

31515-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOSEPH J. GOGGIN, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Mark E. Lindsey
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

FILED
JAN 31, 2014
Court of Appeals
Division III
State of Washington

INDEX

APPELLANT’S ASSIGNMENT OF ERROR.....1

ISSUES PRESENTED.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....2

 A. THE TRIAL COURT PROPERLY ADMITTED THE
 RESULTS OF DEFENDANT’S BLOOD ALCOHOL
 TEST WHERE THE BLOOD SAMPLE WAS
 OBTAINED PURSUANT TO A SEARCH WARRANT2

 B. THE TRIAL COURT PROPERLY DENIED
 DEFENDANT’S MOTION TO DISMISS FOR
 INSUFFICIENT EVIDENCE.....5

 C. THERE WAS NO VIOLATION OF THE DEFENDANT’S
 CONFRONTATION RIGHTS BY THE TRIAL COURT’S
 ADMISSION OF THE CERTIFIED COPIES OF THE
 DEFENDANT’S PRIOR CONVICTIONS8

CONCLUSION.....11

TABLE OF AUTHORITIES

WASHINGTON CASES

STATE EX REL. CARROLL V. JUNKER, 79 Wn.2d 12,
482 P.2d 775 (1971)..... 4

STATE V. ATSEBEHA, 142 Wn.2d 904,
16 P.3d 626 (2001)..... 9

STATE V. BENEFIEL, 131 Wn. App. 651,
128 P.3d 1251 (2006)..... 10

STATE V. COSTICH, 152 Wn.2d 463,
98 P.3d 795 (2004)..... 5

STATE V. DARDEN, 145 Wn.2d 612,
41 P.3d 1189 (2002)..... 4

STATE V. DELMARTER, 94 Wn.2d 634,
618 P.2d 99 (1980)..... 5

STATE V. GREEN, 94 Wn.2d 216,
616 P.2d 628 (1980)..... 6

STATE V. GUNWALL, 106 Wn.2d 54,
702 P.2d 808 (1986)..... 9

STATE V. HUDSON, 150 Wn. App. 646,
208 P.3d 1236 (2009)..... 4

STATE V. LORD, 161 Wn.2d 276,
165 P.3d 1251 (2007)..... 5

STATE V. MYLES, 127 Wn.2d 807,
903 P.2d 979 (1995)..... 6

STATE V. PARTIN, 88 Wn.2d 899,
567 P.2d 1136(1977)..... 5

STATE V. SALINAS, 119 Wn.2d 192,
829 P.2d 1068 (1992)..... 5

STATE V. SMITH, 106 Wn.2d 772,
725 P.2d 951 (1988)..... 6

STATE V. THOMAS, 150 Wn.2d 821,
83 P.3d 970 (2004)..... 6

SUPREME COURT CASES

CRAWFORD V. WASHINGTON, 541 U.S. 36,
124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)..... 8

DELEWARE V. VAN ARSDALL, 475 U.S. 673,
106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986)..... 9

CONSTITUTIONAL PROVISIONS

ARTICLE I, § 22 8, 9, 10

SIXTH AMENDMENT..... 9

STATUTES

RCW 5.44.010 7, 8

RCW 46.20.308 3

RCW 46.20.308(1)..... 3

RCW 46.20.308(2)..... 3

RCW 46.20.308(3)..... 3

RCW 46.20.308(4)..... 4

RCW 46.61.308(4)..... 3

RCW 46.61.502(1)(6)..... 6

I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court erroneously admitted the results of blood alcohol test when the defendant's blood sample was acquired by search warrant and defendant was not advised of his statutory right to an additional test.
2. The trial court erroneously denied defendant's motion to dismiss charge for insufficient evidence.
3. The trial court erroneously admitted certified copies of defendant's prior convictions in violation of the confrontation clause of Washington Constitution, Art.1, sec.22.

II.

ISSUES PRESENTED

1. Did the trial court abuse its discretion by admitting the results of the blood alcohol test into evidence despite defendant not being advised of his right to an additional test?
2. Did the trial court abuse its discretion by denying defendant's motion to dismiss the charge for insufficient evidence?

3. Did the court abuse its discretion by admitting evidence of defendant's four prior convictions without requiring testimony to thereby afford defendant the right of confrontation?

III.

STATEMENT OF THE CASE

The respondent accepts appellant's statement of the case for purposes of this appeal only.

IV.

ARGUMENT

- A. THE TRIAL COURT PROPERLY ADMITTED THE RESULTS OF DEFENDANT'S BLOOD ALCOHOL TEST WHERE THE BLOOD SAMPLE WAS OBTAINED PURSUANT TO A SEARCH WARRANT.

Initially, it is important to remember that driving in Washington State is a privilege, not a constitutional right. As such, the privilege is a statutory creation subject to the Legislature's enactments. Defendant claims that the trial court erroneously admitted the results of defendant's blood alcohol test because the blood was illegally acquired. Defendant argues that he should have been advised of his right to additional testing as a matter of constitutional right.

Defendant cites to the statutory infrastructure that exists to regulate how evidence is obtained by the State when it suspects an individual of driving under the influence of alcohol or drugs (“DUI”). The statutorily created implied consent warnings were developed to ensure that the suspect’s due process rights are protected in the course of evidence acquisition. RCW 46.20.308 sets out the process and conditions precedent to an officer obtaining a sample of an arrestee’s breath or blood. RCW 46.20.308(2) and (3) mandate that the suspect be advised of the statutory right to an additional test where the State seeks an alcohol breath/blood test. However, RCW 46.20.308(1), (2), and (3) further provide that neither these sections nor even the arrestee’s consent preclude an officer from obtaining a search warrant for a person’s breath or blood. Moreover, RCW 46.61.308(4) provides:

If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath, no test shall be given except as authorized by a search warrant.

RCW 46.61.308(4).

Here, the investigating trooper arrested defendant for DUI and advised that he wanted a breath sample from defendant to determine the alcohol content of his breath. RP 348; 352-357. Pursuant, to RCW 46.20.308 the trooper read defendant his implied consent warnings which included the notice of the right to additional tests. RP 352-357. The trooper was not investigating a crime that

statutorily mandated a blood sample nor was defendant incapacitated, so it was not statutorily mandated that he read defendant the implied consent warnings for a blood sample. Hence, once defendant refused to provide a breath sample, RCW 46.20.308(4) was triggered such that the trooper had no statutorily authorized means of obtaining a sample of defendant's breath or blood to thereby determine alcohol content except by search warrant. The trooper completed and presented his affidavit for a search warrant to a neutral Magistrate. The Magistrate reviewed the petition and granted the warrant. RP 357. The trooper then obtained the sample of defendant's blood. The trooper followed the statutory structure to obtain the blood sample. The very statute that directs the officer to obtain a warrant once the arrestee refuses to provide a sample.

A trial court's ruling on the admissibility of evidence is reviewed for abuse of discretion. *State v. Darden*, 145 Wn.2d 612, 619, 41 P.3d 1189 (2002). That standard is well-recognized. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 482 P.2d 775 (1971). A court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons, *i.e.*, if the court relies on unsupported facts or takes a view no reasonable person would take; the standard is violated when the trial court makes a reasonable decision but applies the wrong legal standard or bases its ruling on an erroneous view of the law. *State v. Hudson*, 150 Wn. App. 646, 652, 208 P.3d 1236 (2009). The court's ruling regarding admissibility may be affirmed on any grounds adequately

supported by the record. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004). A trial court abuses its discretion when it relies on unsupported facts, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law. *State v. Lord*, 161 Wn.2d 276, 284, 165 P.3d 1251 (2007). Here, the defendant's claimed error is not supported by the law or trial record.

B. THE TRIAL COURT PROPERLY DENIED
DEFENDANT'S MOTION TO DISMISS FOR
INSUFFICIENT EVIDENCE.

Defendant contends that the trial court should have dismissed the case due to insufficient evidence to support the charged offense. Defendant argues that the certified judgment and sentence memorializing his conviction for DUI in Kootenai County, Idaho, did not provide sufficient proof that he was the Joseph James Goggin reflected therein. "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence are drawn in the State's favor and are interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136(1977).

Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wash.2d 634, 638, 618 P.2d 99 (1980). The reviewing

court will defer to the trier of fact regarding issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 83 P.3d 970 (2004). The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980); *State v. Smith*, 106 Wn.2d 772, 725 P.2d 951 (1988); *State v. Myles*, 127 Wn.2d 807, 816, 903 P.2d 979 (1995).

To convict the defendant of felony DUI as charged, the State must prove that the defendant,

on or about December 17, 2011, in the County of Spokane, State of Washington, did drive a vehicle while under the influence of or affected by intoxicating liquor or any drug; and furthermore, the defendant previously incurred four or more prior offenses within ten years as defined in RCW 46.61.5055(13).

CP 3; RCW 46.61.502(1)(6).

Here, witnesses had their attention drawn to the manner of defendant's driving. They testified that defendant's vehicle drifted over the skip line and fog lines while they were following. RP 209-212; 235-236; 261. Defendant swerved into oncoming traffic forcing that traffic to take measures to avoid a collision. RP 209-212; 261. They detected an odor of intoxicants on defendant's breath. RP 230; 243; 248; 326. Defendant could not maintain his balance while standing and staggered to the point that he could barely walk. RP 213; 248; 265; 267;

325-326; 336. The three law enforcement officers who contacted defendant observed that: his speech was thick-tongued and slurred (RP 291), his movements were lethargic (RP 291-293); he was disoriented (292-293), he admitted drinking (RP 292; 327), his eyes were watery and bloodshot (326), and he could neither follow the instructions for nor complete even one of the field sobriety tests. RP 330-347. Finally, the analysis of defendant's blood found that its alcohol content was 0.32 about four times the legal limit even as long as three hours after he last drove. RP 452.

The evidence of defendant's four prior DUI convictions within ten years was established by certified copies of the judgment and sentences from each of those convictions. Exhibits P5, P7, P9, and P11. As noted, defendant contends that the certified copy of the Idaho Court's judgment and sentence was insufficient because no one testified in court that defendant was the defendant in that case. The trial court rejected this argument based upon the fact that the certified judgment and sentence was a court record which is statutorily admissible. RCW 5.44.010. RP 518-519. The trial court properly admitted the certified Idaho judgment and sentence noting that the defendant's argument went to the weight it should be accorded, not its admissibility. Reviewing the evidence in the record before the jury there was sufficient evidence to support the verdict.

C. THERE WAS NO VIOLATION OF THE DEFENDANT'S CONFRONTATION RIGHTS BY THE TRIAL COURT'S ADMISSION OF THE CERTIFIED COPIES OF THE DEFENDANT'S PRIOR CONVICTIONS.

Defendant claims that the certified judgment and sentence of his Idaho DUI conviction was insufficient to identify defendant with that conviction without in-court testimony. Defendant contends that his confrontation right was violated because he had no opportunity to cross-examine someone about the authenticity of the documents under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) and Washington State Constitution, Art. I, § 22. The trial court ruled that as certified court documents they were admissible by their very nature pursuant to RCW 5.44.010 and that no independent identifying testimony was required.

RCW 5.44.010 provides, in pertinent part:

The records and proceedings of any court of the United States, or any state or territory, shall be admissible in evidence in all cases in this state when duly certified by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

RCW 5.44.010.

Here, the judgment and sentence memorializing the defendant's conviction in Idaho was certified by that Court's Clerk as evidenced by the attestation and seal affixed thereto. As such, the document was properly authenticated and admissible. The lack of a separate witness to testify that the

defendant is the individual memorialized in that conviction goes to the weight and credibility the jury attributes to that item of evidence, not its admissibility. *State v. Atsebeha*, 142 Wn.2d 904, 16 P.3d 626 (2001).

The defendant argues that admitting the certified judgment and sentence without independent testimony identifying the defendant as the person identified therein violates the protections provided by Washington Constitution Art. I, § 22. The defendant provides an analysis of Art. I, §.22 vis-à-vis the Sixth Amendment to the U.S. Constitution pursuant to *State v. Gunwall*, 106 Wn.2d 54, 702 P.2d 808 (1986), to thereby support his claim of a constitutional violation.

Washington State Constitution Art. I, § 22 provides, in pertinent part:

Rights of the Accused

In criminal prosecutions the accused shall have the right to...to meet the witnesses against him face to face...

Article I, § 22.

One of the core functions of the constitutional right of confrontation is to expose a witness' motivation for testifying as the Court ruled in *Deleware v. Van Arsdall*, 475 U.S. 673, 679, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986). The Confrontation Clause of the U.S. Constitution, Sixth Amendment is violated when a defendant is "prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness." *Id.*, 475 U.S. at 680. For example, a witness who testifies for the State in exchange for reduction of charges, a lighter sentence, etcetera. Here, the

certified judgment and sentence of defendant's conviction in Idaho required no additional testimony to be admissible. *State v. Benefiel*, 131 Wn. App. 651, 654-655, 128 P.3d 1251 (2006). Thereafter, the issue was the weight and credibility to be accorded to the evidence, not its admissibility or cross-examination.

Defendant argues that the admission of the certified court records violated his right "to meet the witnesses against him face to face" under Art. I, § 22. The trial court rejected this argument because having a witness testify to introduce the self-authenticating certified court records was not legally required. *State v. Benefiel*, 131 Wn. App. at 654-655. The trial court did acknowledge that to admit the Idaho booking photograph, the State would need to provide evidence that the defendant was the individual depicted therein since the booking photograph was not a court record. RP 519-520.

The State did provide evidence that the defendant was the person reflected in the certified judgment and sentence from Idaho in the form of the defendant's Washington State Identification card. RP 528-530; Exhibit P14. The photographic identification card included defendant's vital statistics, including eye and hair color, weight, and the same address. The information on the identification card included information that corresponded with the time of the Idaho conviction since the card was issued in 2007 and valid until 2011. The exhibit provided the jury with evidence from which it could determine whether

the certified judgment and sentence from Idaho involved the defendant. The trial court protected defendant's rights of confrontation when it rejected the proffered booking photograph that corresponded to the Idaho conviction due to a lack of foundation (i.e. the testimony of someone who could connect the defendant to the photograph and case). Accordingly, defendant suffered no violation of his right "to meet with witnesses against him face to face" with respect to the Idaho judgment and sentence because the existence of the judgment and sentence was established by certified court documents.

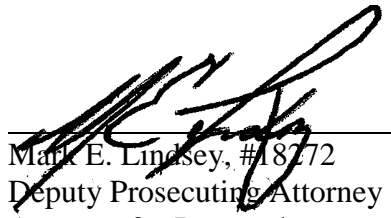
V.

CONCLUSION

For the reasons stated above the defendant's conviction should be affirmed.

Dated this 31st day of January, 2014.

STEVEN J. TUCKER
Prosecuting Attorney



Mark E. Lindsey, #18272
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,)
)
 Respondent,) NO. 31515-1-III
 v.)
)
JOSEPH J. GOGGIN,)
)
 Appellant,)

I certify under penalty of perjury under the laws of the State of Washington, that on January 31, 2014, I mailed a copy of the Respondent's Brief in this matter, addressed to:

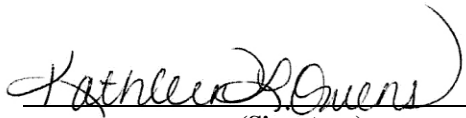
Douglas Phelps
Attorney at Law
2903 N Stout Rd
Spokane WA 99206

and to:

Joseph J. Goggin
3818 N Molter Rd
Otis Orchards WA 99027

1/31/2014
(Date)

Spokane, WA
(Place)



(Signature)