

NO. 34261-8

FILED
COURT OF APPEALS

05 NOV 11 PM 2:57

STATE OF WASHINGTON

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

BY *SW*
CITY

STATE OF WASHINGTON, RESPONDENT

v.

ANDREW L. MAGEE, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Beverly G. Grant

No. 05-2-09617-4

BRIEF OF RESPONDENT

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Prosecuting Attorney

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

1. Was there sufficient evidence for the court to have found that the defendant committed negligent driving in the second degree? (Appellant's "Issue for Review" No. 1, 2, 3, 5, 6, 7)?
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B. STATEMENT OF THE CASE.

1. Procedure

On April 9, 2005, Andrew L. Magee, hereinafter “defendant,” was cited for negligent driving in the second degree, contrary to RCW 46.61.525, for driving the wrong direction on State Route 512. CP (Administrative Record¹, Appendix “A,” Infraction).

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

A hearing was held before the Honorable Judge Margaret Ross on June 21, 2005. CP 23-32. The court stated:

...unless you were airlifted, you were going the opposite direction of what the natural flow of traffic. Perhaps there is marked difference between being on the shoulder or being on the onramp or being on actual 512, but if you are going the wrong way which it’s uncontroverted that your vehicle was going the opposite direction.... I think that the Officer’s testimony was credible. I’m not finding a distinction between driving on the shoulder and driving

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

on the actual paved highway of 512 or even on the on-ramp. Even if I believe everything you have told me about this being on an onramp, you going the wrong way on that endangers people. Reasonably prudent persons ... don't drive the wrong way, even on an onramp.

CP 32.

The court found that defendant had committed the infraction of negligent driving in the second degree, contrary to RCW 46.61.525. Id.

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

On December 3, 2005, the court denied the defendant's motion for reconsideration. CP 83. This court accepted review.

2. Facts

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

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

Trooper Randall approached the defendant who admitted that he had driven the wrong way on the highway in order to meet Mr. Hershey to help him with his car. CP 26. The defendant told Trooper Randall that he had driven down to Benston Drive, turned on the shoulder of the road, and then driven back the wrong direction against traffic so that his car would be "nose-to-nose" with Mr. Hershey's car. CP 28. The defendant further acknowledged that driving the wrong direction on State Route 512 was a "very dangerous thing to do" and that he understood why Trooper Randall was citing him for negligent driving. CP 28, 32.

There was not enough space on the shoulder of the road for the defendant to completely turn his car around on the shoulder without crossing into the lanes of travel on State Route 512. CP 28-29.

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

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

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

C. ARGUMENT.

1. THERE WAS SUFFICIENT EVIDENCE FOR THE COURT TO HAVE FOUND THAT THE DEFENDANT COMMITTED NEGLIGENT DRIVING IN THE SECOND DEGREE.

There is sufficient evidence that a defendant committed a traffic infraction if all the evidence properly admitted during the evidentiary phases of the case, when viewed as a whole, supports a finding that the

infraction was committed. State v. Roberts, 73 Wn. App. 141, 867 P.2d 697 (1994). Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1987). The reviewing court draws all inferences from the evidence in favor of the State and most strongly against the defendant. State v. Joy, 121 Wn.2d 333, 339, 851 P.2d 654 (1993). This Court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

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

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

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

First, the evidence in this case showed that defendant operated a motor vehicle. He drove his car westbound, the wrong direction, on the eastbound lanes of State Route 512. When Trooper Randall contacted defendant on the shoulder of State Route 512, he admitted that he was driving his car and that he was aware that he was driving against the flow of traffic on State Route 512. CP 28. Trooper Randall testified that there was not enough space on the shoulder of the road for defendant to completely turn his car around on the shoulder without crossing into oncoming traffic on State Route 512. CP 28-29. Defendant admitted he had driven his car against the flow of traffic on State Route 512, so that he could be “nose-to-nose” with Mr. Hershey’s car. Id. While defendant asserted that the trooper never saw him driving the wrong way, she did see his car parked facing the wrong way. Id. Defendant further asserts that the 911 callers’ statements are hearsay. Brief of Appellant at 4, 22. This argument also fails in light of defendant’s statements to the trooper at the scene.

Second, defendant's conduct was negligent. Under the statute, "negligent" is defined as "the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances." RCW 46.61.525(2). A reasonable person would not drive the wrong direction on a highway such as State Route 512. The defendant or Mr. Hershey could have easily called the Washington State Patrol, the local Police Department, or a tow truck to come and assist Mr. Hershey with his car. Unlike defendant, a police agency would have been able to coordinate or alert traffic to the dangerous situation of a car moving the wrong direction on a highway access ramp, or officers could have blocked traffic from that lane while they restarted his car. Police vehicles and tow trucks are equipped with emergency lights to alert motorists. Law enforcement officers and tow truck drivers have training in how to safely handle these situations.

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

hit another driver, other driver's might have been forced to maneuver to avoid defendant's car, only to travel into another lane and strike another car because of the close confines of highways. When the dangers of driving the wrong direction on State Route 512 were explained to defendant by Trooper Randall, he acknowledged that it was "a very dangerous thing to do." CP 28.

The evidence in this case showed that defendant drove his car westbound, the wrong direction, on the eastbound lanes of State Route 512. When Trooper Randall contacted defendant on the shoulder of State Route 512, he admitted that he was driving his car and that he was aware that he was driving against the flow of traffic. Viewed in the light most favorable to the State, there was ample evidence to show that defendant committed the infraction of negligent driving in the second degree. The defendant relies on Campbell v. Department of Licensing, 31 Wn. App. 833, 644 P.2d 1219 (1982). Campbell does not apply to the case at bar.

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

The case at bar is distinguishable from Campbell. In the present case, Trooper Randall received a call of a vehicle traveling the wrong way on the freeway. CP 25-27. Upon arrival at the scene Trooper Randall observes the defendant's vehicle facing the wrong direction on the freeway. CP 25. The defendant was already stopped on the side of the freeway and, unlike the officer in Campbell, Trooper Randall did not stop the defendant—he was already on the side of the road. Moreover, before contacting the defendant, Trooper Randall personally observed evidence that the defendant had traveled on the freeway in the wrong direction because she observed that the defendant's vehicle was facing the wrong direction. As the trial court noted, unless the defendant's vehicle was "airlifted" to the shoulder facing the wrong direction, the defendant must have driven it there. CP 32. Trooper Randall did not merely contact the defendant on the sole basis of the 911 call. Rather, Trooper Randall observed that the defendant's vehicle was facing the wrong direction on the shoulder when she arrived at the scene, which corroborated the caller's report of a vehicle driving against traffic. This was further corroborated by the defendant's own statements that he drove the wrong way and that it was "a very dangerous thing to do." CP 25-26,

28. This corroborating evidence was not present in Campbell before the officer stopped that vehicle. The analysis in Campbell does not apply to the case at bar.

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

The defendant asserts that the trial court could have made a committed finding under RCW 46.61.150 or RCW 46.61.155, and therefore the court should have articulated which “theory” it was finding to have occurred. The court did not need to make such a finding, however, because RCW 46.61.155 is not applicable to this case. The defendant states that RCW 46.61.155 prohibits “wrong way on freeway access,” but in fact it prohibits vehicles from driving on limited access

roadways. The court found that whether the defendant drove the wrong way on the on ramp, or on the roadway, that it constituted a violation of RCW 46.61.150.

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

2. THE TRIAL COURT PROPERLY IMPOSED A
LAWFUL SENTENCE, AND THE DEFENDANT
NEVER REQUESTED A DEFERRED FINDING AT THE
CONCLUSION OF THE HEARING.

The defendant argues that the “procedural alternative” of dismissal with costs or deferred finding was not offered to him. Brief of Appellant at 29. The defendant never indicated to the trial court that he wanted a deferred finding. The trial court acted within its discretion in imposing a lawful sentence. The defendant has not articulated a basis for this court to find that the sentence imposed was not lawful.

3. THE DEFENDANT WAS PROVIDED WITH ALL
PROPER DISCOVERY.

Discovery in this case was governed by the infraction rules of limited jurisdiction.

Upon written demand of the defendant at least 14 days before a contested hearing, the plaintiff's lawyer shall at least 7 days before the hearing provide the defendant or defendant's lawyer with a list of the witnesses the plaintiff intends to call at the hearing and a copy of the citing officer's sworn statement if it will be offered into evidence at the hearing. ... ***No other discovery shall be required.*** Neither party is precluded from investigating the case, and neither party shall impede another party's investigation.

IRLJ 3.1(b) (emphasis added).

Under IRLJ 3.1(b), the State is only required to turn over (1) a list of the witnesses plaintiff intends to call at the hearing, and (2) a copy of

the citing officer's sworn statement, but only if it will be offered into evidence at the hearing. Defendant was provided with both in a timely manner. See also State v. Sullivan, 143 Wn.2d 178-79, 19 P.3d 1012 (2001).

Defendant's notice of appearance and demand for discovery was overbroad in its request for several items that he was not entitled to under the IRLJ 3.1(a). Beyond the list of witnesses and the copy of the officer's sworn statement, defendant demanded that the State provide (1) a list of all items the Prosecutor intends to use at trial, (2) notice of prior convictions of defendant and other potential witnesses, (3) disclosure of exculpatory evidence, (4) disclosure of all investigator's contacts made by persons action on behalf of Prosecution including domestic violence advocates, and (5) 911 tapes, CAD sheet printouts, and videotapes. CP (Discovery demand). Defendant has not cited *any* authority that obligates the State to produce any more discovery than was produced in this case.

Defendant's demand for discovery requested that the plaintiff provide more information than the plaintiff is required to provide under the rules. Neither the clerk nor the State is required to provide defendant with these items under the IRLJ rules. IRLJ 3.1(b). Defendant was not

prohibited or hindered from discovering the names of any witnesses who called into 911 regarding his car driving the wrong way on State Route 512.

Defendant admits in his brief that the court clerk provided him with a copy of the citation and the sworn statement of Trooper Randall attached to the back of the citation at the time he filed his demand for discovery. Brief of Appellant at 9. Trooper Randall's statement declared "The [defendant] drove the wrong way on [State Route] 512 to assist a friend with a jumpstart. I explained to him the danger of driving the wrong way on a [highway and] he said he understood." CP (Administrative Record, Appendix "C," Defendant's Request for Discovery).

Moreover, defendant filed a motion to subpoena Trooper Randall to appear at the hearing date. CP (Administrative Record, Appendix "B," Request for Subpoena). Defendant also requested that Trooper Randall appear as a witness, and Trooper Randall was the only witness for the State at the hearing.

Defendant was provided with the citing officer's statement who was the only witness for the State at the hearing, which is all that is required under IRLJ 3.1(b).

4. THE STATE'S RESPONSE TO THE DEFENDANT'S MOTION FOR DISCRETIONARY REVIEW WAS TIMELY FILED, AND EVEN IF THE STATE'S RESPONSE WAS UNTIMELY, SUCH ISSUE IS MOOT AS THIS COURT HAS ACCEPTED DISCRETIONARY REVIEW.

The defendant asserts that the State's response to the motion for discretionary review was untimely. Brief of Appellant at 35. As indicated in the State's response to the defendant's motion to dismiss, the State did file a timely response brief. Such issue, however, is moot because this court has accepted review. It appears that the defendant is requesting that his "motion for discretionary review and appeal" be considered unopposed because of his allegation that the State's response brief was untimely. Brief of Appellant at 39-40. The defendant cites no authority for such request, and does not provide any argument as to how such argument is applicable once this court accepted review. The defendant's claim is without merit.

5. THE DEFENDANT HAS FAILED TO PROVIDE A SUFFICIENT RECORD TO FIND THAT THE SUPERIOR COURT ABUSED ITS DISCRETION IN ALLOWING LATE FILING OF THE STATE'S RESPONSE BRIEF BELOW.

The defendant asserts error in the Superior Court's ruling, but fails to provide the necessary transcripts for this court to conduct such a review. By his own admission, the court continued the case after the State filed its brief in order to allow the defendant time to file a reply. See Brief of

Appellant at 44. The defendant cannot show prejudice. The defendant also indicates that the State had indicated that the response brief was late due to a hospitalization. Brief of Appellant at 43. All of the factual assertions made by the defendant in his argument are without citation to any record. See Brief of Appellant at 41-45. Without the record of the proceedings below, the State is unable to respond to the merits of the defendant's claim. It appears, however, that the court granted a continuance and allowed the defendant adequate time to file a reply brief. The defendant cannot establish prejudice and has not provided the record needed for this court to review this issue.

D. CONCLUSION.

For the abovementioned reasons, the State requests that the trial court's finding of committed be affirmed.

DATED: October 31, 2006.

GERALD A. HORNE
Pierce County
Prosecuting Attorney



MICHELLE HYER
Deputy Prosecuting Attorney
WSB # 32724

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11/10/06 
Date Signature

FILED
COUNTY CLERK
06 NOV -1 PM 2:57
STATE OF WASHINGTON
BY _____

APPENDIX "A"

Infraction

INFRACTION TRAFFI NON-TRAFFIC I 43463

IN THE DISTRICT MUNICIPAL COURT OF TACOMA WASHINGTON

STATE OF WASHINGTON PLAINTIFF VS. NAMED DEFENDANT
 COUNTY OF PIERCE 01/03 WA027013J (du)

L.E.A. ORI #: WAWSP 00 COURT ORI #:

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. MAGEE AL 380MG WA 06 STATE WA EXPIRES PHOTO I.D. ON PERSON YES NO

NAME: LAST MAGEE, FIRST ANDREW, MIDDLE LUKE.

ADDRESS 4104 E. EDgewater PL # 153X IF NEW ADDRESS PASSENGER

CITY SEATTLE, WA 98112 EMPLOYER LOCATION

DATE OF BIRTH 07/07/62 RACE M SEX M HEIGHT 61 WEIGHT 208 EYES BRN HAIR BKO

RESIDENTIAL PHONE NO. CELL/PAGER NO. WORK PHONE NO.

VIOLATION DATE MONTH 04 DAY 09 YEAR 05 TIME 1150 INTERPRETER NEEDED LANG.

AT LOCATION EB SRS12 <-> BENSTON DR. PIONEER PIERCE

HIGH QUALITY ORIGINAL

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO. 75220T STATE WA 05 EXPIRES VEHICLE MAKE SUBBU MODEL SW - 074

TRAILER #1 LICENSE NO. STATE EXPIRES TR. YR. TRAILER #2 LICENSE NO. STATE EXPIRES TR. YR.

OWNER/COMPANY IF OTHER THAN DRIVER SAME

ADDRESS CITY STATE ZIP CODE

ACCIDENT COMMERCIAL YES NO HAZARD YES NO EXEMPT FARM FIRE R.V. OTHER

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

#1 VIOLATION/STATUTE CODE 46.61.525 VEHICLE SPEED IN A ZONE SMD PACE AIRCR/

NEGULENT DRIVING - 2ND DEGREE

#2 VIOLATION/STATUTE CODE

WRONG WAY ON SRS12

#3 VIOLATION/STATUTE CODE

5Y4346327 MAGEE, ANDREW LUKE

REC'D PCDC APR 11 2005 PENALTY U.S. \$ 538 - DATE ISSUED 070905

WITHOUT ADMITTING TO HAVING COMMITTED EACH OF THE ABOVE OFFENSES, BY SIGNING THIS DOCUMENT I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF INFRACTION AND PROMISE TO RESPOND AS DIRECTED ON THIS NOTICE.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S), AND MY REPORT WRITTEN ON THE BACK OF THIS DOCUMENT OR ATTACHED TO THIS INFRACTION IS TRUE AND CORRECT.

DEFENDANT'S SIGNATURE [Signature] OFFICER [Signature] 1167

ABSTRACT OF JUDGMENT

INF	RESPONSE	DISPOSITION	PENALTY	SUSPENDED	SUB-TOTAL	FNDG/JDGT DATE
1	C NC	C NC D P DF	\$	\$	\$	ABSTRACT MLD TO OLYMPIA
2	C NC	C NC D P DF	\$	\$	\$	
3	C NC	C NC D P DF	\$	\$	\$	
TOTAL COSTS \$						

4346327

PACE

I observed the defendant in excess of _____ .ll-posted speed limit. I paced the defendant for approximately _____ mile(s). I maintained a constant distance of approximately _____ car lengths. I paced the defendant at a speed of _____ MPH. My patrol car speedometer is checked for accuracy every 90 days by RADAR. It was last checked on _____ with _____ RADAR unit. The speedometer is checked at the speeds of 30 and 60 MPH.

RADAR

I observed the defendant approaching my location in excess of the _____ MPH posted speed limit. I obtained a high audio signal as the defendant entered the RADAR. I obtained a reading of _____ MPH. The defendant was the only vehicle in the RADAR beam at the time I obtained the above reading. The calibration of _____ a / Trooper / KR 11 / Falcon Radar unit, was checked internally and externally by as assigned tuning fork at the start and end of my shift. The above RADAR unit was functioning properly and was in good working order at the time the above speed was obtained on the defendant. I was trained and certified on the RADAR at the WSP academy. Tuning fork numbers # _____

LASER

I observed the defendant approaching/receding my location in excess of the posted speed limit. I obtained a _____ MPH reading on the defendant's vehicle at the distance of _____ feet. The LTI 20-20 / Kustom Pro Laser II / Laser III SMD, # L _____ has been certified by the factory and State Patrol Technicians and found to be in proper working order. On the day the above mentioned speed was obtained on the defendant, the LASER SMD's accuracy was checked by: (1) internal self diagnostic test, (2) scope alignment test, and (3) the fixed distance/zero velocity test at _____ 100 feet prior to the beginning and end of my shift. I have been trained in the use and operation of the SMD device.

FOLLOWING TOO CLOSELY

I observed the defendant following a vehicle traveling to the front at a distance of approximately _____ feet while traveling at a speed of approximately _____ MPH.

SEATBELT/CHILD RESTRAINT

Upon and/or prior to contacting the defendant I noticed that:

- He/She was not wearing a seatbelt.
- I observed the defendant put on their seatbelt prior to/after being stopped
- A child less than 3 years of age was not properly restrained
- A child less than 10, but at least 3 years of age was not restrained
- A person less than 16, but at least 10 was not wearing a seat belt

VEHICLE LICENSE TABS

A DOL check of the defendant's vehicle showed the license tabs expired on _____

1902 96th Street South
Tacoma WA 98444
(253) 798-7474

POOR QUALITY ORIGINAL

157
ye

27

POOR QUALITY ORIGINAL

IF MUNICIPAL DISTRICT COUNTY

DISTRICT OF WASHINGTON
COUNTY OF KING

CITY/TOWN OF SEATTLE

L.E.A. OR I.F. WANSPI

THE UNDERSIGNED

DRIVER LICENSE NO. MA366

NAME MARCE

ADDRESS 1111A

DATE OF BIRTH 5-17-76

RESIDENTIAL PHONE NO. 206-706-1000

DRIVING WHILE LICENSE SUSPENDED/REVOKED

A Department of Licensing computer check stated the defendant's license was Suspended/Revoke in the _____ degree.

- The defendant was identified via State/Government License/ID card
- The defendant was identified via a DOL driver check return

NO VALID OPERATORS LICENSE

- The defendant did not or could not provide their Driver's License upon demand.
- DOL did not show the defendant to have a current or valid Driver's License
- DOL showed the defendant to have a Driver's License that expired on _____

NO PROOF OF INSURANCE

Upon contact, the defendant was unable to provide valid proof of insurance.

EQUIPMENT VIOLATION(S)

I observed the defendant's vehicle:

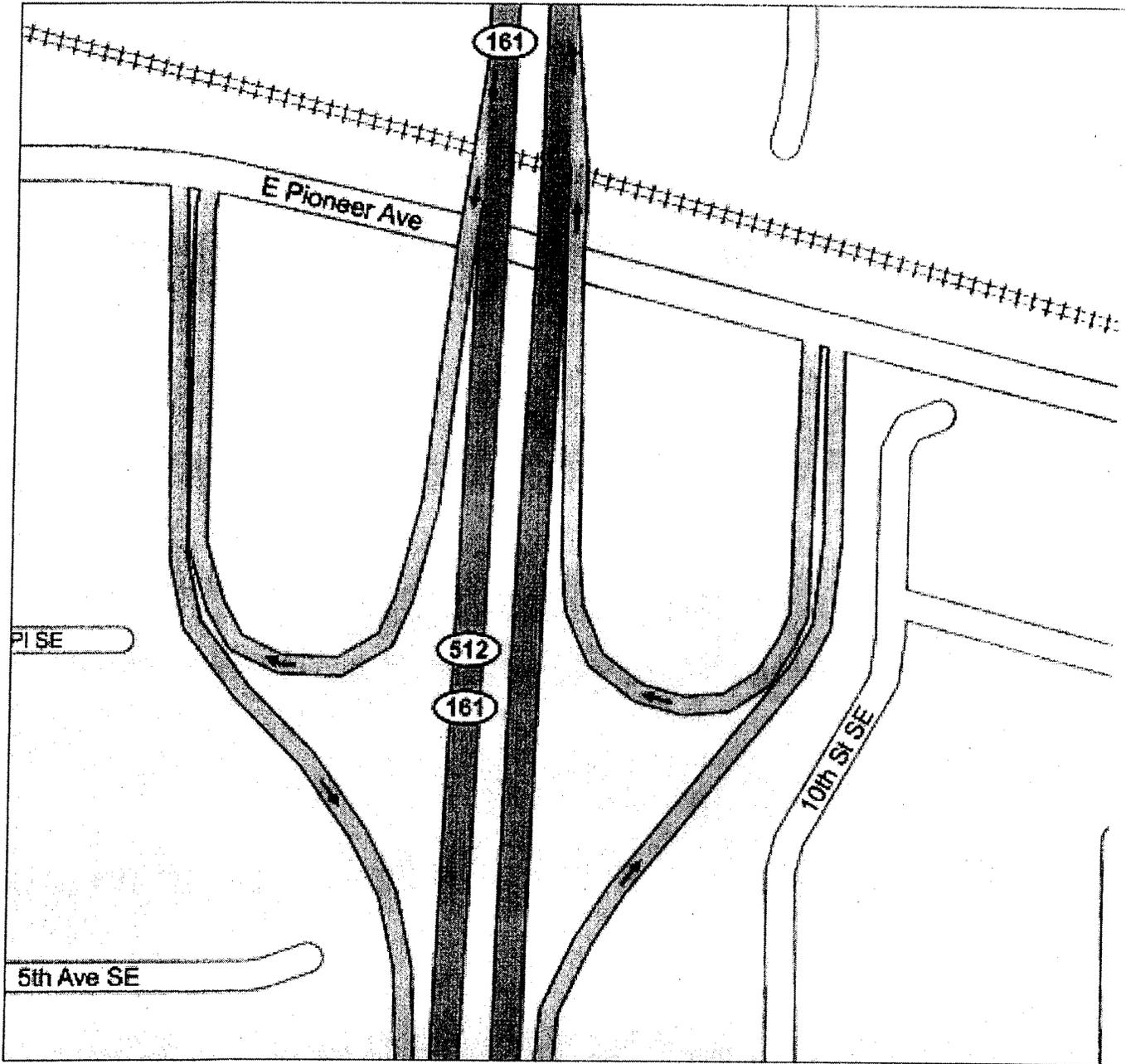
- Had front side windows that were obviously too dark and the occupants were not visible. The front side windows were tested at _____%, in violation of the allowed 35% ±3% for a minimum 24% including AS-2 glazing. The window(s) was/were tested with the SPXM00361 Tint Meter Model 100.
- Had white front turn signals which is an after market addition to the original manufacturer's equipment and a violation of RCW 46.37.200 which states vehicles manufactured after Jan 1, 1969 shall be amber.
- Had side reflector/marker lights that were _____ in color, in violation of RCW 46.37.100 which states that the front side markers shall be amber and rear side marker lights will be red.
- Had after market headlight covers/tail lamp covers in violation of WAC 204-72-040.
- Had after market tail lights that have white reflectors on the rear of the vehicle in violation of RCW 46.37.100. The after market tail lights also violate RCW 46.37.050 by not being visible from a distance of 1000 feet.
- Had replacement bulbs in the back-up lights which emitted a _____ color in violation of RCW 46.37.110.
- Had an after market exhaust system which emits a much louder noise which could be heard from _____ car lengths away. RCW 46.37.390.3 states "No person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the engine of such vehicle above that emitted by the muffler originally installed on the vehicle..."
- Had after market license plate covers which are tinted and violate RCW 46.16.240 by obscuring the plates from plainly being visible.
- Did not have a front license plate mounted to the front of the vehicle between one and four feet off the ground, or was not hung horizontally to be plainly visible.

Comments:

THE Δ DROVE THE WRONG WAY ON SR512 TO ASSIST A FRIEND WITH A JUMPSTART. I EXPLAINED TO HIM THE DANGER OF DRIVING THE WRONG WAY ON A HWY & HE SAID HE UNDERSTOOD.

I certify (or declare) under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct. RCW 9A.72.085

DD Randall 4/9/05
 TROOPER D. RANDALL PIERCE COUNTY Place Signed Date



Puyallup, WA

APPENDIX “B”

Request for Subpoena



Pierce County District Court

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

REQUEST FOR SUBPOENA

CASE NO: 574346327

CASE NAME: State of Washington vs. Mages, Andrew Luke

DATE & TIME of Hearing: 6/21/05 @ 9:00 (a.m./p.m.)

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

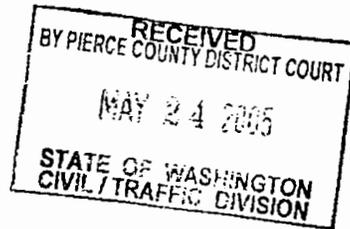
WITNESS ADDRESS: _____

[Signature]
Defendant's Signature)

Dated: May 31, 2005

MAIL SUBPOENA TO DEFT
 DEFT WILL PICK UP SUBPOENA





May 31, 2005

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

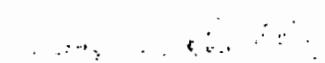
Pierce County District Court
Civil & Infraction Division
1902 96th Street South
Tacoma, Washington 98444

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

To The Court:

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

Sincerely,


Andrew L. Magee

APPENDIX “C”

Defendant's Demand for Discovery

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

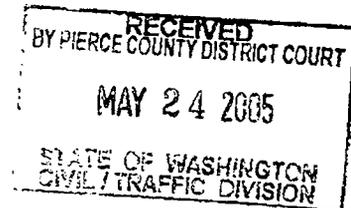
PIERCE COUNTY,
Plaintiff,

vs.

MAGEE, ANDREW,
Defendant.

CASE NO. 5Y4346327

NOTICE OF APPEARANCE AND
DEMAND FOR DISCOVERY

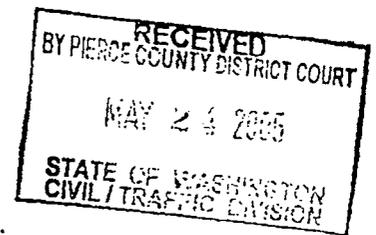


NOTICE OF APPEARANCE

PLEASE take notice that the defendant hereby enters his appearance.

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

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



DEMAND FOR DISCOVERY

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

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

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

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

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

Respectfully submitted this 31 th day of May, 2005

Andrew L. Magee

APPENDIX "D"

Order



05-2-09617-4 24185837 ORDYMT 12-12-05

FILED
DEPT. 18
IN OPEN COURT

DEC - 9 2005

Pierce County Clerk
By [Signature]
DEPUTY

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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

State of WA
Plaintiff(s) / Respondent

Cause No: 05-2-09617-4

ORDER

vs.

Andrew Magee
Defendant(s) / Appellant

Defendant's motion for reconsideration is hereby denied.

DATED this 9 day of Dec, 2005.

[Signature]
Judge BEVERLY G GRANT

[Signature]
Attorney for Plaintiff(s)
WSBA# 102717

[Signature]
Attorney for Defendant(s) / pro se
WSBA# _____

APPENDIX “E”

Ruling Denying Review



05-2-09617-4 25207861 CPRDR 03-29-06

3768 3/31/2006 00015

FILED
IN COUNTY CLERK'S OFFICE

A.M. MAR 29 2006 P.M.

PIERCE COUNTY, WASHINGTON
COUNTY CLERK
DEPUTY

COURT APPEALS
DIVISION II
06 MAR 30 PM 2:14
STATE WASHINGTON
BY DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ANDREW L. MAGEE,

Petitioner.

No. 34261-8-II

05-2-09617-4

RULING DENYING REVIEW

Andrew L. Magee seeks review of Pierce County Superior Court decisions on RALJ appeal affirming a district court determination that he committed second degree negligent driving, and denying his motion for reconsideration. He contends that (1) the evidence was not sufficient to support the conviction; (2) Washington State Patrol Trooper D.D. Randall had no authority to issue a citation because he did not commit the infraction in her presence; (3) the superior court should not have considered the State's response brief because it was untimely; (4) the State violated discovery rules because it did not provide him with the

34261-8-II

names and addresses and witness statements of the individuals who reported his driving to the Washington State Patrol; and (5) the trial court erred in failing to consider the alternative of a deferred finding that he committed the infraction.

Second degree negligent driving is a traffic infraction, and not a criminal offense. *State v. Farr-Lenzini*, 93 Wn. App. 453, 467 (1999). The evidence of that infraction was sufficient if, viewed in the light most favorable to the State, and making all reasonable inferences therefrom, it permitted the trier of fact to find by a preponderance of the evidence that Magee was driving negligently. See *Farr-Lenzini*, at 467; *Cox v. Keg Restaurants*, 86 Wn. App. 239, 250, review denied, 133 Wn.2d 1012 (1997); IRLJ 3.3(d).

A person commits second degree negligent driving if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property. RCW 46.61.525.

Washington State Patrol Trooper D.D. Randall testified that when she encountered Magee, his car was facing eastbound on the shoulder adjacent to the westbound lanes of highway 512. She said he told her he had gone down to Benston Drive, turned onto the shoulder and then drove back the wrong way to get to a friend's disabled vehicle, so that he could be nose-to-nose for a jump-start. The Trooper explained that there is not enough room on that shoulder to permit such a turn without encroaching on the lanes of travel.¹ Accepting this evidence as true and making all reasonable inferences in favor of the State, it is

¹ Resp. to Mot. for Disc. Rev., Appendix B at 5-6 (Report of Proceedings).

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enough to support the court's determination that Magee drove the wrong way on the highway, or on the access to the highway. That is a negligent act, and at 11:30 A.M., it was likely to endanger other motorists.

As to the propriety of the citation, RCW 46.63.030 authorizes a law enforcement officer to issue a notice of traffic infraction if (a) the infraction is committed in the officer's presence; (b) the officer is acting upon the request of another officer in whose presence the offence was committed; (c) the officer has reasonable cause to believe that a driver involved in a motor vehicle accident committed a traffic infraction; (d) the infraction was detected through the use of a photo enforcement system; or (e) the infraction was detected through the use of an automated camera.

Trooper Randall testified that Magee was parked on the shoulder of the highway, headed in the opposite direction from the flow of traffic. She asserted that there was no way for him to have gotten there legally. It could also be inferred that there was no way for him to leave without driving the wrong way or otherwise obstructing traffic.² Magee was, thus, still involved in the negligent behavior and still posing a threat to other motorists when the trooper encountered him.

Likewise without merit is the claim that the superior court could not consider the State's response brief because it was late. The rules for appeal

² It appears from the record that Trooper Randall directed him how to depart and waited to make sure he followed her directions. Resp. to Mot. for Disc. Rev., Appendix B at 3 (Report of Proceedings).

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from courts of limited jurisdiction (RALJ) provide that “[c]ases and issues will not be determined on the basis of compliance or noncompliance with these rules,” except for untimely notice of appeal or abandonment of the appeal. RALJ 1.2(b). To this end, the superior court is authorized to enlarge the time within which an act must be done. RALJ 10.3(a).

This analysis also applies to Magee's complaint that the State did not timely serve him with its response to his motion for discretionary review. See RAP 1.2(a) and (c); RAP 18.8(a).

With regard to the alleged discovery violation, IRLJ 3.1(b) provides discovery of the plaintiff's witness list and a copy of the citing officer's sworn statement. No other discovery is required. See *State v. Sullivan*, 143 Wn.2d 162, 178-79 (2001). Magee got Trooper Randall's statement. The State produced no witnesses. There was no discovery violation.

Finally, Magee contends that the trial court erred because it did not review his case to determine eligibility for a deferred finding. The letter he received from the court regarding contested hearings advised him that he had various options, including a hearing by mail and deferral of the finding that he committed the infraction.³ An “option” is the “power or right to choose.” *Webster's Third New International Dictionary*, (1969) at 1585. Magee did not indicate to the trial court that he wanted a deferred finding.

Magee has presented no argument that meets the requirements of RAP 2.3(d). Accordingly, it is hereby

³ Reply to Resp. to Mot. for Disc. Rev., Appendix 4.

34261-8-II

ORDERED that review is denied.

DATED this 23rd day of March, 2006.



Ernetta G. Skerlec
Court Commissioner

cc: Andrew L. Magee, Pro Se
Kathleen Proctor
Hon. Beverly M. Grant
Hon. Margaret Ross
Pierce County Superior Court
Cause number: 05-2-09617-4