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A. SUMMARY OF ARGUMENT

When Teodoro Vallejo emerged from his car after he was stopped for speeding, a police officer suspected Vallejo was intoxicated and called for assistance. Vallejo spent one hour in handcuffs, was transported more than 11 miles away to a distant police station, and was told he was under arrest, before anyone offered field sobriety tests. Vallejo said “probably not,” asked for a lawyer, and declined to take a blood alcohol test on the advice of counsel.

At his jury trial, Vallejo explained that his post-arrest conduct should not be admitted as evidence against him because he was acting on the advice of counsel, and his refusal to participate in further tests was highly prejudicial and only minimally probative since he was arrested long before they were offered. The court admitted the evidence and allowed the prosecution to argue Vallejo could be found guilty based on his post-arrest silence.

Despite Vallejo’s stipulation that he had the requisite prior convictions to establish the felony level offense of driving while intoxicated, the court insisted upon repeatedly informing the jury that Vallejo was charged with a serious felony offense over Vallejo’s objection. Due to the slim evidence that Vallejo was

actually intoxicated and unable to drive appropriately, the court's admission of highly prejudicial and non-probative evidence denied him a fair trial by jury.

B. ASSIGNMENTS OF ERROR.

1. The court denied Teodoro Vallejo a fair trial by admitting evidence of his failure to offer potentially incriminating evidence to the police after his arrest when his post-arrest silence was based on his constitutionally and statutorily protected right to confidentially communicate with his attorney as well as his right to remain silent.

2. The court repeatedly, over objection, reminded the jury that Vallejo had been charged with a serious offense, which tainted the proceedings and denied Vallejo a fair trial.

3. The cumulative errors denied Vallejo a fair trial by jury as required by the state and federal constitutions.

4. The lack of written findings of fact preclude Vallejo from obtaining meaningful appellate review.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. The court's obligation to ensure an accused person receives a fair trial requires it to exclude evidence that is more prejudicial than probative. After Vallejo's arrest for driving while intoxicated, he refused to provide the police with further evidence

either on the advice of counsel or because, having already been arrested, there was nothing to gain from demonstrating his alertness and coordination in further tests. Where the court admitted evidence that Vallejo could not rebut without revealing confidential advice he received from his attorney, and evidence of his post-arrest silence had little probative value but unfairly painted Vallejo as an uncooperative person, did the court improperly allow the jury to infer Vallejo's guilt based on impermissible characteristics?

2. A court should not unnecessarily emphasize the defendant's prior convictions for the same offense or highlight the seriousness of the charged offense when it has undue prejudicial effect. The court insisted on reminding the jury that Vallejo was charged with a felony offense even though the felony element of the crime had been stipulated to and was not going to be decided by the jury. Did the court's improper emphasis on the seriousness of Vallejo's charge, combined with other errors and when the trial evidence against Vallejo was minimal, deny Vallejo a fair trial?

3. Criminal court rules CrR 3.5 and 3.6 require the court to enter written findings of fact and conclusions of law following suppression hearings to enable meaningful review on appeal.

Does the lack of written findings of fact deny Vallejo his ability to meaningfully appeal from these court orders?

D. STATEMENT OF THE CASE.

At about four o'clock in the morning, on a relatively empty stretch of I-5, Seattle Police Officer Mike Lewis was driving home, travelling at 75 miles per hour due to the lack of traffic. 9/9/09RP 12-14. He saw another car travelling in the same direction that was moving 10 or 15 miles per hour faster and passed him. Id. at 14-15. After the other car passed the police officer, the driver slowed and continued at the speed limit, 60 miles per hour. Id. at 15, 33. Lewis pulled behind the car and followed it, signaling for the car to pull over. 9/9/09RP 15, 34. The driver continued, at the speed limit, and exited the highway. 9/9/09RP 33, 37.

Lewis followed the car, watching as it made several turns and pulled into an apartment complex. 9/2/09RP 15. The driver maintained a reasonable speed during this time, but turned left at a red light, after stopping, when he should have waited for the light to turn green. Id. at 16, 37. Lewis followed the car for about two miles in total. Id. at 17.

When the driver, Teodoro Vallejo, got out of his car at the apartment complex that was his home, Lewis immediately

handcuffed and arrested him. 9/9/09RP 22. Because Lewis was a K-9 officer and had a dog in his car, and was not certified in drunken driving arrest procedures, he asked another officer to come to the scene to assist with the arrest. 9/2/09RP 25. Vallejo waited, handcuffed, for about one-half hour until Officer David Peplowski came to the scene. 9/3/09RP 20, 25. Sometime before his arrest, Vallejo appeared to have urinated in his pants, and he asked to use the bathroom several times while being held in custody. 9/2/09RP 29; 9/9/09RP 20. Once Peplowski arrived, he searched Vallejo's car, read him Miranda warnings, and drove him to the South Precinct, more than 20 minutes away. 9/2/09RP 30-31.

When Peplowski brought Vallejo into the police station after his arrest, he asked Vallejo if he would be interested in doing field sobriety tests. 9/2/09RP 28. Vallejo responded, "probably not," and asked for his lawyer. Id.; 9/9/09RP 67. Vallejo declined to participate in a blood alcohol test, and in response to the officer's questions, said he had been drinking soda with co-workers during the day, denying having consumed alcohol. 9/2/09RP 21, 38; 9/9/09RP 75-77.

Vallejo stipulated to having being convicted of the crime defined in RCW 46.61.5055, driving while under the influence, at least four times in the past 10 years. CP 48. Despite this stipulation, the court insisted on presenting the element of having four prior convictions to the jury and labeled the offense “felony driving under the influence,” throughout the jury instructions and verdict form. CP 41, 43, 50.

Vallejo was convicted of the charged crime and received a standard range sentence of 60 months in prison. CP 51-58. He timely appeals.

Pertinent facts are addressed in further detail in the relevant argument sections below.

D. ARGUMENT.

1. WHERE VALLEJO REFUSED TO PROVIDE POTENTIALLY INCULPATORY EVIDENCE AFTER HIS ARREST BASED ON THE ADVICE OF COUNSEL, AND THE COURT UNNECESSARILY HIGHLIGHTED THE PENALTY VALLEJO FACED, HE WAS DENIED HIS RIGHTS TO COUNSEL AND DUE PROCESS OF LAW.

Cumulative errors may deny a person a fair trial, especially when slender evidence supports the conviction. Here, the court admitted evidence Vallejo refused to supply proof of his innocence

even though he was acting on the advice of counsel and the prosecution used his silence against him. Because Vallejo's post-arrest conduct was not probative of his consciousness of guilt and the evidence of his post-arrest silence violated his rights to counsel and to remain silent, it was improperly admitted. Additionally, the court insisted upon unnecessarily highlighting the seriousness of Vallejo's offense to the jury. These errors, when evaluated together with the slight evidence supporting the charged offense, denied Vallejo a fair trial.

a. The State relied on information purporting to show consciousness of guilt but the probative value was far outweighed by the resulting prejudice, confusion and misleading effect.

Evidence purporting to show a person's consciousness of guilt should not be admitted where it has limited probative value but significant prejudicial effect, including evidence relating to the refusal to submit to blood alcohol tests following an allegation of drunken driving. ER 403; State v. Cohen, 125 Wn.App. 220, 225, 104 P.3d 70 (2005).

In many situations, the inference of consciousness of guilt of the particular crime is so uncertain and ambiguous and the evidence so prejudicial that one is forced to wonder whether the evidence is not directed

to punishing the 'wicked' generally rather than resolving the issue of guilt of the offense charged.

C. McCormick, Evidence (4th Ed. 1992) p. 182. Refusal to submit to a blood alcohol test is inadmissible if “its probative value is outweighed by the danger of unfair prejudice, confusion, or misleading the jury.” Cohen, 125 Wn.App. at 225.

As an example of evidence pertaining to a person’s consciousness of guilt, evidence that a person fled the police may be admitted. State v. Bruton, 66 Wn.2d 111, 112, 401 P.2d 340 (1965). However, flight evidence is often ambiguous and thus not particularly probative. See e.g., United States v. Foutz, 540 F.3d 733, 739-40 (4th Cir. 1976) (“The inference that one who flees from the law is motivated by consciousness of guilt is weak at best.”).

Similarly, the refusal to cooperate with police requests to provide potentially incriminating evidence is not necessarily evidence of guilt. State v. Burke, 163 Wn.2d 204, 218-19, 181 P.3d 1 (2008). Silence “is ambiguous because an innocent person may have many reasons for not speaking.” Id. (quoting People v. DeGeorge, 541 N.E.2d 11, 13 (N.Y. 1989)); Doyle v. Ohio, 426 U.S. 610, 617 n.8, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) (noting that even aside from Miranda warnings, silence may have several

explanations consistent with innocence and is of dubious probative value).

Vallejo explained that he refused to participate in the post-arrest blood alcohol test on the advice of his attorney. 9/2/09RP 50, 52. By introducing his refusal to the jury, the State necessarily implicated his right to privately consult with his lawyer and to remain silent based on his attorney's advice. He objected to the admission of this evidence, arguing that the State should not be free to comment on his refusal to submit to further blood alcohol testing when it was predicated on the express advice of counsel. Id.

The right to the effective assistance of counsel is guaranteed by the Sixth Amendment and article I, section 22 of the Washington Constitution. The right to counsel includes the right to confidential advice about matters material to the representation. State v. A.N.J., 168 Wn.2d 91, 113, 225 P.3d 956 (2010). An accused person has a collateral right to remain silent, and may not be forced to incriminate himself or have his silence used against him. See Doyle, 426 U.S. at 618 (when defendant implicitly assured that he may remain silent, improper to allege his silence

should be used against him); U.S. Const. amend. 5; Wash. Const. art. I, § 9.

Washington protects the right to private attorney-client communications by statute as well as by the explicit right to be free from governmental intrusion into one's "private affairs." Wash. Const. art. I, § 7. In recognition of the importance of attorney-client communication, a statutory attorney-client privilege allows a client "to communicate freely with an attorney without fear of compulsory discovery." Dietz v. Doe, 131 Wn.2d 835, 842, 843, 935 P.2d 611 (1997); RCW 5.60.060. Information generated by a request for legal advice is protected and confidential. Soter v. Cowles Publ'g Co., 131 Wn.App. 882, 130 P.3d 840, aff'd, 162 Wn.2d 716, 174 P.3d 60 (2006); State v. Perrow, _ Wn.App. _, 2010 WL 2038005, *3 (2010).

Vallejo received legal advice from an attorney that he should not ever take a blood alcohol test. 9/2/09RP 50, 52. Vallejo relied on that advice. Id. When the State wanted to introduce into evidence his refusal to take a blood alcohol test, Vallejo argued that he was acting on the advice of counsel and should not be required to tell the jury about the content of that private communication. Id.

The court accepted Vallejo's representation about the content of his attorney's advice. 9/2/09RP 58. Even though the court took as true Vallejo's explanation that he was relying his attorney's advice, the court ruled that the prosecution could introduce evidence of Vallejo's refusal even if it denied him his right to confidentially communicate with his attorney and remain silent. 9/2/09RP 58.

The trial court ruled that Vallejo could argue there were many reasons why a person would refuse a blood alcohol test and he would not need to reveal that his silence derived from his privileged communication with his lawyer. 9/2/09RP 58. The court did not take into account that the jury would necessarily infer that the most likely reason for Vallejo's conduct, and what the prosecution would argue, was that he was intoxicated. See DeGeorge, 541 N.E.2d at 13. "[D]espite its lack of probative value" evidence regarding an accused person's pretrial silence will "undoubtedly" be considered by the jury. Id.

The trial court ignored the likelihood that jurors "may not be sensitive to the wide variety of alternative explanations for a defendant's pretrial silence, [and] may assign much more weight to it than is warranted and thus the evidence may create a substantial

risk of prejudice.” Id. Any argument by the defense that Vallejo may have refused to provide further evidence for reasons other than his guilt would surely fall on deaf ears when the jury did not learn of the legal advice that motivated Vallejo’s conduct.

Further error occurred when the court impermissibly admitted evidence that Vallejo refused to participate in field sobriety tests when that refusal lacked probative value and yet cemented Vallejo’s appearance as an uncooperative and obstructionist person who was hiding information from the police. 9/2/09RP 61. A person’s refusal to submit to field sobriety tests is admissible only on the basis that it is probative of consciousness of guilt and it must pass muster under ER 403. Seattle v. Stalsbroten, 138 Wn.2d 227, 234, 238 n.2, 978 P.2d 1058 (1999). The court admitted this evidence against Vallejo even though no police officer asked him to perform such tests in the “field” or before his arrest, and where Vallejo immediately asked for his attorney after the officer mentioned field sobriety tests. Ex. 4, p. 6 (transcript of Vallejo interview, admitted pretrial).

Officer Mike Lewis arrested Vallejo, handcuffed him, and held him at the scene for about 30 minutes and never tried to do any field sobriety tests. 9/2/09RP 9; 9/3/09RP 25. After waiting

about 30 minutes at the arrest scene, Officer David Peplowski arrived, searched Vallejo's car, and then drove Vallejo to the South Precinct to process the arrest. 9/2/09RP 8-9, 30. Peplowski read Miranda warnings to Vallejo at the arrest scene, before driving him to the police station. 9/2/09RP 13-14.

The South Precinct was more than 11 miles away from the arrest scene and it took about 23 minutes to drive there.¹ 9/2/09RP 30. Thus, it was only after about one hour of being arrested, cuffed, and transported to a police station that the police even mentioned the possibility that Vallejo could take part in a field sobriety test. 9/2/09RP 28. Vallejo did not decline the field test, although he indicated he "probably" would not want to, and the officer never again offered the field tests. Id. Vallejo asked to speak with his lawyer right after the officer mentioned sobriety tests. Ex. 4 (admitted pretrial).

Because Vallejo was never offered "field" sobriety tests while in the "field," but instead long after he was arrested and transported to a police station and at a time when he wanted to speak with his lawyer, his refusal to take part in providing the police with further

potentially incriminating evidence was far more prejudicial than probative of his consciousness of guilt. See DeGeorge, 541 N.E.2d at 13 (detailing cases finding pretrial silence far more prejudicial than probative); see also Stalsbrot, 138 Wn.2d at 238 n.2 (noting court's authority to exclude field sobriety test evidence where insufficiently probative). The court should not have admitted at trial Vallejo's refusal to provide further evidence after his arrest.

b. Vallejo was denied a fair trial by the court's insistence on highlighting the serious nature of the offense.

Vallejo stipulated that he had all prior convictions necessary to prove the offense of felony driving while intoxicated. CP 48. The court accepted the stipulation and read it to the jury. 9/10/09RP 58. In light of the stipulation, Vallejo asked the court to refrain from unnecessarily and repeatedly emphasizing the serious nature of the charge. 9/10/09RP 62-63. Rather, he asked the court to focus the jury's attention on the legal issue before it -- whether Vallejo committed the offense of driving under the influence. 9/10/09RP 66, 68.

¹ The distance is predicated on google maps, "get directions" feature, tracking distance from place of arrest, 3028 S. 216th St., Des Moines, WA to the South Precinct, at 3001 South Myrtle Street, Seattle, WA 98108; available at: <http://maps.google.com/maps>. Ex. 4 (police report listing address of arrest).

Prior criminal history has an “inherent prejudicial effect.” State v. Mills, 154 Wn.2d 1, 8, 109 P.3d 415 (2005), citing State v. Oster, 147 Wn.2d 141, 52 P.3d 26 (2002). “The danger of prior conviction evidence is its tendency to shift the jury's focus from the merits of the charge to the defendant's general propensity for criminality.” State v. Jones, 101 Wn.2d 113, 120, 677 P.2d 113 (1984). Trial courts “should strive to afford defendants the fairest trial possible,” and may separate prior convictions from the jury's consideration at trial. State v. Roswell, 165 Wn.2d 186, 197, 196 P.3d 705 (2008).

The court insisted upon informing the jury that Vallejo was being charged with “felony” driving under the influence, in addition to presenting the stipulated prior convictions to the jury, despite defense objection. CP 41, 43, 58; 9/10/09RP 61-68, 72. While the court has discretion to present the element of prior convictions to the jury, even when stipulated to, the court must acknowledge the prejudicial effect to prior convictions. Roswell, 165 Wn.2d at 198. Here, the court unnecessarily attached the “felony” label to the offense throughout the jury instructions and included the prior convictions as an element of the offense in the to-convict instruction. CP 41, 43, 58.

In State v Hagler, 150 Wn.App. 196, 202, 208 P.3d 32 (2009), this Court held that it was unnecessary and potentially prejudicial to instruct a jury that the charged offenses are considered crimes of “domestic violence.” The domestic violence designation was not an element the prosecution was required to prove, and therefore, this designation “does not assist the jury in its task.” Id.

Similarly, the parties had stipulated to the “felony” element of the charged offense and the only task for the jury was to determine whether Vallejo committed the predicate offense of driving while intoxicated. Despite this stipulation, the court insisted on putting the evidence underlying the stipulation before the jury in its instructions and verdict form, and although it had the discretion to bifurcate aspect of the trial the court elected to emphasize that Vallejo was charged with a “felony” offense. CP 41, 43, 58. Because the jury was not deciding whether Vallejo committed a felony, it was unnecessary and unduly prejudicial to repeatedly remind the jury of the heightened punishment that would attach if he was convicted.

c. Due to the minimal evidence that Vallejo committed the charged crime, these errors denied him a fair trial.

The prosecution's evidence against Vallejo was slim at best. At the time a police officer saw him speeding in the early morning hours, there was little traffic on the road and Vallejo slowed and maintained the proper speed as soon as the officer made his presence known. 9/9/09RP 15, 33. Vallejo drove at the speed limit, stayed in his lane of travel, and exited the highway. 9/9/09RP 33, 37. He continued driving for another mile until he parked at his home. The officer thought Vallejo turned left at a red light without signaling, but agreed that there was no other traffic on the road and Vallejo's driving was not otherwise reckless or improper. 9/9/09RP 37.

Vallejo was not offered field sobriety tests until after he had been in custody for almost one hour and had been taken to the police precinct. 9/2/09RP 30-31; 9/3/09RP 20, 25. He did not refuse field tests, but indicated he "probably" would not want to do them when the officer eventually mentioned that he could do such tests. 9/9/09RP 67. The officer never again offered the field tests.

Vallejo also declined to take a breath test regarding the alcohol in his system. 9/9/09RP 75-77. As explained above, this evidence should not have been admitted because Vallejo explained that he was acting on advice of counsel, not based on

consciousness of guilt. Vallejo denied he was drinking alcohol.
9/2/09RP 38.

The State's case largely hinged on the fact that Vallejo appeared to have urinated in his pants close to the time of his arrest and there was a single beer bottle in his car. 9/10/09RP 80. While the urination accusation is unpleasant, it does not demonstrate that he was under the influence of alcohol. He may have needed to urinate for sometime; he may have been scared when confronted by an officer; he may have spilled something on him that was not urine. Although distasteful, urinating is not evidence of intoxication and here, where the evidence of intoxication was initially driving fast and then slowing once he noticed in the officer's presence, and possible urine on his pants, there is certainly less than overwhelming evidence Vallejo was intoxicated and unable to properly drive his car.

Due to the minimal evidence from which any rational juror could infer Vallejo was driving while intoxicated, the court's errors had a large and decisive impact. Allowing the prosecution to emphasize Vallejo's refusal to take a breathalyzer test, which was based on his attorney's advice, was insufficiently probative to be admissible in light of its prejudicial effect. Likewise, emphasizing

Vallejo's "felony" charge when the jury should not have been considering his prior convictions in assessing his guilt, caused undeniable prejudice. These errors, coupled with the very limited evidence that Vallejo was driving while intoxicated, denied Vallejo a fair trial by jury. State v. Jerrels, 83 Wn.App. 503, 508, 925 P.2d 209 (1996).

2. THE LACK OF WRITTEN FINDINGS OF FACT PRECLUDE EFFECTIVE REVIEW OF THE PRE-TRIAL SUPPRESSION HEARINGS

a. The trial court must enter written findings setting forth the facts necessary to material issues and ultimate conclusions. Court rules as well as due process principles require the trial court to explain the factual basis of its decision. State v. Dahl, 139 Wn.2d 678, 689, 990 P.2d 396 (1999); CrR 3.5; CrR 3.6. It is the trial court's role to resolve factual disputes, make credibility determinations, and issue findings of fact and conclusions of law. State v. Hill, 123 Wn.2d 641, 646-47, 870 P.2d 313 (1994); State v. Barnes, 96 Wn.App. 217, 222, 978 P.2d 1131 (1999). The purpose of the court's findings is to resolve material factual issues so the appellate court has a clear record of the basis for the trial court's decision on review. Dahl, 139 Wn.2d at 689; State v. Smith, 68 Wn.App. 201, 208, 842 P.2d 494 (1992); Bowman v.

Webster, 42 Wn.2d 129, 134, 253 P.2d 934 (1953). When the trial court fails to fully articulate the grounds for its determinations, its decision is not amenable to judicial review. Dahl, 139 Wn.2d at 689; Bowman, 42 Wn.2d at 135.

CrR 3.5 provides,

At the conclusion of a hearing, upon a motion to suppress physical, oral or identification evidence the trial court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) the court's findings as to the disputed facts; and (4) the court's reason for the admissibility or inadmissibility of the evidence sought to be suppressed.

(Emphasis added.). Likewise, CrR 3.6(b) provides that the court “shall enter written findings of fact and conclusions of law,” when it has an evidentiary hearing on a motion to suppress evidence.

The written findings are considered the trial court’s definitive statement on the issues before it, although the appellate court may refer to an oral ruling when it clarifies the basis of the trial court’s decision. Dahl, 139 Wn.2d at 689; Bowman, 42 Wn.2d at 135. When facts are not included in the written findings, the reviewing court presumes the omission means missing facts were not adequately proven. State v. Armenta, 134 Wn.2d 1, 14, 904 P.2d 754 (1995).

The purpose of written findings is not merely to assist, but to enable an appellate court's review of questions presented on appeal. State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998); State v. Alvarez, 128 Wn.2d 1, 16, 904 P.2d 754 (1995). A trial court's oral ruling is "no more than [an] oral expression[] of the court's informal opinion at the time rendered." Id. The oral opinion has no binding effect unless expressly incorporated into a final written judgment. Id. at 622. As the Supreme Court noted in Head,

An appellate court should not have to comb an oral ruling to determine whether the appropriate findings have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction.

Id. at 624.

The failure of the prosecution to submit and the court to enter written findings of fact and conclusions of law is "a serious lapse in appellate procedure." State v. Naranjo, 83 Wn.App. 300, 302, 921 P.2d 588 (1996). Additionally, it is "inherently prejudicial" for this Court to sanction "the practice of allowing findings to be entered on remand, after the appellant has framed the issues in his or her brief." Id.; see State v. Witherspoon, 60 Wn.App. 569, 572, 805 P.2d 248 (1991).

b. The failure to enter written findings requires reversal The trial court neglected to formalize its findings and conclusions into writing as required. Thus, Vallejo is unable to challenge the court's findings with specificity and must speculate as to the court's reasoning and guess at the facts relied upon by the court.

While the lack of written findings may at times be cured by remand, or by reference to oral rulings, in the case at bar no findings can cure the lack of evidence presented by the prosecution. Head, 136 Wn.2d at 20-21; State v. Souza, 60 Wn.App. 534, 541, 805 P.2d 237 (1991). Remand is only an appropriate remedy where there is sufficient evidence to support the missing findings. Souza, 60 Wn.App. at 541. As this Court said in Smith,

Lack of written findings of fact on a material issue on which the State bears the burden simply cannot be harmless unless the oral opinion is so clear and comprehensive that written findings would be a mere formality. The trial court's opinion falls far short of that standard. Accordingly, the conviction cannot stand on the present record.

(Footnotes omitted.) Smith, 68 Wn.App. at 208. The oral findings here are not "clear and comprehensive" and thus, remand for findings is not appropriate. The suppression rulings should be

reversed. Smith, 68 Wn.App. at 210.

F. CONCLUSION.

For the reasons stated above, Teodoro Vallejo respectfully asks this Court to reverse his conviction and remand this case for a trial.

DATED this 28th day of June 2010.

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 64468-8-I
v.)	
)	
TEODORO VALLEJO, JR.,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF JUNE, 2010, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | |
|--|-------------------|----------------------------|
| <input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY
APPELLATE UNIT
KING COUNTY COURTHOUSE
516 THIRD AVENUE, W-554
SEATTLE, WA 98104 | (X)
()
() | U.S. MAIL
HAND DELIVERY |
| <input checked="" type="checkbox"/> TEODORO VALLEJO, JR.
335133
AIRWAY HEIGHTS CC
PO BOX 2049
AIRWAY HEIGHTS, WA 99001 | (X)
()
() | U.S. MAIL
HAND DELIVERY |

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2010 JUN 28 PM 4:29

SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF JUNE, 2010.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
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Phone (206) 587-2711
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