

FILED

JAN 30 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 310485

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

STATE EX REL KENNETH J. INGEBO,
Appellant,

v.

KERRY FREEMAN, PAMELA BYRD, JOE CLARNO,
AS AGENTS OF THE
WASHINGTON STATE DEPARTMENT OF LICENSING,
AND THE
WASHINGTON STATE DEPARTMENT OF LICENSING,
Respondents.

REPLY BRIEF OF APPELLANT

Kenneth J. Ingebo Pro Se
33 Skookum Flat
Lyle WA 98635
509-369-3333

TABLE OF CONTENTS

	Page
Table of Authorities.....	2,3
Statement of the Issues	3
Argument.....	4
A signature on the license is not required prior to issuance.....	4
The Department did not deny Ingebo’s license on the Grounds that he failed to provide his SSN.....	8
The Department improperly denied Ingebo’s license on the grounds that he failed to provide his SSN.....	8
Ingebo does not have a SSN.....	9
Conclusion.....	11

TABLE OF AUTHORITIES

	Page
<i>Alpert v. Harrington</i> , 925 A.2d 716, (N.J. Super. Ct. 2007).....	10
<i>Fort Howard Paper Co. v. Fox River Heights Sanitary Dist.</i> , 26 NW 2d 661.....	6
<i>George Williams College v. Village of Williams Bay</i> , 7 NW 2d 891.....	6
<i>Gow v. Consolidated Coppermines Corp.</i> , 165 AT 136.....	6
<i>Hershey v. Dep’t of Transp. Bureau of Driver Licensing</i> , 669 A. 2d 517 (Pa. Commw. Ct. 1996).....	10

	Page
<i>State of Washington v. Reyes</i> , 104 Wash. 2d 35, 700 P. 2d 1155 (1985).....	7
RCW 46.20.091.....	4,8,9
RCW 26.20.0921.....	8,9
RCW 46.20.120.....	4
RCW 46.20.161.....	4,5,6,7,11
RCW 46.20.291.....	8
WAC 308-104-014.....	4,8
Wash. Dept. of Licensing Rule 6.7 Driver Licensing Renewal. (at CP 47-50)	4,9

STATEMENT OF THE ISSUES

Where Ingebo completed the license renewal application and complied with all laws and rules for renewal, was the Department required to issue the license even though Ingebo refused to sign the camera card or license?

Did the Department deny Ingebo’s license on the grounds that he did not provide his social security number, and if so did the Department act under proper authority and procedure when making the denial on those grounds?

Was Ingebo’s belief that he did not have a social security number sufficient proof that he did not have a social security number within the meaning of the disclosure laws?

ARGUMENT

A SIGNATURE ON THE LICENSE IS NOT REQUIRED PRIOR TO ISSUANCE

The Department argues that WAC 308-104-014 requires the applicant to sign the driver's license. This is not so. This rule refers to information that is required to be provided on the *application* for the license not the license itself. It is clear that the purpose of this signature on the application is to attest to the validity of the information provided. Ingebo provided this information and his signature when he applied for his original license under RCW 46.20.091. CP 28. Ingebo's signature on an application for license renewal was not required under RCW 46.20.120 (3) (a) nor Rule 6.7.

The Department argues that if RCW 46 20.161 requires the Department to issue an unsigned license to Ingebo the result would be absurd in that it requires the Department to issue an invalid state document. The unsigned license that is issued should not be looked upon as being invalid. It is a proper document that contains everything the statute requires it to contain. The statute then requires the Department to deliver the document to the applicant to be signed, if required, thus making the license complete and

valid. The Department creates a lawfully adequate and valid document and its duties are completed upon its delivery to the applicant.

Although driving is a privilege it is so only because the activity is limited to a certain class of individuals. However, it is not a base or mere privilege with no foundation in fundamental right. The authorities cited in appellant's original brief agree that driving is a qualified right included in our fundamental right to life liberty and property. Therefore, regulations concerning driving and the judicial review thereof must be addressed in light of this fundamental right.

The Department has not shown that a signature requirement prevents fraud or that fraud prevention through driver's license signatures was a compelling or substantial police power purpose of the legislature. If it could be shown that such a requirement would prevent fraud through misidentification and if it could be shown that RCW 46.20.161 requires a signature, then it should be stated in the law itself the exact purpose of the signature, such as the following wording: "the licensee shall *for identification purposes* write his or her usual signature ...". This would fairly inform the applicant that his signature could not be used to signify a usual purpose of a signature such as an acknowledgement, approval, acceptance, waiver, or obligation. A signature made for the purpose of identification is an extraordinary use of a signature, so a common person

5 Reply Brief of Appellant

would presume identification is not its purpose. It is most important that the applicant is assured that his signature could not signify a waiver of rights including his qualified fundamental right to drive, or an acceptance of a mere privilege to drive. If a signature is required, the applicant has the right to know its exact purpose. The statute does not inform him of it, in violation of due process.

As pointed out in Appellants original brief, the regulation of the qualified right to drive is limited to reasonable regulations under the police power. If this statute requires a signature, the law does not limit its use to the arguably valid police power purpose of fraud prevention through identification verification and therefore would be constitutionally invalid.

RCW 46.20.161 states in part: “the licensee *shall* write his or her usual signature with pen and ink immediately upon receipt of the license.” As shown in Appellant’s original brief the word “shall” can be construed to mean “may” under the circumstance. Further, the word “shall” in a statute may be construed to mean “may” particularly on the order to avoid constitutional doubt. *Fort Howard Paper Co. v. Fox River Heights Sanitary District*, 26 NW 2d 661; *Gow v. Consolidated Coppermines Corporation*, 165 AT 136; *George Williams College v. Village of Williams Bay*, 7 NW 2d 891. It is the opinion of the courts that if a statute specifies that a certain act *shall* be done, and there is a question about whether or not it would be

6 Reply Brief of Appellant

constitutional for the act to be made mandatory, then the word *shall* takes on a permissive meaning rather than a mandatory one.

RCW 46.20.161 further states: “No license is valid until it has been *so signed* by the licensee.” Since the phrase preceding this one does not require a signature in this case, this phrase would not require it either because it only needs to be *so signed*, i.e., signed as required, or signed if required. This interpretation maintains the statute’s constitutionality. Wherever possible, it is the duty of the court to construe a statute so as to uphold its constitutionality. *State of Washington v. Reyes*, 104 Wash. 2d 35, 700 P2d 1155.

Notwithstanding the above argument, the plain language of the statute requires the Department to issue the license irrespective of the applicant’s signature, and review of this issue needs not go past this point.

THE DEPARTMENT DID NOT DENY INGEBO’S LICENSE ON THE GROUNDS THAT HE FAILED TO PROVIDE HIS SSN

There was no evidence presented to the court to show that the Department refused to issue Ingebo his license on the grounds that he refused to provide his social security number (SSN). Although the Department alleged in its Answer to Petition that Ingebo refused to provide his SSN as a cause for denial (CP 10), the Department provided no

7 Reply Brief of Appellant

evidence to show that this was a reason for the denial. If there was no denial, this issue should not have been brought before the courts.

THE DEPARTMENT IMPROPERLY DENIED INGEBO'S LICENSE
ON THE GROUNDS THAT HE FAILED TO PROVIDE HIS SSN

The Department through its pleadings is claiming that it denied Ingebo's license partially on the grounds that he refused to provide his SSN. CP 36 (see also Brief of Respondents pgs.3,7,15) The Department is attempting to circumvent the Washington statutory and administrative process relating to the issuance and denial of licenses. The statutory process requires under RCW 46.20.091 that the applicant state under oath the existence of certain information including information required under WAC 308-104-014 and Rule 6.7. Except for Ingebo's refusal to sign the camera card, this process was completed to the satisfaction of licensing representative Kerry Freeman on Sept.23, 2011. CP 40-41. It was not until later on Sept.30, 2011 that the Department claims to have decided that Ingebo refused to give his SSN. CP 10,42. The Department then considered this refusal as a basis to deny the license. CP 10. This denial was not authorized under any statute or rule. At that point the only proper procedure for Department to follow would be to have Ingebo convicted under RCW 46.20.0921(1)(e) for knowingly making a false statement, and then to suspend his license under RCW 46.20.291(7). Instead the Department

informally and improperly denied the license without giving Ingebo written notice or opportunity to be heard, in violation of due process.

It is not the prerogative of the Department or this court to determine if Ingebo had a SSN. It is the duty of the trial court or the jury to determine that fact if and when that question is properly brought before them. The question must be decided in a forum where Ingebo has the opportunity to present evidence and argument before that decision is reached. The Department denied Ingebo that forum.

INGEBO DOES NOT HAVE A SOCIAL SECURITY NUMBER

On his application for original license Ingebo stated under oath as required by RCW46.20.091 (2) that he did not have a SSN. CP 28. Giving false information under this statute is a gross misdemeanor. He reconfirmed the fact that he had no SSN at his appearance to have his license renewed. CP 28, Rule 6.7 (II) (F) at CP 48. Knowingly making a false statement at this appearance is a misdemeanor under RCW 46.20.0921 (1) (e).

The trial court judge accepted as fact Ingebo's belief that he did not have a SSN. RP 23. The above statutes require Ingebo to state that he has no SSN if that is what he believes to be true. To expect Ingebo to provide a SSN that he believed he did not have would be to expect him to violate the law. No statute or rule can be interpreted in a way that requires a person to commit an unlawful act. Ingebo gave the only statement he lawfully could.

Ingebo's statements must be accepted until there is evidence to show that he did not hold the belief, and then he must have his day in court.

The statutory design shows that the lawmakers intended to know the truth from the subjective viewpoint of the applicant. If the lawmakers wanted to know the truth from the viewpoint of the Social Security Administration they would have framed the law to require the Department to contact the Social Security Administration to obtain the SSN of all applicants.

The Department cites *Hershey v. Dep't of Transp., Bureau of Driver Licensing*, 669 A.2d 517 (Pa. Commw. Ct. 1996) and *Alpert v. Harrington*, 925 A.2d 716, (N.J. Super. Ct. 2007) to show that Ingebo had a SSN. The facts in those cases and their application to the law being reviewed are substantially different than in this case. In *Hershey* the trial court found that a person's belief that he lacks a SSN was not relevant under the law being reviewed. In the review of the law in this case, as shown above, the applicant's belief is relevant and decisive.

In the *Alpert* case the appellant, Mr. Alpert claimed that he was exempt from applying for a SSN under a New Jersey law. When the court found that Alpert could not prove that he qualified for the exemption, it ruled that Alpert was therefore not exempt from the requirement to submit a SSN on his application. The court did not rule that Alpert had a SSN and refused to

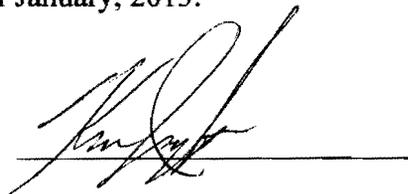
disclose it, as that was not an issue. The law and the facts in *Alpert* are completely different than in this case. Further, the issue of the applicant's belief was not present in *Alpert*.

CONCLUSION

The plain wording of RCW 46.20.161 does not require that the applicant sign the license before the Department is required to issue it. To maintain the constitutionality of this statute it must not be interpreted to require Ingebo's signature on the license. Even if The Department denied Ingebo his license on the grounds that he failed to provide his SSN, the denial was improper and unauthorized and done without a proper finding that Ingebo had a SSN to provide.

Ingebo completed his license renewal application and complied with all laws and rules relating to it. Therefore the Department was required by RCW 46.20.161 to issue the license. Ingebo's motion for summary judgment should be granted, and the Department's cross-motion for summary judgment should be denied.

Respectfully Submitted this 28th day of January, 2013.

A handwritten signature in black ink, appearing to read 'Ken Ingebo', is written over a horizontal line.

Kenneth J. Ingebo
Appellant Pro Se

PROOF OF SERVICE

I Kenneth J. Ingebo certify under penalty of perjury and the laws of the State of Washington that I served a copy of the Reply Brief of the Appellant on counsel of the Respondent, on the date below, by US Mail addressed to:

Jeremy Gelms
Assistant Attorney General
800 5th Ave. Suite 2000
Seattle WA 98104

Dated this 28th day of January, 2013.



Kenneth J. Ingebo