

NO. 69119-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

DIANTRIE JEFFERSON,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

Diantrie Jefferson was seized by three armed police officers following him in an unmarked Cadillac Escalade. The officers had no warrant to stop him. Though the gang unit officers testified they seized Mr. Jefferson because they suspected he was not wearing his seatbelt, a review of the totality of the circumstances indicates the traffic stop was a pretextual basis for initiating a criminal investigation. The evidence seized as a result should have been suppressed.

B. ASSIGNMENTS OF ERROR

1. In the absence of substantial evidence, the trial court erred in finding that “Although the Gang Unit’s primary mission in having detectives and a DOC specialist work as a team is to better detect and address criminal behavior in community, Gang Unit detectives also have a secondary function of enforcing traffic laws when they observe violations. When not involved in gang- or DOC-specific operations, Gang Unit members spend a portion of their on-duty time on standard patrol similar to any other Sheriff’s deputy.” CP 84 (Finding of Fact (FF) 1(d) (order on suppression hearing)).¹

¹ A copy of the Written Findings of Fact and Conclusions of Law of CrR 3.6 Motion to Suppress Physical, Oral or Identification Evidence is attached as an Appendix.

2. In the absence of substantial evidence, the trial court erred in finding that “On the afternoon of October 29, 2011, Detective Miller, Detective Olmstead, and Specialist Rongen were on standard patrol” CP 84 (FF 1(e)).

3. In the absence of substantial evidence, the trial court erred in finding that “Although Detectives Miller and Olmstead did not have a radar gun in the vehicle, Detective Miller had a ticket book and an electronic copy of the traffic code and were prepared to handle traffic infractions when they observed them.” CP 84 (FF 1(f)).

4. In the absence of substantial evidence, the trial court erred in finding that “Detectives Miller and Olmstead regularly conducted traffic stops for traffic violations that they observed while on patrol,” CP 84 (FF 1(g)).

5. In the absence of substantial evidence, the trial court erred in finding that “Specialist Rongen does not remember whether he said anything about his observation [that Mr. Jefferson, a black male, got into the driver’s seat of his vehicle and did not immediately fasten his seatbelt] at that time.” CP 84 (FF 1(k)).

6. In the absence of substantial evidence, the trial court erred in finding that “The officers then continued their patrol, looping

northbound back through the gas station parking lot and exiting directly onto 1st Avenue South, driving northbound.” CP 84 (FF 1(l)).

7. In the absence of substantial evidence, the trial court erred in finding that “Meanwhile, the defendant drove south out of the gas station, exiting onto eastbound Southwest 114th Street, and then immediately turning northbound onto 1st Avenue South. Shortly thereafter, the defendant’s vehicle ended up in front of the officer’s SUV.” CP 84 (FF 1(m)).

8. In the absence of substantial evidence, the trial court erred in finding that “As the officers were driving northbound on 1st Avenue South near Southwest 112th Street, Detective Miller noticed the defendant’s vehicle for the first time.” CP 84 (FF 1(n)).

9. In the absence of substantial evidence, the trial court erred in finding that “The defendant’s vehicle was directly in front of the officers’ SUV, and Detective Miller could see through the tinted rear windshield that the shoulder strap of the driver’s seatbelt was hanging vertically to the driver’s left, rather than crossing in front of the driver’s torso.” CP 85 (FF 1(o)).

10. In the absence of substantial evidence, the trial court erred in finding that “Based on his observations, Detective Miller believed

that the driver of the vehicle, later identified as the defendant, was not wearing a seatbelt in violation of RCW 46.61.688(3).” CP 85 (FF 1(q)).

11. In the absence of substantial evidence, the trial court erred in finding that “At that time, Detective Miller did not know what race the defendant was.” CP 85 (FF 1(r)).

12. In the absence of substantial evidence, the trial court erred in finding that “Detective Miller testified that he commented to Detective Olmstead and Specialist Rongen that the defendant was not wearing his seatbelt, and Detective Olmstead and Specialist Rongen each visually confirmed that the shoulder strap of the defendant’s seatbelt was hanging vertically to the defendant’s left, rather than crossing in front of his torso.” CP 85 (FF 1(s)).

13. In the absence of substantial evidence, the trial court erred in finding that “Other than Specialist Rongen’s earlier observation at the gas station, none of the officers had any previous knowledge of the defendant or his vehicle.” CP 85 (FF 1(u)).

14. In the absence of substantial evidence, the trial court erred in finding that “At the time that the decision was made to stop the defendant’s vehicle, the officers had no reason to suspect, and did not

suspect, that the defendant was involved in any criminal behavior.” CP 85 (FF 1(v)).

15. In the absence of substantial evidence, the trial court erred in finding that “At some point prior to reaching the defendant’s vehicle, the officers learned that the defendant, who was the registered owner of the vehicle, was a convicted felon.” CP 85 (FF 1(z)).

16. In the absence of substantial evidence and because it omits the officer’s inquiry regarding the presence of drugs or guns, the trial court erred in finding that “Detective Olmstead then asked the defendant for his driver’s license. Olmstead couldn’t recall if the defendant handed him a driver’s license.” CP 86 (FF 1(bb)).

17. In the absence of substantial evidence, the trial court erred in finding that “The Court finds the testimony of Detective Olmstead, Detective Miller, and Specialist Rongen to be credible.” CP 86 (FF 1(ll)).

18. The trial court erred in concluding, “Based on the officers’ observations as they were driving behind the defendant’s vehicle, there was both reasonable suspicion and probable cause to believe that the defendant was committing a traffic violation without a seatbelt in

violation of RCW 46.61.688(3).” CP 87 (Conclusion of Law (CL) 4(a)).

19. The trial court erred in concluding, “The true reason, and the only reason, for the stop of the defendant’s vehicle was to investigate the seatbelt violation.” CP 87 (CL 4(b)).

20. The trial court erred in concluding, “Because the initial traffic stop of the defendant’s vehicle was not pretextual and was supported by reasonable and articulable suspicion that the defendant was committing a traffic violation, the stop was lawful.” CP 87 (CL 4(c)).

21. The trial court erred in concluding, “Because (1) the initial traffic stop was lawful, . . . the recovery of the firearm was lawful and the defendant’s motion to suppress is denied in its entirety. The State has carried its burden by a preponderance of the evidence.” CP 87 (CL 4(h)).

22. The incorporation of the trial court’s oral findings was erroneous as not supported by substantial evidence. CP 87.

23. The incorporation of the trial court’s oral conclusions of law was erroneous. CP 87.

24. The trial court erred in concluding that the evidence obtained from the seizure of Mr. Jefferson should not be suppressed.

25. The trial court erred in refusing to consider Pretrial Exhibit 20, a video showing the lack of visibility through the rear tinted windshield of Mr. Jefferson's van.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Brief investigative stops based on a reasonable, articulable suspicion of criminal activity or a traffic infraction are a limited exception to the jealously-guarded, constitutional requirement that warrantless seizures are prohibited. Pretextual traffic stops, however, violate the Washington Constitution. A stop is pretextual if it is effectuated for a speculative criminal investigation but a lawful reason, such as enforcement of the traffic code, is used to justify it. In the case of a pretextual stop, all resulting evidence must be suppressed. Where a review of the totality of the circumstances, including subjective and objective factors, demonstrates the traffic stop of Mr. Jefferson was actually motivated by intent to conduct a speculative criminal investigation, must the resulting evidence be suppressed?

2. The State bears the burden of proving by clear and convincing evidence the existence of an exception to the warrant

requirement justified a warrantless seizure. Did the trial court err by applying the lesser preponderance of the evidence standard to the State?

3. During a bench trial, evidentiary rules are liberally applied. Moreover, evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Did the trial court abuse its discretion by refusing to review a video that tended to discredit the testimony of witnesses at a pretrial suppression hearing where there was no jury?

D. STATEMENT OF THE CASE

Mr. Jefferson is a longshoreman at a port in south Seattle. 6/18/12 RP 178-79. On an October day in 2011, he paid for gasoline inside a gas station in unincorporated King County and then filled up his van. 6/18/12 RP 179-83. When walking out of the station, Mr. Jefferson walked in front of a black Cadillac Escalade that was driving slowly through the gas station. 6/18/12 RP 183. A few blocks from the gas station, the same black Escalade pulled him over. 6/18/12 RP 186-87. He pulled into a parking lot and three armed officers exited the Escalade and approached his vehicle. 6/18/12 RP 187-88.

Detective Matthew Olmstead and Detective Todd Miller are Gang Unit Detectives for the King County Sherriff's Office. 6/18/12 RP 5, 126-27. Their job "consists mostly of proactive police work. Going out and finding cases, handling high impact offenders, tracking down gang member fugitives." 6/18/12 RP 5, 36 ("out to ferret serious crime"); 6/18/12 RP 61 (as part of gang unit, they are out to "bust bigger players"). On occasion, they also serve in a standard police patrol function, including making social contacts, suspicious person stops, vehicle stops, and handling calls for 9-1-1. 6/18/12 RP 7. They often work with Department of Corrections (DOC) Specialist Kristoffer Rongen as part of the Neighborhood Corrections Initiative. 6/18/12 RP 76-77, 101-02; Pretrial Exhibit 11 (memorandum of understanding). DOC officers are on the lookout for contacts with parolees and attempt to work with police to combat crime. 6/18/12 RP 35, 40-41. They do not issue traffic citations. 6/18/12 RP 65-66, 85.

The Neighborhood Corrections Initiative has the following objectives: reduce repeat offenses by individuals who are currently under DOC supervision or who were under DOC supervision in the past; provide information to the community and other law enforcement agencies on offenders currently or previously under DOC supervision;

reduce criminal activity through the team's presence, enforcement activity and referrals to appropriate services and agencies; and reduce criminal street gang activity in the South King County area. Pretrial Exhibit 11 at p.2.

On that day in October 2011, the officers were running license plates of vehicles looking for outstanding warrants or other criminal activity at the gas station where Mr. Jefferson filled up his van (114th Street SW and First Avenue South). 6/18/12 RP 88. DOC Specialist Rongen noticed a black male, who turned out to be Mr. Jefferson, get into his van and start to pull out of the gas station without his seatbelt engaged. 6/18/12 RP 88, 112, 121-22. He is not sure whether he told the other officers. 6/18/12 RP 88. He is also not sure whether he followed the van out of the gas station. 6/18/12 RP 108-12, 118.

Within seconds, the officers were traveling northbound on First Avenue South with Mr. Jefferson's van directly in front of them. 6/18/12 RP 12-14, 42, 88-89. DOC Specialist Rongen was driving the black, unmarked Escalade with Detective Olmstead in the passenger's seat and Detective Miller in the back seat. 6/18/12 RP 14-15, 36-37, 132. Detective Miller testified he could see through the Escalade's windshield from the back seat and through the dark tinted rear

windshield of Mr. Jefferson's van to notice that the driver appeared not to be wearing his seatbelt. 6/18/12 RP 15-17, 67-68. He asked Detective Olmstead to provide him with the van's license plate, which he entered into the computer he was using to run plates while the others initiated a traffic stop of Mr. Jefferson's van. 6/18/12 RP 17-18. The other officers confirmed they could see the driver's seatbelt was not engaged. 6/18/12 RP 89-90, 134. DOC Specialist Rongen admitted he could tell the driver was black. 6/18/12 RP 90-91; *see* 6/18/12 RP 136 (Detective Olmstead testified he could not tell the driver's race).

The three armed officers exited the Escalade together to surround Mr. Jefferson's vehicle. 6/18/12 RP 54, 60, 93, 153. Over the radio, Detective Miller had learned that the van's vehicle tabs were expired; he did not recall whether he learned this before the officers initiated the lights for the traffic stop or once the van was already stopped and he was on his way to that vehicle. 6/18/12 RP 21-23. DOC Specialist Rongen believed he learned Mr. Jefferson was a convicted felon once they initiated the stop but before exiting the vehicle. 6/18/12 RP 113. Detective Olmstead could not recall exactly when he learned Mr. Jefferson was a convicted felon, but it was before he approached Mr. Jefferson. 6/18/12 RP 161. Detective Miller

testified he did not learn Mr. Jefferson was a convicted felon until after he had been ordered out of his van. 6/18/12 RP 27-28, 53.

Detective Olmstead approached the driver, with DOC Specialist Rongen directly behind him. 6/18/12 RP 24, 93. Detective Miller approached the van on the passenger side. 6/18/12 RP 24. In addition to indicating the driver was not wearing a seatbelt and asking for his license and registration, Detective Olmstead likely asked Mr. Jefferson whether he had any drugs or guns. 6/18/12 RP 115, 138-39, 163, 187-88. Because Detective Olmstead thought Mr. Jefferson appeared nervous, was a convicted felon and had taken time to pull into a parking lot rather than pull over on the road, he ordered Mr. Jefferson out of the vehicle. 6/18/12 RP 139-41, 142. The officers recovered a firearm on Mr. Jefferson. 6/18/12 RP 144.

Mr. Jefferson was charged with one count unlawful possession of a firearm in the second degree (RCW 9.41.040(2)(a)(i)). CP 1. The Detectives offered to make Mr. Jefferson's unlawful possession of a firearm charge go away if he helped Detective Miller locate bigger criminals. 6/18/12 RP 61, 172-73.

Mr. Jefferson maintained the stop was pretextual and the firearm seized as a result should be suppressed. CP 19. At the suppression

hearing, the Detectives claimed that the suspected seatbelt violation was the sole basis for the stop of Mr. Jefferson's vehicle. 6/18/12 RP 61, 161. The trial court noted it was a "close call," but ultimately found the State demonstrated by a preponderance of the evidence that the stop was not pretextual and refused to suppress the evidence discovered. CP 83-88; 6/20/12 RP 59-67. Mr. Jefferson was convicted after a stipulated facts, bench trial. CP 58, 72, 78; 6/20/12 RP 73.

E. ARGUMENT

The evidence recovered at the traffic stop should have been suppressed because the stop was a pretext for a criminal investigation.

1. Pretextual seizures violate the Washington Constitution.

Under both the federal and state constitutions, warrantless searches and seizures are unreasonable per se unless an exception applies. *State v. Loewen*, 97 Wn.2d 562, 565, 647 P.2d 489 (1982); *State v. Lennon*, 94 Wn. App. 573, 579, 976 P.2d 121 (1999).

However, article I, section 7 of the Washington Constitution more broadly protects the "private affairs" of each person than does the Fourth Amendment. Const. art. I, § 7; U.S. Const. amend. IV; e.g., *State v. Arreola*, __ Wn.2d __, 290 P.3d 983, 2012 WL 6621148, *2

(Dec. 20, 2012).² “Under article I, section 7, the right to privacy is broad, and the circumstances under which that right may be disturbed are limited.” *Arreola*, 2012 WL 6621148, at *3. Thus, “[w]arrantless disturbances of private affairs are subject to a high degree of scrutiny.” *Id.*

A traffic stop made without a warrant is constitutional only if based upon at least a reasonable articulable suspicion of criminal activity or a traffic infraction, and only if reasonably limited in scope. *Arreola*, 2012 WL 6621148, at *4 (citing *State v. Ladson*, 138 Wn.2d 343, 350, 351-52, 979 P.2d 833 (1999) and RCW 46.61.021(2) among other authorities). “The use of traffic stops must remain limited and must not encroach upon the right to privacy except as is reasonably necessary to promote traffic safety and to protect the general welfare through the enforcement of traffic regulations.” *Id.* A traffic stop must

² Article I, section 7 provides: “INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

be justified at its inception and reasonably limited in scope “based on whatever reasonable suspicions legally justified the stop in the first place.” *Id.*

Article I, section 7 prohibits law enforcement from conducting a traffic stop based on pretext. *E.g., Ladson*, 138 Wn.2d at 358. “Pretext is, by definition, a false reason used to disguise a real motive.” *Id.* at 359 n. 11 (quoting Patricia Leary & Stephanie Rae Williams, *Toward a State Constitutional Check on Police Discretion to Patrol the Fourth Amendment’s Outer Frontier: A Subjective Test for Pretextual Seizures*, 69 Temp. L. Rev. 1007, 1038 (1996)). “A pretextual traffic stop occurs when a police officer relies on some legal authorization as ‘a mere pretext to dispense with [a] warrant when the true reason for the seizure is not exempt from the warrant requirements.’” *Arreola*, 2012 WL 6621148, at *4 (quoting *Ladson*, 138 Wn.2d at 358). In short, the “police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation unrelated to the driving.” *Ladson*, 138 Wn.2d at 349. This State’s “constitution requires we look beyond the formal justification for the stop to the actual one.” *Id.* at 353.

The traffic code is extensive and complicated and it is commonly accepted that it is both impossible and undesirable to fully enforce it. *Arreola*, 2012 WL 6621148, at *5; *Ladson*, 138 Wn.2d at 358 & n.10. “Virtually the entire driving population is in violation of some regulation as soon as they get in their cars, or shortly thereafter.” *Ladson*, 138 Wn.2d at 358 n.10. Thus, traffic stops are ripe for being abused as the “legitimate” basis for a pretextual, warrantless seizure. The courts must ensure that the police exercise—but not abuse—discretion in determining which traffic infractions require police attention and enforcement efforts. *See Arreola*, 2012 WL 6621148, at *5-6.

Washington courts look to a totality of the circumstances, including both the subjective intent of the officer and the objective reasonableness of his or her behavior to determine whether a traffic stop was pretextual. *Arreola*, 2012 WL 6621148, at *6; *Ladson*, 138 Wn.2d at 359. The objective review is aimed at rooting out cases where “police officers . . . simply misrepresent their reasons and motives for conducting traffic stops.” *Arreola*, 2012 WL 6621148, at *6 (citing Samuel Walker, *Taming the System* 45-46 (1993) (which notes that imposition of the exclusionary rule led to an increase in the

“number of officers claiming the defendant had dropped narcotics on the ground”)).

The Washington Supreme Court’s recent decision in *Arreola* supplemented this test in the case of mixed-motive traffic stops. A mixed-motive traffic stop is one “based on both legitimate and illegitimate grounds.” *Arreola*, 2012 WL 6621148, at *6. In that case, the officer admitted he followed a vehicle that matched the description of a possible driving under the influence (DUI) in progress, did not observe any signs of DUI, but observed the vehicle had an altered exhaust in violation of RCW 46.37.390. *Id.* at *1. At that point the officer pulled over the vehicle and seized the driver, observed signs of alcohol use, and discovered the driver had outstanding warrants, on which basis he arrested the driver. *Id.* at *1-2. The Supreme Court held that such a mixed-motive traffic stop is not unconstitutionally pretextual so long as the lawfully-based motive for the stop was actual, independent and conscious. *Id.* at *7-8. Both subjective intent and objective circumstances must be considered in determining whether there was an actual, independent and conscious legal basis for the stop in addition to the unconstitutional, pretextual basis. *Id.* at *8.

The State bears the burden of proving the legality of a warrantless seizure by clear and convincing evidence. *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009). An appellate court reviews the constitutionality of a warrantless stop de novo. *Arreola*, 2012 WL 6621148, at *2; *State v. Martinez*, 135 Wn. App. 174, 179, 143 P.3d 855 (2006). Findings of fact are reviewed for substantial evidence, which is “evidence sufficient to persuade a fair-minded, rational person of the truth of the finding.” *State v. Montes-Malindas*, 144 Wn. App. 254, 259, 182 P.3d 999 (2008). In the event of a pretextual stop, all subsequently obtained evidence from the stop must be suppressed. *Ladson*, 138 Wn.2d at 357.

2. The trial court failed to hold the State to its burden of proof.

The trial court applied the wrong standard of proof in determining whether a valid exception to the warrant requirement granted the officers the authority to seize Mr. Jefferson. CP 87 (CL 4(h)). As stated, the State “bears a heavy burden to show” a warrantless search or seizure falls within one of the narrowly-drawn exceptions to the warrant requirement. *Garvin*, 166 Wn.2d at 250; *Ladson*, 138 Wn.2d at 71. The State must establish the exception by clear and convincing evidence. *Garvin*, 166 Wn.2d at 250.

Here, the trial court only required the State to prove an exception to the warrant requirement by the lesser preponderance of the evidence standard. CP 87 (CL 4(h)); *see* 6/20/12 RP 59 (oral ruling). This was error. Moreover, in light of the issues discussed below, the application of the lesser standard of proof had an appreciable effect on the outcome of the suppression hearing. In fact, the court even noted “it’s a close case” on the issue “whether or not the stop in the first instance was pretextual.” 6/20/12 RP 64.

3. Review of the totality of the circumstances demonstrates the traffic stop of Mr. Jefferson was pretextual.

Arguably, this case does not present the type of mixed-motive stop subject to *Arreola*’s actual, conscious and independent analysis. In *Arreola*, the officer admitted two bases for his traffic stop of the defendant: a constitutional basis and a non-constitutional motive. 2012 WL 6621148, at *1, 2. Here on the other hand, the officers admitted only a constitutional basis but the objective and subjective circumstances call into question whether that basis was the officers actual motive for initiating the stop. However the Court need not determine the reach of *Arreola* here because an analysis of the totality of the circumstances demonstrates the traffic stop here was pretextual in violation of article I, section 7 either because the officer’s proffered

basis was not actual, conscious and independent from the unlawful motive or because a general review of the objective and subjective reasons for the stop demonstrate pretext was the actual motive.

- a. The officers proffered basis for stopping Mr. Jefferson.

In court, the officers did not admit they effectuated a traffic stop to conduct a criminal investigation of Mr. Jefferson. Instead, they maintained they stopped Mr. Jefferson because they suspected him of not wearing a seatbelt.

Detective Miller testified that he requested DOC Specialist Rongen initiate a stop of Mr. Jefferson because he saw from the backseat of the Escalade through the windshield and Mr. Jefferson's tinted rear windshield that the cross-shoulder band of the driver's seatbelt appeared to be unused. 6/18/12 RP 15-18, 67. He claimed this was the sole basis for the stop. 6/18/12 RP 61. Detective Olmstead testified he confirmed Miller's observation after Miller stated it. 6/18/12 RP 134.

DOC Specialist Rongen testified he viewed Mr. Jefferson enter his vehicle without engaging the seatbelt in the gas station. 6/18/12 RP 88. At that time, he also saw Mr. Jefferson was black. 6/18/12 RP 112. He could not confirm that he did not follow Mr. Jefferson out of the gas

station into the street, or that he had not told the detectives of his observation. 6/18/12 RP 87-89. DOC Specialist Rongen confirmed Miller's observation, once openly noted, and initiated a stop of Mr. Jefferson's vehicle. 6/18/12 RP 87-90.

- b. The objective circumstances and subjective intent of the officers show the seizure of Mr. Jefferson was based on pretext.

This Court must look beyond the reason proffered by the officers to determine whether it was the actual basis for the stop. *Ladson*, 138 Wn.2d at 353. "Pretext is no substitute for reason." *Id.* at 356. As *Arreola* and *Ladson* dictate, such review must include both an object and subjective review of the totality of the circumstances. Here, a review of the totality of the circumstances demonstrates the State did not prove the seizure was based upon suspected violation of the traffic code.

First, these officers are not general patrol men; traffic stops are not their foremost duty. Instead, they are employed to reduce gang-related crime and reduce repeat offenses by individuals currently or previously under DOC supervision. Pretrial Exhibit 11 at p.2 (memorandum of understanding for Neighborhood Corrections Initiative). Detective Miller testified that as part of the gang unit, he is

“looking to bust bigger players.” 6/18/12 RP 61. Though the officers were not on any particular gang-related mission when they seized Mr. Jefferson, the circumstances indicate they were not motivated by protecting traffic safety. *See* 6/18/12 RP 132-33. The officers were using DOC Specialist Rongen’s black, unmarked Escalade, which Detective Olmstead testified is “by far the sneakiest of our cars and so people don’t usually know we’re the cops, so it’s a big advantage in police work.” 6/18/12 RP 36-37, 132. When they seized Mr. Jefferson, the officers had most recently been stationed at a gas station where they were running license plate numbers in search of criminal conduct. This was an active attempt to ferret out criminal activity. 6/18/12 RP 12-15, 36. Further, the officers acknowledged that stopping persons for suspected traffic infractions was a productive method of locating individuals related to their gang enforcement and DOC parolee tasks. 6/18/12 RP 103-04, 159. The court’s findings to the contrary are unsupported. *See* CP 84 (FF 1(d), (f), (g), (m)).

Upon seizing Mr. Jefferson, the officers promptly questioned him about the presence of drugs and guns. 6/18/12 RP 114-15, 163,

188.³ Moreover, although Detective Miller had a ticket book with him, the State did not show Detective Olmstead—who positioned himself on the driver’s side and questioned Mr. Jefferson—had a ticket book with him that day. *See* 6/18/12 RP38; CP 84 (FF 1(e)). This also tends to indicate the suspected traffic infraction was merely a pretextual basis for the stop. *Ladson* noted the “fundamental difference between the detention of a citizen by gang patrol officers aimed at discovering evidence of crimes, which is usually ‘hostile,’ and a community caretaking stop aimed at enforcement of the traffic code.” 138 Wn.2d at 358 n.10 (quoting *City of Seattle v. Messiani*, 110 Wn.2d 454, 458, 755 P.2d 775 (1988)).

At the same time, objective evidence of the officer’s citation records shows they did not often enforce the traffic code.⁴ In all of 2011, Detective Olmstead issued no traffic infractions. Pretrial Exhibit 2 at p.1 (cover email summarizing results of search). Detective Miller issued a mere two traffic infractions in 2011, both of which were issued

³ Finding of Fact 1(bb) is not supported by substantial evidence because it omits this evidence. This evidence also disproves the veracity of the court’s findings relating to the officers’ general purpose in conducting traffic stops. CP 84 (FF 1(d), (e), (f), (g)).

⁴ Again, this evidence disproves the veracity of the court’s findings relating to the officers’ general purpose in conducting traffic stops as well as the actual basis for the seizure at issue here. *E.g.*, CP 84 (FF 1(d), (e), (f), (g)).

for more serious violations than failing to wear a seatbelt. Pretrial Exhibit 2 at p.1-3 (infractions issued for driving without a valid license and speeding). In fact, here the officers did not issue Mr. Jefferson a citation for failing to wear a seatbelt. *State v. Minh Hoang*, 101 Wn. App. 732, 742, 6 P.3d 602 (2000) (failure to issue citation for infraction is among factors to be considered in pretext analysis), *review denied*, 142 Wn. 2d 1027, 21 P.3d 1149 (2001).

Statistics also demonstrate that the detectives are far more likely to seek out a black or minority subject. *Arreola*, 2012 WL 6621148, at *6 (noting impropriety of police using race as a factor in conducting a stop allegedly supported by enforcement of the traffic code). Well over half the traffic stops initiated by Detective Olmstead in 2011 were of black suspects. 6/18/12 RP 168-69; Pretrial Exhibit 19. Collectively, of the racial data that is available, 40 percent of the Detectives' traffic stop were of black suspects. CP 27; Pretrial Exhibit 19. "This is approximately eight times greater than the actual percentage of African-Americans in King County in 2011." CP 27-28 (citing King County Metro, Regional Stakeholder Task Force Resource Notebook 2010, Population by Ethnicity at CP 54; also noting this exceeds by almost twice the percentage of African-Americans arrested in King

County as compared to other ethnicities). DOC Specialist Rongen admitted he knew Mr. Jefferson's race when he saw him at the gas station and could tell Mr. Jefferson was black when following behind him immediately prior to the traffic stop. 6/18/12 RP 90-91, 112.

Objectively viewed several parts of the officers' testimony are not credible. *Contra* CP 86 (FF 1(II)). First, DOC Specialist Rongen testified he noticed Mr. Jefferson in the gas station parking lot, noted he had not put his seatbelt on, and knew he was black. 6/18/12 RP 88, 112. He claimed he could not remember whether he followed Mr. Jefferson out of the gas station. 6/18/12 RP 112. Though he thought he pulled out of the gas station before Mr. Jefferson, he had no explanation for how Mr. Jefferson would have then been in front of the Escalade after such a brief distance. 6/18/12 RP 123-25. Nonetheless, within moments of leaving the gas station, the officers were following Mr. Jefferson's car. 6/18/12 RP 88-89 (Olmstead noticed lack of seatbelt within 30 seconds and one to two blocks from gas station).⁵

Second, Detective Miller testified he could clearly make out the outline of the seatbelt while he was in the backseat of the Escalade that was two car-lengths behind Mr. Jefferson's vehicle, through the

⁵ The trial court's findings to the contrary are not supported by substantial evidence. CP 84 (FF 1(k), (l), (m), (n), (r), (u), (v)).

Escalade's windshield, and through the black-tinted rear windshield of Mr. Jefferson's vehicle. 6/18/12 RP 15-16, 50-51. Though he could make out the seatbelt, he claimed he could not tell Mr. Jefferson's race. 6/18/12 RP 21. He so testified even though DOC Specialist Rongen testified he could in fact tell the driver's race through the Escalade's windshield and the black-tinted rear windshield of the vehicle in front of it. 6/18/12 RP 90-91. The court's findings on this issue are equally not supported by substantial evidence. CP 84 (FF 1(k)); CP 85 (FF 1(o), (q), (s), (u), (v)); CP 86 (FF 1(l)).⁶

Furthermore, failing to wear a seatbelt is not a violation that endangers public safety beyond the individual driver. 6/18/12 RP 40. This distinguishes the suspected infraction here from the vehicle exhaust irregularity noted by the officer in *Arreola*. 2012 WL 6621148, at *4. And it further adds to the likelihood that the stop was premised on unlawful grounds.

⁶ At the suppression hearing, Mr. Jefferson sought to admit a video of Mr. Jefferson's van driving down a Seattle street as filmed from behind to demonstrate the lack of visibility through the tinted rear windshield. 6/18/12 RP 194-96; Pretrial Exhibit 20. The video demonstrates the officers' lack of credibility. Compare, e.g., 6/18/12 RP 15-16, 50-51, 21, 90-91 with Pretrial Exhibit 20. The video was entered into the record as an offer of proof, but the court refused to view it. 6/18/12 RP 195-96. Evidence is to be liberally admitted in a bench trial. *State v. Miles*, 77 Wn.2d 593, 601, 464 P.2d 723 (1970). In this pretrial hearing, the court should have at least viewed the video before determining whether to rely on it. This Court should hold the trial court abused its discretion.

The above review of the totality of the circumstances proves the stop was not based on constitutional grounds—it was calculated pretext to circumvent the narrow exceptions to the warrant requirement. This case is like *State v. Montes-Malindas*, 144 Wn. App. 254, 182 P.3d 999 (2008). In that case, the officer who initiated a seizure of the defendant testified his sole basis for the stop was to cite the driver for failing to engage his headlights. 144 Wn. App. at 260. The trial court found the officer’s testimony credible, and declined to suppress the resulting evidence seized during the traffic stop. *Id.* at 258, 260. On appeal, the court reviewed the totality of the circumstances, which included that the officer had observed the defendant acting nervously in a van, another individual leave the same van and depart the area, after which the defendant switched places with the gentleman in the driver’s seat. *Id.* at 257. The officer continued to watch the van occupants as they entered a store and quickly exited with a female. *Id.* The parties returned to the van and drove out of the parking lot in front of the officer, who noticed the headlights were not engaged. *Id.* The officer followed the van and the driver turned the headlights on within about 100 yards. *Id.* The officer stopped the van. *Id.* Though the officer testified he was on routine patrol and executed a traffic stop, the Court

of Appeals held the subjective and objective circumstances demonstrated the stop was pretext, including that the officer stopped the vehicle only after the headlights had been turned on; he did not issue a citation for the violation; no evidence showed the lack of headlights endangered other vehicles, pedestrians or property; and the officer called for backup. 144 Wn. App. at 261-62.

Like the court in *Montes-Malindas*, this Court must look behind the proffered basis for the stop to determine whether the subjective and objective circumstances show the seizure of Mr. Jefferson was constitutional by clear and convincing evidence. 144 Wn. App. at 261-62; *see Ladson*, 138 Wn.2d at 353; *Garvin*, 166 Wn.2d at 250. These officers were prowling for criminal violations when Mr. Jefferson, a black male, was spotted entering his vehicle without a seatbelt. Within moments, the officers were following Mr. Jefferson on the adjacent roadway where the officers claimed they could clearly see the outline of the driver's seatbelt dangling unengaged but could not tell the driver's race. Despite the lack of any endangerment to the public, two gang unit detectives and a DOC specialist decided to effectuate a traffic stop based on this suspected violation of the seatbelt requirement. However, the officers admitted that "enforcing the traffic code" is a

highly effective method for contacting criminals and effectuating their gang- and DOC-related duties. Moreover, Mr. Jefferson was not cited for the failure to wear a seatbelt, the arresting officer did not have a ticket book with him at the time, and among the few questions asked of Mr. Jefferson was whether he had any drugs or guns. Like in *Montes-Malindas*, these circumstances demonstrate the suspected seatbelt violation was merely a pretextual basis for the seizure of Mr. Jefferson. It was not an actual, independent and conscious ground for the seizure.

4. Because the traffic stop was a pretextual seizure, the evidence recovered during the stop should have been suppressed.

All evidence subsequently obtained from a pretextual stop must be suppressed. *Ladson*, 138 Wn.2d at 357. After seizing Mr. Jefferson, the officers discovered he had a gun on his person. This evidence should have been suppressed in the subsequent trial for unlawful possession of a firearm.

F. CONCLUSION

The traffic stop was merely a pretextual basis to conduct a criminal investigation of Diantrie Jefferson. Because the warrantless seizure violated article I, section 7, all subsequently-discovered evidence should have been suppressed. Accordingly, the resulting

conviction for unlawful possession of a firearm should be reversed and
the matter remanded.

DATED this 17th day of January, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Zink', written over a horizontal line.

Marla L. Zink – WSBA 39042
Washington Appellate Project
Attorney for Appellant

APPENDIX

FILED
KING COUNTY, WASHINGTON
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 11-1-08169-5 SEA
)	
vs.)	
)	WRITTEN FINDINGS OF FACT AND
DIANTRIE LATREZ JEFFERSON,)	CONCLUSIONS OF LAW ON CrR 3.6
)	MOTION TO SUPPRESS PHYSICAL,
Defendant,)	ORAL OR IDENTIFICATION
)	EVIDENCE
)	
)	

A hearing on the admissibility of physical, oral, or identification evidence was held on June 18th and 20th, 2012, before the Honorable Judge McCarthy. After considering the evidence submitted by the parties, to wit: the testimony of Detective Matthew Olmstead, Detective Todd Miller, Specialist Kris Rongen, and the defendant, and hearing argument, the court makes the following findings of fact and conclusions of law as required by CrR 3.6:

1. FINDINGS OF FACT:

- a) On October 29, 2011, Detective Matthew Olmstead and Detective Todd Miller were members of the King County Sheriff's Office Burien Gang Unit. (NCL) *Tom*
- b) As part of the Neighborhood Corrections Initiative, Specialist Kris Rongen of the Washington State Department of Corrections was assigned to work with the King County Sheriff's Office, and operated as part of the Gang Unit.
- c) Members of the Gang Unit (including the DOC specialist) perform a variety of functions. They frequently operate in two- or three-person teams, which sometimes include a DOC Specialist (there is one DOC specialist and approximately five or six Sheriff's detectives in the unit).

1 d) Although the Gang Unit's primary mission in having detectives and a DOC specialist
2 work as a team is to better detect and address criminal behavior in community, Gang
3 Unit detectives also have a secondary function of enforcing traffic laws when they
4 observe violations. When not involved in gang- or DOC-specific operations, Gang Unit
5 members spend a portion of their on-duty time on standard patrol, similar to any other
6 Sheriff's deputy. *Rongen testified that "traffic is how
7 YOU MAKE CONTACT WITH THE COMMUNITY TO ACHIEVE (M) GOALS" "RUNNING PLATES"*

8 e) On the afternoon of October 29, 2011, Detective Miller, Detective Olmstead, and
9 Specialist Rongen were on standard patrol, working as a team and travelling in ~~the a~~
10 black Sport Utility Vehicle that had been issued to Specialist Rongen by the Department
11 of Corrections, which was the vehicle the detectives always used when working with
12 Specialist Rongen. *CADILLAC ESCALADE*

13 f) Although Detectives Miller and Olmstead did not have a radar gun in the vehicle, ~~they~~
14 had a ticket book and an electronic copy of the traffic code, and were prepared to handle
15 traffic infractions when they observed them. *Detective Miller*

16 g) Detectives Miller and Olmstead regularly conducted traffic stops for traffic violations
17 that they observed while on patrol, though they frequently resolved such stops with
18 warnings rather than citations.

19 h) At approximately 2:30pm on October 29, 2011, Detective Miller, Detective Olmstead,
20 and Specialist Rongen were in the SUV at a gas station south of the intersection of 1st
21 Avenue South and Southwest 112th Street in unincorporated King County. Specialist
22 Rongen was driving, Detective Olmstead was in the front passenger seat, and Detective
23 Miller was in a rear passenger seat. *ESCALADE*

24 i) While at the gas station, Specialist Rongen saw the defendant get into the driver's seat
of his vehicle and noticed that the defendant did not immediately fasten his seatbelt. At
the time of this observation, the defendant's vehicle was still stopped at the gas station. *a black male*

j) The defendant's vehicle was a silver 1996 Plymouth Voyager minivan.

k) Specialist Rongen does not remember whether he said anything about his observation at
that time, ~~but it would be his custom not to say anything until a driver actually began to~~
~~drive on the road without his seatbelt.~~ *RM*

l) The officers then continued their patrol, looping northbound back through the gas
station parking lot and exiting directly onto 1st Avenue South, driving northbound.

m) Meanwhile, the defendant drove south out of the gas station, exiting onto eastbound
Southwest 114th Street, and then immediately turning northbound onto 1st Avenue
South. Shortly thereafter, the defendant's vehicle ended up in front of the officer's
SUV. *Rongen testified that they were not specifically*

n) As the officers were driving northbound on 1st Avenue South near Southwest 112th
Street, Detective Miller noticed the defendant's vehicle for the first time. *RECALL IF IN FACT THEY ACTUALLY FOLLOWED HIM OUT OF
NOT the GAS STATION.*

- 1 o) The defendant's vehicle was directly in front of the officers' SUV, and Detective Miller
2 could see through the tinted rear windshield that the shoulder strap of the driver's
3 seatbelt was hanging vertically to the driver's left, rather than crossing in front of the
4 driver's torso.
- 5 p) Although Detective Miller knew from experience that some cars have a shoulder belt
6 that is not connected to the lap belt, in Detective Miller's experience such cars are
7 primarily from the 1980s. Detective Miller has never encountered a vehicle of the same
8 type and time period as the defendant's vehicle in which the lap belt can be worn
9 without also wearing the shoulder belt.
- 10 q) Based on his observations, Detective Miller believed that the driver of the vehicle, later
11 identified as the defendant, was not wearing a seatbelt in violation of RCW
12 46.61.688(3).
- 13 r) At that time, Detective Miller did not know what race the defendant was.
- 14 s) Detective Miller ^{TESTIFIED THAT HE} commented to Detective Olmstead and Specialist Rongen that the
15 defendant was not wearing his seatbelt, and Detective Olmstead and Specialist Rongen
16 each visually confirmed that the shoulder strap of the defendant's seatbelt was hanging
17 vertically to the defendant's left, rather than crossing in front of his torso. *Am*
- 18 t) ~~One of the detectives~~ ^{DETECTIVE MILLER} then instructed Specialist Rongen to initiate a traffic stop of the
19 defendant's vehicle. *Am*
- 20 u) Other than Specialist Rongen's earlier observation at the gas station, none of the
21 officers had any previous knowledge of the defendant or his vehicle.
- 22 v) At the time that the decision was made to stop the defendant's vehicle, the officers had
23 no reason to suspect, and did not suspect, that the defendant was involved in any
24 criminal behavior.
- w) When Specialist Rongen activated the vehicle's emergency lights, the defendant turned
into a church parking lot and parked in a parking space. ~~In Detective Olmstead's
experience, taking the time to do that during a traffic stop is very unusual.~~ *Am*
- x) After the defendant parked his vehicle, Detective Olmstead approached the vehicle on
the driver's side as Detective Miller approached the passenger side. Specialist Rongen
stood by a short distance away from Detective Olmstead.
- y) Upon approaching the defendant's vehicle, the officers observed that the defendant was
the sole occupant, and was in fact not wearing any part of a seatbelt.
- z) At some point prior to reaching the defendant's vehicle, the officers learned that the
defendant, who was the registered owner of the vehicle, was a convicted felon.
- aa) When Detective Olmstead contacted the defendant, he said words to the effect of "hey
bud, you weren't wearing a seatbelt."

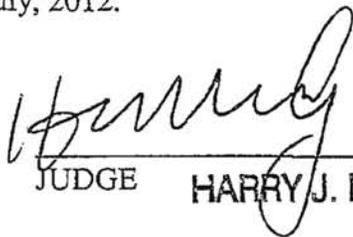
- 1 bb) Detective Olmstead then asked the defendant for his driver's license, which the
2 defendant provided. *OLMSTEAD COULDN'T RECALL IF THE*
DEFENDANT HANDED HIM A DRIVER'S LICENSE.
- 3 cc) As Detective Olmstead interacted with the defendant, he observed that the defendant
4 was extremely nervous, far in excess of what was normal for someone who had been
5 pulled over for a traffic violation. The officers observed that the defendant's hand was
6 visibly trembling and that he was repeating questions that he was asked.
- 7 dd) Detective Olmstead said to the defendant words to the effect of "you're so nervous,
8 you're making me nervous."
- 9 ee) Based on the defendant's nervousness, the fact that he had taken the time to park his
10 vehicle in a parking space when pulled over, and the knowledge that the defendant was
11 a convicted felon, Detective Olmstead was concerned that the defendant was armed and
12 posed a threat to the officers' safety. For that reason, Detective Olmstead directed the
13 defendant to step out of the vehicle. *Am*
- 14 ff) In the moments before the defendant began to exit the vehicle, Detective Miller noticed
15 a black plastic clip on the outer right side of the waistband of the defendant's
16 sweatpants, which appeared to be holding something inside the defendant's pants. In
17 Detective Miller's experience, such a clip, worn in such a manner, indicates a gun
18 holster on the inside of a person's pants. *and because of the*
defendant's nervousness,
- 19 gg) By the time Detective Miller had processed what he had seen, the defendant was
20 moving to exit the vehicle. As the defendant moved, Detective Miller saw a bulge
21 below the clip that was dragging down the defendant's waistband, indicating that the
22 clip was supporting something heavy.
- 23 hh) Detective Miller shouted "gun" to alert the other officers to what he had seen, and
24 Detective Olmstead and Specialist Rongen then took control of the defendant, who was
still in the process of exiting the vehicle, and placed him in handcuffs.
- ii) Detective Miller then approached the defendant and asked if he was carrying a gun. The
defendant responded affirmatively.
- jj) Detective Miller then asked the defendant if the gun would go off if it were removed
from the holster. After the defendant indicated that it would not, Detective Miller
removed a loaded handgun from a holster inside the defendant's sweatpants.
- kk) The defendant was then placed under arrest for Unlawful Possession of a Firearm.
- ll) The Court finds the testimony of Detective Olmstead, Detective Miller, and Specialist
Rongen to be credible.
- mm) The Court finds the testimony of the defendant to be credible except as to the issue of
whether the defendant's nervousness had anything to do with the fact that the defendant
knew he was illegally possessing a firearm.

1 4. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE EVIDENCE
2 SOUGHT TO BE SUPPRESSED:

- 3 a) Based on the officers' observations as they were driving behind the defendant's vehicle,
4 there was both reasonable suspicion and probable cause to believe that the defendant
5 was committing a traffic violation by driving without a seatbelt in violation of RCW
6 46.61.688(3).
- 7 b) The true reason, and the only reason, for the stop of the defendant's vehicle was to
8 investigate the seatbelt violation.
- 9 c) Because the initial traffic stop of the defendant's vehicle was not pretextual and was
10 supported by reasonable and articulable suspicion that the defendant was committing a
11 traffic violation, the stop was lawful.
- 12 d) Based on the totality of the circumstances, including the defendant's extreme
13 nervousness, the fact that he had taken the time to park his vehicle in a parking space
14 when pulled over, and the knowledge that the defendant was a convicted felon,
15 Detective Olmstead had a reasonable and articulable suspicion that the defendant was
16 armed, and was justified in instructing the defendant to exit the vehicle based on his
17 concern for officer safety.
- 18 e) Removing the defendant from the vehicle was a de minimis invasion of the defendant's
19 privacy right, and did not exceed the permissible scope of a traffic stop.
- 20 f) Even if the circumstances known to Detective Olmstead at the time of his instruction to
21 exit the vehicle had not justified such a command, Detective Miller's observation of a
22 clip at the defendant's waistband in the moments immediately before the defendant
23 began to exit the vehicle provided an additional and independent basis to believe that
24 the defendant was armed and to order him out of the vehicle.
- g) Detective Miller's observation of a clip at the defendant's waistband in the moments
immediately before the defendant began to exit the vehicle, and the knowledge that the
defendant was a convicted felon, created a reasonable suspicion that the defendant was
committing a crime, justifying a Terry investigative stop.
- h) Because (1) the initial traffic stop was lawful, (2) Detective Olmstead's instruction to
exit the vehicle did not exceed the permissible scope of a traffic stop, and (3) Detective
Miller's observation of a clip before the defendant began to exit the vehicle created a
reasonable suspicion justifying a Terry stop independent of Detective Olmstead's
instruction, the recovery of the firearm was lawful and the defendant's motion to
suppress is denied in its entirety. *The STATE HAS CARRIED ITS BURDEN
BY A PREPONDERANCE OF THE EVIDENCE.*

In addition to the above written findings and conclusions, the court incorporates by
reference its oral findings and conclusions.

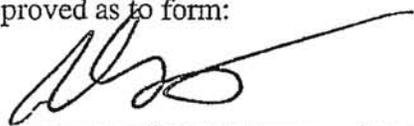
Signed this 25 day of July, 2012.


JUDGE HARRY J. McCARTHY

Presented by:


Stephanie Finn Guthrie, WSBA #43033
Deputy Prosecuting Attorney

Approved as to form:


Bob Goldsmith, WSBA # 12265
Attorney for Defendant

*with objection on pleadings
filed on 7/23/12 &
stated on the record on 7/25/12*

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FILED
KING COUNTY, WASHINGTON
JUL 25 2012
SUPERIOR COURT CLERK

JUL 25 2012
COPY TO COURT OF APPEALS

IN KING COUNTY SUPERIOR COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

DIANTRIE LATREZ JEFFERSON,

Defendant.

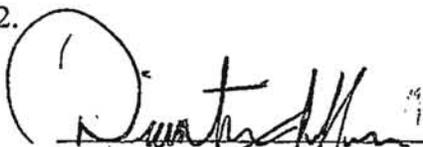
NO. No. 11-1-08169-5 SEA

NOTICE OF APPEAL

NOTICE OF APPEAL

The defendant, Diantrie Jefferson, defendant, seeks review by the Court of Appeals of the judgment and sentence entered on: July 25 2012.

Dated: 7/24/12


Defendant's Signature

1334 15th AVE N.E. F-204
Address

SEATTLE WA 98125#

NOTICE OF APPEAL - 1

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Stephanie Guthrie
Plaintiff's Attorney/WSBA #
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Defendant's Attorney/WSBA # 12265
R-GOLDSMITH
705 Second Ave., #1300
Seattle, WA 98104

Dated: July __, 2012.

NOTICE OF APPEAL - 2

ROBERT W. GOLDSMITH
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 69119-8-I
v.)	
)	
DIANTRIE JEFFERSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 17TH DAY OF JANUARY, 2013, 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:

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KING COUNTY COURTHOUSE
516 THIRD AVENUE, W-554
SEATTLE, WA 98104</p> | <p>(X)
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| <p>[X] DIANTRIE JEFFERSON
13341 15TH AVE NE
APT F-204
SEATTLE, WA 98125</p> | <p>(X)
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SIGNED IN SEATTLE, WASHINGTON THIS 17TH DAY OF JANUARY, 2013.

X _____ 

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