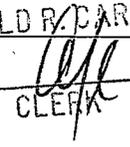


NO. 81746-4

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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON


CLERK

STATE OF WASHINGTON, RESPONDENT

v.

ANDREW MAGEE, APPELLANT

Petition for Review from Court of Appeals, Division II

Court of Appeals No. 34261-8

SUPPLEMENTAL BRIEF

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

1. Did the Court of Appeals correctly find that there was sufficient evidence for the trial court to find that the defendant committed negligent driving in the second degree? (Petitioner's Issues Presented for Appeal #2, 3, 5, and 6)
2. Was the defendant engaged in ongoing negligent behavior at the time the trooper arrived, and therefore was the citation properly issued? (Petitioner's Issues Presented for Appeal #1)
3. Is the defendant not entitled to relief under a due process claim when he was not entitled to any additional discovery beyond the trooper's sworn statement and even if a violation did occur was any error harmless? (Petitioner's Issues Presented for Appeal #4)

B. STATEMENT OF THE CASE.

1. Procedure

On April 9, 2005, Andrew L. Magee, hereinafter "defendant," was cited for negligent driving in the second degree, contrary to RCW

46.61.525, for driving the wrong direction on State Route 512. CP (Administrative Record¹, Appendix "A," Infraction).

Defendant filed a request that the citing officer, Washington State Trooper D.D. Randall, be subpoenaed to appear at the hearing on May 24, 2005. CP (Administrative Record, Appendix "B," Request for Subpoena). Defendant further filed a demand for discovery on May 31, 2005. CP (Administrative Record, Appendix "C," Defendant's Request for Discovery).

A hearing was held before the Honorable Judge Margaret Ross on June 21, 2005. CP 23-32. The court found that defendant had committed the infraction of negligent driving in the second degree, contrary to RCW 46.61.525. *Id.*

The defendant filed a RALJ appeal and Superior Court Judge Grant heard argument on November 22, 2005. CP 62-63. The court entered an order affirming the trial court's ruling that the defendant had committed the infraction. *Id.* The court also held that there was sufficient evidence to support the "committed" finding, and that there was no due process or discovery violations. *Id.*

¹ Per the clerk's papers, the "administrative records," which were before the Superior Court for review, were sent under a separate cover. They were not given CP numbers. For convenience of reference, when such documents are referenced by the State, they will refer to the administrative record, and be attached as appendices.

On December 3, 2005, the court denied the defendant's motion for reconsideration. CP 83. The Court of Appeals accepted review and issued a published opinion on April 1, 2008. *State v. Magee*, 143 Wn. App. 698, 180 P.3d 824 (2008). In its opinion, the court affirmed the finding that the defendant committed the infraction. *Id.* at 700.

The Court of Appeals found (1) that the trial court improperly considered hearsay statements of other motorists, but that any error was harmless, (2) that the evidence was sufficient to find that the defendant committed the infraction of negligent driving in the second degree, and (3) that the defendant was not denied due process by the trial court's decision to enter a finding that he committed the infraction rather than deferring it. *Id.* at 700-708.

This court accepted the defendant's petition for review.

2. Facts

Based on several reports of defendant's car traveling the wrong direction on State Route 512, Washington State Trooper D.D. Randall was dispatched to State Route 512, between Benston Drive and East Pioneer Avenue, at 11:50 a.m. on April 9, 2005. CP 25-27. Trooper Randall found the defendant on the right shoulder of the road, his car facing eastbound on the westbound lanes of State Route 512. CP 25. The

defendant was attempting to jumpstart another car owned by his friend, Kenneth Hershey. CP 25-26, 31. Mr. Hershey's car had broken down on the side of State Route 512. CP 25.

Trooper Randall approached the defendant who admitted that he had driven the wrong way on the highway in order to meet Mr. Hershey to help him with his car. CP 26. The defendant told Trooper Randall that he had driven down to Benston Drive, turned on the shoulder of the road, and then driven back the wrong direction against traffic so that his car would be "nose-to-nose" with Mr. Hershey's car. CP 28; *Magee*, 143 Wn. App. at 701. The defendant further acknowledged that driving the wrong direction on State Route 512 was a "very dangerous thing to do" and that he understood why Trooper Randall was citing him for negligent driving. CP 28, 32. There was not enough space on the shoulder of the road for the defendant to completely turn his car around on the shoulder without crossing into the lanes of travel on State Route 512. CP 28-29.

Mr. Hershey testified that he was with the defendant before Trooper Randall arrived and he did not see the defendant drive on State Route 512. CP 31. Mr. Hershey stated that he did not see the defendant drive the wrong direction in any of the lanes on State Route 512. *Id.* The defendant also testified that he had not been driving the wrong direction on State Route 512. *Id.*

At the hearing, the defendant admitted that he pulled in front of Mr. Hershey's car in order to assist in giving him a "jump-start." *Id.* The defendant stated that he did not pull into the oncoming lanes of State Route 512, but that he turned his car around and parked on the highway on ramp without crossing into any incoming lanes of traffic of State Route 512. CP 31-32. However, the defendant admitted he had crossed into the oncoming lanes of traffic for the on ramp to State Route 512, but stated that he signaled before pulling into the oncoming lane and then signaled again to pull back over to the shoulder. *Id.* The Court of Appeals found that the defendant drove into oncoming traffic by stating:

However, Magee also testified that when he crossed the oncoming lanes of traffic for the *on ramp* to SR 512, he made sure to signal before pulling into the oncoming lanes and signaled again when he drove a short distance (the wrong way) to the shoulder and parked facing Hershey's car, which was parked in the same direction with the flow of traffic.

Magee, 143 Wn. App. 698 at 701-702.

The trial court found the officer's testimony was credible. CP 32. It did not find a distinction between driving against the flow of traffic on the highway or on the shoulder in terms of the danger it posed to other drivers. *Id.* The trial court found the defendant committed negligent driving in the second degree. *Id.* The court stated:

...unless you were airlifted, you were going the opposite direction of what the natural flow of traffic. Perhaps there is marked difference between being on the shoulder or being on the onramp or being on actual 512, but if you are going the wrong way which it's uncontroverted that your vehicle was going the opposite direction.... I think that the Officer's testimony was credible. I'm not finding a distinction between driving on the shoulder and driving on the actual paved highway of 512 or even on the on-ramp. Even if I believe everything you have told me about this being on an onramp, you going the wrong way on that endangers people. Reasonably prudent persons ... don't drive the wrong way, even on an onramp.

CP 32.

The Court of Appeals found that the evidence was sufficient for the trial court to have found that the defendant committed the infraction.

The Court of Appeals found:

Here, Trooper Randall saw Magee's car parked facing the opposite direction of the natural flow of traffic. The district court noted that unless Magee's car was airlifted, this circumstantial evidence established that Magee had to be driving the wrong way to get his car in that position. In finding that Magee had committed the infraction of second degree negligent driving, the district court concluded that driving the wrong way, "even on an onramp," endangered people; that reasonably prudent people do not drive the wrong way on the highway or the on ramp; and that it would have been more helpful for Magee to call a tow truck to help Hershey.

As discussed above, standing alone, Magee's testimony was sufficient to support the district court's finding that Magee drove against traffic and, thus, operated his car "in a manner that is both negligent and endangers or is likely to endanger any person or property."

Magee, 143 Wn. App. 698 at 705-706.

On December 3, 2008, this court accepted the defendant's petition for review.

C. ARGUMENT.

1. THE COURT OF APPEALS PROPERLY FOUND THAT THERE WAS SUFFICIENT EVIDENCE THAT THE DEFENDANT COMMITTED NEGLIGENT DRIVING IN THE SECOND DEGREE.

There is sufficient evidence that a defendant committed a traffic infraction if all the evidence properly admitted during the evidentiary phases of the case, when viewed as a whole, supports a finding that the infraction was committed. *State v. Roberts*, 73 Wn. App. 141, 146, 867 P.2d 697 (1994), *review denied*, 124 Wn.2d 1022 (1994). Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1989). The reviewing court draws all inferences from the evidence in favor of the State and most strongly against the defendant. *State v. Joy*, 121 Wn.2d 333, 339, 851 P.2d 654 (1993). This Court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of

evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992), *review denied*, 119 Wn.2d 1011 (1992).

The court stated that the officer's testimony was credible, but still did not find a distinction between the danger created by driving against the flow of traffic on the highway or driving against the flow of traffic on the shoulder. CP 32. The defendant testified below as follows:

It would be basically to repeat what Mr. Hershey said. It is correct that, I believe it's Pioneer Street if I'm correct, that runs, I'm not sure the orientation, but I'll say for the moment I believe it runs East to West through Puyallup. And I would say, as you travel I would say Eastward on Pioneer there is an onramp that comes up to the highway it was before the onramp that came into the lanes of the highway where Mr. Hershey's car was the day earlier. He had called me and it wouldn't start so I did pull in front of him to give him a jump start. **At all times when I came back into the lane of the onramp, I did signal to go into the ramp and then onto that lane, and then did signal to pull over,** and at all time did I have my flashers on. The geography or the geometry of it was such that I was on a shoulder and then there was the onramp lane, separated further from the lanes of 512.

CP 31 (emphasis added).

Although defendant testified he was in the area of the on-ramp, the trooper testified it was not an on-ramp. CP 28. The trial court found the trooper credible. CP 32. Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Negligent driving in the second degree requires that “A person ...operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property.” RCW 46.61.525(1)(a).

First, the evidence in this case showed that defendant operated a motor vehicle. He drove his car westbound, the wrong direction, on the eastbound lanes of State Route 512. When Trooper Randall contacted defendant on the shoulder of State Route 512, he admitted that he was driving his car and that he was aware that he was driving against the flow of traffic on State Route 512. CP 28. Trooper Randall testified that there was not enough space on the shoulder of the road for defendant to completely turn his car around on the shoulder without crossing into oncoming traffic on State Route 512. CP 28-29. Defendant admitted to Trooper Randall that he had driven his car against the flow of traffic on State Route 512, so that he could be “nose-to-nose” with Mr. Hershey’s car. *Id.* Specifically, the defendant told Trooper Randall that he did drive his vehicle the wrong way on the highway to get his friend’s vehicle to assist him with a jump start. *Id.* Trooper Randall stated:

No, you weren’t on an onramp, you were on the shoulder between Pioneer and Benston Drive, and you told me that you had gone down Benston Drive, turned on to the shoulder, and then drove, back **the wrong way** to get your friend’s vehicle so that you could be nose-to-nose to him. There’s not enough room on that shoulder to completely

turn your car without going into traffic, which is why we received calls about it.

CP 28-29 (emphasis added). While defendant asserted that the trooper never saw him driving the wrong way, she did see his car parked facing the wrong way. *Id.*

Second, defendant's conduct was negligent. A reasonable person would not drive the wrong direction on a highway such as State Route 512. The defendant or Mr. Hershey could have easily called the Washington State Patrol, the local Police Department, or a tow truck to come and assist Mr. Hershey with his car. Finally, driving the wrong direction on the highway is clearly dangerous or likely to endanger other people or property. Defendant was traveling against the flow of traffic on State Route 512, and other cars that were traveling at a high rate of speed would have had little room to maneuver or stop to avoid hitting the defendant. When the dangers of driving the wrong direction on State Route 512 were explained to defendant by Trooper Randall, he acknowledged that it was "a very dangerous thing to do." CP 28.

Finally, driving the wrong direction on the highway is clearly dangerous or likely to endanger other people or property. Defendant was traveling against the flow of traffic on State Route 512, and other cars that were traveling at a high rate of speed and would have little room to maneuver or stop to avoid hitting the defendant. Even if defendant did not hit another driver, other driver's might have been forced to maneuver to

avoid defendant's car, only to travel into another lane and strike another car because of the close confines of highways. When the dangers of driving the wrong direction on State Route 512 were explained to defendant by Trooper Randall, he acknowledged that it was "a very dangerous thing to do." CP 28. His testimony to the district court, combined with his statements to the trooper at the scene, indicate that the defendant was driving the wrong way on State Route 512. Moreover, evidence was presented that it would have been impossible for the defendant to leave the scene without again driving the wrong way because there was not enough room on the shoulder to turn around. Clearly, the defendant was still engaged in the negligent conduct. Viewed in the light most favorable to the State, there was ample evidence to show that defendant committed the infraction of negligent driving in the second degree. This court should affirm the Court of Appeals.

The evidence in this case showed that defendant drove his car westbound, the wrong direction, on the eastbound lanes of State Route 512. When Trooper Randall contacted defendant on the shoulder of State Route 512, he admitted that he was driving his car and that he was aware that he was driving against the flow of traffic. Viewed in the light most favorable to the State, there was ample evidence to show that defendant committed the infraction of negligent driving in the second degree. The defendant relies on *Campbell v. Department of Licensing*, 31 Wn.

App. 833, 644 P.2d 1219 (1982). *Campbell* does not apply to the case at bar.

In *Campbell*, a trooper received information from a citizen caller that a particular vehicle was being driven by a drunk driver. *Id.* at 835. The trooper, without any additional information to suggest that the driver was under the influence of intoxicants, stopped the vehicle. *Id.* at 836. The court held that the stop was not lawful. *Id.* at 837.

The case at bar is distinguishable from *Campbell*. In the present case, Trooper Randall received a call of a vehicle traveling the wrong way on the freeway. CP 25-27. Upon arrival at the scene Trooper Randall observes the defendant's vehicle facing the wrong direction on the freeway. CP 25. The defendant was already stopped on the side of the freeway and, unlike the officer in *Campbell*, Trooper Randall did not stop the defendant—he was already on the side of the road. Moreover, before contacting the defendant, Trooper Randall personally observed evidence that the defendant had traveled on the freeway in the wrong direction because she observed that the defendant's vehicle was facing the wrong direction. As the trial court noted, unless the defendant's vehicle was "airlifted" to the shoulder facing the wrong direction, the defendant must have driven it there. CP 32. Trooper Randall did not merely contact the defendant on the sole basis of the 911 call. Rather,

Trooper Randall observed that the defendant's vehicle was facing the wrong direction on the shoulder when she arrived at the scene, which corroborated the caller's report of a vehicle driving against traffic. This was further corroborated by the defendant's own statements that he drove the wrong way and that it was "a very dangerous thing to do." CP 25-26, 28. This corroborating evidence was not present in *Campbell* before the officer stopped that vehicle. The analysis in *Campbell* does not apply to the case at bar.

The defendant also cites to *Davis v. Microsoft Corp.*, 149 Wn.2d 521, 70 P.3d 126 (2003), but *Davis* is not applicable to the case at bar. In *Davis*, the court held that "in cases such as the present one, where a general verdict is rendered in a multi-theory case and one of the theories is later invalidated, remand must be granted if the defendant proposed a clarifying special verdict form." *Id.* at 539. In the case at bar the analysis in *Davis* is inapplicable. In the present case two different versions of events were relayed to the trial court, but both versions constituted a violation of RCW 46.61.150.

The defendant asserts that the trial court could have made a committed finding under RCW 46.61.150 or RCW 46.61.155, and therefore the court should have articulated which "theory" it was finding to have occurred. The court did not need to make such a finding,

however, because RCW 46.61.155 is not applicable to this case. The defendant states that RCW 46.61.155 prohibits “wrong way on freeway access,” but in fact it prohibits vehicles from driving on limited access roadways. The court found that whether the defendant drove the wrong way on the on ramp, or on the roadway, that it constituted a violation of RCW 46.61.150.

Trooper Randall testified that the defendant was facing the wrong direction on the shoulder of the freeway. The defendant testified that he was on the onramp. The trial court found Trooper Randall’s testimony credible. CP 32. While the court did not find a distinction between the danger created by driving against the flow of traffic on the highway or driving against the flow of traffic on the shoulder, the court found both acts would be dangerous. *Id.* No such distinction was necessary because both acts clearly would violate RCW 46.61.150. Whether the defendant drove the wrong way on the freeway itself, or drove the wrong way on the onramp, his actions constituted the crime of negligent driving in the second degree. Moreover, Trooper Randall stated that there was no way the defendant could have gotten his vehicle into its position legally without driving into traffic. CP 28-29. It can therefore be inferred that there was no way for the defendant to leave without driving the wrong way or obstructing traffic. Trooper Randall had to direct the defendant to drive backward on the shoulder. CP 26. Therefore, it is clear that the

defendant was still posing a threat to other motorists and was still engaged in negligent conduct.

2. THE DEFENDANT WAS ENGAGED IN ONGOING NEGLIGENT BEHAVIOR AT THE TIME THE TROOPER ARRIVED, AND THEREFORE THE CITATION WAS PROPERLY ISSUED.

The defendant asserts that RCW 46.63.030 precluded Trooper Randall from issuing him a citation because she did not witness the violation occur. Appellant's Petition for Review, page 7. The defendant's argument, however, ignores the fact that the defendant was *still* creating a danger when the trooper arrived at the scene. In addition defendant would have been required to drive against the flow of traffic in order to leave the scene, just as he had done to get to the location.

Trooper Randall testified that the defendant was facing the wrong direction on the shoulder of the freeway. CP 25. The trial court found Trooper Randall's testimony credible. CP 32. Trooper Randall stated that there was no way the defendant could have gotten his vehicle into its position legally without driving into traffic. CP 28-29. Trooper Randall specifically testified that there was not enough room on the shoulder for the defendant to turn his vehicle around. CP 28. In fact, Trooper Randall had to direct the defendant to drive backward on the shoulder. CP 26. Therefore, it is clear that the defendant was still posing a threat to other motorists and was still engaged in negligent conduct. Therefore, the

defendant's assertion that the citation was issued to him in error because Trooper Randall did not witness him committing the infraction is without merit. The defendant was still engaged in the negligent conduct when the trooper arrived.

The defendant was properly issued the citation for negligent driving in the second degree, and Pierce County District Court properly adjudicated the infraction. The defendant now appears to assert that District Court should have been precluded from adjudicating the infraction because it was improperly issued by Trooper Randall. The State agrees that in order for an infraction to be issued, it must be committed in the presence of an officer. RCW 46.64.015. As argued above, the defendant's negligent conduct was ongoing, and therefore he was committing the infraction.

The defendant also asserts that Pierce County District Court violated his rights by conducting a hearing regarding his infraction. Petition for Review, page 10, 17. Such assertion is without merit. As argued above, Trooper Randall properly issued the defendant a citation based on his ongoing conduct. The IRLJ rules give the District Court jurisdiction to adjudicate infractions. IRLJ 1.2(d). It is clear that the district court does have the authority to adjudicate infractions, and that the citation was lawfully issued.

In this case, Trooper Randall had probable cause to believe that the defendant had committed an infraction, and that the defendant was still

committing the infraction when he was contacted by the trooper. Specifically, Trooper Randall had to direct the defendant away from the scene after the defendant admitted to her that he had driven the wrong way on State Route 512. CP 26. The citation was properly issued by Trooper Randall, and the infraction was lawfully adjudicated below.

3. THE DEFENDANT IS NOT ENTITLED TO RELIEF UNDER A DUE PROCESS CLAIM BECAUSE HE WAS NOT ENTITLED TO ADDITIONAL DISCOVERY BEYOND THE OFFICER'S SWORN STATEMENT, AND IF ANY ERROR OCCURRED, IT WAS HARMLESS.

During testimony below, Trooper Randall indicated that she responded to the scene in response to calls that had been made regarding the defendant driving the wrong way on the road. CP 26. The defendant now asserts that he was denied his constitutional due process by not receiving discovery regarding those calls. Petition for Review, page 16.

The defendant asserts:

The Trooper alleges that there were reports that a car was driving the wrong way on the freeway, and that was the basis for issuing Mr. Magee the citation. Those reports, while referred to and objected to at the hearing before District Court, were not produced.

Petition for Review, page 16 (emphasis in original).

First, it is clear from the record that there were no additional "reports"—that the information referenced by Trooper Randall were calls that were made from civilians. Second, the defendant is not entitled to any

discovery except for Trooper Randall's sworn statement under the express language of IRLJ 3.1(b). IRLJ 3.1(b) states:

(b) Discovery Upon written demand of the defendant at least 14 days before a contested hearing, filed with the court and served on the office of the prosecuting authority assigned to the court in which the infraction is filed, the plaintiff--'s lawyer shall at least 7 days before the hearing provide the defendant or the defendant's lawyer with a copy of the citing officer's sworn statement and with the names of any witnesses not identified in the citing officer's sworn statement. If the prosecuting authority provides the citing officer's sworn statement less than 7 days before the hearing but not later than one day before the hearing, the citing officer's sworn statement shall be suppressed only upon a showing of prejudice in the presentation of the defendant's case. If the prosecuting authority, without reasonable excuse or justification, fails to provide the citing officer's sworn statement, the statement shall be suppressed. ***No other discovery shall be required.*** Neither party is precluded from investigating the case, and neither party shall impede another party's investigation. A request for discovery pursuant to this section shall be filed on a separate pleading.

(emphasis added).

Third, the Court of Appeals determined that the trial court erred in admitting any hearsay statements made by third party witnesses, and found that any error committed was harmless because of the defendant's own testimony. Assuming, arguendo, that the defendant would even be entitled to any additional discovery, if it exists, any error is still harmless. Due process requires the State to disclose "evidence that is both favorable to the accused and 'material either to guilt or to punishment.'" *United States v. Bagley*, 473 U.S. 667, 674, 105 S. Ct. 3375, 87 L. Ed. 2d 481

(1985)(quoting *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)). There is no *Brady* violation, however, “if the defendant, using reasonable diligence, could have obtained the information” at issue. *In re Personal Restraint of Benn*, 134 Wn.2d 868, 916, 952 P.2d 116 (1998). Moreover, evidence is “material” and therefore must be disclosed under *Brady* “only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *United States v. Bagley*, 473 U.S. at 682; *Benn*, 134 Wn. 2d at 916.

In applying this “reasonable probability” standard, the “question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995); *Benn*, 134 Wn. 2d at 916. “A ‘reasonable probability’ of a different result is accordingly shown when the government’s evidentiary suppression ‘undermines confidence in the outcome of trial.’” *Id.* (quoting *Bagley*, 473 U.S. at 678).

In other words, a due process violation is not per se reversible error. *State v. Luvene*, 127 Wn.2d 690, 704, 903 P.2d 960 (1995). In *Luvene*, the defendant alleged that the State failed to disclose exculpatory information. *Id.* The court held that, “Even if the prosecutor did improperly fail to disclose this information, it was harmless error and

resulted in no prejudice.” *Id.* A showing of prejudice is necessary in order to obtain relief for discovery violations. *Benn*, 134 Wn.2d at 916, *see also State v. Linden*, 89 Wn. App. 184, 947 P.2d 1284 (1997), *rev. denied*, 136 Wn.2d 1018 (1998).

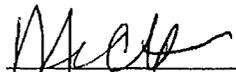
In the present case, any alleged discovery violation was harmless. Defendant admitted to the trooper at the time of the incident, and to the trial court, that he drove the wrong way. Because he cannot establish any prejudice, he is not entitled to relief under a due process analysis.

D. CONCLUSION.

For the above stated reasons, the State respectfully requests that this Court affirm the trial court’s finding that the defendant committed negligent driving in the second degree.

DATED: DECEMBER 31, 2008.

GERALD A. HORNE
Pierce County
Prosecuting Attorney



MICHELLE HYER
Deputy Prosecuting Attorney
WSB # 32724

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.

12/09 _____
Date Signature

APPENDIX “A”

Infraction

INFRACTION TRAFFIC NON-TRAFFIC I 4346327
IN THE DISTRICT MUNICIPAL COURT OF TACOMA WASHINGTON
STATE OF WASHINGTON PLAINTIFF VS. NAMED DEFENDANT
COUNTY OF PIERCE 0103 WA027013J10
CITY/TOWN OF PIERCE 0103 WA027013J10
L.E.A. ORI #: WAWSP 00 COURT ORI #:

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON
DRIVER'S LICENSE NO. MAGEE AL 380MG WA 05 EXPIRES PHOTO ID ON PERSON YES NO
NAME LAST FIRST MIDDLE MAGEE ANDREW LUKE
ADDRESS 4104 E. EDGEWATER PL # 153X IF NEW ADDRESS PASSENGER LOCATION
CITY STATE ZIP CITY EMPLOYER LOCATION SEATTLE WA 98112
DATE OF BIRTH 010762 W M 61 FACE 158 HEIGHT 208 EYES BRN HAIR BKO
RESIDENTIAL PHONE NO. CELL/PAGER NO. WORK PHONE NO.
VIOLATION DATE MONTH DAY YEAR TIME 04 09 05 1150 INTERPRETER NEEDED LANG
ON OR ABOUT AT LOCATION EB SRS12 < BOSTON DR PIERCE PIERCE

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND
VEHICLE LICENSE NO. 752LOT WA 05 87 SUBER SW 674 MAKE MODEL STYLE
TRAILER #1 LICENSE NO. STATE EXPIRES TR. YR. TRAILER #2 LICENSE NO. STATE EXPIRES TR. YR.
OWNER/COMPANY OTHER THAN DRIVER SAME
ADDRESS CITY STATE ZIP CODE
ACCIDENT COMMERCIAL YES HAZARD YES EXEMPT FARM PURE
NO NR R I F VEHICLE NO PLACARD NO VEHICLE RV OTHER

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES
#1 VIOLATION/STATUTE CODE 46.61.525 VEHICLE SPEED IN A ZONE SMD PAGE AIRCFT
NEGLIGENT DRIVING - 2ND DEGREE
#2 VIOLATION/STATUTE CODE *WRONG WAY ON SRS12* C #538
#3 VIOLATION/STATUTE CODE

REC'D PDCD APR 11 2005 PENALTY U.S. \$ 538 -
040905
WITHOUT ADMITTING TO HAVING COMMITTED EACH OF THE ABOVE OFFENSES, BY SIGNING THIS DOCUMENT I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF INFRACTION AND PROMISE TO RESPOND AS DIRECTED ON THIS NOTICE
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S) AND MY REPORT WRITTEN ON THE BACK OF THIS DOCUMENT OR ATTACHED TO THIS INFRACTION IS TRUE AND CORRECT
DEFICER [Signature] OFFICER [Signature] 1167
DEFENDANT'S SIGNATURE

INFRACTION

INF.	RESPONSE	DISPOSITION	PENALTY	SUSPENDED	SUB-TOTAL	REMARKS
1	C	NC D P OF IS	\$		\$	
2	C	NC D P OF IS	\$		\$	
3	C	NC D P OF IS	\$		\$	
					TOTAL COSTS \$	

APR 21 2005
WA027013J
MWR/dp

54346327
MAGEE, ANDREW LUKE
0409/05
4346327

APPENDIX "B"

Request for Subpoena



Pierce County District Court

Civil - Infraction Division
1902 96th Street South
Tacoma, WA 98444

REQUEST FOR SUBPOENA

CASE NO: 574346327

CASE NAME: State of Washington vs. Mayor, Andrew Lurie

DATE & TIME of Hearing: 6/1/05 @ 9:00 (a.m./p.m.)

Please issue a subpoena for Officer ~~Witness~~ DD Randall WSP
to appear at a contested hearing on the above mentioned date.

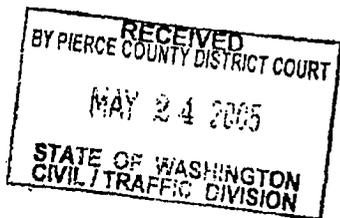
WITNESS ADDRESS: _____

[Signature]
Defendant's Signature)

Dated: May 31, 2005

MAIL SUBPOENA TO DEFT
 DEFT WILL PICK UP SUBPOENA





May 31, 2005

Andrew L. Magee
4104 East Edgewater Pl., #153
Seattle, Washington 98112
(206) 779-3352
andrewlimagee@comcast.net

Pierce County District Court
Civil & Infraction Division
1902 96th Street South
Tacoma, Washington 98444

Re: Citation Issuing Trooper Subpoena – Case No. 5Y4346327

To The Court:

Please let this letter serve as timely request for the issuance of a subpoena to the issuing/citing officer of the citation in the above referenced case. Thank you very much.

Sincerely,

Andrew L. Magee

APPENDIX “C”

Defendant's Request for Discovery

PIERCE COUNTY DISTRICT COURT NUMBER ONE
PIERCE COUNTY WASHINGTON
CIVIL & INFRACTIONS DIVISION

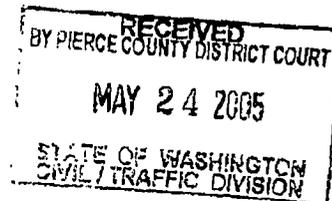
PIERCE COUNTY,
Plaintiff,

vs.

MAGEE, ANDREW,
Defendant.

CASE NO. 5Y4346327

NOTICE OF APPEARANCE AND
DEMAND FOR DISCOVERY

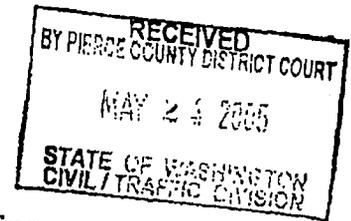


NOTICE OF APPEARANCE

PLEASE take notice that the defendant hereby enters his appearance.

Please direct all further discovery, motions, and correspondence to my address.

The defendant enters a plea of not guilty; requests a jury trial, and does not waive the ninety (90) day Speedy Trial Requirement.



DEMAND FOR DISCOVERY

The defendant demands the Prosecutor provide the following discovery prior to the pre-trial set in this case:

1. The names, addresses, and telephone numbers of all witnesses known to have relevant information by the Prosecution, especially witnesses the Prosecution intends to call at trial.
2. All incident reports, supplemental reports, officer reports, field notes, witness statement(s), and any other information the prosecution intends to use, possesses, or has access to regarding the above referenced case, including but not limited to Blood Alcohol Content test results, validation certification and driving records, if applicable.
3. A list of all items the Prosecution intends to use at trial as exhibits, including photographs, and to allow inspection of same.
4. Notice of knowledge by the Prosecutor of prior convictions on the part of the Defendant or any other potential witness involved in the case.
5. Disclosure of all exculpatory evidence or information favorable to the Defendant.

6. Disclosure of any and all investigator's contacts made by persons acting on behalf of the Prosecution including Domestic Violence Advocates or other Agent.

7. Other: 911 TAPE(S); CAD SHEET PRINTOUT(S);
VIDEOTAPE(S).

Failure to comply with these demands will result in appropriate defense motions including Motions to Dismiss.

Respectfully submitted this 31 th day of May, 2005

Andrew L. Magee

OFFICE RECEPTIONIST, CLERK

To: Heather Johnson
Subject: RE: State v. Andrew Magee--81746-4

Rec. 1-2-09

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Heather Johnson [mailto:HJOHNS2@co.pierce.wa.us]
Sent: Friday, January 02, 2009 7:58 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: State v. Andrew Magee--81746-4

Michelle Hyer--WSB No. 32724
(253)798-7549
mhyer@co.pierce.wa.us

Attached is the State's Supplemental Brief.