23/2021		120480182			OR
9/7/2012	Failure to make required payment of fine and costs	Released	9/7/2012	9/23/2021		120480182			OR

# APPENDIX ITEM

## 4. Judgment and Sentence

DISTRICT COURT OF WASHINGTON  
FOR CLARK COUNTY

STATE OF WASHINGTON CITY OF VANCOUVER/  
CITY OF CAMAS WASHOUGAL Plaintiff,  
v.

PRASAD, BRINESH  
DOB: 11-12-64 Defendant.

No. 117616 VPD

JUDGMENT AND SENTENCE FOR:

- 1) DWLS 2ND DEGREE
- 2)
- 3)
- (JS)

FILED

01-18-2013, 15:15

Scott G. Weber, Clerk

Clark County

ABOVE ORDER (COUNT 1 2 3 ) ISSUED UNDER  26.50  7.90  110.99  26.09  25.10  26.25  114.34 or  FOREIGN ORDER. The defendant was found guilty on 1-4-13 by  plea  jury verdict  bench trial of 1 and the court verified the defendant's criminal history and driving record and made findings accordingly therefore, the defendant is ADJUDGED guilty and sentenced as follows:

Sentence is suspended for a period of 2 years on the following conditions:

- Count 1) 364 days of jail and suspende 357 days, and a fine of \$ 500 with 4000 suspended.
- Count 2) \_\_\_\_\_ days of jail and suspende \_\_\_\_\_ days, and a fine of \$ \_\_\_\_\_ with \_\_\_\_\_ suspended.
- Count 3) \_\_\_\_\_ days of jail and suspende \_\_\_\_\_ days, and a fine of \$ \_\_\_\_\_ with \_\_\_\_\_ suspended.

JAIL: The defendant has been sentenced to confinement totaling 7 days with credit for time served of \_\_\_\_\_ Days (if blank credit for time served to be computed by the jail) to be served as follows:  
\_\_\_\_\_ days of additional total confinement

7 days of partial confinement on \_\_\_\_\_ work's conditional release  work program \_\_\_\_\_ EHC

The defendant shall report to jail  immediately  on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. Jail sentences are concurrent/consecutive with all other commitments.

This crime involves stalking, harassment or communication with a minor for immoral purposes. The defendant shall have a biological sample collected for purposes of DNA identification analysis.

FINANCIAL OBLIGATION:

Fine	<u>400</u>	SAC fee	_____
Filing fee	<u>176180</u>	Warrant fee	_____
Costs/Conviction Fee	<u>43</u>	DUI emergency response fee	_____
Indigent defense reimbursement		PSEA	_____
Traffic Penalty Assessment	<u>102.50</u>	Other	_____
Restitution to:		<b>TOTAL</b>	<u>\$ 725.50</u>

Payment in full on or before: 2-8-13

- \$ \_\_\_\_\_ of this total may be converted to  work program.
- Restitution to (victim) \_\_\_\_\_ amount to be determined by Corrections. The defendant has a right to a hearing before the figure is set.

Additional Conditions of Sentence:

- No criminal violations of law or alcohol related infractions.
- Report to Community Corrections within 24 hours of court or release from custody. Corrections will monitor all affirmative conditions to insure compliance. Proof of compliance shall be provided to corrections.

Not drive a motor vehicle without a valid license and proof of insurance.

Probation for 24 months. Supervised probation for \_\_\_\_\_ months, with probation department and abide by all rules and regulations of probation department. Pay a pre-sentence fee and a monthly probation fee as set by the probation department.

- Supervised probation to end upon completion of  Certified domestic violence treatment and/or  \_\_\_\_\_
- Complete:  Certified Domestic Violence Program  (Begin Certified Domestic Violence Program after completion of Phase I of Two Year Alcohol/Drug Program)  Anger Management (non-domestic violence only)  Consumer Awareness (shift)  Sexual Deviancy Counseling/Treatment  Other \_\_\_\_\_
- Obtain chemical dependency evaluation from a Washington State-approved agency and comply with treatment recommendations.
- Enroll and successfully complete:  DUI Victim's Panel  Alcohol/Drug Information School  One Year Alcohol/Drug Treatment  Two Year Alcohol/Drug Treatment  Alcohol/Drug Treatment for the period of \_\_\_\_\_  Driver Improvement School  SWAY Program  Domestic Violence Victim's Panel
- Do not go upon the property of and have no contact with \_\_\_\_\_ directly, indirectly, in person, or through any third parties  except as set forth in the separate No-Contact or No-Protection Order.
- Do not consume, use or possess alcoholic beverages or illegal drugs.
- This crime involves a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.130. The defendant is required to register with the county sheriff as described in the "Offender Registration" Attachment.

YOU SHALL HAVE NO ILLEGAL DRUGS OR ALCOHOL IN YOUR SYSTEM when reporting to jail, future court appearances, correction or any assigned class or program.

- Other: \_\_\_\_\_
- Return for a review hearing: \_\_\_\_\_  Bail or Bond is  Exonerated  Forfeited

I have read the rights, conditions and warnings.

NOTICE: Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 1A.73.100, RCW 1A.73.090.

DATE: 1/9/13

[Signature]  
Judge of the District Court, Dept. No. 0 / Commissioner

[Signature]  
DEFENDANT'S SIGNATURE      DATE OF BIRTH

[Signature]      6535  
DEFENSE ATTORNEY      WSSA No.      PROSECUTING ATTORNEY      WSSA No.  
 Written Waiver of Counsel is filed.

No. 45443-2-II  
COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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CITY OF VANCOUVER

Respondent

vs.

BRINESH PRASAD

Petitioner

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PROOF OF SERVICE OF PETITIONER'S OPENING BRIEF

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Roger A. Bennett  
Attorney for Petitioner

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WSBA # 6536

FILED  
COURT OF APPEALS  
DIVISION II  
2014 MAR 13 PM 1:13  
STATE OF WASHINGTON  
BY *cm*  
DEPUTY

I certify that on the 10 th day of March, 2014, I served a copy of the Opening Brief of Petitioner on the following:

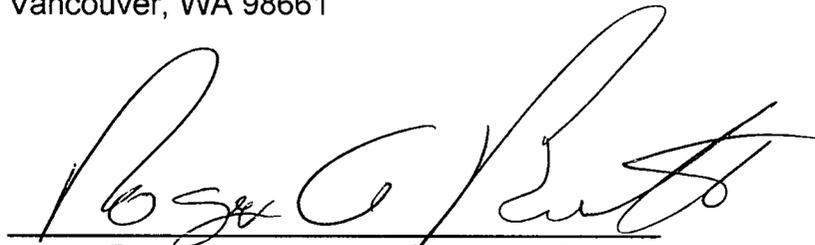
Counsel for Respondent, by e-mail and courier delivery to her office:

Lacey Blair WSBA # 39341  
Assistant City Attorney, City of Vancouver  
415 W. 6th St., 2nd Floor  
Vancouver, Washington 98660  
(360) 487-8500  
lacey.blair@ci.vancouver.wa.us

and to

Petitioner, by U.S. Mail, postage prepaid to:

Brinesh Prasad  
3701 ½ E. 18<sup>th</sup> Street  
Vancouver, WA 98661

A handwritten signature in black ink, appearing to read "Roger A. Bennett", written over a horizontal line.

Roger A. Bennett WSBA # 6536