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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

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NO. 64437-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Petitioner,

v.

CESAR VALADEZ CIENFUEGOS,

Respondent

STATE'S MOTION FOR DISCRETIONARY REVIEW

(King County Superior Court RALJ Decision
No. 08-1-03760-2 SEA

King County District Court No. C00552665

DANIEL T. SATTERBERG
King County Prosecuting Attorney

JERRY L. TAYLOR JR.
Deputy Prosecuting Attorney
Attorneys for Petitioner

King County Prosecuting Attorney
W 554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9544

ORIGINAL

A. IDENTITY OF MOVING PARTY

Petitioner, the State of Washington, seeks the relief designated in part 2.

B. STATEMENT OF RELIEF SOUGHT

The State requests that this Court grant discretionary review pursuant to RAP 2.3(d)(1),(2),(3). This case presents an alleged conflict between decisions of the Washington Supreme Court and the United States Supreme Court on the scope of the Confrontation Clause of the Sixth Amendment. Superior Court decisions on this point conflict, and the issue arises in many cases. A ruling from an appellate court is needed.

C. FACTS RELEVANT TO MOTION

On April 15, 2005, Mr. Cienfuegos was stopped by Corporal Monica Matthews of the Washington State Patrol (WSP) for traveling in excess of the posted speed limit. RP Vol. IV, 103-04. Corporal Matthews contacted Mr. Cienfuegos and requested his driver's license, registration, and insurance card. RP Vol. IV, 105.

Mr. Cienfuegos gave Corporal Matthews his Washington

state identification card and the registration for the vehicle. Corporal Matthews took the documents; returned to her patrol vehicle and performed a check of Mr. Cienfuegos' driving status. She determined that his privilege to drive was revoked in the first degree, and that he was required to have an ignition interlock installed in his vehicle. RP Vol. IV, 106-07. Corporal Matthews returned to Mr. Cienfuegos' vehicle and placed him under arrest for driving while his license was suspended and for violation of the ignition interlock device statute. RP Vol. IV, 108.

Mr. Cienfuegos was tried by jury on March 10, 2008. At trial, the State admitted into evidence a certified copy of driving record (CCDR) from Washington Department of Licensing (DOL). The CCDR consisted of: (1) a cover letter stating that Mr. Cienfuegos' driving status on April 15, 2005, was revoked in the first degree, and he was required to have an ignition interlock device installed on his vehicle, (2) the order of revocation that was sent to Mr. Cienfuegos, and (3) an abstract of his driving record. CP, Appendix A (Plaintiff's Exhibits 9-11). Corporal Matthews was the only

witness called to testify at trial. RP Vol. IV, 100-21.

On March 11, 2008, the jury found Mr. Cienfuegos guilty of Driving While License Suspended or Revoked in the First Degree, and Violation of Ignition Interlock. RP Vol. V, 37. On April 1, 2008, Mr. Cienfuegos filed a notice of appeal. CP Docket at 11. On September 25, 2009, the parties appeared before the Honorable Steven C. Gonzalez for the RALJ appeal. CP Decision on RALJ at 1. Among the issues raised by Mr. Cienfuegos was that the admission of the Certified Copy of Driving Record (CCDR) violated his right to confront witnesses against him. Br. App. at 23. Mr. Cienfuegos argued that the Supreme Court holding in Melendez-Diaz v. Massachusetts,¹ questioned the validity of the current Washington case law regarding the admissibility of CCDRs.² Br. App. at 23-24.

The State argued that the admission of the CCDR did not violate Mr. Cienfuegos' right of confrontation, citing State v.

¹ 129 S.Ct. 2527 (2009).

² State v. Kirkpatrick, 160 Wn.2d 873, 161 P.3d 990 (2007), State v. Kronich, 160 Wn.2d 893, 161 P.3d 982 (2007).

Kronich, 160 Wn.2d 893, 904, 161 P.3d 982 (2007) (a certified statement regarding a defendant's driving status is not testimonial evidence). The State also argued that Melendez-Diaz, did not overrule Kronich, and that Washington caselaw regarding the admission of certified DOL records was still valid after Melendez-Diaz, because Melendez-Diaz does not extend the United States Supreme Court's holding in Crawford v. Washington, 541 U.S. 36 (2004). Br. Resp. at 22.

Regarding the admissibility of the CCDR, the Superior court found:

While the Washington Supreme Court previously held, pursuant to Crawford, that the admission of a CCDR does not violate the confrontation clause, the United States Supreme Court's decision in Melendez-Diaz, effectively overturns Kirkpatrick and is binding on all Washington courts on this point of federal constitutional law...Under the Court's analysis in Melendez-Diaz, the CCDR is a testimonial affidavit, and the DOL official is a "witness" for purposes of the Sixth Amendment. Therefore, the CCDR was inadmissible without corresponding testimony from the DOL official who performed the diligent search, interpreted what was found, and opined as

to its effect. Even particularized guarantees of trustworthiness do not get the CCDR past the Sixth Amendment

Exhibit 10 was the only direct evidence that Mr. Cienfuegos' Habitual Traffic Offender revocation was still in effect on April 15, 2005...Without this improperly admitted exhibit, the evidence is likely insufficient to support his conviction. The conviction must be vacated and the case remanded for dismissal.

Decision on RALJ Appeal at 4. (Appendix B).

Following this decision, on November 6, 2009, the State filed a notice for discretionary review. CP, Notice of Discretionary Review.

D. GROUND FOR RELIEF AND ARGUMENT

- 1. THE COURT SHOULD GRANT REVIEW UNDER RAP 2.3(d)(1), (2) and (3) BECAUSE THE DECISION BELOW CONFLICTS WITH A WASHINGTON SUPREME COURT DECISION ON A SIGNIFICANT CONSTITUTIONAL QUESTION , AND IS AN ISSUE OF CONTINUING PUBLIC INTEREST.**

The State of Washington seeks review of the Superior Court decision discussed below. Pursuant to RAP 2.3(d), this Court will accept discretionary review only:

MOTION FOR
DISCRETIONARY REVIEW

- (1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court; or
- (2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (3) If the decision involves an issue of public interest which should be determined by an appellate court; or
- (4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

RAP 2.3(d).

The State of Washington requests that this court grant review under RAP 2.3(d)(1),(2) and (3). This case merits review because the Superior Court erred in reversing Mr. Cienfuegos' conviction for Driving While Suspended or Revoked in the First Degree, finding that under the Sixth Amendment, a CCDR is a "testimonial" affidavit and that it was inadmissible without corresponding testimony from the DOL witness who performed the search for that information. The court also erred in failing to find the error harmless, and in dismissing the case instead of remanding for retrial.

MOTION FOR
DISCRETIONARY REVIEW

This issue raises a potential conflict on a significant question of constitutional law in light of the recent U.S. Supreme Court decision in Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009) (holding that certificates made under penalty of perjury stating the results of forensic analysis of seized evidence in a criminal drug case were affidavits subject to Crawford analysis), and the current line of Washington cases which permit the admissibility of Certified DOL records in the prosecution's case in chief. State v. Kirkpatrick, 160 Wn.2d 873, 161 P.3d 990 (2007), State v. Kronich, 160 Wn.2d 893, 161 P.3d 982 (2007).

This issue also involves continuing public interest because a large number of Washingtonians drive a motor vehicle every day. In prosecutions for driving-related crimes, the State proffers certified records from DOL. The parties and the trial court need to know whether -- or to what extent -- the Sixth Amendment extends to those records. In King County alone, there are over 5,000 driving while license suspended (DWLS) cases referred to the King County Prosecutor annually.

2. THE SUPERIOR COURT ERRED IN FINDING, PURSANT TO MELLENDEZ-DIAZ V. MASSACHUSETTS, THAT A CC DR IS A TESTIMONIAL AFFIDAVIT THAT IS INADMISSIBLE ABSENT LIVE TESTIMONY FROM A DOL REPRESENTATIVE

a. Standard of Review

Review on appeal in the superior court is governed by the standards contained in RALJ 9.1. State v. Ford, 110 Wn.2d 827, 829, 755 P.2d 806 (1988). "The superior court shall review the decision of the court of limited jurisdiction to determine whether that court has committed any errors of law." RALJ 9.1. The standard of review for an alleged violation of the Confrontation Clause of the Sixth Amendment to United States Constitution is de novo. Lily v. Virginia, 527 U.S. 116, 137, 119 S.Ct. 1887 (1999).

b. Melendez-Diaz does not overrule current Washington State case law permitting the admissibility of a CC DR without the corroborating testimony of a DOL representative.

The Sixth Amendment to the United States Constitution provides every criminal defendant the right "to be confronted with the witnesses against him..." U.S. Const. Amend. VI. This right is

binding on the States through the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 403, 85 S.Ct. 1065 (1965). Under the Sixth Amendment, admissibility of testimonial evidence at trial absent proof of the declarant's unavailability and prior opportunity for cross-examination of the declarant by the accused is prohibited. State v. Kirkpatrick, 160 Wn.2d 873, 876, 161 P.3d 990 (2007).

However, the right of confrontation under the Sixth Amendment does not extend to certified DOL documents. State v. Kronich, 160 Wn.2d 893, 905, 161 P.3d 982 (2007). In Kronich, Kyle Kronich was stopped by Spokane County Sheriff's deputies after they ran his plates and discovered his driving privilege was suspended. Kronich, at 897. Kronich was placed under arrest for DWLS. Id. Kronich was charged with DWLS in the Third Degree. Id. at 898. He was tried before a jury in the District Court for Spokane County. Id. At trial, the State sought to admit two records from DOL: (1) an order of revocation of his driver's license and (2) a certified statement regarding the status of Kronich's driving privilege as of November 15, 2000. Id. The trial court admitted the documents

and Kronich was subsequently convicted of DWLS in the Third Degree. Id.

The Washington State Supreme Court held:

"The present case requires this court to resolve the question of the testimonial nature of a particular type of extant public record, namely, a DOL certification describing the status of a person's driving privilege. We hold that such a record is not testimonial for the purpose of Crawford analysis."

Kronich, at 902. The court reasoned that "Washington courts have long recognized the inherent reliability and admissibility of driving records from DOL." Kronich, at 903 (citing State v. Monson, 113 Wn.2d 833, 784 P.2d 485 (1989)).

Similarly, the Washington State Supreme Court has found that a DOL certification as to the *absence* of a DOL driver's record was not a violation of the Confrontation Clause. State v. Kirkpatrick, 160 Wn.2d 873, 161 P.3d 990 (2007). Nathan Kirkpatrick was arrested for Reckless Driving and No Valid Operator's License on Person (NVOL). Kirkpatrick, at 877-78. At trial, the State offered into evidence a certification from DOL stating Kirkpatrick did not have a license as of September 8, 2003. Kirkpatrick objected on

hearsay grounds, but the trial court found the document admissible under ER 803(a)(10) and ER 902(d). Kirkpatrick was convicted of both reckless driving and NVOL. Id. On review, the Washington State Supreme Court held "that neither certification of DOL driver's records nor certifications as to the absence of such records are testimonial for the purposes of Crawford." Kirkpatrick, at 884. These cases squarely control on the narrow facts of this case.

In contrast, the issue in Melendez-Diaz had nothing to do with certifications of driving records or other routine public records. Luis Melendez-Diaz was arrested and charged with distributing cocaine and trafficking in cocaine. Id. at 2530. The Supreme Court in Melendez-Diaz held that a lab analyst's certificate of analysis -- stating that evidence submitted to the lab for analysis in preparation for trial contained illegal drugs -- fell within the purview of the Confrontation Clause.

At trial, the State admitted into evidence bags seized during the arrest as well as three certificates of analysis performed on the seized substances. Id. at 2531. The certificates stated the weight of

the bags and stated that the substance in the bags "was found to contain cocaine." Id. Melendez-Diaz objected asserting that the Confrontation Clause required the analysts to testify in person, but the objection was overruled, and the certificates were admitted into evidence. Id. The jury found Melendez-Diaz guilty and he appealed, claiming among other things, a violation of his Sixth Amendment right to be confronted with the witnesses against him. Id.

In finding that the affidavits supplied by the lab analysts were testimonial statements and the analysts were in fact witnesses for the purposes of the Sixth Amendment, the court stated:

The Confrontation Clause is implicated by extrajudicial statements only insofar as they are contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions. The documents at issue here, denominated by Massachusetts law "certificates," are quite plainly affidavits: "declaration[s] of facts written down and sworn to by the declarant before an officer authorized to administer oaths." Black's Law Dictionary, 62 (8th ed. 2004)...The certificates are functionally identical to live, in-court testimony, doing "precisely what a witness does on direct examination." Davis v. Washington, 547 U.S. 813, 830, 126

S.Ct. 2266 (2006).

Melendez-Diaz, at 2532. The court emphasized the fact that the affidavits in question were made for use at trial stating, "[U]nder Massachusetts law the *sole* purpose of the affidavits was to provide "prima facie evidence of the composition, quality, and net weight" of the analyzed substance." Id. (citation omitted).

The holding of the United States Supreme Court in Melendez-Diaz, is distinguishable from the line of Washington cases that address the admissibility of CCDRs. Washington law requires the DOL to maintain driving records on all motorists that reside within the State. This is a purely administrative and regulatory function and the records are maintained whether or not the defendant commits a crime, The attestation to those records is wholly dissimilar to the analysts' certificates in Melendez-Diaz, which identified the substances found on Melendez-Diaz after he was arrested.

The Superior Court erred in finding that pursuant to Melendez-Diaz, that CCDRs were testimonial and subject to the

restrictions prescribed by the Sixth Amendment to the United States Constitution. In order to resolve this issue and resolve any conflict between the United States Constitution and Washington Caselaw, this court should grant review.

3. **THIS ISSUE MERITS REVIEW PURSUANT TO RAP 2.3(d)(3) BECAUSE THERE IS A SIGNIFICANT PUBLIC INTEREST IN RESOLVING THE CONFLICTING INTERPRETATIONS OF MELENDEZ-DIAZ**

Pursuant to RAP 2.3(d)(3), this court should only take review where a case presents a continuing public interest. To determine whether there is sufficient public interest to merit granting review this court must examine three criteria: "(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide further guidance to public officers; and (3) the likelihood that the question will recur." In re Dependency of A.K., 162 Wn.2d 632, 643, 174 P.3d 11 (2007) (quoting Dunner v. McLaughlin, 100 Wn.2d 832, 838, 676 P.2d 444 (1984)). All three criteria have been met in this case.

First, the nature of this issue is public as it has the potential

to affect the entire population of Washington drivers, both people whose privilege to drive is revoked and the law-abiding citizens who must share the road with those drivers.

Second, there is a need for clarity on this issue. Recently, two different King County Superior Court judges in two similar cases involving certified public records have come to opposite conclusions about their admissibility. One judge interpreted Melendez-Diaz, as prohibiting the admissibility of CCDRs without live testimony, (i.e., Mr. Cienfuegos' case) and the other judge ruled that Melendez-Diaz did not apply to certified public records. State of Washington v. Moimoi.³ In Moimoi, an unregistered contracting case, the Superior court found: "This case, like Kirkpatrick, deals with records which are routinely maintained by a governmental agency, and is distinguishable from Melendez-Diaz v. Massachusetts, which deals with results of a test which was performed specifically for that litigation." Appendix C (Decision on

³ A defense Motion for Discretionary Review is pending. COA No. 64327-4-I, The State of Washington is the respondent in that case and does not oppose review in that matter.

RALJ, at 1).

Finally, this question is likely to recur not only in DWLS cases, but also any case where the State seeks to admit a certified public record declaring the existence or absence of a fact to be found in those records. For example, this could include records maintained by DOL regarding whether a person has a concealed weapons permit, has failed to register his vehicle, or is a registered contractor as in Moimoi. The current state of the law on this issue is conflicting and review is necessary to provide finality to this issue.

E. CONCLUSION

The Washington State Supreme Court has already determined that the admission of a CCDR, does not violate the confrontation clause under Crawford because it is not testimonial in nature. Moreover, the kind of documents at issue in Melendez-Diaz are distinguishable from those in the present case because the certificates challenged in Melendez-Diaz were specifically drafted for litigation and contained the results of forensic tests performed

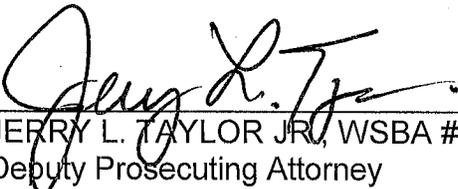
on evidence. The CCDRs in the present case are a public record that DOL is required to maintain. The letter attached to the CCDR is merely a statement of the existence or absence of a fact contained in those records.

The Confrontation Clause prohibits *testimonial* evidence from being offered against a defendant in a criminal case without being subject to challenge via cross-examination. A letter of revocation, an abstract of driving record, and a statement summarizing the facts represented in those documents are not testimonial for purposes of the Sixth Amendment.

This court should grant review pursuant to RAP 2.3(d)(1),(2) and (3) because this issue does raise a significant constitutional issue and is of continuing public interest that must be resolved by the Court of Appeals.

Submitted this 23rd day of November, 2009.

DANIEL T. SATTERBERG
Prosecuting Attorney


JERRY L. TAYLOR JR., WSBA #40739
Deputy Prosecuting Attorney
Attorneys for Petitioner

MOTION FOR
DISCRETIONARY REVIEW

Certificate of Service by Mail

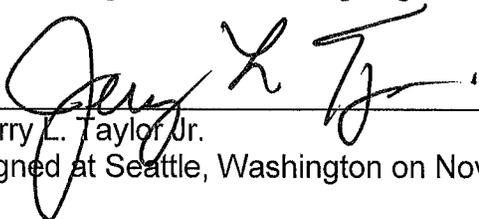
Today I deposited in the mails of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to CHRISTINE JACKSON, attorney for Respondent Cienfuegos, at

**The Defender Association
810 Third Avenue, Suite 800
Seattle, Washington 98104**

The envelope contained a copy of the State's Motion for Discretionary Review and Notice of the Motion to the Court of Appeals, Division One, in STATE OF WASHINGTON v. CESAR VALADEZ CIENFUEGOS COA No. 64437-8-I.

In addition, I faxed a copy of the same to Ms. Jackson at her fax number (206) 447-2349.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Jerry L. Taylor Jr.
Signed at Seattle, Washington on November 23, 2009

APPENDIX A



C1ENFCV370MQ

20030330

NOR

7 YEARS

3CHO

PO Box 9030, Olympia, WA 98507-9030



ORDER OF REVOCATION
FEBRUARY 28, 2003

FILE COPY

#3
CIENFUEGOS, CESAR VALADEZ
11204 31ST AVE SE
EVERETT, WA 98204

LICENSE NO: C1ENFCV370MQ

BIRTHDATE: 07-18-1963

ON 03-30-2003 YOU MUST STOP DRIVING A MOTOR VEHICLE IN THIS STATE. IF YOU HAVE A WASHINGTON STATE DRIVER'S LICENSE IN YOUR POSSESSION IT MUST BE SURRENDERED TO THIS DEPARTMENT.

YOUR DRIVING PRIVILEGE IS REVOKED FOR 7 YEARS AS A HABITUAL TRAFFIC OFFENDER. AUTHORITY: RCW 46.65.070

A HEARING REQUEST FORM IS ENCLOSED.

TO REINSTATE YOUR DRIVING PRIVILEGE REFER TO PARAGRAPHS A, B, E ON THE ENCLOSED REINSTATEMENT SHEET. DO NOT DRIVE UNTIL YOU HAVE BEEN NOTIFIED OF REINSTATEMENT BY THIS DEPARTMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I CAUSED TO BE PLACED IN A U. S. POSTAL SERVICE MAIL BOX, A TRUE AND ACCURATE COPY OF THIS DOCUMENT TO THE PERSON NAMED HEREIN AT THE ADDRESS SHOWN, WHICH IS THE LAST ADDRESS OF RECORD, POSTAGE PREPAID, CERTIFIED MAIL, ON FEBRUARY 28, 2003.

Lucy A. Long

AGENT FOR THE DEPARTMENT OF LICENSING
SUSPENSION/REINSTATEMENT SECTION
PHONE: (360) 902-3900
CERTIFIED MAIL NUMBER

7000 0520 0024 7450 0077

PLEASE INCLUDE YOUR DRIVER LICENSE NUMBER, FULL NAME AND DATE OF BIRTH ON ALL CORRESPONDENCE.





STATE OF WASHINGTON
 DEPARTMENT OF LICENSING
 P. O. Box 9030 • Olympia, Washington 98507-9030

May 9, 2005

dcb

The attached document(s) is/are a true and accurate copy of the document(s) maintained in the office of the Department of Licensing, Olympia, Washington. All information contained in this report pertains to the driving record of:

Lic. #: CIENFCV370MQ
 Name: CIENFUEGOS, CESAR VALADEZ
 15426 ESTHER AVE NE
 MONROE WA 98272

Birthdate: July 18, 1963
 Eyes: BRN Sex: M
 Hgt: 6 ft 00 in Wgt: 200 lbs
 License Issued: June 25, 1999
 License Expires: July 18, 2003

After a diligent search of the computer files, the official record indicates on April 15, 2005, the following statements apply to the status of the above named person:

Had not reinstated his/her driving privilege. Was suspended/revoked in the first degree. Subject was not eligible to reinstate his/her driving privilege on the above date of arrest.

Had not been issued a valid Washington license.

A notation has been placed on the driving record under RCW 46.20.720 stating that the person may operate only a motor vehicle equipped with an ignition interlock or other biological or technical device from 10/20/2002 to 10/20/2005.

Attachments: (if any)

Order of revocation; hearing request and return receipt March 30, 2003

Having been appointed by the Director of the Department of Licensing as legal custodian of driving records of the State of Washington, I certify under penalty of perjury that such records are official, and are maintained in the office of the Department of Licensing, Olympia, Washington.

Denise Bausch

Denise C. Bausch
 Custodian of Records
 Place: Olympia, Washington
 Date: May 09, 2005





03-10-08 01 ABSTRACT OF COMPLETE DRIVING RECORD
 THE FOLLOWING IS A TRUE AND CORRECT COPY OF THE INFO
 MAINTAINED
 BY THE DEPARTMENT OF LICENSING AT OLYMPIA, WASHINGTON.
 INSURANCE COMPANIES
 ARE LIMITED TO A 3 YEAR RECORD. EMPLOYERS ARE ENTITLED TO A
 FULL RECORD.

LIC# CIENF-CV-370MQ STATUS:
 CIENFUEGOS, CESAR VALADEZ DOB 07-18-1963
 R/15426 ESTHER AV NE SEX M EYES BRN LICENSE ISSUED 06-25-99
 R/MONROE WA 98272 HGT 6'00" WGT 200 LICENSE EXPIRED 07-18-03

RESTRICTIONS: FIN RESP
 PX PROBATIONARY LICENSE REQUIRED
 \$150 REISSUE FEE

CURRENT R/ADDR CHG REA/REQ/EFF DS 121807 122007

NOTE: R/DO 082006 053007 DO 041505 060705 M/

NOTE: 97094G

- > 040504 DRIVING W/O LIABILITY INS FTA M SEATTLE 10593825
- > 041505 SPEEDING FTA D KING CO I04371528
- > 072703 DWLS/R 3RD DG FTA D SOUTH C00011631
- > 082006 DWLS/R 1ST DG FTA D EVERGREEN C5008616M
- * 110898 DUI =>0.15 BAC .24 061200J M LAKE FOREST CR03200
- * 032500 DUI <0.15 BAC-2ND OFNS 102000 D BELLEVUE BC123571
- * 110703 DWLS/R 1ST DG 120103J M KIRKLAND C20025K
- * 110703 DISOBEY SIGNALMAN/OFFICER 120103J M KIRKLAND C21826K
- * 072703 DWLS/R 3RD DG 041504J D SOUTH C011631
- * 040504 DWLS/R 1ST DG 083104 M SEATTLE 10231572
- * 040504 DRIVING W/O LIABILITY INS 083104 M SEATTLE 10593825
- * 022204 DWLS/R 2ND DG 072905 D KING CO EAST CR24578
- * 022204 VIOL OF INTERLOCK REST 072905 D KING CO EAST CR24578
- * 082006 DWLS/R 1ST DG 041807 D EVERGREEN C5008616M
- 031799 PROB DI DEFERRED PROSECUTION 031704 031799
- 061200 VIOL DP VIOL TREATMENT 001108980000
- 111798 DR 1ST ADM PER SE - PROB 111703 111798 110898.24.25
- 111798 DR PROBATIONARY STATUS 010704 010799 1108980000
- 030299 DR PROBATIONARY LIC STATUS 010704 010799 1108980000
- 072500 DR PROBATIONARY STATUS 061206 061201 1108980000
- 110300 DR PROBATIONARY STATUS 102007 102002 0325000000
- 033003 REV DR HABITUAL OFFENDER 033013 033007
- 033010 REV DR DWLS/R 1ST DG 033013 033011 1107030000
- 033011 REV DR DWLS/R 1ST DG 033013 033012 0405040000 0000
- 033012 REV DR DWLS/R 2ND DG 033013 033013 0222040000 0000
- 033013 REV DR DWLS/R 1ST DG 033014 033014 0820060000 0000
- 061200 REV SR DUI=>0.15 BAC 061204 061201 110898.00.24
- 102000 REV SR DUI<0.15BAC-2ND OFNS 102005 102002
- 032500.00.00



122002 REIN SR DUI<0.15BAC-2ND OFNS 102005 122002 0325000000
 013103 REV SR DWLS/R 2ND DG 102005 013104 0630020000
 071607 SUSP FT FTA/UNPAID TICKET 052417 072007 C5008616M
 0000
 101900 ALCOHOL AGENCY # 0000 END-DATE 101902 CYCLE 03 SEL-DT
 100104
 *TL ISSUE DT:032500 EXPIRED:062300 REF TEST WA0170200
 B000123571 DT: 062300



APPENDIX B

FILED
KING COUNTY, WASHINGTON
OCT 08 2009
SUPERIOR COURT CLERK
BY JOSEPH MASON
BEPOTY

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Respondent,

v.

CEASAR VALADEZ CIENFUEGOS,

Appellant.

No. 08-1-03760-2 SEA

DECISION ON RALJ APPEAL

CLERK'S ACTION REQUIRED

THIS APPEAL came on regularly for oral argument pursuant to RALJ 8.3 on September 25, 2009, before the undersigned judge of the above entitled Court. The State of Washington, having been represented by Deputy Prosecuting Attorney Peter D. Lewicki; the Appellant represented by his attorney Christine A. Jackson; and the court having considered the written briefs of the parties and having heard oral argument of counsel, now holds the following:

1. Admission of Exhibit 10 (a document called a Certified Copy of Driving Record known as the "CCDR") violated Mr. Cienfuegos' right to confrontation. Exhibit 10 is an affidavit signed under penalty of perjury that contains the kind of statements held to be testimonial in *Melendez-Diaz v. Massachusetts*, ___ U.S. ___, 129 S.Ct. 2527, 174 L.Ed.2d 314

1 (2009). Certainly, the certification of work by a scientist in a crime laboratory in *Melendez-Diaz*
2 is distinguishable in scale from the affidavit of a licensing official about the status of Mr.
3 Cienfuegos' license. Nonetheless, *Melendez-Diaz* held that statements in affidavits are
4 testimonial when they are "...made for the purpose of establishing or proving some fact[]" and
5 made "...under circumstances that would lead an objective witness to believe that the statement
6 would be available for use at a later trial." 129 S.Ct. at 2532 (quoting *Crawford v. Washington*,
7 541 U.S. 36, 51-52, 124 S.Ct. 1354). Specifically, Exhibit 10 presents the following relevant
8 testimony: (1) that "April 15, 2005" is the "date of arrest," (2) that on April 15, 2005, the
9 defendant "[h]ad not reinstated his/her driving privilege," (3) that the defendant "[w]as
10 suspended/revoked in the first degree," (4) that the defendant "...was not eligible to reinstate
11 his/her driving privilege, and (5) that the defendant "[h]ad not been issued a valid Washington
12 license." See *Exhibit 10*. The Department of Licensing (DOL) official who authored this
13 document declared that she performed "...a diligent search of the computer files..." *Id.* The
14 CCDR therefore presents evidence that April 15, 2005 was the date of arrest, and also that Mr.
15 Cienfuegos was driving while his license was suspended on that very day. The CCDR contains
16 statements that prove facts that constitute elements of driving while license suspended in the first
17 degree. Essentially, the statements in Exhibit 10 are testimonial under *Melendez-Diaz* because
18 they are "a clerk's certificate attesting to the fact that the clerk had searched for a particular
19 relevant record and failed to find it." 129 S.Ct. at 2539.

21 Furthermore, Exhibit 10 is neither a business record nor a public record. Pursuant to
22 *Melendez-Diaz*, in determining whether a document is a business record, the inquiry focuses on
23 whether the document was prepared for trial and whether it contains testimony *against* the
24 defendant. Applying this inquiry to this case, it is clear that the CCDR does not qualify as a
25

1 business or public record. First, it was prepared solely for litigation to prove some fact at trial.
2 The Washington Supreme Court recognized that the documents commonly known as CCDRs are
3 "literally prepared for purposes of litigation and [] intended to be relied upon by the State." *State*
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5 was based may have been kept in the normal course of DOL business, but the DOL certification
6 describing the results of a diligent search of the database and the effect of what was found was
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8 Second, in addition to the fact that Exhibit 10 was prepared solely for litigation, it
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12 reinstated his/her driving privilege"). *See Exhibit 10*. The CCDR was made for the purpose of
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14 constituting an element of the crime charged. In short, it affirms that the primary fact
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16 April 15, 2005 - is true. The "...statements here-prepared specifically for use at [appellant's]
17 trial—were testimony against [appellant], and the [author was] subject to confrontation under the
18 Sixth Amendment." *Melendez-Diaz*, 129 S.Ct. at 2539-40. Moreover, the CCDR includes not
19 just the contents of the DOL records, but also the DOL official's interpretation of what the
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1 While the Washington Supreme Court previously held¹, pursuant to *Crawford*, that the
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10 Exhibit 10 was the only direct evidence that Mr. Cienfuegos' Habitual Traffic Offender
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14 *See State v. Smith*, 155 Wn.2d 496, 120 P.3d 559 (2005) ("evidence was insufficient where the
15 only evidence was the factual and legal fiction that the driver's license was 'suspended/revoked
16 in the first degree'").

17
18 2. Mr. Cienfuegos was not deprived due process. The Order on Revocation mailed to him
19 by the Department of Licensing (DOL) satisfied the requirements of RCW 46.20.205, RCW
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14 make a timely objection pursuant to CrRLJ 3.3(d)(3) within 10 days of being notified of the trial
15 date or the purported expiration date of October 31, 2007, thus any later objection is waived.
16
17 *CrRLJ 3.3(d)(4)*.

18 4. The un-redacted abstract of driving record ("ADR", Exhibit 11) was not admissible as it
19 contained no relevant information and contained a full recitation of Cienfuegos' criminal driving
20 offenses. The document, dated "03-10-08" did not bear on the date of violation of April 15,
21 2005. More importantly, the list of Cienfuegos' criminal history was not admissible under ER
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25

1 "DWLS/R 1st DG." This was not harmless error as it cannot be said that this document did not
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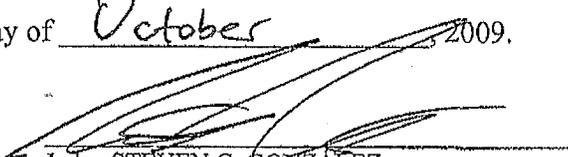
3 5. The phrase "suspended or revoked in the first degree" appearing in the exhibits is a legal
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5 See *State v. Smith*, 155 Wn.2d 496, 503-04 (2005). This was not harmless error because of the
6 similarity of the language with the offense charged, DWLS First Degree.

7 6. Evidence that Mr. Cienfuegos was speeding at the time of the stop and that he was
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9 error because it has no probative value, and carries the prejudicial effect of describing Mr.
10 Cienfuegos as a bad or dangerous driver.

11 7. The Court accepts the State's concession of error that the complaint charging the
12 Defendant with Ignition Interlock Violation omitted an "essential element." The remedy for a
13 defective complaint is reversal and vacation of the conviction for this offense, and dismissal
14 without prejudice to the State's right to re-file the charge. *State v. Vangerpen*, 125 Wn.2d 782,
15 791, 888 P.2d 1177 (1995).

16
17 IT IS HEREBY ORDERED that the above cause is reversed and remanded to vacate Mr.
18 Cienfuegos' DWLS First Degree conviction and to vacate his Ignition Interlock Violation, which
19 violation is dismissed without prejudice.

20 Done in Chambers this 7th day of October 2009.

21
22 
23 Judge STEVEN C. GONZALEZ
24
25

APPENDIX C

FILED
KING COUNTY, WASHINGTON

SEP 16 2009

SUPERIOR COURT CLERK
BY Melissa Ehlers
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

Laki Moi Moi

Appellant,

NO. 08-1-07953-4 SEA

vs.

DECISION ON RALJ APPEAL
SCOMIS CODE: DCRA
[CLERK'S ACTION REQUIRED]

State of Washington

Respondent.

This appeal came on regularly for oral argument on September 8, 2009, pursuant to RALJ 8.3, before the undersigned Judge of the above entitled court and after reviewing the record on appeal and considering the written and oral argument of the parties, the court holds the following:

Reasoning Regarding Assignment of Error: The trial court did not err when it admitted State's Exhibit no. 1. *State v. Kirkpatrick*. 160 Wash.2d 873. This case, like *Kirkpatrick*, deals with records which are routinely maintained by a governmental agency, and is distinguishable from *Melendez-Diaz v Massachusetts*, 129 S.Ct. 2527, which deals with results of a test which was performed specifically for that litigation. IT IS HEREBY ORDERED that the above cause is:

AFFIRMED; REVERSED; MODIFIED;

COSTS _____

REMANDED TO _____ Court for further proceedings, in accordance with the above decision and that the Superior Court Clerk is directed to release any bonds to the Lower Court after assessing statutory Clerk's fees and costs.

DATED: September 11, 2009



JUDGE

ORIGINAL

DECISION ON RALJ APPEAL (DCRA)

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

November 19, 2009

Jerry Lincoln Taylor, Jr
King County Prosecuting Attorney
516 3rd Ave Ste W554
Seattle, WA, 98104-2362

Christine Anne Jackson
Attorney at Law
The Public Defender
810 3rd Ave Fl 8
Seattle, WA, 98104-1655

CASE #: 64437-8-I

State of Washington, Petitioner v. Ceasar Valadez Cienfuegos, Respondent

RE: King County No. 08-1-03760-2 SEA

Counsel:

On November 6, 2009, a notice for discretionary review was filed in King County Superior Court. Pursuant to RAP 6.2(b), a motion for discretionary review must be filed in the appellate court within 15 days after filing the notice. RAP 17.4(a) requires that the motion be accompanied by a notice of the time and date set for oral argument of the motion. A copy of the motion and notice must be served on all parties at least 10 days prior to the date noted for the hearing on the motion. Matters on discretionary review are considered by a commissioner on Fridays at 9:30 a.m.

The motion and notice setting the above-referenced discretionary review for hearing should be filed on or before November 23, 2009. If the motion and notice are not filed by that date, the court will consider imposition of sanctions in accordance with RAP 18.9.

Responses to motions are due on or before the Monday preceding the hearing date. RAP 17.4(e). Counsel are requested to please note the Court of Appeals number in all future references to this case.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

LLS

11/13

FILED

09 NOV -6 PM 2: 20

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

COPY TO COURT OF APPEALS ~~NOV 06 2009~~

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Petitioner/Plaintiff,

vs.

CEASAR VALADEZ CIENFUEGOS,

Respondent/Defendant,

04437-8

No. 08-1-03760-2 SEA

District Court No. C00552665

NOTICE FOR DISCRETIONARY
REVIEW TO COURT OF
APPEALS

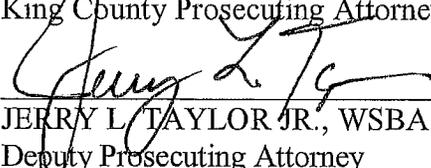
2009 NOV 12 AM 10:38

FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

The State of Washington, plaintiff, seeks review by the Court of Appeals of the State of Washington, Division I, of the superior court's Order on RALJ Appeal entered on October 8, 2009. A copy of the decision is attached.

Dated this 6th day of November, 2009.

DANIEL T. SATTERBERG
King County Prosecuting Attorney


JERRY L. TAYLOR JR., WSBA #40739
Deputy Prosecuting Attorney
Attorneys for Appellant/Plaintiff

Attorneys for the Petitioner:
Jerry L. Taylor Jr. (WSBA # 40739)
King County Prosecuting Attorney's Office
W554 King County Courthouse
516 Third Ave
Seattle, WA 98104

Attorneys for Respondent:
Christine Jackson (WSBA # 17192)
810 3rd Ave. Suite 800
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Certificate of Service by Mail

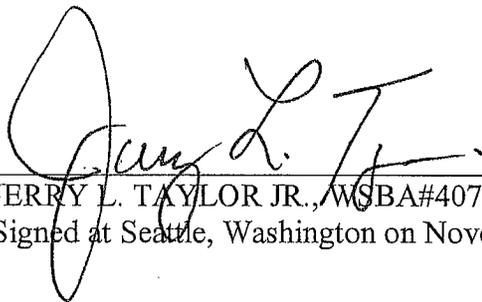
Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to CHRISTINE JACKSON, attorney for Respondent at

The Defender Association
810 3rd Avenue, Suite 800
Seattle, Washington 98104

The envelope contained a copy of the Notice of Discretionary Review and Certificate of Service, in State v. Cesar Valadez Cienfuegos Superior Court Cause No. 08-1-03760-2 SEA, in the Court of Appeals, Division I, for the State of Washington.

In addition, I faxed a copy of the same to Ms. Jackson at her fax number (206) 447-2349

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



JERRY L. TAYLOR JR., WSBA#40739

Signed at Seattle, Washington on November 6, 2009.

FILED
KING COUNTY, WASHINGTON
OCT 08 2009
SUPERIOR COURT CLERK
BY JOSEPH MASON
BEP/PLP

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Respondent,

v.

CEASAR VALADEZ CIENFUEGOS,

Appellant.

No. 08-1-03760-2 SEA

DECISION ON RALJ APPEAL

CLERK'S ACTION REQUIRED

THIS APPEAL came on regularly for oral argument pursuant to RALJ 8.3 on September 25, 2009, before the undersigned judge of the above entitled Court. The State of Washington, having been represented by Deputy Prosecuting Attorney Peter D. Lewicki; the Appellant represented by his attorney Christine A. Jackson; and the court having considered the written briefs of the parties and having heard oral argument of counsel, now holds the following:

1. Admission of Exhibit 10 (a document called a Certified Copy of Driving Record known as the "CCDR") violated Mr. Cienfuegos' right to confrontation. Exhibit 10 is an affidavit signed under penalty of perjury that contains the kind of statements held to be testimonial in *Melendez-Diaz v. Massachusetts*, ___ U.S. ___, 129 S.Ct. 2527, 174 L.Ed.2d 314

1 (2009). Certainly, the certification of work by a scientist in a crime laboratory in *Melendez-Diaz*
2 is distinguishable in scale from the affidavit of a licensing official about the status of Mr.
3 Cienfuegos' license. Nonetheless, *Melendez-Diaz* held that statements in affidavits are
4 testimonial when they are "...made for the purpose of establishing or proving some fact[]" and
5 made "...under circumstances that would lead an objective witness to believe that the statement
6 would be available for use at a later trial." 129 S.Ct. at 2532 (quoting *Crawford v. Washington*,
7 541 U.S. 36, 51-52, 124 S.Ct. 1354). Specifically, Exhibit 10 presents the following relevant
8 testimony: (1) that "April 15, 2005" is the "date of arrest," (2) that on April 15, 2005, the
9 defendant "[h]ad not reinstated his/her driving privilege," (3) that the defendant "[w]as
10 suspended/revoked in the first degree," (4) that the defendant "...was not eligible to reinstate
11 his/her driving privilege, and (5) that the defendant "[h]ad not been issued a valid Washington
12 license." See *Exhibit 10*. The Department of Licensing (DOL) official who authored this
13 document declared that she performed "...a diligent search of the computer files..." *Id.* The
14 CCDR therefore presents evidence that April 15, 2005 was the date of arrest, and also that Mr.
15 Cienfuegos was driving while his license was suspended on that very day. The CCDR contains
16 statements that prove facts that constitute elements of driving while license suspended in the first
17 degree. Essentially, the statements in Exhibit 10 are testimonial under *Melendez-Diaz* because
18 they are "a clerk's certificate attesting to the fact that the clerk had searched for a particular
19 relevant record and failed to find it." 129 S.Ct. at 2539.

21 Furthermore, Exhibit 10 is neither a business record nor a public record. Pursuant to
22 *Melendez-Diaz*, in determining whether a document is a business record, the inquiry focuses on
23 whether the document was prepared for trial and whether it contains testimony *against* the
24 defendant. Applying this inquiry to this case, it is clear that the CCDR does not qualify as a
25

1 business or public record. First, it was prepared solely for litigation to prove some fact at trial.
2 The Washington Supreme Court recognized that the documents commonly known as CCDRs are
3 "literally prepared for purposes of litigation and [] intended to be relied upon by the State." *State*
4 *v. Kirkpatrick*, 160 Wn.2d 873, 885, 161 P.3d 982 (2007). The database on which the CCDR
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14 *See State v. Smith*, 155 Wn.2d 496, 120 P.3d 559 (2005) ("evidence was insufficient where the
15 only evidence was the factual and legal fiction that the driver's license was 'suspended/revoked
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18 2. Mr. Cienfuegos was not deprived due process. The Order on Revocation mailed to him
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17 *CrRLJ 3.3(d)(4)*.

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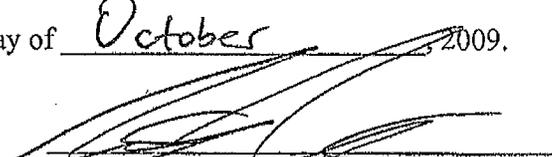
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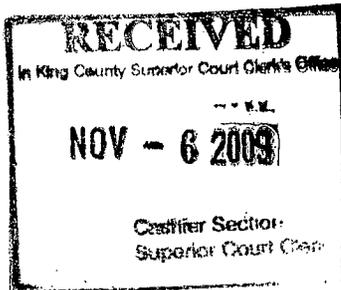
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11 7. The Court accepts the State's concession of error that the complaint charging the
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14 without prejudice to the State's right to re-file the charge. *State v. Vangerpen*, 125 Wn.2d 782,
15 791, 888 P.2d 1177 (1995).
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17 IT IS HEREBY ORDERED that the above cause is reversed and remanded to vacate Mr.
18 Cienfuegos' DWLS First Degree conviction and to vacate his Ignition Interlock Violation, which
19 violation is dismissed without prejudice.

20 Done in Chambers this 7th day of October, 2009.

21
22 
23 Judge STEVEN C. GONZALEZ
24
25



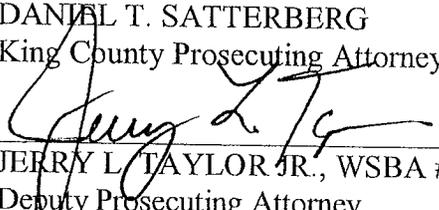
SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Petitioner/Plaintiff,)	No. 08-1-03760-2 SEA
)	
vs.)	District Court No. C00552665
)	
CEASAR VALADEZ CIENFUEGOS,)	NOTICE FOR DISCRETIONARY
)	REVIEW TO COURT OF
Respondent/Defendant,)	APPEALS
)	
)	

The State of Washington, plaintiff, seeks review by the Court of Appeals of the State of Washington, Division I, of the superior court's Order on RALJ Appeal entered on October 2009. A copy of the decision is attached.

Dated this 6th day of November, 2009.

DANIEL T. SATTERBERG
King County Prosecuting Attorney


JERRY L. TAYLOR JR., WSBA #40739
Deputy Prosecuting Attorney
Attorneys for Appellant/Plaintiff

Attorneys for the Petitioner:
Jerry L. Taylor Jr. (WSBA # 40739)
King County Prosecuting Attorney's Office
W554 King County Courthouse
516 Third Ave
Seattle, WA 98104

Attorneys for Respondent:
Christine Jackson (WSBA # 17192)
810 3rd Ave. Suite 800
Seattle, WA 98104

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 NOV - 9 PM 2:51

Certificate of Service by Mail

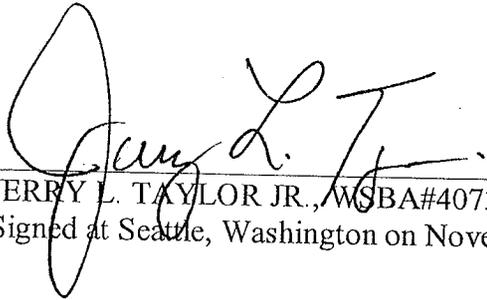
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In addition, I faxed a copy of the same to Ms. Jackson at her fax number
(206) 447-2349

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



JERRY L. TAYLOR JR., WSBA#40739
Signed at Seattle, Washington on November 6, 2009.