

CO. OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 42461-4-II

**COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON**

STEPHEN CHRISS JOHNSON,

Petitioner,

vs.

STATE OF WASHINGTON

Respondent

MOTION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONER

Stephen Johnson, Defendant below, requests discretionary review.

II. DECISION BELOW

Mr. Johnson seeks review of the Lewis County Superior Court Ruling on Appeal from District Court (RALJ), entered July 12, 2011 by Judge Richard L. Brosey.

III. ISSUES PRESENTED FOR REVIEW

Did the Superior Court err in ruling that the crime of Driving While License Suspended in the Third Degree, as defined in RCW 46.20.342(1)(c)(iv), includes driving with a license suspended for the sole reason of failure to pay a fine imposed after a contested hearing, when the plain language of the statute includes only failure to respond, failure to appear, or failure to comply with the terms of a notice of infraction?

Did the Superior Court err in ruling that a suspension for failure to pay does not violate Equal Protection, as applied to indigent defendants?

Did the Superior Court err in ruling that the District Court's impromptu indigency hearing did not violate Mr. Johnson's Due Process rights to notice and a meaningful opportunity to be heard?

IV. STATEMENT OF THE CASE

Stephen Chriss Johnson is an indigent resident of Lewis County.

He has not held a regular job since 1976, subsisting on occasional income from odd jobs. (App. at 34-35.) He lives in a dilapidated home which he has been unable to sell. (App. at 35, 37.) He receives food stamps, energy assistance, and medical assistance. (App. at 34, 38.) He owns a 1985 Toyota truck, the vehicle he drove at all times pertinent to this case. (App. at 37; *see* App. at 3.)

On April 14, 2007, Mr. Johnson was pulled over and issued a notice of infraction for driving without a valid operator's permit. (App. at 3-4.) The terms of the citation gave Mr. Johnson three options: 1) pay a fine of \$538; 2) request a contested hearing and appear in court; or 3) request a mitigating hearing and appear in court. *Id.* Mr. Johnson requested a contested hearing and appeared in court. (App. at 144-46.) The court found Mr. Johnson had committed the infraction and ordered him to pay a monetary penalty of \$260. (App. at 3, 146-47.) Mr. Johnson was unable to pay the fine, which is still outstanding. (App. at 60, 144.)

On September 17, 2007, DOL issued a notice of suspension for failure to pay the fine. (App. at 2.) The suspension became effective November 1, 2007. *Id.*

On September 19, 2008, Mr. Johnson was again pulled over and this time was arrested for Driving With License Suspended in the Third

Degree. (App. at 96.) He spent four days in custody. (App. at 184.)

At trial on September 18, 2009,¹ the State presented evidence that Mr. Johnson was driving on the public highways while his driving privilege was suspended and that Mr. Johnson knew his privilege was suspended. Mr. Johnson did not contest this evidence, but argued that he could not be convicted of the crime charged because it does not apply to a suspension for nonpayment of fines after a contested hearing. The District Court found Mr. Johnson guilty of the crime charged.

Mr. Johnson initiated a RALJ appeal to Superior Court. He applied for and was granted appointed counsel on appeal. When appointed counsel refused to make Mr. Johnson's arguments and failed to pursue the appeal in a timely manner, Mr. Johnson made a motion for replacement counsel. (App. at 25.) At that hearing, the District Court, without warning, questioned Mr. Johnson at length under oath about his financial status, for the purpose of determining whether he was still entitled to indigent defense counsel. (App. at 32-41.) Some time after the hearing, the District Court ruled Mr. Johnson was not indigent and stripped him of appointed counsel.

¹ A complete transcript of the trial was submitted to the Superior Court with Mr. Johnson's opening brief. It is reproduced in the Appendix to this brief at pages 89-196.

On appeal, the Superior Court affirmed the conviction. Mr. Johnson seeks review of the Superior Court's ruling.

V. ARGUMENT

The Court of Appeals should accept review under RAP 2.3(d)(2) and (3). The case involves "a significant question of law under the Constitution of the State of Washington or of the United States." *See* RAP 2.3(d)(2). It is also "an issue of public interest that should be determined by an appellate court." *See* RAP 2.3(d)(3).

This case revolves around Mr. Johnson's conviction of Third Degree Driving While License Suspended ("DWLS 3rd"). Mr. Johnson argues his conviction should be reversed because the crime of DWLS 3rd does not include driving with a license suspended solely because of failure to pay a fine. With nearly 300,000 Washington residents currently suspended for failure to pay fines, and one-third of misdemeanor court filings being charges of DWLS 3rd, the proper interpretation of the DWLS statute is a matter of great public interest that should be resolved by an appellate court.

The case also involves significant constitutional questions. Mr. Johnson argues that the underlying suspension violates Equal Protection by attempting to coerce payment from indigent persons who, by definition,

are unable to pay. Mr. Johnson also argues that the District Court's *sua sponte* indigency hearing violated his Due Process rights of notice and opportunity to be heard.

A. The Interpretation of the DWLS Statute Is an Issue of Public Interest That Should Be Resolved By an Appellate Court.

“The misdemeanor court is such an abomination that it destroys any myth or notion that I ever had about...American criminal justice.”² All too often in misdemeanor cases, “judges emphasize expediency over justice.”³ Propelled by institutional momentum, both the District Court and the Superior Court followed standard operating procedure, as it were, and applied an erroneous interpretation of the DWLS statute to convict Mr. Johnson of DWLS 3rd even though his acts did not fit the crime defined by the legislature. Resolution by an appellate court of the conflict between what the statute says and how it is applied in the district courts of this state could impact hundreds of thousands of Washington residents. It is an issue of great public interest and this court should accept review.

² Robert C. Burochowitz, et al., *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts*, National Association of Criminal Defense Lawyers, p. 14 (April 2009) available at <http://www.law.seattleu.edu/Documents/lawclinic/DefInitReport.pdf> (quoting Professor William Hellerstein, Brooklyn Law School, 1970) (App. at 326). The full report is reproduced in the Appendix at 311-74.

³ *Id.* at 44 (App. at 356).

1. The District Court and the Superior Court applied an erroneous interpretation of the DWLS 3rd statute, RCW 46.20.342(1)(c).

In order to convict a criminal defendant, the State must prove every element of the crime charged beyond a reasonable doubt. *State v. Smith*, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). The reason for suspension is an essential element of the crime of DWLS. *Smith*, 155 Wn.2d at 502-04. Reaching for some way to punish Mr. Johnson for driving while suspended, both the District and Superior Courts applied an erroneous interpretation of the DWLS 3rd statute (particularly the reason for suspension element) to convict him of a crime he did not actually commit.

Questions of statutory construction are reviewed de novo. *Smith*, 155 Wn.2d at 501. “When interpreting a criminal statute, a literal and strict interpretation must be given.” *State v. Wilson*, 125 Wn.2d 212, 216-17, 883 P.2d 320 (1994). The legislature means exactly what it says; a court “cannot add words or clauses when the legislature has chosen not to include that language.” *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

DWLS 3rd is defined in RCW 46.20.342(1)(c). It provides, in relevant part:

A person who violates this section when his or her driver’s

license or driving privilege is, at the time of the violation, suspended or revoked *solely because* . . . (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, *or has failed to comply with the terms of a notice of traffic infraction* or citation, as provided in RCW 42.20.289 . . . is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

RCW 46.20.342(1)(c) (emphasis added). Mr. Johnson's conviction relies on the allegation that he "failed to comply with the terms of a notice of traffic infraction or citation."

The relevant DWLS 3rd language is based upon the Nonresident Violator Compact (RCW 46.23.010),⁴ in which "terms of the citation"⁵ is defined as "those options *expressly stated upon the citation.*" RCW 46.23.010 (emphasis added). Thus the language of the DWLS 3rd statute, "terms of a notice of traffic infraction or citation," cannot mean anything other than the words printed on the notice itself.

The terms of the notice of infraction Mr. Johnson received required him to respond within fifteen days by checking one of three boxes and

⁴ Laws 1993 Chapter 501 (Substitute House Bill 1741) (App. at 270-83) enacted RCW 42.20.289, requiring suspension for failure to respond, failure to appear, and failure to comply with the terms of a notice of traffic infraction or citation. It added clause (iv) to the definition of DWLS 3rd. The purpose of these changes, according to the House Bill Report (App. at 285), was to meet the requirements of the Nonresident Violator Compact, which Washington had adopted, to obtain the full benefits of the Compact.

⁵ "Citation" as defined in the Compact includes a notice of infraction. RCW 46.23.010.

returning the form to the court. (App. at 4.) The terms included listed consequences for failure to respond or appear in court. *Id.* Next to each of the three check-boxes were additional terms applicable to each of the three options. *Id.* The terms for a contested hearing included information on the defendant's rights, a promise to appear in court, and the defendant's understanding that the infraction will go on his driving record if he loses at the contested hearing. *Id.* It is uncontested that Mr. Johnson complied with all of these terms. Nowhere on the notice of infraction does it require the defendant to pay a fine that results from the contested hearing. *Id.*

The Legislature has determined that not every reason for suspension of a license merits criminal penalties for DWLS. *Compare* RCW 46.20.291 *with* RCW 46.20.342.⁶ Those reasons that merit criminal punishment are enumerated in the DWLS definitions. Failure to pay a fine is not one of those enumerated reasons. It follows that the Legislature has determined it warrants only civil penalties.

⁶ For example, RCW 46.20.291(8) gives the department authority to suspend the license of a person who is not in compliance with a child support or visitation order. This authority to suspend was added to § 291 in 1997. *See* West's RCWA 46.20.291 (2008). The definitions of DWLS have been amended six times since 1997, but a suspension under § 291(8) for failure to comply with a child support or visitation order has never been added to any of the DWLS definitions. *See* West's RCWA 46.20.342 (2008). Clearly, the legislature intended that such a suspension should not be followed by criminal sanctions, otherwise it would have amended the DWLS definition to include it.

The State argued, and the District and Superior Courts erroneously agreed, that failure to comply with the terms of a notice of infraction includes failure to pay. The courts below apparently reasoned that “failure to comply with the terms of a notice of infraction,” despite its plain language, also means failure to comply with any legal requirement through the entire process, including payment of a fine.⁷ In doing so, the courts gave meaning to additional words or clauses that the legislature did not include in the statute. A literal and strict interpretation of the statute *cannot* include suspension for failure to pay a fine because those words do not appear in the statute or in the notice of infraction.

Failure to pay a fine imposed after a contested hearing, while punishable by suspension under RCW 46.63.110, could only be punished criminally as DWLS 3rd if the terms of the notice of infraction—the words printed on that piece of paper—required that payment. The notice of infraction Mr. Johnson received said nothing about payment of a fine after a contested hearing. Mr. Johnson did not “fail to comply with the terms of

⁷ App. at 242 (Judge Brosey held that failure to comply with the terms of a notice of infraction “refers in clear and unequivocal language to non-compliance by [not] doing what the *adjudicated* infraction requires” (emphasis added), rather than what the *notice of infraction* requires.); App. at 182 (Commissioner Tripp held that failure to comply “still encompasses the failing to pay because payment on a committed infraction is part of the infraction process.”)

a notice of traffic infraction.” Clearly, Mr. Johnson had an obligation to pay the fine for the original infraction, but his failure to do so cannot form the basis of a conviction of DWLS 3rd. This Court should accept review and reverse the conviction.

2. The correct interpretation of the DWLS statute is a matter of public interest impacting hundreds of thousands of Washington residents.

In explaining its tortured interpretation of DWLS 3rd, the District Court observed, “you have to go from here to here to here to here to figure this all out. It is not a good situation at all, not for defendants, not for lawyers, not for judges, not for anybody to have it be this confusing.” (App. at 177.) The public has a keen interest in sorting out this confusion.

In determining whether an issue involves a sufficient public interest to grant discretionary review under RAP 2.3(d)(3), this court considers “the public or private nature of the question, the need for future guidance provided by an authoritative determination, and the likelihood of recurrence.” *Eide v. Dept. of Licensing*, 101 Wn. App. 218, 223, 3 P.3d 208 (2000). The public nature of the issue and its likelihood of recurrence can be demonstrated by the number of pending cases involving the same issue. *In re A.D.F.*, 88 Wn. App. 21, 24, 943 P.2d 689 (1997).

Nearly 300,000 Washington residents currently have licenses

suspended for failure to pay their traffic tickets.⁸ In 2010, out of 294,474 misdemeanor cases filed statewide,⁹ over 98,000,¹⁰ or about one-third, were for DWLS 3rd.¹¹ Clearly this is a public issue likely to recur. The public has a keen interest in knowing whether these people are in jeopardy of criminal punishment, including the possibility of jail time.

[T]he prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or ‘petty’ matter and may well result in quite serious repercussions affecting his career and his reputation.

Argersinger v. Hamlin, 407 U.S. 25, 37, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972).

Given the conflict between the plain language of the DWLS statute and the way it is being applied in the district courts, there is great need for guidance provided by an authoritative determination by an appellate court. The high volume of misdemeanor cases creates a preoccupation in the

⁸ Austin Jenkins, Northwest News Network, *Nearly 300,000 Wash. drivers suspended for failure to pay tickets*, KPLU radio broadcast (12:13 p.m., July 23, 2011) available at <http://www.kplu.org/post/nearly-300000-wash-drivers-suspended-failure-pay-tickets> (last visited August 4, 2011) (App. at 307). Entire article reproduced in Appendix at 307-10.

⁹ Caseloads of the Courts of Washington 2010 Annual Report, Cases Filed (App. at 298).

¹⁰ Statewide DWLS filings for 2010, JIS report compiled by the Administrative Office of the Courts (App. at 299-304).

¹¹ Jenkins (App. at 309) (one-third); Burochowicz at 25-26, 29 (App. at 337-38, 341) (more than one-third).

district courts with the movement of cases—speed is substituted for care. *See Argersinger*, 407 U.S. at 34. “The misdemeanor trial is characterized by insufficient and frequently irresponsible preparation on the part of the defense, the prosecution, and the court.” *Id.* at 35. The district courts have become accustomed to applying their erroneous interpretation, like a rubber stamp. The appellate courts of the state are better positioned to take the time to analyze the issue and announce the correct rule for the district courts to follow.

This court has accepted discretionary review in similar situations before. In *State v. Alfonso*, 41 Wn. App. 121, 122, 702 P.2d 1218 (1985), this court accepted discretionary review to determine the correct interpretation of other portions of the DWLS statute. The proper interpretation of statutes has often been held to be a matter of sufficient public interest to merit discretionary review. *E.g.*, *In re Swanson*, 115 Wn.2d 21, 804 P.2d 1 (1990) (civil commitment statutes); *City of Spokane v. Ward*, 122 Wn. App. 40, 92 P.3d 787 (2004) (conflict between statute and court rule); *In re A.D.F.*, 88 Wn. App. 21, 943 P.2d 689 (1997) (civil and criminal contempt statutes); *State v. Hazzard*, 43 Wn. App. 335, 716 P.2d 977 (1986) (DWI and physical control statutes); *Lowery v. Nelson*, 43 Wn. App. 747, 719 P.2d 594 (1986) (forfeiture statute).

In *City of Spokane v. Ward*, the issue of public interest was whether a person who successfully challenges a traffic infraction judgment by appealing to superior court is entitled to an award of costs on appeal. *City of Spokane*, 122 Wn. App. at 43. In 2002, the year Mr. Ward prevailed in his appeal to superior court, there were 169 such RALJ appeals,¹² only a fraction of which could have been successful. If that is a sufficient public interest to warrant discretionary review, certainly 300,000 suspensions and over 98,000 cases per year of DWLS 3rd create a compelling public interest meriting discretionary review of this case. The court should accept review on the important issue of the proper interpretation of the DWLS 3rd statute.

B. Whether the Underlying Suspension Violated Equal Protection Is a Significant Constitutional Question That Should Be Reviewed by an Appellate Court.

Mr. Johnson has also raised the significant constitutional question of whether the underlying suspension violated Equal Protection. A driver cannot be convicted of DWLS when the underlying suspension was unconstitutional. *City of Redmond v. Moore*, 151 Wn.2d 664, 670, 91 P.3d 875 (2004).

¹² The Courts of Limited Jurisdiction 2002 Annual Caseload Report, Infraction Activity (App. at 305).

The constitutionality of the suspension is judged by the rational basis test. The “ordinary right of a citizen to use the streets in the usual way” is “a common right.” *Hadfield v. Lundin*, 98 Wn. 657, 662 (1917). The legislative power over that right is confined to *reasonable regulation* and does not extend to absolute prohibition. *Id.* at 662. A driver's license is a valuable property interest protected by procedural due process. *Moore*, 151 Wn.2d at 670. Thus the right to drive a motor vehicle on the public roadways is not a mere “privilege” that the State can revoke at will. Any regulation that would suspend or revoke that right must have a rational relationship to a legitimate government purpose, that being public safety.

In *Tate v. Short*, 401 U.S. 395 (1971), The United States Supreme Court held that imprisonment for the sole reason that the offender was unable to pay a fine was unconstitutional as a violation of Equal Protection. The Court held that “the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.” *Tate*, 401 U.S. at 398. The court reasoned:

[The statutory scheme] cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine. Imprisonment in such a case is not imposed to further

any penal objective of the State. It is imposed to augment the State's revenues [by coercing payment of the fine] but obviously does not serve that purpose; the defendant cannot pay because he is indigent and his imprisonment [does not lead to] collection of the revenue.

Tate, 401 U.S. at 399. The statutory scheme failed the rational basis test because imprisoning those unable to pay fines was not rationally related to the government purpose of collecting the fines.¹³

Similarly, in the present case, the statutory scheme creates an additional coercive penalty of suspension¹⁴ for those who do not pay fines for traffic infractions. Suspension of the driving privilege for failure to pay a fine is an automatic result; it is not punishment for a separate infraction. This suspension is not related to any penal objective, nor is it related to public safety. *See Moore*, 151 Wn.2d at 677. It is a penalty imposed solely to coerce the payment of the fine. It should be just as obvious here as it was to the Court in *Tate* that this coercive suspension cannot serve its purpose when a defendant is indigent. The indigent defendant *cannot pay*,

¹³ Justice Blackmun, concurring, observed that only entirely eliminating the use of fines as alternative punishment will avoid the equal protection issue that indigency occasions. *Tate*, 401 U.S. at 401. Because the burden of paying a fine varies with the economic status of the defendant, the indigent will always be more severely punished than the well-off unless the amount of the fine is adjusted based on ability to pay. Imprisonment or suspension for a set term is much more likely to impact all defendants equally.

¹⁴ Suspension of a drivers license can be more harmful for some individuals than a stay in jail. *Argersinger*, 407 U.S. at 48 (Powell, concurring).

and no length of suspension will ever lead to collection of the fine. The statutory scheme creates an invidious discrimination against indigent defendants and violates equal protection by imposing an additional punishment for the sole reason that the defendant is unable to pay the fine.

Just as imprisonment for coercive civil contempt must end when it is clear that the contemnor cannot comply with the court's order,¹⁵ coercive suspension of the driving privilege should end, or rather not even begin, when it is clear that the defendant *cannot pay* the fine that is the reason of the suspension.

The Court in *Tate* left open the possibility that coercive imprisonment may be appropriate for defendants who are able, but unwilling, to pay a fine. *Tate*, 401 U.S. at 400-01. Similarly, suspension of the driving privilege of a defendant who is able, but unwilling, to pay a fine may be appropriate. See *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 227 (2006). But it is offensive to equal protection to impose the additional penalty of suspension for the sole reason that a person is unable to pay a fine. It is irrational to think that suspension will ever lead to payment of

¹⁵ *King v. Dep't of Soc. & Health Services*, 110 Wn.2d 793, 804, 756 P.2d 1303 (1988) ("To continue one's incarceration for contempt for omitting an act he is powerless to perform would make the sanctions purely punitive. As soon as it becomes clear to the court that the contemnor cannot obey its original order, the court must release him.")

the fine by a person who does not have the means to pay. Thus suspension for inability to pay fails the rational basis test and is unconstitutional as applied to indigent defendants such as Mr. Johnson. This court should accept review of this significant constitutional question and reverse the suspension of Mr. Johnson's driving privilege and the resulting, erroneous conviction for DWLS 3rd.

C. The District Court Violated Procedural Due Process In Holding an Indigency Hearing Without Notice.

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” Matthews v. Eldridge, 424 U.S. 319, 333 (1976). On June 2, 2010, the District Court held a hearing on Mr. Johnson's motion to substitute counsel. Appointed counsel on appeal, Ms. Newbry, had failed to timely prepare and file a brief on Mr. Johnson's behalf. (App. at 28.) As a result, the prosecuting attorney, Mr. O'Rourke, had threatened a motion to dismiss for lack of prosecution. (App. at 29.) After hearing arguments from Mr. Johnson and Ms. Newbry, the District Court *sua sponte* and without warning decided to hold a hearing on Mr. Johnson's indigency status. (App. at 32.) Without proper notice, Mr. Johnson was unable to prepare any defense of his indigency. As a result, the District Court, instead of simply rejecting the

motion to substitute counsel, made the erroneous determination that Mr. Johnson was not indigent and deprived him of his right to appointed counsel. This deprivation without notice and a meaningful opportunity to be heard violated Mr. Johnson's due process rights.

Indigency is determined "upon the defendant's initial contact with the court or at the earliest time circumstances permit." RCW 10.101.020(3). The statute only provides for a subsequent determination of ineligibility in the case of a provisional appointment, where eligibility could not be determined before the time when the first services were to be rendered. RCW 10.101.020(4). The defendant is not required to notify the court of a change in financial status unless he was determined to be "indigent and able to contribute." RCW 10.101.020(5). There is no provision in the statute for the court to initiate an indigency determination of its own volition after a defendant has already been found indigent. Thus the indigency hearing was entirely invalid.

Even if the hearing could be validly held, the court failed to provide Mr. Johnson with any meaningful notice or opportunity to be heard. Without time to prepare to defend his indigency status, Mr. Johnson's opportunity to testify at the hearing could hardly be called meaningful. Given the procedures set forth in the statute, Mr. Johnson

could not have expected that such a hearing would ever take place.

After the invalid hearing, the court erroneously found that Mr. Johnson was not indigent and stripped him of appointed counsel. A person is indigent under the statute if one of four conditions is met:

- (1) “Indigent” means a person who, at any stage of a court proceeding, is:
 - (a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, *food stamps or food stamp benefits transferred electronically*, refugee resettlement benefits, medicaid, or supplemental security income; *or*
 - (b) Involuntarily committed to a public mental health facility; *or*
 - (c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; *or*
 - (d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

RCW 10.101.010 (emphasis added). Mr. Johnson testified at the hearing that he was receiving food stamp benefits, one of the types of public assistance that qualify a defendant as indigent. (App. at 34.)

The district court apparently believed that Mr. Johnson’s house and his judgment against his neighbor disqualified him from indigent status under paragraph (1)(d), but that is not how the statute operates. Because

the statutory list is disjunctive, failure to meet any of the other criteria could not have disqualified Mr. Johnson from being indigent. Since he met the qualification of receiving food stamps, all other considerations were irrelevant.

Mr. Johnson was given no notice nor meaningful opportunity to be heard at this invalid hearing, in violation of his Due Process rights. As a result, he was stripped of his right to appointed counsel. This court should accept review of this significant constitutional issue.

VI. CONCLUSION

The correct interpretation of the DWLS statute is a matter of public interest that could impact hundreds of thousands of Washington residents. The public would greatly benefit from an authoritative determination by an appellate court of this state. The case also involves significant constitutional questions that should be resolved by an appellate court. This court should accept review on all of these issues.

Respectfully Submitted this 26th day of August, 2011.

CUSHMAN LAW OFFICES, P.S.



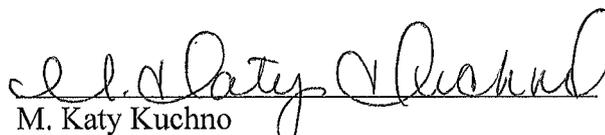
Kevin Hochhalter, WSBA #43124
Attorney for Stephen Johnson

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on August 26, 2011, I caused to be served a true copy of the foregoing Motion, by the method indicated below, and addressed to each of the following:

original:	Court of Appeals Division II 950 Broadway, #300 Tacoma, WA 998402 253-593-2806	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail
copy:	Shane Michael O'Rourke, 345 W. Main St, 2 nd Floor Chehalis, WA 98532	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail

DATED this 24 day of August, 2011 in Olympia, Washington.


M. Katy Kuchno
Paralegal to Kevin Hochhalter

11 SEP 20 PM 1:20

STATE OF WASHINGTON
BY _____
DEPUTY

Filed

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

STEPHEN C. JOHNSON,

Appellant.

DIVISION II
NO. ~~41461-4-II~~ *42461-9*

ERRATA TO MOTION FOR
DISCRETIONARY REVIEW

COMES NOW Petitioner to correct the face page and table of contents to his Motion for Discretionary Review for the following clerical errors. The positioning of the Respondent and Petitioner's names is corrected and documents included in the original appendix are identified. A corrected copy of the face page and table of contents are attached hereto. The additional items identified in the table of contents are as follows:

Notice of Appeal	A7
Verbatim Report of Proceeding, June 2, 2010, re: Motion to Substitute Counsel	A19
Verbatim Report of Proceeding, March 19 2009, re: Motion for Reconsideration	A44
Verbatim Report of Proceeding, September 18, 2009, re: Trial and Sentencing	A89

The following has been removed from the table of authorities:

RCW 74.09.035	19
---------------------	----

DATED this 1st day of September, 2011.

CUSHMAN LAW OFFICES, P.S.

Kevin Hochhalter
Kevin Hochhalter, WSBA#43124
Attorney for Petitioner Johnson

COURT OF APPEALS
DIVISION II

11 SEP 20 PM 1:20

CERTIFICATE OF SERVICE

STATE OF WASHINGTON
BY _____
DEPUTY

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4 I certify that on September 19th, 2011, I served a copy of this document upon the Attorney for the
5 Respondent by placing said document in the U.S. Mail, with sufficient postage paid, addressed as
6 follows:

7 Shane Michael O'Rourke,
8 Lewis County Prosecuting Atty's Office
9 345 W. Main St, 2nd Floor
10 Chehalis, WA 98532-1900

SIGNED at Olympia, Washington this 19th day of September, 2011.

11 
12 Elisabeth Cushman

No. 42461-4-II

**COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON

Respondent

vs.

STEPHEN CHRISS JOHNSON,

Petitioner,

MOTION FOR DISCRETIONARY REVIEW

Jon E. Cushman
Kevin Hochhalter
Cushman Law Offices, P.S.
924 Capitol Way South
Olympia, WA 98501

360-534-9183

Attorneys for Petitioner

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 1. The District Court and the Superior Court applied
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 2. The correct interpretation of the DWLS statute is a
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 Should Be Reviewed by an Appellate Court. 13

 C. The District Court Violated Procedural Due Process In
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Senate Bill Report SHB 1741 A2292

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SEP 20 2011
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
Respondent,
v.
STEPHEN C. JOHNSON,
Appellant.

NO. ~~41461-4-II~~
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The following has been removed from the table of authorities:

RCW 74.09.035	19
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DATED this 14th day of September, 2011.

CUSHMAN LAW OFFICES, P.S.

Kevin Hochhalter
Kevin Hochhalter, WSBA#43124
Attorney for Petitioner Johnson

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CERTIFICATE OF SERVICE

I certify that on September 19th, 2011, I served a copy of this document upon the Attorney for the Respondent by placing said document in the U.S. Mail, with sufficient postage paid, addressed as follows:

Shane Michael O'Rourke,
Lewis County Prosecuting Atty's Office
345 W. Main St, 2nd Floor
Chehalis, WA 98532-1900

SIGNED at Olympia, Washington this 19th day of September, 2011.


Elisabeth Cushman

RECEIVED
SEP 20 2011
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

No. 42461-4-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent

vs.

STEPHEN CHRISS JOHNSON,

Petitioner,

MOTION FOR DISCRETIONARY REVIEW

Jon E. Cushman
Kevin Hochhalter
Cushman Law Offices, P.S.
924 Capitol Way South
Olympia, WA 98501

360-534-9183

Attorneys for Petitioner

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RCW 46.23.010	7
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APPENDIX



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

P. O. Box 9030 • Olympia, Washington 98507-9030

July 23, 2009

als

The information in this report pertains to the driving record of:

Lic. #: JOHNSSO526P8
Name: JOHNSON, STEPHEN CHRISS
PO BOX 13
RANDLE WA 98377

Birthdate: October 23, 1948
Eyes: GRN Sex: M
Hgt: 5 ft 07 in Wgt: 197 lbs
License Issued: October 23, 1997
License Expires: October 23, 2001

After a diligent search, our official record indicates that the status on September 19, 2008, was:

Personal Driver License Status:

- Suspended in the third degree

Commercial Driver License Status:

The following also applied:

PDL Attachments:

- Notice of Suspension November 01, 2007

CDL Attachments:

PLFF. IDENT. 1 EX 1
LEWIS COUNTY
DISTRICT COURT
CASE No. C85203
DEFT. IDENT. EX



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 within the Department of Licensing.

Shannon Smiley

Custodian of Records
Place: Olympia, Washington
Date: July 23, 2009

The Department of Licensing has a policy of providing equal access to its services.
If you need special accommodation, please call (360) 902-3900 or TTY (360) 664-0116.

JOHNSSC526P3

20070414

072585520



ABFT

PO Box 9030, Olympia, WA 98507-9030

I00038445

September 17, 2007

File Copy

JOHNSON,STEPHEN CHRISS
144 ABBY RD PO BOX 13
RANDLE WA 98377

DP

License #: JOHNSSC526P3
Birthdate: 10-23-1948

On 11-01-2007 at 12:01 a.m. your driving privilege will be suspended. The Court has notified us that you failed to respond, appear, pay, or comply with the terms of the citation listed below:

<u>Citation Number</u>	<u>Violation Date</u>	<u>Reason for Citation</u>
I00038445	04-14-2007	NO VALID LICENSE/I

What do I have to do to avoid suspension of my driving privilege?

- Contact this court to find out how to take care of this citation:
LEWIS CO. DIST CRT
345 WEST MAIN/PO BOX 336
CHEHALIS, WA 98532-0336
(360) 740-1203
- Provide proof that you have satisfied the court's requirements. Once the requirements are met, the court will send us notice. Because this may take several days, you may take your copy of the Notice of Adjudication form from the court to any driver licensing office to speed up the process.

What will happen if my driving privilege is suspended?

Make sure that we have received notice that this matter is settled before the date shown above. If we have not, it will be illegal for you to drive and you must surrender your license to any driver licensing office. You must pay a reissue fee and any other applicable licensing fees before a new license can be issued.

May I appeal this action?

Yes. To request an administrative review return the enclosed form or submit a written request to: Department of Licensing, Hearings & Interviews, PO Box 9031, Olympia, WA 98507-9031 or fax to (360)664-8492. Requests must be postmarked within 15 days from the date of this notice. If you have questions, please call (360)902-3878.

If you have other questions after contacting the court, call Customer Service at (360) 902-3900 or visit our website, at www.dol.wa.gov.

The Department of Licensing has a policy of providing equal access to its services. If you need special accommodation, please call (360) 902-3900 or TTY (360)664-0116.

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, on September 17, 2007.

Debra M. Maniv
Agent for the Department of Licensing

Authority: RCW 46.20.289

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. **JOHNSSC526P3** STATE **WA** EXPIRES **2001** PHOTO I.D. ON PERSON YES NO

NAME: LAST **JOHNSON,** FIRST **STEPHEN** MIDDLE **CHRIS**

ADDRESS **70 BOX 13 / US HWY. 12** IF NEW ADDRESS PASSENGER

CITY **RANDLE** STATE **WA** ZIP CODE **98377** EMPLOYER LOCATION

DATE OF BIRTH **10-23-48** RACE **W** SEX **M** HEIGHT **5-07** WEIGHT **197** EYES **GRN** HAIR **BRN**

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

VIOLATION DATE MONTH **04** DAY **14** YEAR **07** TIME **1645** INTERPRETER NEEDED LANG. ()

AT LOCATION **US HWY. 12** M.P. **111** CITY **LEWIS** COUNTY **LEWIS**

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

VEHICLE LICENSE NO. **A91679L** STATE **WA** EXPIRES **03-08** VEH. YR. **1985** MAKE **TOYOTA** MODEL **PU** STYLE **PU** COLOR **WHITE**

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

OWNER/COMPANY IF OTHER THAN DRIVER **SAME AS ABOVE**

ADDRESS CITY STATE ZIP CODE

ACCIDENT NO NR R I F COMMERCIAL YES HAZARD YES EXEMPT FARM FIRE OTHER OTHER

VEHICLE NO PLACARD NO VEHICLE R.V.

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

1. VIOLATION/STATUTE CODE **RCW 46.20.015** VEHICLE SPEED IN A ZONE SMD FACE AIRCRAFT

NO VALID DRIVERS LICENSE WITH VALID ID

2. VIOLATION/STATUTE CODE

3. VIOLATION/STATUTE CODE

FILED
LEWIS CO. DIST. COURT
APR 14 2007

3B-

PENALTY U.S. \$ **539.00**
DATE ISSUED **04-14-07**

RELATED #

WITHOUT ADMITTING TO HAVING COMMITTED EACH OF THE ABOVE OFFENSE(S), 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.

COPY PROVIDED TO DEFENDANT
DEFENDANT'S SIGNATURE **C. SPANW 236**
OFFICER

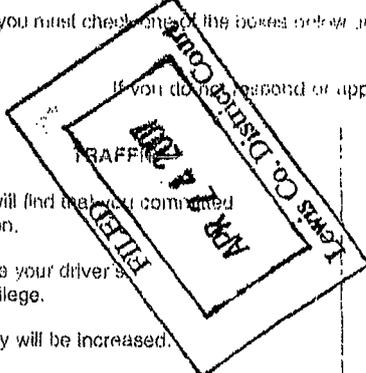
INFRACTION

INF.	RESPONSE	DISPOSITION	PENALTY	SUSPENDED	SUB-TOTAL	FNDG/JDGM DATE
1	C	NC	C NC D P DF \$ 250	\$	\$ 250	7/19/07
2	C	NC	C NC D P DF \$	\$	\$	ABSTRACT MLD TO OLYMPIA
3	C	NC	C NC D P DF \$	\$	\$	
					TOTAL COSTS \$ 260	

PLFF. IDENT. EX
 LEWIS COUNTY
 DISTRICT COURT
 CASE No. **C85203**
 DEFT. IDENT. **2** EX **2**

YOU MUST RESPOND WITHIN FIFTEEN (15) DAYS FROM THE DATE ISSUED.

Your response must be postmarked by midnight or earlier, if it is due at the court. To respond, you must check one of the boxes below and send this form to the court listed on the front.



If you do not respond or appear for court hearings:

The court will find that you committed the infraction.
You will lose your driver's license/privilege.
Your penalty will be increased.
Also, if you do not pay, your case may be sent to a collection agency.

NON-TRAFFIC

The court will find that you committed the infraction.
It is a crime and will be treated accordingly.
Your penalty will be increased.
Also, if you do not pay, your case may be sent to a collection agency.

Here are the three ways you can respond. Check one box, then sign and date the bottom of the ticket.

- I have enclosed a check or money order, in U.S. funds, for the amount listed on the front. I understand this will go on my driving record if "traffic" is checked on the front. DO NOT SEND CASH. NSF checks will be treated as a failure to respond.
- Mitigation Hearing. I agree I have committed the infraction(s), but I want a hearing to explain the circumstances. Please send me a court date and I promise to appear on that date. I know I can ask witnesses to appear but they are not required to appear. I understand this will go on my driving record if "traffic" is checked on the front. In some cases the court may allow time payments or reduce the penalty. The court may allow time payments or reduce the penalty where allowed by law.
- Contested Hearing. I want to contest (challenge) this infraction. I did not commit the infraction. Please send me a court date, and I promise to appear on that date. The state must prove by a preponderance of the evidence that I committed the infraction. I know I can require (subpoena) witnesses, including the officer who wrote the ticket, to attend the hearing. The court will tell me how to request a witness's appearance. I understand this will go on my driving record if I lose and "traffic" is checked on the front.

My mailing address is: (PLEASE PRINT)

Name: Stephen C. Johnson

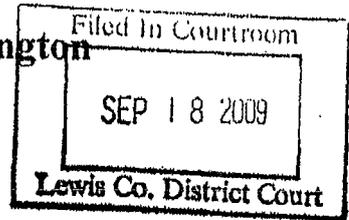
Street: None! Apt: _____

City: _____ State: _____ Zip Code: _____

Interpreter Language _____

x [Signature] (SIGNATURE) _____ (DATE)

In the District Court of the State of Washington
For Lewis County



[] State of Washington,
[] County of Lewis,
[] City of _____

Plaintiff,

Cause No. C85203

vs.

JUDGMENT AND SENTENCE
GENERAL

Stephen Chriss Johnson
Defendant.

This matter having regularly come before the Court for sentencing and the Defendant personally appearing, [] having waived counsel with counsel of record Atty Gray and Appears the Defendant's guilt having been fully adjudicated on the 18th day of September 2009, by: 2/27/c
ARRAIGNMENT DATE 9/22/08 Atty Gray appeared 10/1/08 w/o 12/17/08, pro se
[] a plea of guilty [] a trial resulting in a verdict of guilty [] a stipulated finding of guilt
Practico present - D Johnson, Atty Gray, PLA O'Rourke, Deputy McKnight, Pro Tem Teipp
Now Therefore, It is Ordered, Adjudged and Decreed that the Defendant is guilty of the charge(s):

Count	Crime	RCW or Ordinance (with subsection)
1.	DWLS 3rd Degree	46.20.342.1C
2.		

In count _____, the defendant committed the offense against another family or household member as defined in RCW 10.99.020.

see pocket for prior hearings
It is Further Ordered and Adjudged that the defendant be sentenced as follows:

Count 1: Sentenced to serve 90 days in jail and to pay \$ 300 in fines.
CB 4 86 days in jail and \$ _____ in fines are suspended and deferred for 24 months upon the conditions set forth below.

Count 2. Sentenced to serve _____ days in jail and to pay \$ _____ in fines.
_____ days in jail and \$ _____ in fines are suspended and deferred for _____ months upon the conditions set forth below.

WARNING: Failure to comply with any of the conditions set forth below during the period of suspension could result in the imposition of some or all of the suspended jail time.

Conditions of Sentencing: The balance of the jail term is suspended on the following conditions:

- Serve 4 days in jail. CB 4
- [] Be on probation supervision for _____ months or until treatment requirements are met.
- [] Enter into an [] alcohol [] drug [] DV treatment program within _____ days, provide proof of same to the Court, and complete same.

- Complete current alcohol drug DV treatment program with _____.
- Pay fines and assessments in the sum of \$ _____.
- Reimburse the State of Washington, the County of Lewis or the named City for:
 Public Defender Fees \$ 360 Warrant Fees \$ _____ Jail Costs \$ _____
 DV Assessment \$ _____ TPC Assessment \$ 102.50
(County Domestic Violence Penalty) (Criminal Traffic Penalty)
 CFT Assessment \$ 43 CFN Assessment \$ _____
(Criminal Conviction Fee-Traffic) (Criminal Conviction Fee-Non-Traffic)
 CAS/CAL Drug Analysis Fee \$ _____ Other: \$ _____
(CAS-Crime Lab Analysis Fee / CAL-Crime Lab Analysis Fee)
- Pay a probation supervision fee of \$ _____.
- Complete Alcohol Drug Information School within _____ days.
- Complete a Domestic Violence VIP and/or a DUI VIP within _____ days.
- Do not possess or consume alcohol or controlled substances unless prescribed by a physician.
- Your right to drive is suspended/revoked for _____ days.
- Do not drive unless you are both licensed and insured.
- Clear all warrants and provide written proof to the Court within _____ days.
- Furnish the court with written proof of valid driver's license by _____.
- Have no ~~criminal charges or convictions~~ ^{major traffic w/s} during the next two years.
- Pay restitution into the Court registry in the amount of \$ _____.
- This crime involves a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.130. The defendant is required to register with the county sheriff as described in the "Offender Registration" Attachment.**
- Other: _____

Total number of days to be served by imprisonment in Jail or by Confinement: 4 w/CS 4
(See Jail Commitment form for details as to commencement date and alternative sanctions)

Total Fines, Assessments, and Costs to be paid: \$ 805.50

Payment shall be made as follows: — is request to collections
 Send payments to: Lewis County District Court, PO Box 600, Chehalis WA 98532-0600

Dated: 9/18/09

 Prothonotary Judge/Commissioner

I have read the terms, conditions, and warnings and have received a copy of this document.
 Dated: 18 Sept 09

 Defendant Signature and Date of Birth
(Your rights on appeal of this decision are on the back of this page)

Distribution: White - Court Canary - Defendant Pink - Prosecutor Gold - Defense Attorney

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
FOR LEWIS COUNTY

State of Washington,
City of _____

State of Washington
~~Plaintiff~~
~~Respondent~~
vs.
Stephen C. Johnson
~~Defendant~~
Appellate

District Court No. C 85203
Superior Court No. 09-1-00586-3

Notice of Appeal

Filed
OCT 6 2009
Lewis Co. District Court

The Appellant (Please Print Your Name) Stephen C. Johnson

seeks review by the Lewis County Superior Court of the decision rendered in the Lewis County

District Court under Case No. C 85203 entered on 18 Sept. 09

Type of Case Appealed:

- Criminal (RALJ) DWS 3rd
(include charge description)
- Civil (RALJ)
- Infraction (RALJ)

Received & Filed
LEWIS COUNTY, WASH
Superior Court
OCT 06 2009

By [Signature]
Kathy A. Brack, Clerk
Deputy

Designate each decision to be reviewed:

Motion To Dismiss, motion for Reconsideration
Interlocutory Appeal, Trial.

Dated this 6 day of October, 2009.

[Signature]
Appellant

Appellant or Attorney for Appellant

Name: _____

Address: _____

Telephone: () _____

Bar No. _____

Attorney for Respondent

Name: _____

Address: _____

Telephone: () _____

Bar No. _____

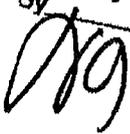
AUG 15 2011

CUSHMAN LAW OFFICES

1 □ Hearing is set
Date:
2 Time:
3 Judge/Calendar:
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Received & Filed
LEWIS COUNTY, WASH
Superior Court

NOV 03 2010

By  Kathy A. Erack, Clerk
Deputy

**SUPERIOR COURT OF WASHINGTON
FOR LEWIS COUNTY**

STATE OF WASHINGTON

Respondent,

v.

STEPHEN C. JOHNSON,

Appellant.

District court case no. C85203

Superior court case no. 09-1-00586-3

APPELLANT'S BRIEF

Appellant Stephen Johnson was convicted on September 19, 2009, of Driving While License Suspended in the Third Degree under RCW 46.20.342(1)(c) in the Lewis County District Court. Mr. Johnson appeals that conviction because the state failed to prove every element of the crime charged and for Constitutional infirmities in the motor vehicle licensing statutes.

SUMMARY OF FACTS

Mr. Johnson is an indigent resident of Lewis County. He is disabled and has not held a job since 1976. Transcript of Hearing on Motion for New Counsel, June 2, 2010 (**EXHIBIT A**), at 16:20-17:4. He lives in a dilapidated home which he has been unable to sell. *Id.* at 17:11-23. He receives food stamps and medical assistance. *Id.* at 20:10-20. He owns a 1985 Toyota truck, the vehicle he has driven at all times pertinent to this case. *Id.* at 19:3-5; *see* Defendant's Exhibit 2. Mr. Johnson's conviction in this case is the result of a string of events that began years ago.

Mr. Johnson used to hold a valid Washington driver's license. Transcript of Hearing on Motion for Reconsideration, March 19, 2009 (**EXHIBIT B**), at 11:14-20. At that time he had a clean driving record. *Id.* at 12:14. A few years ago, Mr. Johnson applied to renew his driver's license. *Id.*

APPELLANT'S BRIEF-1

1800.007
w/c file

CUSHMAN
LAW OFFICES, P.S.
ATTORNEYS AT LAW

924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501
(360) 534-9183 FAX: (360) 956-9795

1 at 11:14-20. The Department of Licensing (“DOL”) refused to renew his license for failure to provide a
2 residence address. Id. at 12:3-4, 15-17. At the time, Mr. Johnson did not have a primary residence. Id. at
3 13:5-6.

4 Mr. Johnson continued to exercise his driving privilege. On April 14, 2007, he was pulled over
5 and issued a notice of infraction for driving without a valid operator’s permit. Defendant’s Exhibit 2.
6 The terms of the citation gave Mr. Johnson three options: 1) pay a fine of \$250; 2) request a contested
7 hearing and appear in court; or 3) request a mitigating hearing and appear in court. Id. Mr. Johnson
8 requested a contested hearing and appeared in court. Transcript of Trial, September 18, 2009 (hereafter,
9 “Trial”), at 56:21-25, 58:16-24. The court upheld the citation and ordered Mr. Johnson to pay a monetary
10 penalty. Id. at 59:5-60:1. Mr. Johnson was unable to pay the fine, which is still outstanding.
11 Reconsideration at 16:8-12; *see* Trial (**EXHIBIT C**) at 56:21.

12 On September 17, 2007, DOL issued a notice of suspension for failure to pay the fine. Plaintiff’s
13 Exhibit 1. The suspension became effective November 1, 2007. Id.

14 On September 19, 2008, Mr. Johnson was again pulled over and this time was arrested for
15 Driving With License Suspended in the Third Degree. Citation; *Exhibit C* at 8:8-16; He spent four days
16 in custody. *See Exhibit C* at 96:7-8.

17 Before trial, Mr. Johnson filed a motion to dismiss, arguing that the underlying suspension of his
18 driving privilege was unconstitutional on due process and equal protection grounds. The District Court
19 denied his motion on February 5, 2009. Mr. Johnson filed a motion for reconsideration of that decision,
20 which the District Court denied on March 19, 2009. At the hearing on that motion, the District Court
21 allowed Mr. Johnson to present limited testimony on the record for the purpose of appeal. Mr. Johnson
22 made an interlocutory appeal of denial of his motion to dismiss, but the appeal was dismissed and the
23 case proceeded to trial.

24 At trial on September 18, 2009, the State presented evidence that Mr. Johnson was driving on the
25 public highways while his driving privilege was suspended and that Mr. Johnson knew his privilege was
26 suspended. Mr. Johnson did not contest this evidence, but argued that he could not be convicted of the
27 crime charged because it does not apply to a suspension for nonpayment of fines. The District Court
28 found Mr. Johnson guilty and Mr. Johnson has appealed to this Court.

1 Johnson failed to comply with the terms of the notice of traffic infraction.

2 But Mr. Johnson presented competent evidence at trial that he did comply with the terms of the
3 notice. The District Court admitted the original notice as evidence. The notice provides:

4 **YOU MUST RESPOND WITHIN FIFTEEN (15) DAYS FROM THE DATE**
5 **ISSUED.**

6 To respond, you must check one of the boxes below and return this form to the court
7 listed on the front.

8 If you do not respond or appear for court hearings: [list of consequences]

9 **Here are the three ways you can respond.**

10 **Check one box, then sign and date the bottom of the ticket.**

11 **I have enclosed a check or money order, in U.S. funds, for the amount listed on**
12 **the front. . . .**

13 **Mitigation Hearing. . . .**

14 **Contested Hearing.** I want to contest (challenge) this infraction. I did not commit the
15 infraction. Please send me a court date, and I promise to appear on that date. The state
16 must prove by a preponderance of the evidence that I committed the infraction. I know I
17 can require (subpoena) witnesses, including the officer who wrote the ticket, to attend the
18 hearing. The court will tell me how to request a witness's appearance. I understand this
19 will go on my driving record if I lose and "traffic" is checked on the front.

20 Defendant's Exhibit 2 (emphasis in original). Mr. Johnson complied with the terms of the notice by
21 requesting a contested hearing.

22 Neither the statute nor the terms of the notice require payment of a fine imposed by the court
23 after a contested hearing. The statute only requires that the person respond to and comply with the terms
24 of the notice, and that the person appear in court. The terms of the notice, under the option elected by
25 Mr. Johnson, only require the request for a contested hearing, nothing more. Suspension for reason of
26 nonpayment of a fine does not qualify for DWLS in the Third Degree under the plain language of the
27 statute under which Mr. Johnson was charged. The State's argument that nonpayment of fines is
28 included requires this Court to give meaning to additional words or clauses that the legislature did not
include in the statute. A literal and strict interpretation of the statute **cannot** include suspension for
nonpayment of fines because those words do not appear in the statute.

An examination of RCW 46.20.289, referenced by Section 342, is of no avail in attempting to
bring Mr. Johnson under the definition of DWLS in the Third Degree. Section 289 directs DOL to
suspend driving privileges under the same conditions listed in Section 342:

1 The department shall suspend all driving privileges of a person when the department
2 receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 **that**
3 **the person has failed to respond to a notice of traffic infraction, failed to appear at a**
requested hearing, violated a written promise to appear in court, or has failed to
comply with the terms of a notice of traffic infraction or citation

4 RCW 42.20.289 (emphasis added). The references to RCW 46.63.070(6), 46.63.110(6), and 46.64.025
5 simply specify the conditions under which a court will send notice to DOL. The words that follow (“that
6 the person has”) specify the conditions under which DOL “shall suspend all driving privileges.”
7 Once again, failure to pay a fine is not one of the listed conditions. Section 289 adds nothing to the
8 meaning of the language of Section 342.

9 The State has failed to prove an essential element of the crime charged. The reason for the
10 underlying suspension is an essential element of DWLS. Mr. Johnson’s driving privilege was not
11 suspended for any of the reasons provided in RCW 46.20.342(1)(c). It was suspended for nonpayment of
12 a fine. Nonpayment of a fine is not “fail[ure] to comply with the terms of a notice of traffic infraction”
13 where the terms of that notice did not require compliance with any court order following the contested
14 hearing. If the Legislature had intended suspension for nonpayment of fines to qualify a defendant for
15 DWLS in the Third Degree, it could easily have said so, but it did not. For this Court to hold that
16 suspension for nonpayment of fines subjects a person to criminal sanctions under RCW 46.20.342(1)(c)
17 would be adding words or clauses that the legislature plainly did not write. According to the plain
18 language of the statute and the notice, Mr. Johnson cannot be convicted of the crime charged. The State
19 has failed to prove a reason for Mr. Johnson’s suspension that brings him under the force of RCW
20 46.20.342(1)(c). This Court should reverse the conviction.

21 The State erroneously argues that this strict interpretation of the statute leads to absurd results
22 that would allow an offender to escape punishment for failure to pay a fine. But the State has failed to
23 fully understand the statutory scheme. RCW 46.63.110(6) still requires DOL to suspend the license of a
24 person who fails to pay a fine ordered by a court after a hearing. RCW 46.63.020 provides that any
25 violation of Title 46 not specifically listed in that section as a criminal offense is an infraction. Driving
26 with privilege suspended for any reason is a violation of RCW 46.20.342(1), but a suspension for failure
27 to pay a fine is not a basis for any criminal offense listed in RCW 46.63.020, so it must be an infraction.
28 A person who fails to pay a fine would still have his or her driving privilege suspended and could be

1 subject to further fines for the infraction of driving while license suspended for failure to pay a fine
2 (subject to civil infractions, not criminal jeopardy). Here the State is seeking criminal penalties that are
3 contrary to the plain language of the statutes. This Court should reverse Mr. Johnson's conviction.

4 **II. This Court Should Reverse Mr. Johnson's Conviction Because the Underlying Suspension**
5 **Was Unconstitutional.**

6 A driver cannot be convicted of DWLS when the suspension was unconstitutional. City of
7 Redmond v. Moore, 151 Wn. 2d 664, 670, 91 P.3d 875 (2004). Mr. Johnson's conviction in this case is
8 the result of an unconstitutional refusal by DOL to renew Mr. Johnson's license. The conviction rests on
9 the suspension of Mr. Johnson's driving privileges by DOL on November 1, 2007. DOL suspended Mr.
10 Johnson's driving privileges because he did not pay a fine. Mr. Johnson incurred the fine for the
11 infraction of driving without a valid operator's permit on April 14, 2007. Mr Johnson did not have a
12 valid license because DOL refused to renew his license on the grounds that he did not provide a
13 residence address as required under RCW 46.20.091(1)(d). This requirement violates the Equal
14 Protection clause of the U.S. Constitution and Article 12 of the Washington State Constitution by
15 denying homeless persons the right to obtain a driver's license, without any rational basis for doing so.
16 Thus Mr. Johnson has now been convicted of a crime for the sole reason that he was homeless when he
17 attempted to renew his driver's license and too poor to pay the fine for the resulting traffic infraction.

18 **A. Requirement of residence address to obtain a driver's license is unconstitutional on**
19 **its face.**

20 Regulation of driver's licenses must be rationally related to a legitimate government interest. *See*
21 City of Spokane v. Port, 43 Wn. App. 273, 275-76, 716 P.2d 945 (1986) (driving privilege is subject to
22 reasonable regulation). In the equal protection context, the **classification** that is drawn must be rationally
23 related to the government purpose. State v. Osman, 157 Wn.2d 474, 486, 139 P.3d 334 (2006).

24 RCW 46.20.091(1)(d) draws a classification between persons with a residence address and
25 persons without. A homeless person cannot qualify for a driver's licence because the person will be
26 unable to provide a residence address on the application. In order to pass the rational basis test, there
27 must be some rational relationship between this exclusion of the homeless and some legitimate
28 government purpose.

1 The District Court indicated that the government interest served by this requirement is the need
2 of law enforcement to be able to locate violators of motor vehicle regulations, especially when the
3 violators seek to evade penalties. But the exclusion of homeless persons without an actual residence
4 address is not rationally related to accomplishing this purpose.

5 Most violations are detected firsthand by law enforcement officers who give notice of infraction
6 or citations directly to the offending drivers. In such cases, a homeless person is as easy to locate as one
7 with an actual residence address, since the violator is physically present. Other violations are detected
8 under circumstances where only the vehicle registration is observable (a parked car or toll cameras, for
9 example). In these cases, notice is sent to the person indicated on the vehicle registration, not to the
10 address on a driver's license, so it makes no difference if the driver provided a residence address.

11 When DOL is required by law to suspend a license, such as when a person fails to respond or
12 appear in court, DOL follows the procedures of RCW 46.20.245, which requires that notice of
13 suspension be mailed to the address of record, which is often the address given when applying for (or
14 renewing) a driver's license. For this purpose, any valid mailing address would be sufficient; an actual
15 residence address is not necessary. A homeless person who provides a mailing address will be just as
16 easily located as a person who provides an actual residence address. In the rare instance that an arrest
17 warrant is issued to compel a criminal defendant to appear in court, a homeless defendant is not any
18 more difficult to locate, when the defendant is seeking to evade capture. And since proof of residence is
19 not required under the statute, a homeless person is no more likely to provide a false address than is any
20 other person.

21 There is no rational relationship between the exclusion of homeless persons and the purpose of
22 locating offenders. It is unreasonable for the state to deny a person the privilege of a driver's license for
23 the sole reason that the person is homeless and unable to provide a residence address. This Court should
24 hold RCW 46.20.091(1)(d) invalid as a violation of the Equal Protection clause of the U.S. Constitution
25 and Article 12 of the Washington State Constitution, and reverse Mr. Johnson's conviction that resulted
26 from DOL's unconstitutional refusal to renew his license.

27 //

28 //

1 P.2d 1303 (1988) ("To continue one's incarceration for contempt for omitting an act he is powerless to
2 perform would make the sanctions purely punitive. As soon as it becomes clear to the court that the
3 contemnor cannot obey its original order, the court must release him."), coercive suspension of the
4 driving privilege should end, or rather, not even begin, when it is clear that the defendant **cannot pay** the
5 fine that is the reason of the suspension.

6 The Court in Tate left open the possibility that coercive imprisonment may be appropriate for
7 defendants who are able, but unwilling, to pay a fine. Tate, 401 U.S. at 400-01. Similarly, suspension of
8 the driving privilege of a defendant who is able, but unwilling, to pay a fine may be appropriate. But it is
9 offensive to equal protection to impose such a suspension for the sole reason that a person is unable to
10 pay a fine. Thus the statute is unconstitutional as applied to Mr. Johnson. The suspension of his driving
11 privilege for the sole reason that he is unable to pay his fine should be lifted and the resulting conviction
12 for DWLS reversed.

13 **III. Mr. Johnson Received Ineffective Assistance of Counsel at Trial.**

14 The conviction should be overturned because Mr. Johnson received ineffective assistance of
15 counsel at trial. Mr. Jerry Gray was appointed to represent Mr. Johnson, an indigent defendant.
16 Reconsideration at 5:25. Mr. Gray refused to propound Mr. Johnson's constitutional and statutory
17 arguments and insisted that Mr. Johnson proceed pro se. *Exhibit B* at 6:2-4 ("It has become clear to me
18 that my appropriate role would be to be stand-by counsel and I have informed Mr. Johnson of that.").

19 Mr. Gray's actions were unreasonable. There was no reason to refuse to make Mr. Johnson's
20 constitutional and statutory arguments. These arguments, as propounded above, are not frivolous and are
21 based in law and fact, including a good faith argument for the modification of existing (and erroneous)
22 statutory interpretation. *See* RPC 3.1. Rather than make these reasonable arguments, Mr. Gray pressured
23 Mr. Johnson into proceeding pro se against his will. Mr. Gray's insistence on the role of stand-by
24 counsel unreasonably deprived Mr. Johnson of effective assistance of counsel. Any assistance of
25 competent counsel in making the constitutional and statutory arguments would have a reasonable
26 probability of leading to a different result.

27 Because Mr. Johnson was deprived of his Constitutional right to effective assistance of counsel,
28

1 the conviction should be reversed.

2 **IV. The Trial Court Violated Procedural Due Process In Its Finding of No Indigency And**
3 **Denial of Counsel on Appeal**

4 On June , 2010, the District Court held a hearing on Mr. Johnson's motion to substitute counsel
5 for his appeal. At that hearing, without any prior notice or opportunity to prepare evidence or argument,
6 the court sua sponte raised the issue of whether Mr. Johnson qualified as indigent for purposes of
7 appointed counsel. *Exhibit A* at 14:14-22. The court questioned Mr. Johnson at length about his financial
8 status. *Exhibit A* at 15-23. Throughout the entire proceeding, counsel for the prosecution was present.
9 *See Exhibit A* at 5-6 and 23.

10 Presence of counsel for prosecution during this impromptu indigency hearing violated Mr.
11 Johnson's due process rights and confidentiality protected by statute and court rules. *See* RCW
12 10.101.020(3) ("Any information given by the accused under this section or sections shall be
13 confidential and shall not be available for use by the prosecution in the pending case."); CrRLJ 3.1(d)(3)
14 ("Information given by a person to assist in the determination of whether he or she is financially able to
15 obtain a lawyer . . . shall not be available for use to the prosecution.").

16 The surprise hearing on indigency violated procedural due process requirements of notice and a
17 fair opportunity to be heard. Without any notice that the court would raise the issue at the hearing, Mr.
18 Johnson had no opportunity to prepare an argument for his position that he was indigent.

19 The court erroneously found that Mr. Johnson was not indigent. Under RCW 10.101.010, a
20 person is indigent if one of four conditions is met. RCW 10.101.010(1) (note the use of the disjunctive
21 "or" in listing the conditions). One of those conditions is receiving one of an enumerated list of types of
22 public assistance, which includes food stamps. RCW 10.101.010(1)(a). Mr. Johnson testified at the
23 hearing that he receives food stamp benefits. *Exhibit A* at 16:4. Because the statutory list is disjunctive,
24 failure to meet any of the other criteria does not disqualify Mr. Johnson from being indigent. Since he
25 meets the qualification of receiving food stamps, all other considerations are irrelevant.

26 Due to this unconstitutional and erroneous deprivation of Mr. Johnson's right to appointed
27 counsel, Mr. Johnson was forced to obtain private counsel. To correct this error, this Court should order
28 Mr. Johnson's attorney fees be paid out of public funds.

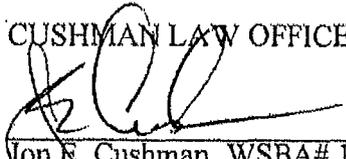
1 **CONCLUSION**

2 This Court should reverse Mr. Johnson's conviction because the State failed to prove every
3 element of the crime charged and because the underlying suspension was unconstitutional. The statute
4 defining the criminal offense of DWLS in the Third Degree, RCW 46.20.342(1)(c), does not, by its
5 terms, include a suspension for failure to pay a fine. Neither does RCW 46.20.289, referenced by Section
6 342, grant DOL authority to suspend for failure to pay a fine. DOL may suspend under RCW
7 46.63.110(6) for failure to pay a fine, but that suspension does not form the basis for any crime under
8 RCW 46.63.020, so DWLS for failure to pay a fine must be a mere infraction. This Court should reverse
9 the conviction.

10 Further, suspension of Mr. Johnson's driving privilege was unconstitutional. The people have the
11 right to use public roads in an ordinary and customary manner. The state's interest in regulating the
12 people's use of the roads is to promote public safety and welfare. The requirement of a residence address
13 for issuance of a driver's license draws an unconstitutional classification that burdens the homeless
14 without any rational relationship to the purpose of promoting public safety and welfare. Suspension of
15 driving privileges for nonpayment of a fine is an automatic coercive penalty for purposes of collecting
16 revenue that unconstitutionally punishes indigent people without any rational basis for expecting the
17 suspension to lead to collection of the fine. Suspension cannot coerce payment from a person who
18 cannot pay. This Court should reverse the conviction and the underlying, unconstitutional suspension.
19 This Court should further hold that the requirement of a residence address, as opposed to a mailing
20 address, is unconstitutional on its face.

21
22
23
24 DATED this 28 day of October, 2010.

25 CUSHMAN LAW OFFICES, P.S.

26
27 
28 Jon R. Cushman, WSBA# 16547
Attorney for Appellant

LEWIS COUNTY DISTRICT COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
)
) NO. C85203
 Plaintiff,)
)
)
 vs.)
)
)
 STEPHEN C. JOHNSON,)
)
)
 Defendant.)

COPY

VERBATIM REPORT OF TAPE-RECORDED PROCEEDINGS
Before
THE HONORABLE R.W. BUZZARD
June 2, 2010

Transcribed By:

Kristin DeLyn Manley, RPR, CCR
Registered Professional Reporter
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Verbatim Report of Tape-Recorded Proceedings
State of Washington v. Stephen C. Johnson

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APPEARANCES:

MS. CHRISTINE E. NEWBRY	ATTORNEY AT LAW
MS. CAILEN WEVODAU	PROSECUTING ATTORNEY
MR. STEPHEN C. JOHNSON	PRO SE

1

GLOSSARY OF PARENTHETICALS

2

3 (Indiscernible): Words were heard, but not
understood.

4

5 (Inaudible): Sounds were heard, which
was an apparent response,
6 but could not be understood.

7

(No audible response): There was no sound.

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P R O C E E D I N G S

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THE COURT: Is that working okay?

8

MR. JOHNSON: Yes, sir.

9

THE COURT: All right. Thank you. This is
10 C85203, State of Washington versus Stephen Chris
11 Johnson, who is present, not in custody, at this point
12 represented by Ms. Newbry. The State is represented by
13 Ms. Wevodau.

14 The matter is before the Court on the Superior
15 Court's order extending the district court order's
16 jurisdiction to determine the issue of counsel.

17 Is that correct?

18

MR. JOHNSON: I believe so, yes.

19

MS. NEWBRY: That is correct.

20

THE COURT: Okay. Thank you for your patience
21 because we kind of combined calendars. I appreciate
22 that.

23

24

25

And I will let all parties know that I have read
everything that has been submitted, both Mr. Johnson's
motion for new counsel as well as Ms. Newbry's response

4

1 to Appellant's request for new counsel, so I understand
2 both party's positions.

3 Mr. Johnson, this is your motion. I will hear from
4 you.

5 MR. JOHNSON: Your Honor, first I'm asking to
6 exclude the prosecutor. This is an issue between me and
7 counsel and I believe that there could be things
8 discussed here today that would be prejudicial to my
9 case, and the State has no interest in being here at
10 this point.

11 THE COURT: Ms. Wevodau, would you like to be
12 heard in response to that.

13 MS. WEVODAU: Yes. If the State would be
14 excluded from this motion, it would be an improper ex
15 parte communication between the Defendant and the Court
16 and it would not be proper and the State would ask that
17 that not be ordered.

18 THE COURT: Okay. Anything further on that
19 issue, Mr. Johnson?

20 MR. JOHNSON: Well, I have read some cases and
21 it - it seems that this case and the issue of indigency
22 is something that is sealed and is not privy to the
23 State. And I am here today adverse to my counsel and as
24 such she is not effectively representing me. And I'm
25 here without representation and I (inaudible) waive my

5

1 right to that.

2 I do believe that the State has no interest in this.
3 And my case could be prejudiced by having the State
4 present here today.

5 THE COURT: Thank you. Mr. Johnson, the factual
6 matters - you filed with the Court your allegations?

7 MR. JOHNSON: Yes.

8 THE COURT: All right. That's public record.
9 The State likely has a copy of that already because you
10 filed it with the Court. I don't intend or - I don't
11 see as necessary anything other than what you filed to
12 be argued. It would not be proper for me to exclude the
13 State. I will not. That motion is denied.

14 MR. JOHNSON: Thank you.

15 THE COURT: Any other preliminary matters?

16 MR. JOHNSON: Well, I'm in a position here that
17 I'm adverse to my counsel and I'm not being effectively
18 related - or represented here today and I should be
19 represented by counsel that is not adverse to my
20 position.

21 In other words, there is going to be things said here
22 today that are going to be denied by counsel or by me
23 and it is - it is a position where I'm not being
24 represented here.

25 THE COURT: Mr. Johnson, it is my understanding

6

1 that it is your belief that you have set forth in your
2 motion that, first of all, you don't believe that
3 Ms. Newbry is pursuing your appeal in a timely fashion.

4 MR. JOHNSON: That's correct.

5 THE COURT: And you are also alleging that she is
6 not willing to pursue the issues on appeal that you wish
7 her to pursue.

8 MR. JOHNSON: That is correct.

9 THE COURT: It is my understanding also that you
10 are asking the Court not only to remove Ms. Newbry -
11 Newbry but to allow you to interview all of the
12 attorneys that are available for appointment by the
13 county commissioners to be able to choose one that you
14 believe would best suit you.

15 MR. JOHNSON: I think it would be better
16 described as to not walk in with my brief and have an
17 attorney say, "I don't want to do this," is a better way
18 to describe that; to find an attorney that is
19 understanding of what my case is and is willing to
20 proceed with it rather than have you assign a counsel,
21 me walk in and have them say that they are not willing
22 to do this.

23 THE COURT: Okay. You understand that we are
24 working off of the bas- - basic premise, Mr. Johnson -
25 and I'm sure you have come across this in your research

7

1 that if you are found to be indigent by the Court, you
2 are entitled to competent representation, but not
3 competent representation of your choosing.

4 MR. JOHNSON: I understand that.

5 THE COURT: Okay.

6 MR. JOHNSON: But what I'm saying is I don't want
7 to have to come back here again with another attorney
8 that says, "I don't want to do this." And I think part
9 of the issue there lies in their compensation in the
10 fact that they are limited to \$1,300 by their contract
11 including costs, and I don't think anybody can
12 effectively represent me on that amount of money.

13 THE COURT: So you don't think that if that is,
14 in fact, their contractual basis with the county
15 commissioners and that's the only remuneration that they
16 will receive regardless of the issues on their appeal,
17 are you telling me that there is nobody that we could
18 appoint that would be able to adequately represent you
19 based on their contract?

20 MR. JOHNSON: I believe that so. I don't know
21 whether Superior Court has different attorneys on
22 different contracts. I have only read a copy of the
23 district court counsel's (inaudible) to be district
24 court counsel's contract and so I'm not sure there.

25 Now, I have here a copy of RCW 10.10.120 and it

8

1 discusses what the court must determine when determining
2 indigency. And one of the issues there that they have
3 to do is the court shall also consider the anticipated
4 length and complexity of the proceedings and the usual
5 and customary charge of an attorney in the community for
6 rendering services.

7 THE COURT: Mm-hmm.

8 MR. JOHNSON: And that - I just don't think
9 that - I think that the State is limiting the amount of
10 defense that I get by that amount.

11 THE COURT: Now, you are misinterpreting the
12 essence of that statute, Mr. Johnson. And this is
13 besides the point, but to give you some clarification as
14 to my, and I believe the entire judiciary's,
15 interpretation of that statute is that if the guidelines
16 say that the cutoff is \$1,100 for an individual as far
17 as 125 percent of the base poverty guidelines - so if
18 somebody comes in and says they make \$1,500 a month, but
19 the cutoff is \$1,100 a month, so theoretically, they
20 have some disposable income, I'm to take into
21 consideration whether or not that \$300 or \$400 is
22 sufficient to hire somebody for that same representation
23 in appointing counsel.

24 So I don't arbitrarily say, "Oh, you are above the
25 cutoff. You can't have counsel." That's the

9

1 consideration I make, not whether or not our
2 court-appointed counsel need - they all work for the
3 county commissioners on a contract basis. They don't
4 limit the effort they put in. But that's besides the
5 point. That's just a little insight to my
6 interpretation of that statute.

7 To the essence of your motion, Mr. Johnson, you said
8 that you don't believe that she is representing you
9 timely and that she is not pursuing the issues that you
10 wish. Please tell me how she is not competent to
11 represent you.

12 MR. JOHNSON: Well, by statute there is 45 days
13 to file a brief after the filing of the appeal. She
14 didn't file a brief within the 45 days and to this date
15 I have not seen a brief from her.

16 I have my own brief and I have worked on that, but
17 she said she wanted to rewrite that brief. And then
18 later on she said she wanted to limit it to one issue
19 rather than the issues that I had brought up.

20 I have a draft of the brief here, if you would like
21 to review it. It is confidential at this point and it
22 has not been filed, but it is for --

23 THE COURT: Well, if you hand it up to the Court,
24 it is not confidential anymore.

25 MR. JOHNSON: I understand.

10

1 THE COURT: Is your appeal still pending?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: It has not been dismissed?

4 MR. JOHNSON: As far as I know. It is my
5 understanding that Mr. O'Rourke (phonetic) indicated
6 that he was going to bring a motion to dismiss for
7 (inaudible) of prosecution.

8 THE COURT: Has that been done?

9 MR. JOHNSON: Well, I started this procedure and
10 he has put that off --

11 THE COURT: Okay.

12 MR. JOHNSON: -- pending the outcome of this.

13 THE COURT: Do you have a mailing address?

14 MR. JOHNSON: No.

15 THE COURT: All right. Perhaps you need to get a
16 mailing - we have sent you mail, but it has been
17 returned as "Refused." That's just - I'm trying to get
18 as to whether or not you are receiving information that
19 your attorney may be sending to you because you are
20 obviously not getting information that we are sending to
21 you regarding your appeal.

22 MR. JOHNSON: I have a telephone number and --

23 THE COURT: Well, we are not going to call you,
24 Mr. Johnson.

25 MR. JOHNSON: I --

11

1 THE COURT: The Court will not call you.

2 MR. JOHNSON: I understand.

3 THE COURT: Okay.

4 MR. JOHNSON: But I also have an attorney that is
5 representing me and I would assume that things from the
6 Court would be sent to her --

7 THE COURT: They are.

8 MR. JOHNSON: -- and not to me.

9 THE COURT: They are.

10 MR. JOHNSON: Okay. And she hasn't communicated
11 that to me.

12 THE COURT: Okay. Ms. Newbry, as to the issues
13 that Mr. Johnson has brought up to timeliness and to the
14 issues?

15 MS. NEWBRY: Well, timeliness, Your Honor, is
16 simply a matter of - it took - definitely took a while
17 to get the transcript in this case. As the Court knows,
18 (inaudible) appeals are unique in that we are not really
19 allowed to request the whole transcript. We are only
20 allowed to request the portions of the transcript
21 necessary for the appeal, which required listening to
22 the trial CD.

23 And after Mr. Johnson came into my office with his -
24 I will say his pre-prepared brief and issues, it became
25 clear that I would probably need the entire transcript

12

1 because he had many issues. So it took a while to get
2 that done.

3 Mr. Johnson has, as I recall, 10 or 15 - maybe seven,
4 eight issues that he wanted me to research, many of
5 which I don't - didn't believe were pertinent to the
6 subject. He also wanted discovery requested from DOL
7 that I didn't believe was in existence nor did we have
8 the right to have that discovery.

9 When Mr. Johnson first came in, I thought that we
10 would maybe be able to come to an agreement regarding
11 his brief. He said that he was going to allow - I said
12 I wouldn't be signing it. He said he (inaudible) allow
13 me to edit it. I said I wouldn't be putting my
14 signature on anything that I didn't agree with.

15 As we went on, it became clear that he wanted to
16 submit that brief as was. So I told him that he could
17 submit that pro se and that I would go ahead and submit
18 my own brief and then he could submit his brief pro se.
19 And, at that time, he filed for new counsel.

20 THE COURT: Okay. Ms. Wevodau, do you want to be
21 heard on anything.

22 MS. WEVODAU: No, Your Honor.

23 MR. JOHNSON: Your Honor?

24 THE COURT: Yes.

25 MR. JOHNSON: The request for this transcript was

13

1 not made until December 12th. The court appointed her,
2 I think, October 4 and she did not get the transcript to
3 me until March. I believe that that is - and as far as
4 I know, there has been nothing else done.

5 THE COURT: Okay. Before we go any further,
6 Mr. Johnson, I think I fully understand your position,
7 is that you are not happy with how she is pursuing this
8 as far as timeliness and you are not happy with her -
9 how she is pursuing this as far as not willing to adopt
10 the issues that you think she should be adopting and
11 pursuing the issues on appeal that you believe are
12 pertinent.

13 MR. JOHNSON: Mm-hmm.

14 THE COURT: Okay. Before we go any further, I
15 pulled your - your most recent - it is from October 6th,
16 2009, which is the financial affidavit to determine
17 indigency as to whether or not you are entitled to
18 court-appointed counsel. It is - it is pretty much - it
19 is barren. It is blank.

20 I wanted to go through it with you again real quick
21 to see whether or not this issue is still even an issue.
22 So, Mr. Johnson, please raise your right hand.

23
24
25

14

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3

STEPHEN C. JOHNSON,

having been first duly

4

sworn by the Judge,

testified as follows:

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9

THE COURT: Thank you. All right. And you
signed the other one under penalty of perjury, so I'm
just going to ask you pretty much the same questions
that form has, but now.

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EXAMINATION

19

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23

BY THE HONORABLE R.W. BUZZARD:

24

Q Do you have any income?

25

A No.

15

1 Q No - no income of any - not any employment income?

2 A No.

3 Q Any sort of public assistance income?

4 A Yes. I'm now receiving food stamps at \$200 a month,
5 which I wasn't receiving at the time that that was made.
6 And in addition to that, I received a check for \$560 for
7 energy assistance, which I have never received before.

8 Q Is that monthly?

9 A No, that's --

10 Q Just the one time?

11 A One time. And I'm in the process of suing Community
12 Development and Timberland Bank for issuing me a check
13 that I can't cash, so I haven't been able to use those
14 funds because the check has not been cashed.

15 Q The energy assistance check?

16 A Yes.

17 Q Okay. So that's the only income that you have received
18 over what amount of time?

19 A Two-and-a-half years.

20 Q Okay. Are you disabled?

21 A Yes.

22 Q And you have a - a court - or an adjudication
23 determining you 100 percent disabled and unable to work?

24 A No, I have nothing.

25 Q Partial disablement or is that a self-diagnosis that you

16

Verbatim Report of Tape-Recorded Proceedings
State of Washington v. Stephen C. Johnson

1 are disabled?

2 A Self diagnosis.

3 Q Okay. When is the last time you sought work?

4 A '76.

5 Q Okay. Do you have a spouse that has any income?

6 A No.

7 Q Do you have any interest, dividends or other earnings

8 from any other holding or investments?

9 A No. No bank accounts. Nothing.

10 Q Okay.

11 A I have a house. I'm two years delinquent on the

12 property taxes because I'm basically housebound now. I

13 can't get out and leave. Next year they are going to

14 sell my house at a share sale for nonpayment of property

15 taxes.

16 Q All right.

17 A And --

18 Q Is the house owned free and clear --

19 A Yes.

20 Q -- by you?

21 A Yes.

22 Q What is the value of the house?

23 A I have no idea. It has been for sale for 15 years.

24 Q Okay. What are you asking for it?

25 A Right around \$300,000.

17

Verbatim Report of Tape-Recorded Proceedings
State of Washington v. Stephen C. Johnson

1 Q Okay. So you are asking \$300,000 and you own it free
2 and clear?
3 A Yes.
4 Q Okay. Because that wasn't put on your previous
5 affidavit.
6 A It wasn't asked. They don't ask for anything on the
7 back.
8 Q It says, "Section 7 (inaudible) equity and real estate."
9 It is blank.
10 A They --
11 Q You signed it under affidavit of penalty of perjury that
12 the above information is true and correct, Mr. Johnson.
13 A The gal at the counter handed it to me and said, "Sign
14 it."
15 Q Okay.
16 A She asked me all the questions on the front and said,
17 "That's all we need," and, "Sign it."
18 Q And you signed it?
19 A Yes.
20 Q All right. So you certified under penalty of perjury
21 that the information on here was true and correct?
22 A Yes.
23 Q Okay. But you do have what you believe is \$300,000 in
24 equity in a house?
25 A Yes.

18

1 Q Okay.

2 A You want to buy it?

3 Q I'm asking questions, Mr. Johnson. Do you have any
4 vehicles that you own?

5 A 1985 Toyota pickup.

6 Q Do you own that free and clear?

7 A Yes.

8 Q What do you believe the value of that is?

9 A \$500.

10 Q Do you own any additional vehicles such as helicopters,
11 planes, boats, recreational vehicles?

12 A (No audible response.)

13 Q I need you to answer out loud.

14 A No.

15 Q Thank you. It is just because I can't record your
16 headshakes.

17 A I understand.

18 Q Thank you. Any personal property that you own such as
19 jewelry, stereos, TVs, that sort of thing?

20 A No. I have no electricity in the house. I have -
21 basically live in a shack.

22 Q Stocks, bonds, certificates of deposits, anything like
23 that?

24 A Nothing.

25 Q Any interest in any public or private entities?

19

Verbatim Report of Tape-Recorded Proceedings
State of Washington v. Stephen C. Johnson

1 A No.

2 Q Any cash savings?

3 A No.

4 Q Not necessarily in a bank but perhaps in a can or a jar
5 in your yard or in your mattress?

6 A No, sir.

7 Q All right. What do you spend per month on living
8 expenses such as utilities?

9 A I have no utilities.

10 Q What do you spend per month on food?

11 A \$200 a month I get in food stamps.

12 Q What do you spend on clothing?

13 A Nothing.

14 Q Healthcare?

15 A That's paid for by the State, I believe. I don't know.

16 Q What do you mean?

17 A Well, I go down to Cascade - or not Cascade, but --

18 Q Is it Valley View?

19 A Valley View and pay them \$20 when I need to see a doctor
20 and that's as much as I know.

21 Q Okay. Where do you get the \$20 from if you have no
22 income? And you spend - you have \$200 in food stamps.
23 I'm not seeing any disposable income here.

24 A There is none.

25 Q So where do you get the \$20 to pay a co-pay at Valley

20

Verbatim Report of Tape-Recorded Proceedings
State of Washington v. Stephen C. Johnson

1 View?

2 A I borrow it.

3 Q Okay. Do you spend anything per month on
4 transportation?

5 A No.

6 Q Do you have any obligations that you pay for any other
7 loans?

8 A No. Well, excuse me, sir. I have about a \$50,000 lien
9 - I'm not sure exactly what it is - of attorney fees on
10 a civil case.

11 Q Contingent fees?

12 A No.

13 Q All right. So you are going to owe the fees whether you
14 win or lose?

15 A We already won.

16 Q What do you mean you have already won?

17 A Well, the trial is over.

18 Q And what were the results?

19 A I was awarded 2.5 million dollars against by neighbors
20 under the tort of outrage and \$420,000 in actual
21 damages.

22 Q How long ago was the trial?

23 A I think we got the jury decision October 1st last year,
24 2009.

25 Q Do you know if there is any appeal pending?

21

Verbatim Report of Tape-Recorded Proceedings
State of Washington v. Stephen C. Johnson

1 A No. There is --
2 Q There is no appeal pending?
3 A There is no appeal pending..
4 Q So you have a judgment in your favor for two-and-a-half
5 million dollars?
6 A Actually, it is 2.928 at 12 percent interest.
7 Q 2.928?
8 A 2.928 and that pays 12 percent interest, which is about
9 \$960 a day.
10 Q Have you realized any income from that judgment --
11 A No.
12 Q -- or from the \$420,000 judgment?
13 A No. They are the same judgment.
14 Q All right. So the 2.928 includes the \$420,000?
15 A Yes.
16 Q Thank you. What county was that in?
17 A Lewis.
18 Q What steps have you taken to collect upon that judgment?
19 A The attorney is working on it and he is coming to the
20 conclusion - we were going to sue his attorney for
21 malpractice, but we have decided pretty much we can't do
22 that. And, at this point, he is of the belief that we
23 can collect no income.
24 Q What leads him to that belief? I mean --
25 A We can't take his house because it is worth less than

22

1 \$128,000 on a homestead exemption, which means he still
2 lives next door to me. And because his house and
3 property is less than \$128,000, his personal property is
4 also covered. He has - he has disposed of anything that
5 we could take. Basically it is more expensive to try
6 and collect and he is going to fight all the way.

7 Q I understand.

8 A So I don't anticipate receiving anything at that point.

9 Q Okay. Thank you.

10 THE COURT: Anything further on the issue of
11 counsel?

12 MS. WEVODAU: Nothing from the State.

13 THE COURT: Ms. Newbry, anything further?

14 MS. NEWBRY: No, Your Honor.

15 THE COURT: Mr. Johnson, it is your motion. You
16 have final say. Anything further on this issue?

17 MR. JOHNSON: No, sir, I believe it is all said
18 here.

19 THE COURT: Okay. Thank you. As you mentioned
20 before, Mr. Johnson, you are entitled to competent
21 counsel. Ms. Newbry is competent counsel. Your appeal
22 is still pending. I'm not removing her from the case.
23 You are not entitled to counsel of your choice, which
24 means that I - there is absolutely no way that you are
25 going to be able to interview those that are on the

23

1 contract to see which one is willing to take your case
2 based on your terms.

3 You have requested counsel. The Court has appointed
4 you counsel. As Ms. Newbry has stated to you, she will
5 pursue the appeal in the way she sees fit with your
6 input. And you are also free, as she gave you correct
7 advice, to file a pro se brief in addition to its
8 additional grounds - in addition to what the attorney
9 has filed. I'm sure you are aware of that.

10 MR. JOHNSON: Mm-hmm.

11 THE COURT: So at this point, Ms. Newbry is not
12 allowed to be removed from the case. You are not
13 allowed to have other counsel. And I will get back to
14 you on whether or not Ms. Newbry stays on the case based
15 on the information of indigency. Until I rule on that
16 though, which . . .

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(End of recording.)

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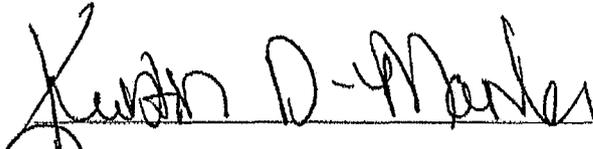
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I further certify that the foregoing transcript of the tape-recorded proceedings is a full, true, and accurate transcript of all discernible and audible remarks.

DATED AND SIGNED this 17th day of June,
2010.



KRISTIN D. MANLEY
CCR NO. 2211



LEWIS COUNTY DISTRICT COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
)
)
 Plaintiff,) NO. C85203
)
 vs.)
)
 STEPHEN JOHNSON,)
)
)
 Defendant.)

ORIGINAL

VERBATIM REPORT OF TAPE-RECORDED PROCEEDINGS
Before
JUDGE MICHAEL P. ROEWE
March 19, 2009

Transcribed By:

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1

APPEARANCES:

2

FOR THE STATE:

MR. SHANE O'ROURKE

3

DEPUTY PROSECUTING ATTORNEY

4

FOR THE DEFENDANT:

MR. STEPHEN JOHNSON

5

PRO SE

6

MR. JERRY GRAY

STAND-BY COUNSEL

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TO: Jerry Gray
Stephen Johnson
For the Defendant

DATE: May 13, 2009

Shane O'Rourke
For the State

FROM: Tamara Jensen
Production Manager

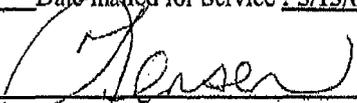
RE: State of Washington vs. Stephen Johnson
Lewis County Cause # C85203

NOTICE OF SERVICE OF ORIGINAL TRANSCRIPT

Please take notice that the sealed, original deposition transcript listed below was served as follows:

**Verbatim Report of Tape-Recorded Proceedings Taken February 5 and
March 19, 2009**
Reported by: Kris Manley, CCR #2211

 X Served upon: Jerry Gray Date mailed for Service : 5/13/09



Tamara Jensen, Production Manager

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I N D E X

PAGE:

State's Witnesses:

(None)

Defense Witnesses:

Direct by Mr. Gray	11
Cross by Mr. O'Rourke	14

1

2

GLOSSARY OF PARENTHETICALS

3

4

(Indiscernible): Words were heard, but not understood.

5

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(Inaudible): Sounds were heard, which was an apparent response, but could not be understood.

7

8

(No audible response): There was no sound.

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P R O C E E D I N G S

THE COURT: . . . cause number is CS85203, a charge of driving while license suspended in the third degree from September 19th of 2008. This matter comes back before the Court on a motion for reconsideration of the Court's ruling on a previous motion to dismiss.

Mr. Johnson is present with his attorney of record, Mr. Gray. The state is represented by Mr. O'Rourke.

Gentlemen, I will hear from the defense.

MR. JOHNSON: Your Honor, before we start I have a question for the Court, please.

THE COURT: Yes, sir.

MR. JOHNSON: Is there any evidence that the Court may be aware of outside of this case which could be construed to prejudice the case before you?

THE COURT: I haven't got a clue what you mean, sir.

MR. JOHNSON: Thank you.

MR. GRAY: Your Honor, to clarify some things on my side. I was appointed to the case. I wasn't sure

1 whether or not Mr. Johnson wanted me to be the attorney
2 of record or a stand-by counsel. It has become clear to
3 me that my appropriate role would be to be stand-by
4 counsel and I have informed Mr. Johnson of that. And I
5 believe that we are prepared to proceed today with that
6 arrangement, but I wanted to make that for the record.

7 I believe the procedure that we will have today - and
8 obviously Mr. Johnson will be at the forefront here -
9 but would be asking the court to reconsider some of the
10 arguments that were laid out before and possibly to
11 offer some testimony on the record for preservation of
12 any kind of appeal. So that's basically what I have so
13 far.

14 THE COURT: Well, Mr. Johnson, it is your motion.
15 The record will reflect that Mr. Gray is designated, as
16 I suspected he would be, as stand-by counsel.

17 MR. JOHNSON: I guess first I would like to be
18 sworn and make a statement for the record, please.

19 THE COURT: For what purpose?

20 MR. JOHNSON: To state certain facts about my
21 going to the Department of Licensing and attempting to
22 get a license.

23 THE COURT: Mr. Johnson, this is a motion for
24 reconsideration of the Court's earlier ruling. All the
25 facts that the Court has to consider were filed by you

6

1 at the time of the original motion. What purpose does
2 testimony at this stage serve?

3 MR. GRAY: If I may jump in, Your Honor. I
4 wasn't at the first hearing. I suggested to Mr. Johnson
5 if he is going to have a record that he wants appealed -
6 and one of his issues that he is asking the Court to
7 consider is that his underlying suspension was unlawful
8 - that he needs to have some sort of record of how the
9 license was suspended previously.

10 And I believe if he was sworn in, he would testify
11 briefly about how he went to the Department of
12 Licensing, asked to get his license renewed and they
13 denied it based on a lack of primary residence. And so
14 that's what he would want to, I think, be sworn in on.

15 THE COURT: Isn't that what he asserted in his
16 original motion and the affidavits?

17 MR. GRAY: He may have, Your Honor. I wasn't
18 clear on that.

19 MR. JOHNSON: I believe it is in the motion, yes.

20 THE COURT: Page 2 of the motion to dismiss,
21 which was prepared - well, I guess it isn't his
22 testimony. It is a statement of facts contained in the
23 Cushman Law Office motion. They then withdrew. And
24 then Mr. Johnson filed a brief in support of a motion to
25 dismiss in which he asserts those same facts.

7

1 But on a motion to dismiss, I'm not sure those are
2 not the appropriate - or that the testimony would not be
3 more appropriate at the time of trial, but if he wishes
4 to put it on the record, I have no objection. What is
5 the State's position?

6 MR. O'ROURKE: Well, I guess the issue is if this
7 is going to be some kind of interlocutory appeal or
8 something like that, I guess we would have to have
9 something. But I thought the same thing as the Court,
10 that this would be reconsidered today, either reversed
11 and dismissed or - and then it falls back in the state's
12 court, or affirmed and proceed to trial and then maybe
13 acquittal and no issue at all or a conviction and then
14 an appeal based on the testimony elicited there.

15 Because I don't have a trooper or anything - or a
16 deputy. I'm not sure how a fact-finding would take
17 place right now. But I suppose if the Court wants to
18 hear something on the record, I --

19 THE COURT: Well, I have those allegations before
20 the Court. I'm not sure what the purpose of the
21 testimony is unless you are not going to be going to
22 trial, Mr. Johnson. Is that your intention?

23 MR. JOHNSON: Well, my intention is to appeal
24 today's decision if it is not satisfactory.

25 THE COURT: Sir, the decision of today is whether

8

1 I'm going to grant a motion for reconsideration. If you
2 are appealing a decision, you are appealing the decision
3 that I made back in February, which is the decision of
4 the Court --

5 MR. JOHNSON: Mm-hmm.

6 THE COURT: -- at the moment and will stand as
7 the decision of the Court unless you can convince me
8 that there is some grounds for reconsideration.

9 I'm not sure what presenting testimony is - purpose
10 will serve, but if you wish to present testimony about
11 the fact that they won't give you a driver's license
12 because you don't have a residential address - you have
13 argued that at length and put it in two different briefs
14 - but if you want to testify to that here today, that's
15 fine.

16 MR. GRAY: Your Honor, do you want him to stay
17 here or go up there?

18 THE COURT: Well, he needs to come forward and be
19 sworn just like any other witness. And you need to
20 question him, Counsel, because he is not able to
21 question himself.

22 MR. JOHNSON: This is from the Department of
23 Licensing when I went down to renew title, that's the
24 date --

25 MR. GRAY: Okay. I'm going to ask you about

9

1 these questions.

2 MR. JOHNSON: I understand, but I'm - that's what
3 I'm telling you (inaudible); two trips to get a driver's
4 license renewed, two trips to get an ID card.

5 MR. GRAY: Okay.

6 MR. JOHNSON: Okay.

7 THE COURT: Come right up here, sir, and raise
8 your right hand.

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STEPHEN JOHNSON,

having been first duly
sworn by the Judge,
testified as follows:

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THE COURT: Thank you. Please be seated. You
may inquire, Mr. Gray.

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DIRECT EXAMINATION

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BY MR. GRAY:

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Q Please state your full name for the record.

9

A Stephen Chris Johnson.

10

Q Spell your last name.

11

A J-O-H-N-S-O-N.

12

Q Where do you live?

13

A Randle, Washington.

14

Q Let me direct your attention to a couple years back.

15

Have you tried to renew your driver's license - your

16

Washington driver's license in the last couple of years?

17

A About two years ago I went in on two occasions - two,

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three years ago on two occasions ago and attempted to

19

renew my driver's license. They had refused to renew it

20

on the grounds that I didn't have a residence address.

21

Q Do you know what date that occurred on?

22

A I do not.

23

Q When you say they refused to renew it on the grounds

24

that you did not have a residence address - is that

25

correct --

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1 A That's correct.

2 Q -- what do you mean by that?

3 A A - a formal street address was what they wanted and
4 without that, they weren't going to renew my license.

5 Q Did they tell you that you could provide to them any
6 other form of getting any kind of mail in lieu of a
7 primary residence?

8 A Well, they - we weren't there regarding a mailing
9 address. We - that was not in dispute. It was a
10 physical address of where I lived.

11 Q Okay. And you say this occurred two to three years ago?

12 A Yes.

13 Q Is that the reason why your license was not renewed?

14 A Yes, it is. At that time, I had no tickets.

15 Q Was that the only reason, as far as your understanding,
16 that your license wasn't renewed?

17 A That is correct.

18 Q Are you aware of the requirements for renewing your
19 driver's license --

20 A Yes, I am.

21 Q -- in the State of Washington?

22 And it is your understanding that you need a
23 residence address to get your license?

24 A Yes, it is.

25 Q And just to be clear for the record, you were trying to

12

1 renew your Washington driver's license to be able to
2 operate a vehicle legally in the State of Washington;
3 correct?

4 A That is correct.

5 Q Did you have a primary residence at that time?

6 A No.

7 Q In terms of that limited issue, Mr. Johnson, are there
8 any - are there any other restrictions that you believe
9 are - you believe are something that needs to be made of
10 the record in terms of your license being - the denial
11 of your license to be renewed?

12 A Yes. Without a residence address, I'm not entitled to
13 either a driver's license or a state ID card. Without a
14 state ID card, I'm unable to renew or transfer
15 registration from a vehicle that I buy without a valid
16 license. I'm unable to open a bank account or cash a
17 check.

18 I went to Ritchie Brothers auction yesterday to
19 register and the only way I was able to register is my
20 personal knowledge of the manager of Ritchie Brothers.
21 Otherwise, with my expired driver's license, they
22 weren't going to accept my identification and allow me
23 to register.

24 Q What - what office did you go to for this transaction?
25 What Department of Licensing office?

1 A Morton, Washington.

2 Q On all occasions?

3 A On all occasions.

4 Q Okay. Do you recall who you spoke to that day?

5 A I don't recall who I spoke to. I talked to Mr. Seymour
6 at one point when I was trying to register a vehicle I
7 purchased.

8 Q Who is Mr. Seymour?

9 A He is an agent working at the Department of Licensing.

10 MR. GRAY: I don't think I have any further
11 questions.

12 THE COURT: Does the State wish to inquire?
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17 CROSS-EXAMINATION
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21 BY MR. O'ROURKE:

22 Q Mr. Johnson, you - your license was suspended for
23 failing to pay civil traffic infractions in the State of
24 Washington at some point in time; correct?

25 MR. GRAY: Your Honor, I would object to that. I
14

1 think that's outside the scope of the direct
2 examination.

3 THE COURT: Well, it has been his testimony that
4 the only reason he didn't get a driver's license was
5 that he didn't have a residential address. I think the
6 question is appropriate.

7 You may - you may answer the question, if you can,
8 Mr. Johnson.

9 Q (BY MR. O'ROURKE) So isn't it true that you were issued
10 a civil infraction, which you failed to pay, which
11 thereby suspended your license in Washington State in
12 2007; correct?

13 A I believe that's correct.

14 Q And subsequent to that point in time, one of the
15 additional requirements by the - that the Department of
16 Licensing imposed upon you for getting a new license
17 would be to take care of that unpaid civil infraction;
18 isn't that also true?

19 A I believe that's the terms.

20 Q In - in other words, the - the address wasn't - prior in
21 time to this incident, the address wasn't the only
22 reason your license was suspended; initially it was
23 suspended because of unpaid tickets; correct?

24 A Prior to - prior to getting any tickets and being
25 suspended, I did attempt to renew it and was told I

15

1 wasn't eligible.

2 Q Right. But after - subsequent to that, you incurred a
3 ticket which further suspended your license? You
4 already testified to that, right?

5 A Yes.

6 Q And so then you had to pay that back; correct?

7 A I had to.

8 Q And did you do that?

9 A No.

10 Q So the ticket remains unpaid at this point in time;
11 correct?

12 A Yes, sir.

13 MR. O'ROURKE: For the purposes of the record,
14 I'm going to ask to admit - I'm going to ask to admit
15 the State's - I'm having it marked now.

16 THE COURT: We are getting a little far afield
17 here.

18 MR. O'ROURKE: Well, I'm going to ask for the
19 abstract of the driving record to be marked as State's
20 ID 1 and then admitted into evidence as State's
21 identification - or - well, if I can ask questions with
22 regard to that, then have that marked and entered into
23 evidence as State's Exhibit 1 for this hearing.

24 MR. GRAY: Your Honor, I would object to that and
25 renew my objection to this line of questioning. The

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1 purpose of the record was a possible appeal before
2 trial, so the issues presented by the prosecutor are
3 stretching, for lack of a better word, what is before
4 the Court. So I would object to any admissibility
5 there.

6 MR. O'ROURKE: Your - Your Honor, the whole
7 essence of what Mr. Johnson testified to Mr. - to
8 Mr. Gray's questions was that the sole reason why he is
9 being denied a right to a license is because he didn't
10 give an address and if that's not the case, then that is
11 entirely relevant to whether this gets appealed or not
12 because if - if it is actually suspended because of
13 failure to pay fines, that's a totally different set of
14 circumstances.

15 THE COURT: Well, we are getting far afield, as I
16 indicated. I have allowed the question as a proper
17 cross-examination because of the allegations made in the
18 testimony of Mr. Johnson. I'm not admitting the
19 documentation. We are not at trial. We are not proving
20 the facts of the case at this stage. This is a motion
21 for reconsideration and I only allowed what testimony I
22 have allowed --

23 MR. O'ROURKE: Fair - fair enough.

24 THE COURT: -- as an accommodation to
25 Mr. Johnson, more than anything else.

17

1 MR. O'ROURKE: Okay. I will withdraw it then,
2 Your Honor. And with that, I think there is sufficient
3 testimony on the record from my standpoint.

4 THE COURT: Thank you. Any other questions of
5 Mr. Johnson, Mr. O'Rourke?

6 MR. GRAY: No, Your Honor.

7 MR. O'ROURKE: Oh.

8 THE COURT: Mr. Gray, any questions?

9 MR. GRAY: No, Your Honor.

10 THE COURT: All right. Mr. Johnson, it is your
11 motion.

12 MR. JOHNSON: Oh, boy, where do I start here? I
13 brought a motion to dismiss this on an allegation that
14 the issues of RCW 6 - 46.63.110(6)(b) and - was
15 unconstitutional and also 46.90.91(1)(d) was
16 unconstitutional.

17 In the 46.63.110(6)(b), fail to consider my interest
18 in suspension, I have also since become aware that the
19 RCW 46.20.291 . . .

20 (Inaudible.)

21 THE COURT: No, but you can mark it as an exhibit
22 to your argument, sir.

23 MR. JOHNSON: Okay.

24 THE COURT: We are not here to file things.

25 MR. JOHNSON: Thank you. It gives no

1 authorization, that I can see, to suspend a license for
2 nonpayment. This is the authority to suspend and the
3 grounds. And according to this, there is no authority
4 here to suspend. I have looked through the -
5 cross-referenced all the statutes in this and at no
6 place does it say failure to pay as a grounds for
7 suspension of a driver's license.

8 THE COURT: Anything else?

9 MR. JOHNSON: Yes. The operation of a motor
10 vehicle is very important in this day's society. We use
11 this almost exclusively for travel today. In the old
12 days we were given the option of a horse or foot or a
13 horse and wagon.

14 As times have changed, the motor vehicle has become
15 more and more important and the roads have been custom
16 built exclusively for automobile traffic. In that the
17 importance of it has had a value to a driver's license.
18 That is stated pretty clearly in Moore, that a driver's
19 interest in his license is substantial, and terms of a
20 valuable interest or valuable property interest are used
21 regularly.

22 In addition to that, in Moore it says that you have
23 to consider the length of a suspension when determining
24 the value of that interest. That is further inference
25 that there is a value there. The --

1 THE COURT: What case are you quoting, sir?

2 Moore?

3 MR. JOHNSON: Redmond, City of Redmond.

4 THE COURT: Redmond versus Moore?

5 MR. JOHNSON: Moore, yes. In Rawson - as I read
6 Rawson, I got the feeling that the (inaudible) you gave
7 tended to indicate that there was no value to that
8 whereas the court has now determined that there is a
9 value to that.

10 THE COURT: With all due respect, sir, the Court
11 of Appeals, which is Redmond versus Moore, doesn't
12 overwhelm or overturn the Supreme Court of the state.
13 So unless you have got something from the Supreme Court
14 of this state that says that the Rawson case is no
15 longer good law, there is really not much of an argument
16 here. And I was unable to find any new law that says
17 the Supreme Court has overturned its decision from 1942
18 yet.

19 MR. JOHNSON: Okay. I'm misunderstanding
20 something here.

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(Conversation in the background
between Mr. Johnson and
Mr. Gray.)

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MR. JOHNSON: Okay. I'm sorry, Your Honor. I
had a misunderstanding of the law.

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10

THE COURT: That's fine, sir.

11

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MR. JOHNSON: I guess I'm of the belief that from
other U.S. Supreme Court state cases where this stuff
has come from, in Mackey and Monthrym - Mackey versus
Monthrym, U.S. - 443 US 1, and in Fusari that upheld
that a license is a valuable property interest and a
valuable interest in those (inaudible) cases - correct
me if I'm wrong, I believe U.S. Supreme Court law would
overturn Washington State case law.

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Now, where is my brief?

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(Conversation in the background
between Mr. Johnson and
Mr. Gray.)

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THE COURT: Anything else, sir?

MR. JOHNSON: Yes. I'm asking you to reconsider
the issues in - on Page 2 of my brief as to whether
the . . .

(Conversation in the background
between Mr. Johnson and
Mr. Gray.)

MR. JOHNSON: Yeah. Did the court fairly
consider the issues before the court? Did the state
present evidence of a compelling interest in RCW
46.63.110(6)(b) and is RCW 46.63.110(b)
unconstitutional? Did the state present evidence of a
compelling interest in RCW 46.20.091(1)(d) and is RCW
46.20.091(1)(d) unconstitutional?

I do believe that there is statutory authority to
consider the issue of the balance in RCW
46.63.110(6)(b), whether it considers my interest.
Those are laid out in a number of cases, Matthews, Bell,

22

1 Mackey, Dollson (phonetic), to name a few in my brief.

2 In addition --

3 THE COURT: Why don't you define for me what you
4 mean by fail to consider your interest? That seems to
5 be a continuing theme throughout all of your pleadings
6 and your argument.

7 MR. JOHNSON: Well, you suspended my license --

8 THE COURT: Sir, I didn't suspend your license.

9 MR. JOHNSON: I'm sorry. The state has suspended
10 my license - I'm sorry - for failing to pay a fine,
11 which is a penalty. They imposed a more strict penalty
12 of a suspension until that fine is paid.

13 I'm financially unable to pay that fine. And I'm
14 being forced not to have a driver's license for the rest
15 of my life basically for a \$250 fine that has nothing to
16 do with my ability to drive and operate a motor vehicle.

17 I'm saying that the state has failed when casting
18 this law to consider my interest or the length of my
19 suspension in suspending it. In most cases, a
20 suspension is defined as up to a year except in the case
21 of suspension for nonpayment of a ticket, which is
22 forever. This is basically a penalty that has no end.
23 And it is worse than most of them.

24 I would like to call your attention to Tate, which is
25 a case - and I'm going to also bring Williams, which is

23

1 another case that was used to overturn 30 days and 30
2 dollars, which was when they used to put you in jail for
3 not having the money to pay a fine.

4 In Tate, on Page 1 here, held it is denial of equal
5 protection to limit punishment to payment - punishment
6 to payment of a fine for those who are able to pay but
7 converted to the fine of imprisonment for those who are
8 unable to pay. This is basically the same thing.

9 THE COURT: You have been - you have been
10 imprisoned?

11 MR. JOHNSON: I have been thrown in jail, yes. I
12 spent three days in jail.

13 THE COURT: You have been imprisoned for the fact
14 that you didn't pay your traffic infraction?

15 MR. JOHNSON: That's correct.

16 THE COURT: And how --

17 MR. JOHNSON: Because I have been denied the
18 ability to operate a motor vehicle.

19 THE COURT: Not denied the ability, sir; you are
20 denied the license or the privilege to do so.

21 So what does that - how does Tate play into that?
22 You were charged with a crime, you were placed in jail.
23 Why were you placed in jail, Mr. - Mr. Johnson?

24 MR. JOHNSON: I think that's not relevant here
25 today.

24

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1 THE COURT: Well, you just said you were placed
2 in jail because you couldn't pay a traffic infraction.

3 MR. JOHNSON: Yes.

4 THE COURT: I --

5 MR. JOHNSON: I'm sorry.

6 THE COURT: I guess what I'm asking is I don't
7 think that is legally or physically possible. Did you
8 fail to - to appear at a court hearing?

9 MR. JOHNSON: I have not missed a court hearing.

10 THE COURT: Then how was a - how were you
11 placed - what case were you placed in jail on, sir?
12 That's what I guess I'm trying to get to.

13 MR. JOHNSON: On a --

14 THE COURT: This one?

15 MR. JOHNSON: On a suspension on driving - on a
16 driving suspended and I was suspended for nonpayment of
17 a fine.

18 THE COURT: So you were placed in jail on this
19 charge for three days?

20 MR. JOHNSON: Yes.

21 THE COURT: So when you were arrested back in
22 September, they booked you into jail?

23 MR. JOHNSON: Yes.

24 THE COURT: All right. I guess I'm understanding
25 you. I'm not tracking how Tate applies, but go ahead.

25

1 MR. JOHNSON: I - I guess what I'm saying with
2 regard to Tate is that I was fined and I'm unable to pay
3 that fine, so now I'm suspended forever. And I do not
4 believe that that is reasonable.

5 It is not relevant under equal protection as stated
6 in Tate. A person that has the money to pay a fine can
7 drive, and a person that doesn't cannot. There are no
8 other alternatives with this.

9 At some point, I should be able to drive again is
10 what I'm saying. And under this law, I can't. Under
11 this law, now I'm indigent. And the state is getting to
12 the point - it is getting to the point that the state is
13 going to have to start supporting me.

14 The next issue would be the issue of the driver's
15 license and the residence address. The protection
16 guaranteed under the Fourth and Fifth Amendments are
17 much broader in scope. The makers of the constitution
18 undertook to secure conditions favorable to the pursuit
19 of happiness. They recognized the significance of men's
20 spiritual nature, of his feelings of intellect. They
21 knew that only part of the pain, pleasure and
22 satisfactions of life are to be found in material
23 things.

24 They sought to protect Americans in their belief,
25 their thought, their emotions, their sensations. They

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1 conferred as against the government the right to be let
2 alone, the most comprehensive of rights and the most
3 valued by civilized men. That is Ohmstead (phonetic)
4 versus the United States as quoted in Griswald
5 (phonetic) versus State of Connecticut.

6 (Inaudible) a long series of cases the court has held
7 where fundamental personal liberties are involved there
8 may not be abridged - be abridged by the state simply
9 showing that a regulatory statute or some rational
10 relationship through the effectuation of a proper state
11 purpose where there is a significant encroachment upon
12 personal liberty. The state may prevail only on a
13 showing of a subordinary - subordinating interest, which
14 is compelling. That was Bates versus City of
15 Littlerock.

16 The law must be shown necessary and not merely
17 rationally related to the accomplishment of a
18 permissible pol- - policy. That is quoted in Griswald
19 versus State of Connecticut.

20 The court considered similar (inaudible) residence
21 requirements for welfare assistance in Shapiro versus
22 Thompson. The court observed that those requirements
23 created two classes of needy residents indistinguishable
24 from each other except that one is composed of residents
25 who have resided a year or more and the second of

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1 residents who have resided less than a year in the
2 juris- - in the jurisdiction.

3 On the basis of this sole difference, the first class
4 was granted and the second class was denied welfare aid
5 upon may - welfare aid upon which may depend the ability
6 to obtain the very means to subsist, food, shelter and
7 other necessities of life.

8 The court found that because the classification
9 impinges upon a constitutional guaranteed right of
10 interstate travel, it was to be judged by the standard
11 of whether it promoted a compelling state interest.
12 Finding such an interest wanting, the court held the
13 challenged residence requirements unconstitutional.

14 Appellees argue that the resident requirement before
15 is distinguishable from those in Shapiro, which
16 appellates - Shapiro was controlling. We agreed with
17 the appellant that (inaudible) residence requirements
18 for free medical care must be justified by compelling
19 state interest and that such interest being lacking, the
20 requirement is unconstitutional. That's Memorial
21 Hospital versus Maricopa (phonetic).

22 THE COURT: Do you have any case law, sir, that
23 deals with driving licenses? Do you have any case law
24 that says anywhere that the State of Washington doesn't
25 have the ability to determine who may drive and who may

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1 not drive and the circumstances under which they may do
2 so? Or do you have any case law that says that drivers'
3 license statutes which create more than one class of
4 people - which they certainly do, those who can drive
5 and those who can't - are unconstitutional?

6 MR. JOHNSON: In all the cases that I have read -
7 and I'm looking for Tate.

8 THE COURT: Tate had to do with jail time. It
9 didn't have to do with --

10 MR. JOHNSON: Tate --

11 THE COURT: -- a driver's license.

12 MR. JOHNSON: Ta- - I'm sorry, not Tate. Port
13 (phonetic).

14 THE COURT: Port. Yes, I have Port here, which
15 at least is a Washington case.

16 MR. JOHNSON: Thank you.

17 MR. O'ROURKE: I got that, yeah. Port.

18 THE COURT: How does Port support your position?

19 MR. JOHNSON: In Port it clearly states that the
20 state's authority to issue a license is based on safety.

21 THE COURT: Well, that's not all it says, sir.

22 MR. JOHNSON: I understand that's not all it
23 says.

24 THE COURT: What Port says is that requiring an
25 operator's license to operate a motor vehicle on a

1 public highway is a justifiable exercise of the police
2 power of the state. That's what Port says.

3 MR. JOHNSON: It does, but it also goes on to say
4 that for the purposes of safety --

5 THE COURT: That's one of the reasons.

6 MR. JOHNSON: I --

7 THE COURT: With all do you respect --

8 MR. JOHNSON: I have found others.

9 THE COURT: -- Mr. Johnson, we have now gone on
10 into this for 45 minutes. Do you have anything that
11 applies directly to your motion for reconsideration?

12 I have heard testimony. I have heard arguments on
13 topics that were not argued to the Court the first time.
14 Have you got anything that goes to the issue of the
15 reconsideration of my ruling from February --

16 MR. JOHNSON: Only what --

17 THE COURT: -- except the same arguments that you
18 made the first time, sir?

19 MR. JOHNSON: I guess they are the same
20 arguments.

21 THE COURT: All right. Mr. O'Rourke?

22 MR. O'ROURKE: Well, with regard to the same
23 arguments, I guess I'm primarily just going to rely on
24 my record I made then. And with regard to - yet the
25 Court did hear some argument about testimony and I think

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1 initially - I mean, there might be a different type of
2 case before the Court if it was a situation where a
3 person goes and tries to get a license and they can't
4 simply because of the fact that they are indigent and
5 don't have a physical address. I think that's kind of
6 been alluded to here and that might be a different type
7 of scenario than what is before the Court.

8 But what is before the Court I think arises out of -
9 through Mr. Tate's - excuse me - through Mr. Johnson's
10 own testimony was because of nonpayment of fines. And I
11 think that's the thrust of the issue. I mean, I don't
12 think they are standing here to even get (inaudible)
13 point where you are dealing with a situation where
14 Mr. Johnson was suspended because he didn't have an
15 address or a physical address. That's not what the
16 Court is here to consider. That would be a different
17 case.

18 As for nonpayment of fines, I mean, I think 46.20.291
19 says under Subsection 5 that failing to respond properly
20 to a traffic infraction, which can include - by my
21 understanding, can include just nonpayment, not actually
22 addressing or resolving that infraction - so if you are
23 issued an infraction and you don't resolve it for
24 speeding or whatever it might be, the Department of
25 Licensing has the ability to suspend your license.

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1 And I think that Mr. Johnson testified that that
2 happened to him. He has yet to pay those off. I think
3 in this particular case it is clear that that didn't
4 occur. And whether there is a relationship to driving,
5 the police power says they can decide who gets a license
6 and in the same vein, the state can decide who gets it
7 taken away.

8 And when there is an issue of safety, if traffic
9 codes are in place to keep the roads safe, speed,
10 operating at a certain age is defined by the state in a
11 serious fashion and a certain (inaudible), operating
12 your vehicle properly.

13 If you don't do these things, the police power
14 applies; in the same way that you are authorized a
15 license, it can be taken away at - 46.20.291 says
16 that.

17 And in this case Mr. Johnson didn't pay the traffic
18 infraction. The state has the ability to use its power
19 to take the license away. Whether Mr. Johnson believes
20 it is fair or not is not the question.

21 And then there is means to get that license back. It
22 is not like - I mean, the courts have analyzed these in
23 Moore and all these cases. It is not a lifetime
24 prohibition against driving. It is a prohibition
25 against driving until you resolve these matters with the

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1 State of Washington. You can't rack up 20, 30, 40
2 tickets and then not have any kind of sanction as to
3 your ability to operate a motor vehicle. That's a
4 balancing interest. We want the roads to be safe.

5 So if you speed - if you do - if you operate a motor
6 vehicle improperly, your right to do that is going to be
7 denied. If you don't properly respond to being
8 sanctioned, in this case by civil infractions - so
9 that's been balanced. Mr. Johnson hasn't resolved that
10 and his license remains, you know, suspended.

11 And there are also channels for indigent individuals.
12 I mean, there is bankruptcy, there is Chapter 13. I
13 mean, I have heard the Court allude to it a number of
14 times here. I don't - I don't necessarily understand
15 all the means that you can use to go about getting your
16 license back, but it would be my understanding that it
17 is not a lifetime type of suspension where - where
18 Mr. Johnson is permanently deprived of a right to
19 property and his license.

20 He has the right to travel amongst the states. There
21 is no equal protection violation because those two
22 classes of people are properly defined and they are not
23 protected classes under the 14th Amendment or the
24 Washington Constitution.

25 And with that said, I think this is a pretty

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1 cut-and-dried case of a suspended license that was
2 properly suspended and hasn't been taken care of.

3 So we have a criminal cause of action. Once you
4 drive under the State's law without a license, you are
5 committing a crime. So here we are. I ask the Court to
6 affirm its prior ruling and either we proceed to trial
7 or Mr. Johnson, I think, can try to appeal this.

8 I don't know what we are going to do after that, but
9 I just ask the Court to affirm it for the time being,
10 and keep the dates until we decide what we want to do.

11 THE COURT: Well, the motion for reconsideration,
12 which for the record is some 15 pages in length, sums up
13 the basis of this motion for reconsideration at Page 2.
14 Did the Court fairly consider the issues before the
15 Court?

16 Well, I'm sure from Mr. Johnson's point of view he
17 doesn't think so. Let me reiterate what I said at the
18 time of the first hearing, and it is still the same
19 position of this court. I am bound by the Supreme Court
20 decisions of the State of Washington. I have asked for
21 a number of times any Supreme Court decision that
22 supports Mr. Johnson's position.

23 I have not heard from Mr. Johnson any Supreme Court
24 decisions. I have heard him rely on one Court of
25 Appeals decision, which, quite frankly, I think he

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1 misinterprets for his positions. But the law in the
2 State of Washington - in the State of Washington has
3 been and remains the same since 1942. A license is
4 neither a contract nor a right of property. It is no
5 more than a temporary permit to do that which would
6 otherwise be unlawful. Hence, the authority which
7 granted a license always retains the power to revoke it
8 either for due cause of forfeiture upon a change of
9 policy or legislation in regard to that subject. Such
10 revocation cannot be pronounced unconstitutional either
11 as an impairment of contract obligation or as unlawfully
12 divesting persons of their property rights.

13 As a general rule, the jurisdiction for the
14 revocation of a license is vested in the same board,
15 court or officer who granted the license. That's State
16 versus Rawson.

17 Rawson goes on to say, "We hold that the Superior
18 Court properly construed the act in upholding the order
19 of the director of the Department of Licensing
20 cancelling appellant's operator's license and that the
21 act, as so construed, is not open to the objections
22 urged by the appellant on constitutional grounds."

23 Subsequently in State versus Port - or pardon me -
24 Spokane versus Port, a 1986 decision of the Court of
25 Appeals - and I quote from the second paragraph: "The

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1 privilege is always subject to such reasonable
2 regulation and control as the proper authorities see fit
3 to impose under the police power in the interest of
4 public safety and welfare."

5 That's citing State versus Sheffle (phonetic) 82
6 Wn.2d 872, a 1973 decision of the Supreme Court of this
7 state.

8 Mr. Johnson, this whole topic has been hashed out
9 since 1915. The U.S. Supreme Court's first decision on
10 the right to drive without a driver's license was in a
11 case called Hendrick versus Maryland, 235 US 610, 1915.
12 "States may rightfully prescribe uniform regulations
13 necessary for public safety and order in the operation
14 of - upon its highways of motor vehicles and may require
15 the licensing of drivers."

16 That was cited in State - or also in Wright
17 (phonetic) versus Mealy (phonetic), 80 - or 314 US 33, a
18 1941 decision of the U.S. Supreme Court.

19 I have asked, again, for cases today where the U.S.
20 Supreme Court or the state Supreme Court has overruled
21 these ancient decisions and have heard nothing. Thus,
22 as I indicated, did I fairly consider the issues before
23 the Court?

24 The issues before the Court were whether I should
25 dismiss a charge of driving while suspended in the third

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1 degree because it was unconstitutional. I find no
2 support in any of the arguments made then or now by
3 Mr. Johnson as to the lack of constitutionality.

4 He raises a new argument today that there is no
5 authority for suspending a driver's license for not
6 paying monetary fines. I would refer you, sir, to RCW
7 46.63.110(6)(a) and (b) --

8 UNIDENTIFIED SPEAKER: (No audible response.)

9 THE COURT: -- no, not 46.20, 46.63 --

10 UNIDENTIFIED SPEAKER: That's it right here.

11 THE COURT: -- which says, and I quote, "The
12 department - if a person has not entered into a payment
13 plan with a court and has not paid the monetary
14 obligation in full on or before the time established for
15 payment, the court shall notify the department of the
16 delinquency. The department shall suspend the
17 driver's - the person's driver's license or driving
18 privilege until all monetary obligations have been paid,
19 including those imposed under Sections 3 and 4 of this
20 section or until the person is entered into a payment
21 plan under this section."

22 46.53.110(6) certainly allows in a variety of
23 different circumstances for the department - requires
24 the department to suspend the license of people who have
25 not paid the fines that have been imposed upon them for

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1 traffic infractions.

2 You have argued, again, in your brief did the state
3 present evidence of a compelling issue for
4 46.63.110(6)(b)? Well, it would appear that once - I'm
5 not even sure how that argument is being made, but
6 basically does the state have a compelling issue to
7 collect the fines imposed?

8 It absolutely does. I - I'm not tracking your
9 argument on that at all. It does have a compelling
10 issue to collect the fines that are - and monies owed to
11 the state. That's what the state government has been
12 designed for. The money belongs to the people of the
13 State of Washington. There is no more compelling issue
14 than that.

15 And, finally, did the state present evidence of a
16 compelling interest in 46.20.091(1)(d), which is the
17 part that requires Mr. Johnson to provide a residential
18 address? Well, there isn't an argument that can be
19 made - or not an argument. There is a fact of life,
20 Mr. Johnson, that has to be applied and that is that
21 when people are involved in the operation of a motor
22 vehicle, they can be charged with a crime.

23 They generally are charged with a crime by the
24 issuance of citations. People who fail to appear have
25 warrants issued for their criminal charges. They fail

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1 to appear, the officer generally is under an order from
2 a court to issue - or to arrest the person on a warrant.

3 If you don't know where their residential address is,
4 there is not much way that anybody can effectuate those
5 warrants. That provides a compelling state interest in
6 knowing where you can be located beyond your mailing
7 address.

8 So in answer to your question is it unconstitutional
9 because there is no compelling interest? There is an
10 absolute compelling interest in the enforcement of the
11 criminal laws of this state, which require, among other
12 things, if you are going to operate a license - or
13 operate a motor vehicle, that they know what your
14 residential address is.

15 Going back to the bigger question. The case law from
16 all the states, the case law from the U.S. Supreme
17 Court, the case law from the State of Washington is
18 absolutely clear. This is a privilege, it is not a
19 right.

20 The authority issuing the license has the right to
21 enact those laws and those regulations that are
22 appropriate in the mind of the legislative body to the
23 safe operation and the efficient and orderly operation
24 of the traffic system. They have done that. They have
25 the right to do that. They have the authority to do

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1 that and they have done that in your case.

2 And the fact of the matter is that there is nothing
3 unconstitutional about any of the statues that you have
4 challenged here or even the general concept. Based upon
5 that, your motion to reconsider is denied.

6 Any questions?

7 MR. O'ROURKE: No.

8 MR. JOHNSON: No. Do you have any questions?

9 THE COURT: Thank you, gentlemen. That is all
10 for the day.

11 MR. GRAY: Your Honor, I guess I do have one side
12 question. What is the expiration date on this case?

13 THE COURT: Speedy trial expiration is March
14 31st. He is set - oh, pardon me. Let me double-check
15 that before I make that statement, if I can find the
16 right documents. The file has become so chockablock
17 with pleadings. What is the - what is the trial date on
18 this one?

19 MR. O'ROURKE: July - or March 30th.

20 THE COURT: 30th. And we are showing a speedy
21 trial expiration is March 31st.

22 MR. GRAY: Well, Your Honor, I need to throw this
23 out there. I had a matter in Superior Court that was
24 set for trial tomorrow, but was bumped to the 30th
25 today. I have talked to Mr. Johnson about what we want

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1 to do or what he wants to do in terms of appeal. I
2 believe he wants to appeal this decision today and not
3 proceed to trial; however, I don't know what the outcome
4 is for that at this point. So I guess my request would
5 be to strike the trial date today, if the Court would
6 accept a speedy trial waiver, if Mr. Johnson wants to
7 proceed like that knowing that he will probably appeal
8 today's decision, but just in case, just because I have
9 had this matter come up in Superior Court and I cannot
10 be here on the 30th for trial if it, in fact, got that
11 far.

12 THE COURT: Well, that's up to Mr. Johnson,
13 Counsel.

14 MR. GRAY: Is that okay with you?

15 THE COURT: It is currently set to go to trial on
16 the 30th.

17 MR. JOHNSON: (Inaudible.)

18 MR. GRAY: To wave your speedy trial right?

19 MR. JOHNSON: Yes. Yes.

20 MR. GRAY: Do you want to reset the trial date or
21 do you want a pretrial date?

22 THE COURT: Well, if he is going to file an
23 interlocutory appeal, what is his timeline on that,
24 Mr. Gray?

25 MR. JOHNSON: Thirty days on that, I believe.

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1 THE COURT: No, that's when you have to file it.

2 MR. JOHNSON: Right.

3 THE COURT: I'm talking about how long is it
4 going to take them to hear and decide the interlocutory
5 appeal.

6 MR. O'ROURKE: Maybe if we have a pretrial date
7 so with it like in 31 days or whatever to make sure that
8 something has been filed and then we can decide if we
9 need to set trial.

10 THE COURT: That's what I would suggest, go about
11 five weeks down the road.

12 MR. JOHNSON: Okay.

13 MR. GRAY: Okay. So we are going to start your
14 (inaudible) 90 days over on May 1st just to give enough
15 time for the appeal.

16 MR. JOHNSON: Yeah (inaudible).

17 MR. GRAY: Okay.

18 MR. O'ROURKE: What was - what was (inaudible).

19 MR. GRAY: May 1st (inaudible) speedy
20 commencement.

21 MR. O'ROURKE: Commencing May 1st?

22 MR. GRAY: Yeah.

23 THE COURT: All right. Mr. Johnson, since you
24 are your own primary attorney, do I understand correctly
25 you are asking the Court to strike the trial date for

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1 March 30th and reset this matter down the road
2 approximately five weeks for a pretrial hearing so you
3 can initiate an interlocutory appeal?

4 MR. JOHNSON: That's correct.

5 THE COURT: The record will so reflect. We will
6 move the matter over to - let's move it over to - pro se
7 pretrial --

8 THE CLERK: (Inaudible) Wednesday.

9 THE COURT: How about the 22nd of April?

10 MR. GRAY: Would I still be stand-by counsel at
11 that point?

12 THE COURT: You are still stand-by counsel.

13 MR. GRAY: 22nd of April?

14 THE COURT: Wednesday, April 22nd at 1:30.

15 MR. GRAY: Sounds good.

16 THE COURT: All right. Thank you, gentlemen.

17 Court is in recess.

18 MR. O'ROURKE: Thank you, Your Honor.

19 MR. GRAY: Thank you, Your Honor.

20

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23

(End of proceedings.)

24

25

C E R T I F I C A T E

I, KRISTIN D. MANLEY, a certified court reporter of the State of Washington, do hereby certify that the foregoing proceedings were tape recorded; that I was not present at the proceedings; that I was requested to transcribe the tape-recorded proceedings; that the tape recording was transcribed stenographically and reduced to typewriting under my direction.

I further certify that the foregoing transcript of the tape-recorded proceedings is a full, true, and accurate transcript of all discernible and audible remarks.

DATED AND SIGNED this 11th day of May, 2009.



KRISTIN D. MANLEY

CCR NO. 2211

1 IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF LEWIS
3

4
5 STATE OF WASHINGTON,)
6 Plaintiff,)
7 Vs.)
8 STEVEN C. JOHNSON,)
9 Defendant.)

COPY

NO. C85203

10
11 VERBATIM REPORT OF PROCEEDINGS
12 September 18, 2009
(Trial, Sentencing)
13

14 A P P E A R A N C E S

15 For the State: MR. SHANE O'ROURKE
16 DEPUTY PROSECUTOR
Chehalis, Washington

17 For the Defendant: MR. STEVEN JOHNSON
18 PRO SE
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19 MR. JERRY GRAY (Standby Counsel)
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21
22 Presiding Judge: WENDY TRIPP
23

24 KATHLEEN M. MAHR, CSR NO. 2311
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EXHIBIT C

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September 18, 2009

* * * * *

THE COURT: Okay. Today we're scheduled for a bench trial on State versus Steven Johnson. Mr. Johnson is present with I believe Mr. Gray as standby counsel.

MR. GRAY: Yes, your Honor.

THE COURT: Mr. Johnson is representing himself. Are you able to hear me okay, Mr. Johnson?

MR. JOHNSON: This is breaking up a little bit, basically I can hear you, that's fine.

THE COURT: If there is anything said by anybody that you don't hear, just make me aware of that, okay?

MR. JOHNSON: I will, okay, yes.

THE COURT: Because we can talk louder or repeat or whatever we need to do to make sure you're hearing everything that's happening. Are the parties ready to proceed on this bench trial with this driving on suspended charge?

MR. O'ROURKE: Yes, your Honor.

THE COURT: State is ready, is the defense ready?

MR. JOHNSON: Yes.

THE COURT: Are there any preliminary issues that we should take up before we get started with the

1 trial?

2 MR. O'ROURKE: No, I don't have any.

3 MR. JOHNSON: No.

4 THE COURT: Okay. Do the parties want to make
5 opening statements?

6 MR. O'ROURKE: This is a driving suspended
7 case. State is going to show that on September 19th,
8 2008, Mr. Johnson was driving in Lewis County suspended
9 in the third degree.

10 THE COURT: Mr. Johnson, did you want to make
11 an opening statement?

12 MR. JOHNSON: I don't believe I need to do
13 that.

14 THE COURT: Okay. State want to proceed with
15 presenting its evidence?

16 MR. O'ROURKE: Yes, thank you. State calls
17 Deputy McKnight:

18
19 MATTHEW MCKNIGHT, having been first duly sworn
20 on oath, testified as follows:

21

22 DIRECT EXAMINATION

23 BY MR. O'ROURKE:

24 Q Deputy McKnight, could you please state your name and
25 spell the last for the record?

1 A Matthew McKnight, M-c-K-n-i-g-h-t.
2 Q What's your current occupation?
3 A I'm a deputy with the Lewis County Sheriff's Office.
4 Q Were you working as a deputy on September 19th, 2008?
5 A Yes, I was.
6 Q How long have you been a deputy at the sheriff's office?
7 A Approximately two years now.
8 Q Do your duties with the -- have you been trained in
9 making traffic stops prior to working at the sheriff's
10 office?
11 A Yes, I have.
12 Q Is it a regular part of your work with the sheriff's
13 office over the course of that time to conduct traffic
14 stops?
15 A Yes, it is.
16 Q And have you conducted traffic stops for driving
17 suspended in the past?
18 A Yes, I have.
19 Q A number of times?
20 A Yes.
21 Q And I want to direct your attention to September 19,
22 2008. On that day in particular, were you working in
23 your capacity as a deputy with the sheriff's office?
24 A Yes, I was.
25 Q Were you dressed in full attire and in a marked patrol

1 vehicle similar to what you're dressed in today?

2 A Yes, I was.

3 Q Specifically, I want to direct your attention to around
4 11:00 a.m., September 19, 2008, what if anything were
5 you doing at that time?

6 A At that time I was on random patrol on the east half of
7 Lewis County.

8 Q And what, if anything, happened with regard to this
9 case?

10 A I observed a vehicle drive by me, it was a white Toyota,
11 had no rear bumper and no mud flaps.

12 Q Where in particular did it drive by, what road, of what
13 part of the road?

14 A Right around the 100 block of Falls Road.

15 Q Is that within Lewis County?

16 A Yes, it is, it is in Randle.

17 Q Did you make -- did you stop the vehicle?

18 A Prior to stopping the vehicle, I performed a driver's
19 check using my MVC -- I'm sorry, performed a
20 registration check using my MVC. During the
21 registration check, I checked the owner's registration
22 of the vehicle, discovered him to be suspended.

23 Q Who did the registrar of the vehicle come back as?

24 A A Mr. Steven Johnson.

25 MR. O'ROURKE: And given that Mr. Johnson's

1 pro se in these proceedings, I would indicate for the
2 court that that last portion of the testimony by the
3 deputy is for foundation purposes and not submitted to
4 the court for any other purposes, it constitutes
5 hearsay.

6 Q (By Mr. O'Rourke) So based upon that, what if anything
7 did you do?

8 A I attempted to perform a traffic stop on the vehicle.

9 Q And were you successful in stopping the vehicle?

10 A Initially, no. Eventually, the vehicle did stop.

11 Q And did you activate your lights and follow it for a
12 while, is that what you're referring to?

13 A I did, I activated my lights near the end of the 100
14 block of Falls Road.

15 Q Did it continue to drive down the county road?

16 A Yes, it did.

17 Q And that still remained in Lewis County?

18 A Yes, it did.

19 Q You said you eventually stopped the vehicle, what did
20 you do upon stopping the vehicle?

21 A Upon stopping the vehicle, the driver immediately exited
22 the car. I asked him to step back in the vehicle. He
23 refused to do so.

24 Q Do you recognize the driver of the vehicle in the
25 courtroom here today?

1 A Yes, I do.

2 Q Do you recognize the driver of the vehicle as Mr. Steven
3 C. Johnson seated to my left?

4 A Yes, I do.

5 MR. O'ROURKE: Have the record reflect the
6 witness has identified the defendant.

7 THE COURT: So noted.

8 Q By Mr. O'Rourke) Based upon the information you
9 obtained from your registration check, did you cite Mr.
10 Johnson for any offense?

11 A Yes, I did.

12 Q What did you cite him for?

13 A Driving on Suspended License in the Third Degree.

14 Q Would that be a citation issued in Lewis County on
15 September 19th 2008?

16 A Yes, it was.

17 MR. O'ROURKE: I'm just showing Mr. Johnson
18 what's marked as Plaintiff's ID 1. Permission to
19 approach the witness?

20 THE COURT: Granted.

21 Q (By Mr. O'Rourke) Deputy McKnight, I'm showing you
22 what's marked as Plaintiff's Identification Number 1,
23 can you review the two-page document, let me know when
24 you have had a chance to review it.

25 A I've reviewed it.

1 Q Do you recognize the document?

2 A Yes, I do.

3 Q What is it?

4 A Appears to be a document, a notice of suspension from
5 the Department of licensing.

6 Q And does this page one have identified information for
7 the defendant?

8 A Yes, it does.

9 Q Does it identify Steven C. Johnson as the defendant in
10 this particular case?

11 A Yes, it does.

12 Q Does it --

13 MR. JOHNSON: I guess I would like to object
14 at this point, your Honor. This is hearsay information
15 and he has no firsthand knowledge of this document other
16 than that it's been laid in front of him.

17 THE COURT: Okay. The state hasn't moved to
18 at admit it yet, so we will get to that in just a
19 minute. I assume -- are you moving to admit it right
20 now?

21 MR. O'ROURKE: Not yet, just laying the
22 foundation.

23 THE COURT: Okay. When we get to them moving
24 to admit it, then we can discuss the objection.

25 Q By Mr. O'Rourke) Does it appear to have identifying

1 information from Mr. Johnson, the defendant?

2 A Yes, it does.

3 Q Does that match the information that you received in the
4 field as far as his name, et cetera?

5 A Yes, it does.

6 Q Does the document -- is it from the Department of
7 Licensing of the State of Washington?

8 A Yes, it is.

9 Q Does the document bear the seal of the State of
10 Washington?

11 A Yes, it does.

12 Q And does it indicate that there is in fact an attachment
13 for notice of suspension from the Department of
14 Licensing?

15 A Yes, it does.

16 Q Is that attached to the document, page two?

17 A Yes, it is.

18 MR. O'ROURKE: At this time, I move to admit
19 Plaintiff's ID 1 as State's Exhibit 1.

20 THE COURT: Okay. Now we can talk about your
21 objection.

22 MR. JOHNSON: Yes.

23 THE COURT: Do you want to elaborate on your
24 objection, is there anything more that you want to say?

25 MR. JOHNSON: This is basically hearsay here.

1 Today there is no -- nothing, nobody here to testify as
2 to what this document is and how it was created. And
3 Mr. McKnight I don't believe is qualified to do that.

4 THE COURT: Okay, does the state want to
5 respond?

6 MR. O'ROURKE: This is a self-authenticating
7 document from the State of Washington Department of
8 Licensing.

9 THE COURT: Any other argument?

10 MR. JOHNSON: No, ma'am.

11 THE COURT: Okay, as I understand it, the case
12 law in Washington at this point is that records from the
13 Department of Licensing are allowed to be admitted. I
14 think the most recent case on that in Washington is
15 State v. Kronich, I'm not sure I'm pronouncing that
16 right, it's a case from I believe 2007 which deals with
17 this exact issue. I've read the case, and the Supreme
18 Court in that case, with one justice dissenting, ruled
19 that the information contained on a Department of
20 Licensing record regarding license suspension is
21 non-testimonial for purposes of hearsay so that it would
22 fall within best records and not require that a person
23 from the Department of Licensing come to court to
24 testify. That's distinguishing that from like a lab
25 report from a drug case where a lab technician has done

1 testing and that is considered testimonial and that
2 person is required to be in court to testify. So far,
3 the law in Washington allows the Department of Licensing
4 to submit this record and the court to admit and
5 consider that record without a person bringing that to
6 court and testifying and allowing you to cross examine
7 that person because they're considered to be reliable
8 and part of the business records of the Department of
9 Licensing. So at this point in time, following current
10 Washington law, I'm going to overrule the objection and
11 admit the document.

12 (WHEREUPON, Plaintiff's Exhibit 1
13 admitted)

14 MR. O'ROURKE: Thank you. Just one moment.

15 Q (By Mr. O'Rourke) Just to be clear, Deputy McKnight,
16 Mr. Johnson is the defendant seated to my left, that's
17 the individual who you stopped for driving with
18 suspended license in Lewis County on September 19th,
19 2008?

20 A Yes.

21 MR. O'ROURKE: No further questions.

22 THE COURT: Mr. Johnson, do you have any
23 questions for the deputy?

24 MR. JOHNSON: Yes, ma'am.

25 THE COURT: Go ahead.

1 MR. JOHNSON: Thank you. May I approach the
2 witness, please?

3 THE COURT: Yes.
4

5 CROSS EXAMINATION

6 BY MR. JOHNSON:

7 Q The state has amended the citation, are you familiar
8 with this, this is the amended citation?

9 A I'm not familiar with it.

10 Q You're not. This is what I have been charged with at
11 this point, and I'd like to go over this with you to see
12 what supposedly I had done in this charge.

13 A If I can have some time to review this.

14 Q Would you like time to review it?

15 A Yes.

16 THE COURT: Why don't you just give him a
17 minute to look it over then you can continue your
18 questioning.

19 THE WITNESS: I've reviewed it.

20 Q (By Mr. Johnson) Now, there is a list of items here that
21 I have supposedly done, I would like to know basically
22 what evidence you have would show that I've done this.
23 First one here says, because the defendant (a) failed to
24 furnish proof of the satisfactory progress in a required
25 alcoholism or drug treatment program, do you have any

1 evidence to show that?

2 A I don't know.

3 Q Is there any evidence that you might be aware of or
4 could be aware of of my failure to do that?

5 A Not that I'm aware of.

6 Q Thank you. (B) failed for any proof of financial
7 responsibility for the future as provided by RCW Chapter
8 46.29, do you have any evidence to show that?

9 MR. O'ROURKE: I object to -- he's being asked
10 to make a legal conclusion and also to speculate beyond
11 what he's actually aware of whether or not he -- whether
12 or not Mr. Johnson's properly cited under this amended
13 citation is a question for the court, not Deputy
14 McKnight.

15 THE COURT: Well, I think he can ask the
16 deputy if he has any information regarding the
17 information that charges -- I'll allow that. If the
18 deputy doesn't, he can say he doesn't, if he does, he
19 can give that information to Mr. Johnson. Go ahead.

20 MR. JOHNSON: Thank you.

21 Q (By Mr. Johnson) Do you have any -- (b) failed to
22 furnish proof of financial responsibility for the future
23 as provided by RCW Chapter 46.29, do you have any
24 information to that?

25 A Nope.

1 Q Now, the next one here -- excuse me, that's one more,
2 failed to comply with the provisions of RCW Chapter
3 46.29 related to uninsured accidents, do you have any
4 evidence to show that?

5 A I do not.

6 Q Failed to respond to notice -- this is four quarters,
7 I'm going to read the whole thing -- failed to respond
8 to a notice of traffic infraction, failed to appear to
9 requested hearing, violated a written promise to appear
10 in court, or failed to comply with the terms of a notice
11 of traffic infraction or citation as provided in RCW
12 46.20.289?

13 A I believe that's on the notice of suspension document.
14 If I can review it, I could be sure.

15 THE COURT: It is right here.

16 THE WITNESS: On this document it says on
17 11/01/07 at 12:01 a.m. your driving privileges will be
18 suspended. The court has notified us that you failed to
19 respond, appear, pay, or comply with the terms of the
20 following citation listed below, has citation number
21 I00038445, a violation date of 01/14/2007, and then the
22 reason for citation was that it is no valid license.

23 Q (By Mr. Johnson) Now, do you see failure to pay listed
24 anywhere in this document?

25 MR. GRAY: Your Honor, I would request that

1 Mr. Johnson identify which document he's referring to
2 for the record.

3 MR. JOHNSON: This is the order amending
4 citation.

5 MR. GRAY: Thank you.

6 THE WITNESS: I don't see failure to pay, I do
7 see failure to respond, appear, pay, or comply in the
8 suspension document and several of those are listed in
9 the charging document.

10 Q (By Mr. Johnson) But you have no information to show
11 that I failed to respond?

12 A Just the letter of suspension from the Department of
13 Licensing.

14 Q Okay. And that you have no information that I failed to
15 appear?

16 A Again, just based on the letter of suspension from
17 Department of Licensing.

18 Q And you have no information that I violated a written
19 promise to appear in court?

20 A Just the letter of suspension from the Department of
21 Licensing.

22 Q And you have no information that I failed to comply with
23 the terms of a notice of traffic infraction or citation?

24 A Again, just the letter from Department of Licensing.

25 Q Thank you. (E) admitted an offense in another state

1 that if admitted in this state would not be grounds for
2 suspension or revocation of the person's driving
3 license. I really don't understand that one, I'm sorry,
4 but do you have any evidence to show that?

5 A No.

6 Q Received traffic citations or notice of traffic
7 infractions that have resulted in suspension under RCW
8 46.20.267, in other words, do I have a prior conviction
9 for driving on suspended?

10 A I'm not sure that's what that says.

11 Q Well --

12 A There is a comma, says, relating to intermediate
13 driver's license.

14 Q Yes.

15 A I would understand that as --

16 Q Okay.

17 A -- a violation of intermediate driving status.

18 Q Okay, thank you. By reason of the --

19 MR. O'ROURKE: Your Honor, I object. If we're
20 going to go through that, I'd like that document marked
21 and for identification purposes so we can have that on
22 the record for any further proceedings after today. I
23 didn't ask for that before, but I think that's
24 appropriate if we're reading from a document and they're
25 both referring to it.

1 THE COURT: Which document are you talking
2 about?

3 MR. O'ROURKE: The order amended citation. I
4 know this is already in the court file as part of the
5 court's charging document, but if it is used in this
6 proceeding separately by Mr. Johnson and they're both
7 reading from it and utilizing it, I would like to have
8 it marked and retained by the court.

9 MR. JOHNSON: It is already in the court
10 record, your Honor.

11 MR. O'ROURKE: Right, but Mr. Johnson is
12 reading something off -- reading off something in his
13 hand that I want to have marked and put in the court's
14 record.

15 THE COURT: Well, it doesn't really change
16 anything, but you want his copy that he is reading from
17 marked?

18 MR. O'ROURKE: Right, whatever they're using
19 to elicit testimony, evidence.

20 THE COURT: Okay.

21 MR. JOHNSON: I don't believe I have a signed
22 copy here. I do not have a signed copy here. Is that
23 -- I don't have a signed copy, I never received one.

24 MR. O'ROURKE: That's fine. I mean, I just
25 wanted whatever they're using marked and put into the

1 record.

2 MR. JOHNSON: I did not bring copies of it
3 other than these two, mine and my attorney's copy, and I
4 don't think either one of us have a signed copy. We
5 were never served a signed copy or given a signed copy.

6 THE COURT: The original that's in the court
7 file is signed. It was signed by the prosecutor and by
8 the judge. But if you're just wanting to have this
9 marked to somehow be preserved, I guess in case there is
10 some difference between that and this copy, I don't
11 know, but --

12 MR. JOHNSON: There shouldn't be.

13 THE COURT: No, but if you don't have any
14 objection to that, you can hand it to the clerk and she
15 will just stamp it and mark it.

16 MR. JOHNSON: I'll trade you here.

17 THE COURT: Are you moving to admit it?

18 MR. O'ROURKE: No, I'm just asking for them
19 both to be marked and retained by the court.

20 THE COURT: Okay, go ahead, Mr. Johnson.

21 Q (By Mr. Johnson) Committed an offense in another state
22 that if admitted in this state would not be grounds for
23 a suspension or revocation of the person's driver's
24 privilege or driver's license?

25 A I believe I already answered that one.

1 THE COURT: I think you were a little bit
2 further down there because we just talked about the
3 intermediate driver's license which was F.

4 Q (By Mr. Johnson) Okay, (f) and you answered negative to
5 that, the intermediate driver's license portion?

6 A Right.

7 Q Number two, by reason of a conviction of (a) a
8 conviction of a felony in the commission of which a
9 motor vehicle was used, do you have any evidence to show
10 that?

11 A Not that I'm aware of.

12 Q (B) a previous conviction for violating RCW 46.20.342
13 related to driving while a license is suspended or
14 revoked, do you have any evidence to show that?

15 A Not that I'm aware of, although I don't have your
16 driver's abstract in front of me.

17 Q Okay. A notice received by the Department of Licensing
18 from a court or diversion unit as provided by RCW
19 46.20.265 relating to a minor who has committed or who
20 has entered a diversion unit concerning the offense and
21 offense related to alcohol, legend drugs, or controlled
22 substances or imitation controlled substance, do you
23 have any evidence to show that?

24 A No, I do not.

25 Q A conviction for violating RCW 46.20.410 relating to the

1 violation of restrictions of an occupational driver's
2 license, do you have any evidence to show that?

3 A No, I do not.

4 Q (E) a conviction for violating RCW 46.20.345 relating to
5 the operation of a motor vehicle with a suspended or
6 revoked license?

7 A I'm not sure I understand that one. If my understanding
8 of it is right and it means you have been convicted
9 prior for suspended, then, no, I don't have any evidence
10 of convicted prior for suspended.

11 Q Okay, thank you. A conviction for violating RCW
12 46.52.020 relating to duty in case of injury or death of
13 a person or damage to an attended vehicle, do you have
14 any evidence to show that?

15 A No, I do not.

16 Q (G) a conviction for violating RCW 46.61.024 relating to
17 attempting to elude police officer, do you have any
18 evidence to show conviction for that?

19 A No, I do not.

20 Q (H) a conviction for violating RCW 46.61.500 related to
21 reckless driving, do you have any evidence to show that?

22 A No, I do not.

23 Q A conviction for violating RCW 46.61.502 or 46.61.504
24 relating to a person driving or being in actual physical
25 control while under the influence of intoxicating liquor

1 or drugs, do you have any evidence to show that?

2 A No.

3 Q A conviction for violating RCW 46.61.520 relating to
4 vehicular homicide?

5 A No.

6 Q A conviction for violating RCW 46.61.522 relating to a
7 to vehicular assault, do you have any evidence to show
8 that?

9 A No.

10 Q A conviction for violating RCW 46.61.527(4) relating to
11 reckless endangerment of roadway workers?

12 A No.

13 Q (M) a conviction for violating RCW 46.61.530 relating to
14 racing of vehicles on highways, do you have any evidence
15 to show that?

16 A No.

17 Q A conviction for violating RCW 46.61.685 relating to
18 leaving children in an unattended vehicle with the motor
19 running, do you have any evidence to show that?

20 A No.

21 Q A conviction for violating RCW 46.61.740 relating to
22 theft of a motor vehicle fuel, do you have any evidence
23 to show that?

24 A No.

25 Q A conviction for violating RCW 46.64.048 relating to

1 attempting, aiding, abetting, coercing, or committing
2 crimes, do you have any evidence to show that?

3 A No.

4 Q (Q) an administrative action taken by the Department of
5 Licensing under chapter 46.20 RCW, do you have any
6 evidence to show that?

7 A The letter sent from Department of Licensing, I don't
8 know if that would be considered an administrative
9 action or not.

10 Q That's the only thing that you have then under RCW 46 --

11 A Yes, I'm not familiar with all of 46.20.

12 Q There is 237 pages there.

13 A Like I said, I'm not familiar with all of the
14 administrative actions, however, I do have the letter
15 from Department of Licensing stating suspension.

16 Q Would you say then, other than the statute cited there,
17 that there are no other reasons under RCW 46.20 that I
18 would be suspended?

19 A I'm not sure I understand your question.

20 Q Is there anything else besides the one listed in that
21 letter, the RCW 46.20.289, that I would be suspended for
22 under 46.20?

23 A As far as I know, if the one you're referring to is
24 whether you're to -- failure to respond, appear, pay, or
25 comply with the terms of a citation, then that and the

1 administrative action, again, the letter from Department
2 of Licensing, I don't know if that's considered an
3 administrative action or not so.

4 Q Okay. Do we need to go through 46.20 in it's entirety
5 to make sure there is nothing else in there or will you
6 say there is nothing else in there?

7 MR. JOHNSON: Does the state want to stipulate
8 that there is nothing other than 46.20.289 and 46.20
9 that I'm charged with?

10 MR. O'ROURKE: No, I don't want to stipulate
11 to anything, and he's answered the question I believe to
12 the best of his ability, and anything else is
13 irrelevant.

14 MR. JOHNSON: Thank you.

15 Q (By Mr. Johnson) I'm going to come back to this. (R) a
16 conviction of a local law ordinance or regulation or
17 resolution of a political subdivision of this state,
18 federal government, or any other state of an offense
19 similar to violating RCW 46.20.342(1)(b), do you have
20 any evidence to show that?

21 A I'm not familiar with that RCW so I can't answer that
22 question.

23 Q Page 555 to 563, can you find something in there that
24 I'm suspended?

25 MR. O'ROURKE: I'm objecting again, your

1 Honor. I don't know the relevance, there is no
2 relevance to -- well, again, I'll object, there is no
3 relevance to any of the questioning. But he doesn't
4 need to find -- he doesn't need to be familiar with the
5 statute that I've cited or alleged as one of the
6 possible reasons why Mr. Johnson could be suspended. So
7 for him to read eight pages of the statute is not
8 relevant at this point.

9 THE COURT: What are you trying to get at?

10 MR. JOHNSON: Well, I don't see anything in
11 here that I've done to be suspended is simply what I'm
12 getting at, and I want to know what evidence the state
13 has under what law I'm suspended for.

14 THE COURT: Well --

15 MR. JOHNSON: And if that is in this document.

16 THE COURT: The deputy is testifying as to the
17 evidence that he has, that he is not a lawyer, at least
18 to my knowledge, and so the legal aspects of what you're
19 asking for I think you're going beyond what this witness
20 can testify to.

21 MR. JOHNSON: This is the witness that has
22 issued the citation and brought me here.

23 THE COURT: Right, he cited you for driving
24 while license suspended.

25 MR. JOHNSON: And this is the amended

1 citation.

2 THE COURT: And that was done by the
3 prosecutor's office, they amended it to add detail which
4 is information from the statute. But I think what
5 you're getting at is asking the deputy to somehow put
6 the facts of this case into the statute and I think
7 that's getting beyond what this witness is competent to
8 testify to.

9 MR. JOHNSON: Well, I think that this witness
10 is arresting people, he's a law enforcement officer, he
11 should be familiar with the laws and he should be able
12 to tell me what this document is and what's in it. I
13 have a right to know what's in here I have done to be
14 suspended. And if it's not in here, I haven't been
15 charged with it, and if I'm not charged with it, why am
16 I here?

17 THE COURT: Well, you're getting into what
18 your legal argument is, or one of them anyway, so --

19 MR. JOHNSON: Somebody needs to answer.

20 THE COURT: But the questions you're asking
21 him I think are getting beyond what he is competent to
22 testify to. Because you're asking him to read a statute
23 and then say what in that statute applies to you, is
24 that what you're asking him to do?

25 MR. JOHNSON: Well, I'm asking him what

1 evidence he has to show that I violated any of these
2 charges in here. If the state has no evidence to show
3 that I violated these charges, there is no case. And
4 somebody has to testify as to what I did to be suspended
5 and have some proof.

6 THE COURT: Okay. Well, I think he's given
7 the testimony that he's got, so going beyond that, I
8 think we're sort of wasting time. If you want to ask
9 him is there anything else that you intend to -- any
10 other part of this statute that you're intending to
11 refer to regarding these charges against me or something
12 like that, but to make him read page after page of
13 statute when he's already testified as to the charge --

14 MR. JOHNSON: Well, the state brought these
15 two pages of charges, and some of them are pretty
16 onerous. I don't drink and I don't do drugs. I've
17 never left the scene of an accident, I'm a boy scout.

18 THE COURT: The charging document is the
19 nature of this or this or this or this, and they do that
20 because when they tried to make it be just something
21 lesser than that, then everybody, other people, not you,
22 but other people in other cases that have said, no, you
23 have to give us more specific information, and so they
24 were giving all of this.

25 MR. JOHNSON: Well, that's the thing, giving

1 you this information, I need to --

2 THE COURT: But, apparently, most of that -- I
3 haven't heard the whole case, but so far most of what's
4 in that doesn't apply to you, they're only saying one
5 small section of it applies to you.

6 MR. JOHNSON: Well, I've asked the state to
7 stipulate to that and they said they aren't stipulating
8 to anything.

9 THE COURT: Right, but if they're not
10 presenting any evidence to anything else, then it is not
11 going to be part of the case.

12 MR. JOHNSON: I want to make sure --

13 THE COURT: The state is required to present
14 the evidence.

15 MR. JOHNSON: -- that this is understood that
16 this doesn't stand because the way this is written it is
17 indicating that --

18 THE COURT: If there's any other evidence as
19 to anything else comes in, then I'll allow you to
20 question as much as you want about that evidence. But
21 at this point, we have no further evidence of anything
22 else that's been mentioned.

23 MR. JOHNSON: Okay.

24 THE COURT: I don't know if the state's
25 calling any other witnesses, but if this is their only

1 witness, then I think there is no point in getting into
2 a lot of other things that have nothing to do with this
3 case.

4 MR. JOHNSON: Well, I don't know.

5 THE COURT: That's what I'm saying, we will
6 know soon because when the state's done with their
7 evidence, then we will know whether they're alleging
8 that you've been involved in a vehicular homicide in New
9 Jersey and that that's the reason that they're citing
10 you. There's been no evidence to anything like that so
11 it is not part of this case. There is just nothing here
12 that has to do with that.

13 MR. JOHNSON: Okay.

14 MR. GRAY: So, your Honor, for clarity sake
15 for Mr. Johnson, you sustained the state's objection so
16 he can't continue the questions in that realm, is that
17 correct?

18 THE COURT: Well, I think the last question
19 that he asked was the only thing I was referring to
20 where he was asking him to start reading through pages
21 of statute to see whether there was any other evidence
22 that he had relating to any other statute, and I think
23 that's beyond what is relevant to this case.

24 MR. GRAY: Okay.

25 MR. JOHNSON: Does the state intend to show

1 what exactly it is that I'm suspended and accused of
2 doing or do we need to continue narrowing this down?

3 MR. O'ROURKE: I don't think I can respond to
4 that unless there is an objection, if the court wanted
5 to hear from me.

6 MR. JOHNSON: I'm just saying there is the
7 next one coming up here, RCW 46.20, an administrative --

8 MR. GRAY: I believe we have gone over that
9 one.

10 MR. JOHNSON: I understand and I said I would
11 come back to that one. It's 237 pages and I need to get
12 at which of those and what it is exactly and nothing
13 else, but I'm defending myself and do I need to go
14 through those 237 pages here today. And the court's
15 already said no. I believe if the state's not going to
16 tell me beyond what's in this document, what's here, I
17 think I have a right to question each and every part of
18 it.

19 THE COURT: Well, the thing that I'm
20 struggling with is that when you have a criminal case,
21 the state is required to come into court and to prove
22 beyond a reasonable doubt the facts that are the bases
23 for the charge. And they have to present that evidence
24 and then you respond to that evidence and present any
25 evidence that you have. But what you're doing, as far

1 as I can tell, is trying to go through a lot of things
2 that aren't part of what the state is presenting as
3 their evidence.

4 MR. JOHNSON: The state has presented --

5 THE COURT: Because you're trying to say that
6 these things don't apply, that you aren't -- there is no
7 reason to do that when the state has to prove, in the
8 first place, their allegations, they have to prove them.
9 So if they aren't presenting evidence as to those
10 things, then they're out, they're nothing to do with
11 this case. Without evidence of those allegations,
12 they're not part of this case. And so to go through and
13 say, well, this isn't part of it and this isn't part of
14 it, well, this isn't part of it, when they aren't part
15 of it because the state hasn't presented them, is just
16 not relevant to what we're doing today. If the state
17 doesn't prove it, it is not part of the case against
18 you. So the only thing that you need to consider is
19 what the state has presented as their evidence and then
20 any evidence that you want to present on your behalf.
21 But you don't have to disprove things that haven't been
22 proven.

23 MR. JOHNSON: Okay.

24 MR. GRAY: Your Honor, if at all possible,
25 since Mr. Johnson is representing himself and I'm

1 standby counsel, I would ask the court to consider
2 giving us like a three-minute break so I can discuss
3 with Mr. Johnson the case. I believe at this point
4 there may be no further questions, but I just wanted to
5 make sure of that.

6 THE COURT: Certainly, we will take a recess
7 until 9:40.

8 MR. GRAY: Thank you, your Honor.

9 (Recess taken)

10 THE COURT: Mr. Johnson, do you have any
11 further questions for the witness?

12 MR. JOHNSON: I have no further questions.

13 THE COURT: Anything from the state?

14 MR. O'ROURKE: No, your Honor, state rests.

15 THE COURT: You can step down. Okay, the
16 state has no further evidence, the state has rested.
17 So, Mr. Johnson, do you have any evidence that you would
18 like to present?

19 MR. JOHNSON: Well, I would like to make a
20 motion to dismiss. The state has not shown it's point,
21 that is that I've been driving while suspended under any
22 of the laws listed in the statute or under any of the
23 terms of the statute. It says, RCW 46.20.289, and if
24 you read that statute, it says the Department shall
25 suspend all driving privileges of the person when the

1 Department receives notice from a court under RCW
2 46.63.070(6), 46.63.110(6), or 46.64.025, that the
3 person has failed to respond to notice of traffic
4 infraction, failed to appear as requested -- failure to
5 appear at required requested hearing, violate a written
6 promise to appear in court, or failed to comply with the
7 terms of a notice of traffic infraction. And the way
8 that sentence is written, the three RCWs can be limited
9 to those four objects after them. And nowhere in this
10 does it say failure to pay. So I have made all court
11 appointed hearings in front of you a year ago. I've
12 complied with the terms of notice of traffic infraction,
13 and I have not done anything under this statute.

14 THE COURT: Okay, does the state want to
15 respond?

16 MR. O'ROURKE: Well, yeah, there is only one
17 piece of this -- the court hit it right on the head, the
18 court appears to understand better than others why the
19 orders amending now include every piece of language,
20 because of a select few defense counsel in this county
21 who will, I guess, line the weeds and claim they don't
22 know what they're charged -- their client's charged with
23 even when the specific RCW is there and the title of the
24 crime. If all the elements aren't there, then they
25 claim they don't know what they're charged with. And

1 some of it, sometimes the court has entertained
2 dismissal of the action because of a lack of the entire
3 charging document.

4 I don't necessarily think that everything that's
5 here is necessary under the law. I don't agree with
6 some of those rulings that have come down, but the
7 bottom line is that the court hit the nail on the head.
8 If I'm going to have cases dismissed because it doesn't
9 have every single word of the statute in it, then I'm
10 willing to put every word of statute on the complaint in
11 front of the court. So that's what you have here. And
12 as the court knows, the charging document I think here
13 is a literal word-for-word recitation of 342 or 46.342,
14 46.20.342 and (1)(c). And so there is a number of ways
15 you can be driving suspended in the third degree.

16 In this case, Mr. Johnson, his license is
17 suspended. Now, whether he agrees with it or not, that
18 Exhibit 1 in front of the court indicates through the
19 Department of Licensing that his license is suspended
20 for fail to respond to traffic infraction which includes
21 -- again, Mr. Johnson may not want to pay his traffic
22 infractions, but this court deals with them every day
23 and has quite a bit of familiarity with what it actually
24 takes to suspend a driver's license. And if you do fail
25 to respond, appear, pay, or comply with any of the terms

1 of the citation, the Department of Licensing can revoke
2 or can suspend your license. So that's what's happened
3 here. If the charging document sufficiently sets forth
4 what 46.20.342 stands for and Exhibit A matches one of
5 the bases -- excuse me, Exhibit 1 matches one of the
6 bases why you can be suspended and why this particular
7 defendant, Mr. Johnson, is suspended. This is the same
8 process that takes place in court's across the state,
9 ten of thousands of times in here, and I don't have
10 anything to add besides exactly what's in front of the
11 court.

12 THE COURT: Do you want to say anything more,
13 Mr. Johnson?

14 MR. JOHNSON: Yes, ma'am. In 46.20.342 there
15 is nothing said about failure to pay. This is a quote,
16 the charging document is mostly of 46.23, it
17 specifically limits 46.20.289 to those four objects we
18 read earlier a few minutes ago and listed, that would be
19 failure to respond to a notice of traffic infraction,
20 failure to appear to requested hearings, violation --
21 violated a written promise to appear in court, or failed
22 to comply with the terms of a notice of traffic
23 infraction or citation. All of those are very specific
24 things. I mean, nowhere does it say failure to pay,
25 it's just a few words that aren't in the RCW. We both

1 know that there is an RCW that does suspend your license
2 for nonpayment of the ticket, but it is not charged.

3 THE COURT: Well, the statute that -- the
4 evidence that the state has provided here with regard to
5 your license was contemplating 46.29(d), fail to respond
6 to a notice of traffic infraction, fail to appear at
7 requested hearing, violated a written promise to appear
8 in court, or failed to comply with the terms of a notice
9 of infraction or citation as provided in RCW 46.20.289.

10 And if you look at 46.20.289, suspension for
11 failure to respond, appear, et cetera, it says, the
12 Department shall suspend all driving privileges of a
13 person when the Department receives notice from a court
14 under RCW 46.63.070(6) or 46.63.110(6) or 46.64.025 that
15 a person has failed to respond to a notice of
16 infraction, failed to appear at a requested hearing,
17 violated a written promise to appear in court, or has
18 failed to comply with the terms of the notice of traffic
19 infraction or citation other than for a standing,
20 stopping, or parking violation, provided that the
21 traffic infraction or traffic offense is committed on or
22 after July 1st, 2005. A suspension under this section
23 takes effect pursuant to the provisions of RCW 26 or
24 46.20.245 and remains in effect until the Department has
25 received a certificate from the court showing that the

1 case has been adjudicated and until the person meets the
2 requirements of RCW 46.20.311. In the case of failure
3 to respond to a traffic infraction issued under RCW
4 46.55.105, the Department shall suspend all driving
5 privileges until the person provides evidence from the
6 court that all penalties and restitution have been made.

7 MR. JOHNSON: State has presented no evidence
8 under 46.55.105, which is abandoned vehicle, which the
9 bottom sentence covers. 46.20.311 has to do with proof
10 of insurance, 46.20.245 has to do with a hearing, and
11 the sentence above which lists 46.63.110(6), is limited
12 to those four objects after it. It says that the person
13 has failed, it is very specific as to what it says. It
14 does not say the fail to pay, it does not say or after
15 the three RCWs, it doesn't even have a comma or a
16 period. So those three RCWs are limited to those four
17 objects after it.

18 THE COURT: Well, I guess what this comes down
19 to is the language of RCW 46.20.289 that says -- because
20 I don't have any other place to look, that nobody has
21 mentioned to me -- fail to appear to requested hearing,
22 Mr. Johnson is alleging that is not the case here;
23 violated a written promise to appear in court, he's
24 saying that's not the case; has failed to comply with
25 the terms of a notice of traffic infraction or citation,

1 so complying with the terms of a notice of traffic
2 infraction or citation.

3 I guess the allegation is here that the Department
4 of Licensing has notice from the court, and I think if I
5 remember correctly it said it was from this court, Mr.
6 Johnson, I believe said it was a case out of this court,
7 that failed to comply with the terms of a notice of
8 traffic infraction. The terms of a notice of traffic
9 infraction, the traffic infraction tells you that you
10 have three options, you can pay it, you can request a
11 contested hearing, or you can request a mitigation
12 hearing. And, of course, if you appear, that you have
13 the further option of asking for deferral of a ticket,
14 but the ticket itself just gives these three options.

15 If you request a hearing then you must appear at
16 that hearing, and if you contest it and it is found
17 committed, then you're required to pay the ticket and
18 you might be ordered -- some people pay it that day and
19 some people ask for time to pay, but judgment is entered
20 upon a finding of committed on a contested ticket.

21 On a mitigation, judgment is entered and sometimes
22 people are given time to pay and sometimes people say
23 they will pay that day. But once that judgment is
24 entered on a traffic infraction, then the infraction
25 itself, the person signs it generally saying that

1 they're going to pay it either today, or I mean that day
2 of the hearing, or at some future date. And the notice
3 also says that if they fail to do that, then their
4 driving license will be suspended. That's the language
5 that's on the judgment on infraction that says that you
6 have been -- it's been found committed either after
7 mitigation or after a contested hearing and that the
8 person has to pay it, and if it isn't paid, then their
9 driver's license will be suspended. So part of the
10 complying with the terms of a notice of infraction is
11 requesting a hearing, appearing at that hearing, and
12 then if it's found committed, paying that. That's all
13 part of complying with the notice of infraction which
14 gives those options. It's all part of the process.

15 MR. JOHNSON: Is it stated somewhere in this?

16 THE COURT: In where?

17 MR. JOHNSON: That I have to pay. It tells me
18 that I can ask for the three options, I don't see where
19 anywhere it says I have to pay judgment on this
20 citation.

21 THE COURT: On the citation itself?

22 MR. JOHNSON: That's right, and that's a
23 notice of infraction.

24 THE COURT: I think the options that are given
25 are -- I don't have them right in front of me, but --

1 MR. JOHNSON: I have a copy, your Honor.

2 THE COURT: -- but what the defendant is
3 handed generally is a --

4 MR. JOHNSON: I have a copy here, your Honor.

5 THE COURT: -- the green part of the ticket
6 that the person sends in requesting a hearing.

7 MR. JOHNSON: Yes.

8 THE COURT: Or sending in the payment or
9 whatever is being done.

10 MR. JOHNSON: Yeah.

11 THE COURT: That has those three options and
12 you mark a box --

13 MR. JOHNSON: Yes.

14 THE COURT: -- I'm sending in payment, I'm
15 requesting a contested hearing, or I'm requesting to
16 mitigate.

17 MR. JOHNSON: Yes.

18 THE COURT: And you mark the box. You're
19 given those three options, and I believe it says on
20 there that if you don't do that then your driving
21 license will be suspended.

22 MR. JOHNSON: It's been done.

23 THE COURT: But that's just the first step.

24 MR. JOHNSON: Well, that's the entire terms of
25 this citation, the rest is showing up in court.

1 THE COURT: Right, showing up, that's if you
2 request a hearing, then you have to show up in court.

3 MR. JOHNSON: Right.

4 THE COURT: If you don't show up in court,
5 then you haven't complied. And then once you've shown
6 up in court, then depending on what happens in court,
7 you have -- you're ordered -- either the case is
8 dismissed, or if the person mitigates or if they contest
9 it and it's found committed, then they're required to
10 pay, there's a judgment that's entered, the judgment is
11 signed by the defendant, it is signed by the judge.
12 It's signed by the defendant and it says that you're
13 going to pay it either that day or some date in the
14 future. If it isn't paid, then it says, if this is not
15 complied with, then your driving license will be
16 suspended for noncompliance. It is all part of a
17 process that you go through with a traffic infraction.

18 MR. JOHNSON: Where does it say that on this
19 piece of paper?

20 THE COURT: Well, that just starts the
21 process.

22 MR. JOHNSON: Well this --

23 THE COURT: That paper.

24 MR. JOHNSON: The law is specific to this
25 piece of paper only, and that whole law is written for

1 people that don't appear, somebody that takes the
2 ticket, balls it up, and throws it on the ground, that's
3 what that law is about. There is nothing on the back of
4 this ticket or on the front of this ticket that says I
5 have to comply with the orders of the court. It says I
6 have to appear, that's my promise to appear. I signed
7 it, I sent it back to the court in a timely manner, it
8 was filed. I have complied with the terms of this
9 notice in its entirety. Nowhere in this notice says
10 that I have to pay or comply with an order of the court.

11 THE COURT: Well --

12 MR. JOHNSON: 46.20.289 is very specific about
13 what it says. It doesn't say comply with the notice of
14 the terms of a court order, it says comply with the
15 terms of a notice of infraction. This does not say pay,
16 it gives an option, it is an option, but that's an or
17 function, there is three ors here. As long as I
18 selected one of them and do what that one says, I've
19 complied with this notice. This is issued solely to
20 bring me to court or to collect money.

21 MR. O'ROURKE: Objection, your Honor, I'll
22 withdraw it.

23 MR. JOHNSON: All this is is something to
24 bring me to court I'm being charged. I can, may, and
25 not come, I can ask for a mitigating hearing and plead

1 guilty or I can ask for a contested hearing and plead
2 not guilty. That's the sole function of this and it
3 doesn't say any more. Says if I give a bad check I
4 believe that I can lose my license. State has no bad
5 checks from me.

6 MR. O'ROURKE: I'm objecting to the -- well,
7 there is no -- first of all, there is no evidence as to
8 this document Mr. Johnson is referring to, that's not on
9 the record. There is Exhibit 1 and there is the
10 testimony of the deputy. And the statute reads as this
11 notice of suspension reads, if you fail to respond,
12 appear, pay, or comply with the terms of the citation
13 listed below, and the statute says complies with the
14 terms of a notice of traffic infraction or citation.

15 It is ludicrous to propose that you are complying
16 with the terms of a citation issued in this state -- and
17 this has been dealt with before, this is not the first
18 time these arguments have been made, they're not
19 novel -- it's ludicrous to suggest here you're complying
20 with the terms of a citation by simply walking into
21 court, having a hearing, and which there is no evidence
22 of anyway, but for sake of argument, and refusing to pay
23 traffic infractions. It would be naive to think that
24 the legislature crafted this statute with this gaping
25 loophole where you could simply avoid suspension of your

1 license under this 46.20.342 by simply not paying your
2 traffic infractions.

3 The whole purpose of this statute is so you don't
4 have the ability to be cited 20, 30, 40, 100 times and
5 simply fail to pay your infractions and then be able to
6 say, well, there is going to be absolutely no
7 repercussions as far as my license being suspended. Not
8 paying a traffic infraction is failure to comply with
9 the citation. To suggest that just reading the face of
10 it and doing something off the face of it and then not
11 following up, not complying with the court's orders, a
12 court order, that is part of what the citation is
13 crafted for, you're not complying with the terms of the
14 citation by not following the court orders. But beyond
15 that, there is no evidence to suggest that.

16 All we have is Exhibit 1 and the testimony of the
17 deputy. Exhibit 1 says Mr. Johnson failed to do what
18 the statute says, and the statute says if you fail to
19 comply with what the statute says here, and what's in
20 Exhibit 1 here, found guilty of driving suspended in the
21 third degree. So these aren't novel arguments and there
22 is no merit to them. And this document indicates that
23 Mr. Johnson's license is suspended per this statute.
24 And the motion has to be denied.

25 THE COURT: Are you alleging, Mr. Johnson,

1 that there is another statute that would have been more
2 on point to this that the state didn't cite you under?

3 MR. JOHNSON: Yes, 46.63.110(6)(b) and I'm not
4 suspended under that statute.

5 THE COURT: Say that again.

6 MR. JOHNSON: 46.63.110(6)(b).

7 MR. O'ROURKE: Just in case the court's to
8 look up and take notice of what I'm doing, I'm not text
9 messaging or something in court, I'm just looking up the
10 statute in my phone. Just so the court doesn't think
11 I'm being disrespectful enough to start talking to my
12 friends in court.

13 MR. GRAY: I would ask to verify that.

14 MR. O'ROURKE: Judge Roewe heard argument on
15 this issue already, I recall this statute now.

16 THE COURT: Okay. So 46.63.110 is talking
17 about the penalties on infractions. So it says that if
18 somebody doesn't pay an infraction then their license is
19 suspended. So you said that's not what you did.

20 MR. JOHNSON: No, I'm saying that's not what
21 I've been charged with.

22 THE COURT: Right, because --

23 MR. JOHNSON: I've been charged with violating
24 46.20.289 which has nothing to do with --

25 MR. O'ROURKE: I object to that, that's not

1 what he's been charged with, he's charged with
2 46.20.342, I want to make that really clear. But what
3 I've done here, and I read while we were taking that
4 short break the entire statute 46.20.342, driving
5 suspended in the third degree which is the only crime
6 Mr. Johnson could be charged with.

7 These other statutes referencing -- we have dealt
8 with this in a motion and a motion to reconsider in
9 front of Judge Roewe this 46.63.110, that's monetary
10 penalties associated with an infraction. This citation
11 has the entire driving suspended third statute, that's
12 what Mr. Johnson is charged with. He's not charged with
13 the crime under 46.20.289, he's charged with a crime
14 under 46.20.342 for failing to respond to a traffic
15 infraction. And the Department of Licensing had his
16 license suspended for such failure.

17 I guess I'm not sure what we're looking at at this
18 point. If the failure to fully comply with a
19 citation -- there is no other crime he can possibly be
20 charged with other than 46.20.342. I mean, if we
21 decriminalize driving suspended for not failing to pay a
22 traffic infraction, that will be one thing. But
23 clearly, the case law, the evidence, the statute, they
24 all suggest that if you fail to comply with a traffic
25 infraction by failing to respond to it, failing to pay

1 for it, failing to comply with it in total, then the
2 Department of Licensing has the ability to suspend your
3 license and they do, and they have done that here
4 because Mr. Johnson failed to comply with the terms of
5 I38445. That's what he's charged with, and it is a
6 criminal offense, and there is no evidence in the record
7 to suggest to the contrary.

8 THE COURT: Okay. Well, if I understand the
9 argument then, the defendant's motion to dismiss is
10 based upon his reading of the statute that he was
11 charged under, which refers back to RCW 46.20.289, and
12 his argument is that he didn't -- that the reason that
13 the state is alleging that his license was suspended is
14 that he failed to respond to a notice of infraction. He
15 says that he did not fail to respond. That it alleges
16 or that he failed to appear at a hearing, he says that
17 he did not fail to appear. Violated a written promise
18 to appear, he's saying he didn't violate a written
19 promise to appear, or failed to comply with the terms of
20 a notice of infraction, and he's saying, well, the
21 notice of infraction just says here are your options,
22 check the box, and send it in. It doesn't say that once
23 you appear in court and the judge perhaps orders
24 judgment and orders you to pay it, that that is what is
25 set forth here in this statute. Have I got that right?

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MR. JOHNSON: Yes, ma'am.

THE COURT: And the state is alleging that -- the state's argument here is that failing to comply with the terms of a notice of traffic infraction includes, if it is found committed, paying that infraction, is that right?

MR. O'ROURKE: I'm arguing he's failed to comply with the terms of his citation --

THE COURT: Because he didn't pay it.

MR. O'ROURKE: -- without a valid operator's license.

THE COURT: That's the allegation.

MR. O'ROURKE: I don't know, but what I'm saying is that, number one --

THE COURT: I don't think the evidence that we actually have in this case differentiates between -- or I don't have the exhibit, do I?

MR. O'ROURKE: I don't have it either, but the issue I'm having is that there is no evidence from Mr. Johnson. What he's saying in his argument is not evidence, there is no evidence on the record of any of these things that he is talking about. He hasn't testified and he hasn't admitted a citation or anything. What we have is a document, certified document from the Department of Licensing saying that Mr. Johnson has

1 failed to respond, appear, pay or comply with the terms
2 of the citation listed below, I38445, no valid
3 operator's license. That's the evidence we have. So
4 when he's saying he didn't do these things, he hasn't
5 been sworn under oath, he hasn't testified, he hasn't
6 admitted any documents, so there is no evidence of any
7 of this stuff. What we have for a motion to dismiss is
8 Exhibit 1, and Exhibit 1 matches the terms of the
9 statute for driving suspended and he's properly
10 suspended, that's all we have to consider at this
11 juncture.

12 THE COURT: Okay. Well, the state's point is
13 that there is no evidence that's been admitted into
14 court today that says that you did any of these things
15 that are alleged in this suspension, because the letter
16 of suspension says your driving privilege will be
17 suspended, the court has notified us that you failed to
18 respond, appear, pay, or comply with the terms of the
19 citation listed below.

20 MR. JOHNSON: The state has not put into
21 evidence any facts as to what that is. They have not
22 proven their case here.

23 THE COURT: Well, what the state has to prove
24 is that you were driving a motor vehicle in Lewis County
25 Washington, which the deputy has testified that he

1 observed you driving a vehicle in Lewis County
2 Washington, while your license was suspended, and that
3 you were sent notice of that suspension. And they have
4 a document from the Department of Licensing saying that
5 after a diligent search, our official record indicates
6 that the status on September 19th, 2008 was personal
7 driver's license status suspended in the third degree.

8 And then a copy of a letter that -- you were mailed
9 a letter on September 17, 2007, telling you that your
10 license was going to be suspended because of this
11 infraction, this no valid driver's license infraction
12 that was here in Lewis County District Court. And the
13 letter that was sent to you is the one that says the
14 court has notified us that you failed to respond,
15 appear, pay or comply. That's the Department of
16 Licensing sending you notice. They say they sent you
17 this notice telling you that you were going to be
18 suspended for that reason.

19 And then they have a document saying that as of
20 September 19th, 2008, your license status was suspended.
21 So that's the evidence that I have, the officer's
22 testimony as to observing you driving, in Lewis County,
23 and the document that's been admitted from the
24 Department of Licensing saying that as of that date your
25 license was suspended, and a document sent to you saying

1 this is why you're being suspended. That's all the
2 evidence that I have at this point. So with that
3 evidence, without anything else, then I have to deny
4 your motion to dismiss because this evidence that's been
5 presented by the state is sufficient evidence to prove
6 the allegation of driving while suspended. It meets the
7 elements of that charge. If you want to present any
8 evidence on your behalf, then you have the opportunity
9 to do that at this point. Do you have evidence that you
10 wanted to present?

11 MR. JOHNSON: Yes, ma'am.

12 THE COURT: Okay, go ahead.

13 MR. JOHNSON: Thank you. Do you want to swear
14 me in?

15 THE COURT: Are you going to testify?

16 MR. JOHNSON: Yes.

17
18 STEVEN JOHNSON, having been first duly sworn
19 on oath, testified as follows:

20
21 MR. GRAY: Your Honor, I'm guessing Mr.
22 Johnson would like me to elicit his responses by
23 questioning him.

24 MR. JOHNSON: Yes.

25 THE COURT: Okay, go, ahead Mr. Gray.

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DIRECT EXAMINATION

BY MR. GRAY:

Q Mr. Johnson, can you please state your name for the record and spell the last name.

A Steven Chris Johnson, J-o-h-n-s-o-n.

Q Where do you live?

A Randle, Washington.

Q Mr. Johnson, on the date of September 19th, 2008, what were you doing on that day?

A I was going to see a friend on the Falls Road and to find out about having him come to court to testify on behalf of me in a civil lawsuit.

Q Were you pulled over by an officer?

A Yes, sir.

Q What happened after that?

A I was arrested and put in jail, stayed in jail from Friday morning until Monday morning, Monday afternoon.

Q What were you arrested for?

A Driving on suspended in the third degree.

Q As far as you know, why would your license be suspended?

MR. O'ROURKE: Objection, speculation.

THE COURT: I think he can testify as to that, go ahead.

THE WITNESS: I believe my license was

1 suspended for not paying a fine.

2 Q (By Mr. Gray) What fine were you alleged to not pay?

3 A Traffic ticket that I received 4/14/07.

4 MR. O'ROURKE: Objection, hearsay.

5 THE COURT: What's the hearsay?

6 MR. O'ROURKE: That there is some kind of
7 citation or that he is alleged to have done something,
8 it is not his own statement. That would have to be from
9 an out of court statement, out of court source, so there
10 is no evidentiary value to it. That's in the form of an
11 out of court statement.

12 MR. GRAY: Your Honor, I believe --

13 THE COURT: Can you rephrase?

14 MR. GRAY: I'm sorry, what was your Honor's
15 ruling on that?

16 THE COURT: I need to hear the question again.

17 Q (By Mr. Gray) Mr. Johnson, what ticket were you
18 allegedly -- did you allegedly fail to pay?

19 THE COURT: I think he can testify as to a
20 ticket that he --

21 MR. O'ROURKE: That question, that's fine.

22 THE COURT: Okay.

23 MR. O'ROURKE: That's not what the question
24 was before.

25 THE COURT: Okay, go ahead.

1 Q (By Mr. Gray) Go ahead.

2 A A ticket that was issued to me a 4/14/07 by Deputy
3 Spawn. The number on it was 07C --

4 MR. O'ROURKE: Objection, hearsay, now it's an
5 out of court statement that hasn't been admitted into
6 evidence. It is not through Mr. Johnson. He can state
7 that he believes he was alleged to have been suspended
8 for a certain reason, but when he starts to read hearsay
9 documents into the record, that's inadmissible evidence.

10 MR. GRAY: Your Honor, it's a ticket out of
11 Lewis County District Court, I think it would be
12 self-authenticating. He has a copy in his hand, we can
13 mark it for identification purposes.

14 Your Honor, I'm passing to Mr. Johnson what's been
15 marked as Defendant's Identification Number 2. I guess
16 in terms of the court's ruling on whether or not that's
17 hearsay --

18 THE COURT: Well, if he's giving the citation
19 number, that's already been -- it's already in the
20 letter of suspension, that's been admitted from the
21 state, so I don't see any problem in him giving a number
22 that's already part of the evidence. Go ahead.

23 Q (By Mr. Gray) Go ahead, Mr. Johnson.

24 A Thank you. A citation issued 4/14/07. The citation
25 number is 07C4242, and the stamp number at the top is

1 38445.

2 MR. O'ROURKE: Objection, hearsay as to all
3 that.

4 MR. GRAY: Your Honor, I believe he's just
5 eliciting, as your Honor pointed out, the ticket that he
6 is alleged to have failed to comply with which is the
7 basis of the suspension and the state's original
8 exhibit.

9 MR. O'ROURKE: And I have admitted a certain
10 piece of evidence and it might have an infraction
11 number. What he's reading from is an out of court
12 document, a statement that hasn't been admitted, there
13 is no foundation laid for it, he's reading out of the
14 court statement onto the record. That's hearsay until
15 he can lay some foundation that it comes in otherwise.
16 Whether or not it might be the same infraction that I'm
17 referring to, that's fine, but right now, procedurally,
18 it's hearsay and it's inadmissible.

19 THE WITNESS: I believe that I was asked and
20 answered what ticket do I believe that I was suspended
21 for.

22 MR. O'ROURKE: And he's answered that. Now
23 he's reading from the document, that's hearsay.

24 THE COURT: He gave the citation number. I
25 don't have a problem with him giving a citation number,

1 it's foundational in nature anyway. But we already have
2 it in evidence that citation number and that date, the
3 violation date.

4 Q (By Mr. Gray) Mr. Johnson, did you fail to comply with
5 your previous ticket that you're alleging led to your
6 suspension?

7 MR. O'ROURKE: Objection, that question calls
8 for speculation. If there is a particular thing he may
9 or may not have done, he can testify about that, but he
10 can't testify as to whether he legally failed to comply
11 with this under the statute, that's speculative on his
12 part.

13 MR. GRAY: Of course he can, your Honor,
14 that's his own response to it. He's not speculating,
15 he's either saying yes or no.

16 THE COURT: He can answer the question, go
17 ahead.

18 THE WITNESS: Can you repeat it?

19 Q (By Mr. Gray) One more time, to your recollection, did
20 you fail to comply with that ticket?

21 A I didn't have any money to pay the fine, otherwise, I
22 complied with the notice of traffic infraction and filed
23 it in a timely manner. I did appear in court and gave
24 testimony, and, therefore, I think I've complied with
25 the terms of the law and with this citation.

1 Q Mr. Johnson, in connection with this case, is there
2 anything else that happened on that day or with the
3 ticket that you want to testify about?

4 A I think I would like to deal with this a little bit.
5 This is --

6 Q What are you referring to?

7 A It says I gave testimony here, defendant testified.

8 Q Okay, you've already testified to that fact. So you had
9 a hearing on the underlying ticket and you testified at
10 that hearing, is that correct?

11 A Yes.

12 Q Okay. Is there anything else about that hearing you
13 want to explain to the court?

14 A No, just that I did appear and that I did give testimony
15 at the trial.

16 Q Is there anything else you want to testify to as to when
17 you were pulled over on this case?

18 A No.

19 MR. GRAY: I don't have anything further.

20 MR. O'ROURKE: I'm asking for a half hour
21 recess so I can prepare for my examination of Mr.
22 Johnson and rebuttal witnesses for evidence that I have
23 to present.

24 THE COURT: Any objection?

25 MR. JOHNSON: No.

1 THE COURT: Okay, we will reconvene at 11:05.

2 (Recess taken)

3 THE COURT: Okay. I think Mr. Johnson was on
4 the witness stand and it was the state's cross
5 examination. Go ahead, Mr. O'Rourke.

6
7 CROSS EXAMINATION

8 BY MR. O'ROURKE:

9 Q Mr. Johnson, your testimony is that you were in fact
10 issued infraction I38445? I have that if you want to
11 refresh your memory as to it.

12 A Yes.

13 Q That would be accurate? Okay, and you were cited for no
14 valid operator's license, is that correct?

15 A That's correct.

16 Q And it's your contention that you complied with the
17 requirements of the notice of infraction and citation
18 under the law, correct?

19 A That's correct.

20 Q And you are claiming that because you did in fact check
21 one of the boxes for contested hearing, correct?

22 A Yes.

23 Q And you mailed and sent it to the court, right?

24 A Yeah, yes.

25 Q And is it in fact true that you had a contested hearing,

1 correct, according to you?

2 A That's correct.

3 Q And you gave testimony according to you?

4 A Yes.

5 Q And isn't it also in fact true that at the hearing, the
6 contested hearing for this infraction that you have here
7 in front of you, you were found to have committed the
8 violation, correct?

9 A That's correct.

10 Q And isn't it also true that at that hearing you were
11 ordered to pay a monetary sanction for having been found
12 to have committed that, correct?

13 A That's correct.

14 Q And you received an order to that effect, correct?

15 A I believe so.

16 Q And the court told you that you in fact had to pay that
17 infraction within a certain period of time, correct?

18 A That's correct.

19 Q And you were given no alternatives other than payment of
20 the fine, correct?

21 A Yes, sir, that's correct.

22 Q And so you didn't pay it, correct?

23 A That's correct.

24 Q And you never made efforts to pay it, you simply didn't
25 pay it for whatever reason?

1 A That's correct.

2 Q And you weren't set up with any other conditions or any
3 other sort of terms by which you could avoid payment of
4 this, it simply wasn't paid, correct?

5 A I don't know that there are any other terms available.

6 Q Right. So there would be no other terms known to you,
7 none that were set forth to you, correct?

8 A That's correct.

9 Q In fact, whether mistakenly or wrongly in your
10 estimation or not, your driver's license is in fact
11 suspended, correct, by the Department of Licensing?

12 A I don't think it's legally suspended.

13 Q But you are aware in fact that the Department of
14 Licensing, whether in your estimation is legally
15 suspended or not, has suspended your license, correct?

16 A I'm aware of that.

17 Q And you're also aware that in fact, whether legally or
18 not, on September 18th of 2009, the Department of
19 Licensing had in fact suspended your license, correct?

20 A Was I aware of it?

21 Q You were aware of that fact on September 19th, 2008,
22 okay. And you're also aware that the basis, whether in
23 your estimation it is legal or not for that suspension,
24 was because of failure to pay that infraction I38445,
25 isn't that correct?

1 A Yes.

2 Q And you were the operator of the motor vehicle that
3 deputy McKnight stopped on September 19th, 2008,
4 correct?

5 A Yes.

6 Q And you were driving it within the county limits of
7 Lewis County, correct?

8 A That's correct.

9 MR. O'ROURKE: Unless there is objection from
10 you, I'm going to move to admit what you marked as your
11 Defendant's Identification 2 as well. I guess I'm going
12 to move to admit that document we have been referencing,
13 that Mr. Johnson has been referencing, into evidence.

14 THE COURT: Which is what, a copy of the
15 original infraction?

16 MR. O'ROURKE: Right.

17 MR. GRAY: Do you have any objection to that,
18 Mr. Johnson?

19 MR. JOHNSON: I have no objection.

20 THE COURT: Okay, that will be admitted.

21 (WHEREUPON, Defendant's Exhibit 2
22 admitted)

23 MR. JOHNSON: I have no other copy of that, I
24 would like to get a copy of it.

25 MR. O'ROURKE: We can ask the court to get you

1 a copy of that.

2 MR. JOHNSON: Thank you.

3 MR. O'ROURKE: And also the other document I
4 have had marked, just for the record we can get those
5 for you also.

6 Permission to approach the witness again, your
7 Honor.

8 THE COURT: Granted.

9 Q By Mr. O'Rourke) I'm going to hand you what's been
10 marked as Plaintiff's Identification Number 2. I think
11 this may be something that you had a copy of yourself
12 originally or looking at, but I want to give you a
13 chance to look at that and tell -- let me know if you've
14 seen it before.

15 A Yes.

16 Q Not that specific one, but the contents of it, correct?

17 A Yes.

18 Q That's the court docket from the infraction you were
19 issued that we have been referring, that's Exhibit -- 1
20 think Defense Exhibit 1 now?

21 A Yes.

22 Q Okay. And does that -- have you reviewed that
23 sufficiently to be able to tell me whether or not that
24 in your estimation, not whether you agree with it or
25 whether it's legally sound, but that in fact adequately

1 that it represents the proceedings for that particular
2 infraction of this court, Lewis County District Court?

3 A To the best of my knowledge it does.

4 Q Okay.

5 MR. O'ROURKE: I have no further questions for
6 Mr. Johnson.

7 THE COURT: Mr. Gray, do you have anything
8 further?

9
10 REDIRECT EXAMINATION

11 BY MR. GRAY:

12 Q Mr. Johnson, based on the prosecuting attorney's cross
13 examination questions, do you have response to those
14 questions?

15 A The only thing I would respond is that that document
16 showed that I did appear in court and that I did comply
17 with the terms of the notice of traffic infraction.
18 That's all I have to say.

19 MR. GRAY: Nothing further from me, your
20 Honor.

21 MR. O'ROURKE: I have no questions for this
22 witness. I would like to call Pamela Shirer of Lewis
23 County District Court as a rebuttal witness.

24 MR. GRAY: Your Honor, the defense hasn't
25 rested at this point, so I'm assuming that's what Mr.

1 Johnson wants, but --

2 MR. O'ROURKE: Okay.

3 MR. GRAY: Mr. Johnson does, the defense rests
4 at this point.

5 MR. JOHNSON: Yes.

6 THE COURT: Okay.

7 MR. O'ROURKE: I apologize for that, with that
8 I would like to make the same request.

9 THE COURT: To call Pam Shirer as a witness?

10 MR. O'ROURKE: Yes.

11 THE COURT: Is there any objection to that?

12 MR. JOHNSON: Well, we have had no notice of
13 this witness.

14 MR. O'ROURKE: It is a rebuttal witness.

15 MR. GRAY: Rebuttal, we would ask the court to
16 clarify what the rebuttal would be, what the information
17 will be.

18 MR. O'ROURKE: Mr. Johnson has called into
19 question whether he's properly complied with the notice
20 of traffic infractions. The court needs all the
21 documents relevant to that infraction in front of it,
22 including what he's referenced previously as the court
23 docket in this particular case, and I would like that
24 evidence to be submitted to the court. So I'm going to
25 ask that she be able to testify to that limited extent

1 to be able to submit this court docket of Mr. Johnson's
2 infraction that I believe will help rebut his claim that
3 he hasn't been, I guess, charged properly or brought
4 through the process of suspension properly, or legally
5 whether the evidence presented is sufficient to convict
6 him of driving suspended in the third degree. That's
7 what he's claimed thus far in his testimony and this
8 piece of evidence will help in the argument to rebut
9 that claim.

10 THE COURT: Okay. So you're bringing her in
11 for the sole purpose of admitting the docket?

12 MR. O'ROURKE: Yes.

13 THE COURT: Do you have any objection to the
14 docket being entered into evidence?

15 MR. JOHNSON: I have no objection to the
16 document being entered into evidence. I don't know what
17 this can testify to, which this witness can testify to.
18 We haven't sat here and argued about.

19 MR. GRAY: If he admits to the evidence, I
20 don't know if the --

21 MR. O'ROURKE: I don't need her, that's fine.

22 MR. GRAY: Just to clarify, Mr. Johnson, you
23 have no objection to the admitting --

24 MR. JOHNSON: I have no objection.

25 MR. O'ROURKE: I move to admit Plaintiff's ID

1 2 as State's Exhibit 2.

2 (WHEREUPON, Plaintiff's Exhibit 2
3 admitted)

4 THE COURT: Okay.

5 MR. O'ROURKE: And I don't have any more
6 rebuttal evidence or witnesses.

7 THE COURT: Mr. Johnson, do you have any other
8 evidence?

9 MR. JOHNSON: I have no more.

10 THE COURT: Okay. Argument.

11 MR. O'ROURKE: Yeah. Your Honor, the claim
12 that appearing in court at a contested hearing after you
13 checked a box and showed up for the hearing and then
14 failing to follow the court order as far as payment of
15 that doesn't constitute a valid or legal basis to
16 suspend a person's license is totally contrary to any
17 law and to the statutes that Mr. Johnson has been
18 reading. Now, I have read the statute in the half hour
19 recess that I asked for to determine whether or not
20 there is even sort of -- I guess there is no merit to
21 the argument whatsoever in my mind, but I wanted to read
22 these statutes just to see I guess where the attempt of
23 the logic is coming from. And, again, it goes back to
24 this RCW 46.20.289.

25 Now, the argument here in a nutshell, and the court

1 recited that back to me, was under RCW 20.289, we have
2 charged as RCW 46.20.342, has Mr. Johnson failed to
3 comply with his notice of infraction. Now, again, if
4 the court looks at RCW 46.20.342, I have charged Mr.
5 Johnson with -- the state has charged Mr. Johnson with
6 the entire language of that statute. So essentially
7 what Mr. Johnson is asking this court to find today is
8 that when he is issued a traffic infraction, fails to
9 pay that traffic infraction, that he cannot be charged
10 with driving suspended, that's what he's asking the
11 court to find. That's what this court must find, that's
12 the essence of his argument. Because if he's been
13 charged with the entire statute, there is no other
14 alternative means for him to be charged under.

15 So essentially, if his conduct doesn't match the
16 statute, he's arguing that if anybody in this state
17 simply comes into this courtroom in front of your Honor
18 on a traffic infraction, on a contested hearing, because
19 they have checked the box and because they have
20 appeared, they can just simply fail to pay dozens,
21 countless traffic infractions and be held by a court of
22 law to still have complied with the requirements of RCW
23 20.342. That's not right. And it's not only right, not
24 because I'm saying it's not right, that's not the
25 argument, it just defies logic, it actually defies the

1 language of the statute.

2 If we read it more carefully, 46.20.342, it's been
3 glossed over so far in the defendant's motion.

4 46.20.342 states you can't have your license suspended
5 or revoked for a number of reasons. And if we jump, cut
6 right to the chase, one of those reasons, like the court
7 referenced, is RCW 46.20.289, and that's specifically
8 referenced in the state's charging document. Now, that
9 reads -- that doesn't read that Mr. Johnson has failed
10 to enter his ticket with the court in a timely fashion,
11 whether or not he's failed to respond, or whether or not
12 he's failed to show up to court. What it says is fail
13 to respond to a notice of traffic infraction, failed to
14 appear at a requested hearing, violated written promise
15 to appear in court.

16 Now, those three, I don't necessarily think there
17 is evidence in the record to suggest he's done those.
18 But this term, to just say that we can look at this and
19 gloss over it, fail to comply with the terms of a notice
20 of traffic infraction or citation and it says as
21 provided in RCW 46.20.289. Now, it doesn't say fail to
22 comply with the terms of a notice on or traffic
23 infraction or citation as listed on the back of the
24 document as checked in a box. It doesn't matter there
25 is no mention required in this crime it doesn't matter

1 what Mr. Johnson knows he has to do based upon the back
2 of the citation. What matters is whether or not he's
3 complied with the terms of 46.20.289.

4 And what he's asking the court to find is that he
5 has complied with the notice of traffic infraction or
6 citation by simply appearing in court at a contested
7 hearing, being found committed, and then not paying the
8 traffic infraction. That's the gross misreading of what
9 it means. When the statute says failed to comply with
10 the terms of a notice of traffic infraction or citation,
11 that's not what it means. We know that's not what it
12 means not only because it defies all logic and reason
13 and defies everything, that's defies any practice that
14 goes on throughout courts in this state, and defies the
15 law, it actually defies the plain meaning of the
16 statute.

17 Now, 46.20.342, we have already read that, it
18 references us to 46.20.289. The Department shall
19 suspend all driving privileges of a person when the
20 Department receives notice from a court under one of
21 three RCWs, RCW 46.63.070(6), RCW 46.63.110.(6), or RCW
22 46.64.025 that the person has failed to respond to a
23 notice of traffic infraction.

24 THE COURT: What are you reading from right
25 now?

1 MR. O'ROURKE: 46.20.289, and it is
2 referencing those three statues within there. There is
3 three of them. Again, it goes on to say after the three
4 of these, the person has failed to respond to notice of
5 traffic infraction, well, we know what that means
6 because 46.64.025 deals with failure to appear, notice
7 to Department, we're not operating under that.
8 46.63.070 contesting the termination hearing, failure to
9 respond, we're not necessarily objecting under that.

10 But what 46.20.289 specifically references, and
11 what Mr. Johnson wanted the court to overlook, is
12 46.20.289 states that the Department shall suspend the
13 driving privileges of a person if they don't comply with
14 46.63.110(6). Now, 110(6), I'm going to read this all,
15 not to take up any more of the court's time, but because
16 I think it's patently clear here what we're dealing
17 with, whenever a monetary penalty, fee, cost,
18 assessment, or other monetary obligation is imposed by a
19 court under this chapter, it is immediately payable.

20 Now, your Honor knows what that's about because you
21 deal with hundreds of these, if not on a daily basis at
22 least on a weekly basis. When a fine is imposed, the
23 court makes that immediately payable by the defendant.
24 And how do we deal with that if they can't pay it right
25 away, well, there is a \$10 time pay that can be set up

1 on something like that or maybe there is other remedies
2 and the statute goes on to talk about those. If the
3 court determines in its discretion that a person is not
4 able to pay a monetary obligation in full, and not more
5 than one year has passed since the last of July 1st,
6 2005, or the date the monetary obligation initially
7 became due and payable, the court shall enter into a
8 payment plan with the person unless the person has
9 previously been granted a payment plan with respect to
10 the same monetary obligation, or unless the person is in
11 noncompliance of any existing or prior payment plan in
12 which case the court may at its discretion implement a
13 payment plan.

14 Now, that's what the court does on these. If he
15 doesn't pay the infraction immediately, he's issued a
16 \$10 time pay, he's put on a payment plan. That didn't
17 happen here. Mr. Johnson said he simply failed to
18 respond to it. So again, 289, which Mr. Johnson relies
19 entirely on for his argument, is saying he has complied
20 with, goes directly to the heart of this issue.

21 And we continue to read on, if the court is
22 notified the defendant, that is the person, has failed
23 to pay or comply, and the person has subsequently
24 entered into a payment plan and made initial payment
25 plan, the court shall notify the defendant the

1 infraction has been adjudicated and the Department shall
2 rescind any suspension of the person's driving license
3 or driver privilege based upon a failure to respond to
4 that infraction.

5 Now, that statute is saying if you don't pay the
6 infraction, you fail to respond properly to it, which
7 RCW 46.20.342 specifically addresses, so we deal with
8 this every day. People's licenses get suspended and
9 then they make payments on their infractions that have
10 been sent to collections or otherwise and they get
11 unsuspended.

12 So to suggest that nonpayment of an infraction that
13 you've been found to have committed and ordered to pay
14 is not a basis for suspension defies the entire statute.
15 Why, we have a statute that Mr. Johnson is relying on
16 and that's been specifically referenced that deals with
17 time payment of these things and court orders to pay
18 them, and deals specifically with legal fees, it is for
19 suspension yet Mr. Johnson can claim that well he
20 checked the box, he showed up in court, so the DOL
21 invalidly suspended his license. It is preposterous, it
22 doesn't make any sense, and it doesn't match the
23 statute.

24 When you continue to read on, it talks about it
25 even more, it talks about payment plan using the section

1 means using a plan that requires reasonable payment
2 based upon the potential ability of the person to pay,
3 the person may voluntarily pay an amount at any time in
4 addition to those payments required under the payment
5 plan.

6 Now, here's the specific portion that we need to
7 look at, RCW 46.63.110, section 6, which again, I direct
8 the court's attention back to 46.20.289 that's
9 specifically referenced as the basis for which Mr.
10 Johnson has been charged under, 46.63.110(6)(a) states
11 if a payment required to be made under the payment plan
12 is delinquent, or the person fails to complete a
13 community restitution program on or before the time
14 established under the payment plan, unless the court
15 determines good cause therefor, and adjusts the payment
16 plan or the community restitution plan accordingly, the
17 court shall notify the Department of the person's
18 failure to meet the conditions of the plan and the
19 Department shall suspend this person's driver's license
20 or driving privilege until, and I'm adding emphasis
21 here, all monetary obligations, including those imposed
22 under subsection 3 and 4 of this section have been paid
23 and the court authorized community restitution has been
24 completed.

25 Now, again, 3 and 4 state the supreme court shall

1 prescribe by rule a schedule of monetary penalties for
2 designated traffic infractions. So what that statute is
3 telling us is that if Mr. Johnson is deemed to have
4 committed an offense, there is a particular monetary
5 penalty. If he doesn't pay it, he gets suspended. If
6 he's suspended and he makes payment and repays that, his
7 license is unsuspended.

8 What we know is that the evidence in Exhibit 1
9 shows that Mr. Johnson -- and he's told us that he
10 hasn't paid that, he doesn't believe there is a basis to
11 suspend his license. The evidence suggests that on
12 November 1st of 2007, at 12:01 a.m. his driving
13 privilege is going to be suspended. Now the reason
14 listed is this infraction, because he committed it and
15 he hasn't paid it. Then it says September 19th, 2008,
16 he's still suspended. Why is he still suspended,
17 because the Department of Licensing is complying with
18 the requirement of law in the statute by leaving him
19 suspended until he repays his monetary obligations. I
20 mean the basis for suspension can and should be under
21 the statute, failure to pay for an infraction. And the
22 only argument Mr. Johnson has made is he hasn't been
23 charged with the proper statute. Well, there is no
24 other statute that could be proper because this is
25 exactly the statute he's supposed to be charged under.

1 He's supposed to be charged under 46.20.342 because
2 he's disregarded the court's orders for over a year or
3 more to pay an infraction and we have these statutes for
4 a reason. Otherwise, again, as a matter of policy,
5 people come in here and say, I checked the box, done
6 everything I'm going to, disregard the judges and the
7 court's order to pay this infraction because, guess
8 what, you can't do anything to me. Well, that's wrong,
9 it is flat wrong. The legislature has recognized that
10 and Mr. Johnson's failed to comply with the statute.
11 There is no argument that can be made here in a plain
12 reading of the statute. As a matter of logic it simply
13 can't be upheld, his argument can't hold any water.

14 He needs to be found guilty because, again, and
15 I'll just do a brief recitation of the evidence because
16 we have been arguing strictly about the statutory
17 interpretation. He has a notice of suspension. He's
18 admitted that, everything in the notice of suspension
19 and the actual Exhibit 1 makes sense. He's said he knew
20 on September 19th, 2008, he was suspended, but he
21 doesn't agree with it because he doesn't think it is a
22 lawful basis for a suspension. Why doesn't he believe
23 it's lawful, I don't know because there is absolutely no
24 legal basis for him to contest that. And the notice of
25 suspension says in fact the very reason he's being

1 suspended is for a lawful reason under 46.20.289.

2 So the court has Deputy McKnight's testimony, Mr.
3 Johnson's testimony corroborates that yes, I was
4 driving, yes, I was in Lewis County, yes, it was in
5 September 19th of 2008, yes, my license was suspended,
6 yes, I knew about it. Exhibit 1 there hasn't been any
7 objection to and the Exhibit 1 shows a lawful basis for
8 him being suspended. It is the only evidence of
9 suspension. His only argument is that it is unlawful,
10 and it doesn't hold any water.

11 So based upon that evidence, the reading of the
12 statutes, and the laws of the State of Washington, I'm
13 asking the court to find Mr. Johnson guilty of driving
14 suspended in the third degree.

15 THE COURT: Mr. Johnson.

16 MR. JOHNSON: Yes. The notice of traffic
17 infraction is a specific document with specific
18 requirements. There is no requirement in that document
19 that says I have to comply with the terms of the court.
20 The purpose of that is to charge me with a crime or an
21 infraction. That's all it is. In this country we're
22 innocent until proven guilty. The money's owed until
23 the gavel comes down. There is nothing in that citation
24 that says I have to pay a fine unless I choose to do
25 that.

1 In the first option, that would be to forfeit a
2 bail. The other two options I have, and there is an or
3 in that, an or in that citation which specifically is
4 different from and, to have a mitigating hearing or a
5 contested hearing. I chose a contested hearing and I
6 appeared in this court before you. I gave testimony. I
7 have complied with the terms of the notice of traffic
8 infraction.

9 RCW 46.20.289 does not reference failure to pay.
10 If the legislature chose to do that, they can put those
11 words in there, they have not. We're not here to
12 presume what the legislature intended to do, we are here
13 to follow their instructions. If the DOL wanted to
14 suspend me under 46.63.110, they could have done that.
15 They did not. They suspended me under 46.20.289, and
16 there is no proof to show that.

17 The state would have you believe that there is no
18 consequence if I got 40, 50, or 100 tickets, I would be
19 before you in prison garb and not walking around on the
20 street with no repercussion. There is one moving
21 violation on my record. Nine years ago in Oregon in an
22 unfamiliar place failure to yield, a minor traffic
23 accident. There are no other tickets other than the one
24 with you, a nonmoving violation for driving on an
25 expired license.

1 Now, the 46.20.289 limits the scope of those three
2 RCW to those four options that follow it. It's quite
3 clear on that because there is no or, no period. After
4 that third RCW, it says, if I might read it, when the
5 defendant receives notice from a court under RCW, RCW,
6 and RCW that the person has failed to respond to a
7 notice of traffic infraction, failed to appear at a
8 requested hearing, violated a written promise to appear
9 in court, or failed to comply with the terms of a notice
10 of traffic infraction, all they would have had to do was
11 add a fifth item, failure to pay a traffic ticket. They
12 did not do that. They did not allow those three RCWs to
13 stand by themselves. They put them in there in such a
14 way that those RCWs are limited to the four following
15 options. And that's all it says.

16 The state has not shown in addition any order
17 suspending me. They have provided a copy of the letter
18 sent to me threatening suspension, and they have
19 provided you with a copy of the letter saying that at
20 that date I was suspended. But there is no order, no
21 authorized person has signed any document that says I'm
22 official ly suspended. There is nothing, and they have
23 not prepared any such document. Nothing in their
24 computer, there is no information available as to what
25 was sent from this court to DOL, there is no document

1 signed by anybody in this county of any information sent
2 to DOL. I have no idea what this county said to DOL. I
3 do not know what was done. The DOL has not signed any
4 order or no authorized person has signed any order
5 suspending me.

6 I don't think this law stands. This is one of the
7 most enforced laws in the state. Singularly, I don't
8 think there is any law that gets more charged than this
9 law. And yet it is written in such a way that you have
10 to go through page after page after page to try and
11 understand what it says. And you get this wording that
12 is interpreted quite differently from what it says by
13 the prosecution and the state, it doesn't say anything
14 in this 289 about failure to pay. It cites page -- RCW,
15 that does, but then it proceeds to limit that RCW to
16 those four objects.

17 Again, if they wanted this RCW to do what they
18 think it does, it should have a period and then say
19 after the last RCW on there and then continue with the
20 sentence that says or which would then include those
21 three objects. It does not say that. And we're not
22 here to second guess what the legislature has written.
23 Or they could have added fail to pay as a fifth option
24 in this law. They did not do that. It is not here.

25 There is nothing in 46.20 other than this that has

1 anything to do with failure to pay, 342 doesn't even
2 mention it. It's not there. I can't find it. I don't
3 think the state presented evidence that it's there. And
4 yet half a million people in this state are probably
5 suspended under the third degree. A hell of a burden on
6 this state because those people can't earn a living.
7 That's citing City of Redmond versus Moore, 151 wash two
8 did page 664. Those people need to be fed, housed, and
9 paid for because they can't earn a living without a
10 driver's license.

11 Thank you, I have nothing more.

12 THE COURT: Mr. O'Rourke.

13 MR. O'ROURKE: Your Honor, it's sounds like a
14 novel argument, it is just simply not supported by
15 anything, absolutely nothing supports it. And it is
16 totally glossing over everything to say the fail
17 46.20.342, yes, it's been dealt with a half -- maybe
18 even a half million times and it encompasses all these
19 things that Mr. Johnson has done here. Failure to pay a
20 traffic infraction is failure to comply with a notice of
21 traffic infraction or a citation.

22 Now, the courts -- I can tell the court's going to
23 review the statute and say why doesn't it say in
24 particular failure to pay. Mr. Johnson, again, asked
25 the court to rely on the back side of the document which

1 tells him certain things. Well, the document, letter
2 which the court has in evidence, actually references the
3 fact that your license can be suspended and that it can
4 be -- or that it can be a criminal action if you don't
5 fail to respond to these things. But the back side of
6 the citation has nothing to do with it. It's what the
7 law says you can and can't do with regard to the
8 issuance of these infractions. And the law doesn't
9 allow for you to disregard them.

10 I'm going to ask the court -- this was decided
11 July 9th, 2009, it's Supreme Court of Washington and
12 City of Bellevue, petitioner, versus Shin H. Lee, number
13 of other defendant's. Now this case, I'm going to hand
14 it up to the court, says administrative procedures used
15 by the Department of Licensing to suspend the driver's
16 licenses of motorists for nonpayment, nonpayment of
17 traffic citations, did not violate the motorist's due
18 process rights. The court continually recognizes this
19 as a valid practice and legal practice. You can and
20 must suspend a person's driver's license when they don't
21 pay their infractions.

22 And Mr. Johnson says, well, this isn't
23 constitutional. This isn't the court to be arguing
24 that. If Mr. Johnson wants to take this case up to the
25 court of appeals, to the supreme court of this county,

1 to the supreme court of this state of Washington, and
2 wherever else beyond that he wanted to take it, that's
3 fine. But this court is not in a position, with all due
4 respect to this court, and I'm not suggesting that this
5 court isn't able to have its own opinions as to whether
6 the statute is constitutional or whether this court
7 couldn't articulate a basis why it might not be, but
8 this is not an appellate court. This is not a court
9 where Mr. Johnson can come in here and say, well, I
10 think this is unjust and half a million people can't pay
11 these and they shouldn't be suspended. Well, that's a
12 novel argument -- it's not a novel argument, it's been
13 made before and it's been flatly refuted throughout the
14 history of the case law of the State of Washington, and,
15 again, here, on July 9th of 2009 where it was once again
16 challenged and the court in its opinion specifically
17 referenced the basis for which Mr. Johnson here today
18 has been suspended as being a constitutionally sound one
19 under the Washington constitution and it is sound.

20 And these half million people that can't pay, well,
21 there is a burden on the State of Washington when people
22 commit multiple violations of traffic infractions and
23 don't pay them. And the legislature specifically
24 recognized it as a public policy consideration and has
25 for the longest time suspended people's licenses for

1 that. So if you want to take into account what's a
2 matter of good public policy or not, there are arguments
3 to be made on both sides of the coin, but this isn't the
4 proper court to be doing that, it's just not. We're
5 supposed to be looking at the law and whether or not it
6 says something. And Mr. Johnson wants to suggest
7 because 46.20.342 doesn't say fail to pay that it's not
8 there. It specifically references three things that Mr.
9 Johnson is not supposed to do, then goes on to say in
10 broad terms, fails to comply with a notice of traffic
11 infraction or citation. And this court, the Supreme
12 Court in the City of Bellevue, they actually
13 specifically reference 289.

14 Now, Mr. Johnson, again, says that this 46.63.110,
15 he should have been charged under that. As the court
16 knows, not all statutes are statutes under which you can
17 criminally charge someone. You can't charge Mr. Johnson
18 under 46.63.110. 46.63.110 is a statute that lays out
19 the administrative guidelines for the Department of
20 Licensing. So what they do is they go under 46.63.110,
21 they say, well, you haven't paid under that so we will
22 suspend you. And then under 46.20.289 that becomes a
23 basis for your failure to respond. And then that goes
24 to 46.20.342. 342 says 289, 289 says 46.63.110. So for
25 Mr. Johnson to suggest that he hasn't had the statute

1 properly applied to him is flat out wrong. He has all
2 of these statutes applied to him. He's been cited under
3 46, he's been cited under the entire statute for
4 46.20.342 in that does reference what the state's
5 presented to the court, 289, and then 289 encompasses
6 46.63.110.

7 I don't know whether the court had a chance to look
8 at it, I'm going to hand up those statutes that
9 specifically reference one another. All three of them
10 say that a person's license can be properly suspended
11 for failure to pay monetary assessments on a traffic
12 infraction and that case specifically references 289.
13 The court turns to I think the second or page third page
14 or maybe the first page of the actual opinion, it says
15 they challenge the validity of a suspension under 289
16 and that wasn't upheld.

17 And for these cases to continually -- if the court
18 wants to take its own time to research this before
19 issuing a ruling -- for these cases to continually
20 reference a basis for suspension as being failure to pay
21 costs, it would make absolutely no sense for people to
22 continually throughout all the case law in this state to
23 be challenging the constitutional basis. How can Mr.
24 Johnson be charged under 46.20.342 improperly when the
25 state's presented the entire statute. And then you have

1 case law saying when you don't pay an infraction that's
2 a constitutionally sound basis to suspend you. Clearly,
3 this argument has been made before, it doesn't need to
4 explicitly reference failure to pay because he has
5 failed to comply with the traffic infraction.

6 If we look at the WPICs, the WPICs say the exact
7 same thing. The WPICs don't even talk about this. What
8 Mr. Johnson is arguing is premised on is whether or not
9 the basis under which he's suspended is constitutionally
10 sound. It is not for this court. The WPICs don't even
11 say you need to be particularly suspended in a certain
12 fashion. The WPICs say you need to have been driving a
13 motor vehicle while there is an order in effect
14 suspending or revoking your license in the third degree.

15 There is a copy of the WPICs, but this is an order
16 from the Department of Licensing it's been recognized
17 consistently throughout court's in this state and by
18 this court as being a valid order of suspension. So for
19 Mr. Johnson to suggest that there is no order is
20 patently false. Exhibit A is an order suspending him
21 and a notice of suspension, he knew about a suspension.
22 He is suspended and he was suspended on the violation
23 date. Then he says add a fifth item to the charge, fail
24 to pay. Fail to comply again encompasses that. Item
25 number four under the statute under 342 encompasses that

1 as part of 289.

2 The WPICs say Mr. Johnson is guilty of the offense,
3 the statute says it, the case law says it. The only
4 basis that Mr. Johnson has to make an argument before
5 this court is he doesn't believe that because the
6 citation, back side of the citation, doesn't address
7 that issue, that's unconstitutional. Well, that may be
8 a novel -- that may be a novel argument for an appellate
9 court for him to say, well, the back side of my citation
10 didn't say something that the statute says, so that's a
11 basis for me to challenge the constitutionality of this
12 case. But as for what this court needs to find, this
13 court needs to find whether these statutes match that
14 order and Mr. Johnson's conduct, and there is absolutely
15 no way to find anything to the contrary. And because of
16 that and that alone, I'm again asking the court to find
17 Mr. Johnson guilty as charged.

18 MR. JOHNSON: Your Honor, I would like to make
19 an objection here.

20 THE COURT: Okay.

21 MR. JOHNSON: He's presented a document which
22 I'm not familiar with and have had no chance to rebut or
23 review. I don't know what it says and I would like to
24 have some time or ask the court not to consider it.

25 THE COURT: Well, he gave me a sort of a copy

1 of a supreme court case that I have actually already
2 read because it is a recent one that came out. That is
3 a challenge following the Redmond case.

4 MR. JOHNSON: Moore?

5 THE COURT: Right when the supreme court said
6 the process that the state was using didn't give due
7 process regarding suspension of license, that
8 legislature then changed the law and it is the new law
9 has been in effect since July of '05. And this case,
10 City of Bellevue versus Lee, I guess is the case, just
11 came out recently saying that the majority of supreme
12 court said that the new process that's in effect in the
13 current statute does meet due process. So the
14 suspension statute or the process of suspending
15 licensing is now okay whereas before it was not okay.

16 MR. JOHNSON: Yes.

17 THE COURT: So that's what this is and I have
18 already read the case.

19 MR. JOHNSON: Okay, I'd like a little say on
20 that.

21 THE COURT: About the statute?

22 MR. JOHNSON: This case and the case law
23 involved and Moore.

24 THE COURT: Well, Moore is not -- it's done
25 because now --

1 MR. JOHNSON: I know, but Moore said a whole
2 lot more than just the hearing, and I have not contested
3 the states granting a hearing by DOL.

4 MR. O'ROURKE: I'm objecting to all this, the
5 case is over, arguments have been made.

6 THE COURT: Right. Final argument is the
7 state gets a chance to make argument and you get a
8 chance to make argument, then the state gets a chance to
9 respond. Since they had the burden of proof, they get
10 the final say and that's the end of argument. I don't
11 -- that's just the process with a trial.

12 The other things that he handed me was looks like a
13 copy of the statute, driving while suspended statute,
14 46.20.342 which we already have and 46.20.289 which we
15 have already been talking about, and 46.63.110 which
16 we've already been talking about, and 46.63.070 which is
17 all referenced in here as well. So that's what he
18 handed me. If you want to see any of that.

19 Okay, well the first thing that I'm going to say is
20 that, Mr. Johnson, you should have gone to law school.
21 You argue very well, you have the mind of a lawyer.

22 MR. JOHNSON: I was a D student and my parents
23 were told that I was retarded.

24 THE COURT: Oh, well, they were way off the
25 mark with that. I think you speak very well and you

1 have argued your case very well. I think your argument
2 is a very interesting one. And the problem with it,
3 though, is that there is a lot of case law that says
4 that when you are reading statute you have to read them
5 to have some meaning, that they're -- I'm probably not
6 saying this very well, but the nonsensical
7 interpretation of a statute, if there is another way to
8 read it, then you don't read it to be nonsensical or to
9 not make sense.

10 And the whole scheme of this driving while
11 suspended, I completely agree with you that it is
12 extremely complicated, and I'm sure that somebody looked
13 at it and saw that you have to go from here to here to
14 here to here to figure this all out. It is not a good
15 situation at all, not for defendants, not for lawyers,
16 not for judges, not for anybody to have it be this
17 confusing.

18 But the statute that you're cited under, 46.20.342,
19 talks about driving while suspended, that it's unlawful
20 in the State of Washington to drive while your license
21 is suspended. And it references 46.20.289 which says
22 that one of the reasons that you can be suspended is for
23 this, if the Department receives notice from the court
24 under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that
25 a person has failed to respond to a notice of

1 infraction, failed to appear at a requested hearing,
2 violated a written promise to appear in court, or has
3 failed to comply with the terms of the notice of traffic
4 infraction for a citation. That is the statute.

5 So it then references 46.63.110(6), which
6 46.63.110(6) says that the Department must suspend
7 somebody who fails to pay. So if you had 46.63.110(6)
8 saying that somebody fails to pay they must be
9 suspended, then the Department of Licensing must suspend
10 you. So then, if by your interpretation of this
11 statute, somebody would be suspended but it would be
12 impossible to prosecute them successfully for driving
13 while suspended because while the Department was
14 required to suspend them, a person could not be
15 convicted of driving while suspended because of the
16 wording of the statute. It sites that statute, but
17 saying with the wording that saying all the other things
18 that I don't need to read for the fifth or sixth time.

19 So with that argument, that whole statutory scheme
20 that a court notifies the Department of Licensing, the
21 Department of Licensing is required to suspend you, it
22 would just be nonsensical because a person would be
23 suspended but there would be no consequences to that.
24 Whereas, the state has said if your license is
25 suspended, you're not allowed to drive. And so I can't

1 read it that way because it just makes the whole scheme
2 have a big nonsensical component to it that I can't find
3 was intended nor was a full reading of all of these
4 different laws that you have to read together to make
5 any sense out of this.

6 And so reading them together, because they do
7 reference each other, 46.20.342 reference 46.20.289,
8 46.20.289 references 46.63.110(6), and 110(6) does say
9 if you're suspended for nonpayment. I mean, if you
10 don't pay, then you're suspended and you are -- it is
11 not legal to drive while your license is suspended under
12 46.20.342. So reading those in conjunction with each
13 other, I can't just pick that one part of the statute
14 out and say that it doesn't say fail to pay. Because
15 how I'm reading this is violating or failing to comply
16 with the terms of a notice of infraction.

17 As I said earlier, a notice of infraction tells you
18 you've been cited for this, here's the penalty, you can
19 pay it, you can request a hearing. That starts that
20 process. You request a hearing, which is the evidence
21 we have that happened here, you requested a hearing and
22 you showed up for the hearing and you testified at the
23 hearing and judgment was entered. And I have in
24 evidence the docket now that shows that judgment was
25 entered and you were given time to pay. There was a

1 date set in the future for you to pay and that it was
2 not paid by that date, or a couple weeks after when they
3 reviewed it, it hadn't been paid. So the FTA processing
4 delay was removed, the FTR was ordered, the FTR was
5 issued, and the shorthand of that is that it was
6 referred to Department of Licensing because FTR is the
7 code for failing to pay the ticket and comply with the
8 ticket.

9 And so requesting a hearing delays the dealing with
10 a ticket, but it doesn't negate the dealing of a ticket,
11 it's still there. The dealing with the ticket requires
12 what every steps go beyond that, it still requires that
13 either the ticket be dismissed or the ticket be paid.
14 And so the ticket wasn't dismissed, there was judgment
15 entered, so that requires in complying with the
16 infraction requires that in this case the ticket be
17 paid. And since it wasn't paid, you didn't comply with
18 the infraction and that's -- it requires under 46.20.289
19 that if you don't comply with it, then your license is
20 suspended.

21 So when you got the notice of suspension, you were
22 given a chance to appeal that. I don't know, we heard
23 no testimony regarding that process. You had
24 administrative remedy there to appeal that, and I'm not
25 familiar with how all that works through the Department

1 of Licensing, but there is -- I know there is an appeal
2 process that you can go through and the notice advising
3 you that your license would be suspended in the future
4 does reference what you can do to appeal it. And so you
5 have a process there once you get that notice, which now
6 the supreme court just recently, as we said, in Bellevue
7 versus Lee has ruled that process is adequate and meets
8 due process.

9 So we're back to the facts of the case that are not
10 in dispute are that you were driving a motor vehicle in
11 Lewis County on September 18th of 2008, that your
12 license was suspended, you testified that you were aware
13 of the suspension and the state has admitted the
14 evidence that you were in fact suspended on that date
15 and that you were given notice of that suspension.
16 There was no -- basically all of that are agreed facts.

17 And so the only question is what I've just been
18 talking about whether the statute applies to you. And I
19 agree that there obviously can be a lot more artful
20 wording of all this, it could be hopefully simplified
21 greatly from how it is at this point in time, but we
22 have to go obviously with how the statutes read right
23 now. I can't read it to have that nonsensical component
24 to it because I don't think that's the right way to
25 legally interpret the statute. But on the other hand,

1 without that part to it, the failing to comply, I find
2 still encompasses the failing to pay because payment on
3 a committed infraction is part of the infraction
4 process. It is not a different, new thing, it's either
5 pay it or it gets dismissed. Those are the two things
6 that happen. It didn't get dismissed, so paying it is
7 part of complying with the infraction itself. So on
8 that basis, I do find that the state has shown by a --
9 has proven beyond a reasonable doubt the driving while
10 license suspended occurred and find you guilty of the
11 charge.

12 Do the parties want to proceed to sentencing today
13 or did you want to set that?

14 MR. O'ROURKE: Yes.

15 MR. JOHNSON: Your Honor, I plan on appealing,
16 I'm only here to get final decision.

17 THE COURT: Okay, I'll read you your appeal
18 rights. Does the state have a -- are you ready to be
19 sentenced today?

20 MR. JOHNSON: Yes.

21 THE COURT: Okay, does the state have a
22 recommendation?

23 MR. O'ROURKE: I do, and despite the fact this
24 is a first offense, and despite the novel arguments made
25 here today, and they were made in a compelling fashion,

1 the bottom line is that Mr. Johnson continues to show an
2 absolute disregard for the law. His license remains
3 suspended from this infraction from 2007, it's been
4 suspended, it's been suspended for more than two years,
5 he's not going to get it back.

6 First, I'm asking the court as part of the judgment
7 and sentence to explicitly order him not to drive a
8 motor vehicle while his license is suspended, whether it
9 be when he leaves the courtroom today, or at any point
10 at any time in the State of Washington. I'm asking it
11 to be a condition of his judgment and sentence that he
12 not have any further criminal law violation or that jail
13 time on this can be unsuspended.

14 I am asking the court to impose jail time in this
15 case, notwithstanding the fact it's a first offense,
16 because, again, his license remains suspended. He's
17 disregarded the laws of the State of Washington whether
18 he agrees with them or not by continuing to leave it
19 suspended. And I'm asking the court to impose 90 days,
20 suspend 87 of them, require three days to be served in
21 custody. I'm asking, because of the facts of this case
22 and because of the fact --

23 THE COURT: How much jail time were you asking
24 for?

25 MR. O'ROURKE: Three days.

1 THE COURT: He's already served four.

2 MR. O'ROURKE: Well, then --

3 MR. JOHNSON: Three, I believe.

4 MR. GRAY: Credit for time served is three
5 according to what he says, your Honor. I believe it
6 might be almost four.

7 THE COURT: He was cited on the 18th and
8 released on the 22nd.

9 MR. O'ROURKE: That's fine, four days credit
10 for time served. I'm asking the court to impose \$1,000
11 fine because of the nature of the facts of this case and
12 because he remains suspended and in disregard of the
13 laws of the State of Washington. Nothing further.

14 THE COURT: Mr. Johnson, do you have anything
15 you would like to say before I impose sentence on this
16 charge?

17 MR. GRAY: Your Honor, on Mr. Johnson's
18 behalf, he doesn't have any other criminal history as
19 far as I know. He did serve up to four days in custody.
20 I would ask the court to grant him credit for time
21 served, impose the usual fine which is \$500. There is a
22 court appointment attorney fee which is usually \$240,
23 but I request \$360, for it to be a half unit according
24 to the bench trial. The other fines and fees, and set
25 Mr. Johnson a payment plan of \$25 a month starting next

1 month some time. Nothing further.

2 THE COURT: Do you want to say anything, Mr.
3 Johnson?

4 MR. JOHNSON: Yes. I'm not interested in
5 paying the fine, I have no income and no ability to make
6 any payment, I'm disabled.

7 THE COURT: Okay. I'm going to sentence you
8 to 90 days in jail. I'm going to suspended 86 days and
9 give you credit for four days served. This appears to
10 me that you served four days. I think to impose a fine
11 of -- state's asking for \$1,000, but that's way beyond
12 what we normally would impose on a first offense driving
13 while license suspended. And I understand the argument
14 that you're sort of unrepentant and don't intend to
15 change and all that, but that's something that may cause
16 problems in the future for you, unfortunately, but I'm
17 not going to impose a larger fine because of that and
18 because of your financial situation. I'm going to
19 impose the fine of \$300, the attorney fee recoupment of
20 \$360, the traffic penalty assessment of \$102.50, the \$43
21 assessment, and I think I don't have anything else,
22 fees, or anything like that here.

23 So the other things that I'm going to order is that
24 you not drive without a valid license and insurance, you
25 have no major traffic violations for the next two years.

1 The rest of the jail time, the 86 days in jail, are
2 suspended on those conditions that you have no similar
3 law violations, that you not drive without valid
4 insurance, no major traffic violations. And those are
5 standard conditions of a conviction for driving while
6 license suspended in the third degree.

7 And do you just want it sent to collections, you
8 don't want to pay it, you don't want a time pay?

9 MR. JOHNSON: I don't have any money.

10 MR. O'ROURKE: I ask it be sent to
11 collections.

12 THE COURT: I mean, I can try to do something,
13 but if you don't want to attempt to do that, then it
14 just gets sent to collections. On the -- is that the
15 most recent --

16 MR. O'ROURKE: No, it is the 2008, but I'm
17 going to ask that there is some requirements I've been
18 talking about the court that are requisites to be
19 entered on the judgment and sentence such as the
20 arraignment date. I'm going to ask that all those be --
21 I'll look them up to see if they're not denoted already,
22 but sometimes they get left off in a case like this.
23 I'm going to ask that they all explicitly be referenced.

24 THE COURT: Okay. I'm going to read you your
25 rights to appeal and then you're going to get a copy of

1 this. And the appeal, if you have any questions about
2 it, we can talk about it and then also of course Mr.
3 Gray can speak to you about it. And out at the counter
4 they have forms and such for filing a notice of appeal.

5 You have the right to appeal this conviction
6 pursuant to the rules of appeal for decisions of courts
7 of limited jurisdiction or pursuant to the rule 9.1 of
8 the criminal rules for courts of limited jurisdiction.
9 Unless a notice of appeal is filed in the Lewis County
10 District Court within 30 days after entry of this
11 judgment and sentence or order appealed from, the right
12 to appeal is waived, so 30 days from today. The notice
13 of appeal must be served on all other parties, that
14 means the Prosecutor's Office. The Lewis County
15 District Court will, if requested by you and you are
16 appearing without a lawyer, supply a notice of appeal
17 form, and they have those out at the counter. You have
18 a right to have a lawyer on appeal, and if unable to pay
19 the cost thereof, to have a lawyer appointed and
20 portions of the trial record necessary for review of
21 assigned errors prepared at public expense for an
22 appeal.

23 And you have the right to file a petition or motion
24 seeking to collaterally attack this judgment only as
25 provided by the Revised Code of Washington RCW 10.73.090

1 and Revised Code of Washington RCW 10.73.110, or
2 10.73.090, collateral attack one year time limit. No
3 petition or motion for collateral attack on a judgment
4 and sentence in a criminal case may be filed more than
5 one year after the judgment becomes final if the
6 judgment and sentence is valid on its face and was
7 rendered by a court of competent jurisdiction. For
8 purposes of this section, collateral attack means any
9 form of post conviction release other than a direct
10 appeal. Collateral attack includes, but is not limited
11 to, a personal restraint petition, a habeas corpus
12 petition, a motion to vacate judgment, a motion to
13 withdraw guilty plea, and a motion for a new trial, and
14 a motion to arrest judgment. For the purposes of this
15 section a judgment becomes final on the last of the
16 following dates, (a) the date that it is filed with the
17 clerk of the trial court, (b) the date that an appellate
18 court issues it's mandate disposing of a timely direct
19 appeal from the conviction, or (c) the date that the
20 United States Supreme Court denies the timely petition
21 for certiorari to review a decision affirming the
22 conviction on direct appeal. The filing of a motion to
23 reconsider denial of a certiorari does not prevent a
24 judgement from becoming final.

25 Then 10.73.100, collateral attack, when one year

1 limit not applicable, the time limit specified in RCW
2 10.73.090 does not apply to a petition or motion that is
3 based solely on one or more of the following grounds:
4 Number one, newly discovered evidence, if the defendant
5 acted with reasonable diligence in discovering the
6 evidence and filing the petition or motion, number two,
7 the statute that the defendant was convicted of
8 violating was unconstitutional on its face or as
9 applied to the defendant's conduct, and, number three,
10 the conviction was barred by double jeopardy under
11 Amendment Five of the United States Constitution, or
12 Article I Section 9 of the State Constitution, the
13 defendant pled not guilty and the evidence introduced at
14 trial was insufficient to support the conviction, or,
15 number five, the sentence imposed was in excess of the
16 court's jurisdiction, or, six, there's been a
17 significant change in the law, whether substantive or
18 procedural, which is material to the conviction,
19 sentence, or other order entered in a criminal or civil
20 proceeding instituted by the state or local government
21 and either the legislature has expressly provided that
22 the change in the law is to be applied retroactively or
23 a court in interpreting a change in the law that lacks
24 express legislative intent regarding retroactive
25 application determines that sufficient reasons exist to

1 require retroactive application of the changed legal
2 standard. We're going to give this all to you so you
3 don't have to remember all that.

4 MR. O'ROURKE: Judge --

5 THE COURT: Yes.

6 MR. O'ROURKE: CrRLJ 7.3 references that any
7 judgment after sentencing include, there is a list of
8 them here, defendant's name, defendant's ID number, I
9 think both of those are there, the charge as well as any
10 amendments, driving suspended will be in there, but it
11 also requires, and these are requisites, it says, and I
12 know that sometimes doesn't get put on judgments here,
13 but we're working on that now with court, but I would
14 ask the court to include, says 7.3(d) here, the
15 arraignment date, plea and the date entered, that's not
16 the case here, but it says, Representation by or waiver
17 of lawyer, as well as date of lawyer's appearance or
18 waiver, parties present, including but not limited to
19 the judge, attorney, prosecutor, defense counsel,
20 witnesses, findings, which we're going to have,
21 adjudication of the sentence, which we'll have, the
22 conditions, which we have had, then consideration,
23 outcome of any hearings held on the case, including but
24 not limited to any compliance reviews, I'm not sure
25 whether that is subsequent to this judgment or if it

1 means that it has to include the hearings that occurred
2 prior to this. If that's the case and the court reads
3 it that way, I would ask for a copy of the docket to be
4 attached to the judgment. I would ask the court here do
5 that for those all to be indicated on the judgment and
6 sentence so there is no collateral attack to it after
7 the fact.

8 MR. GRAY: Your Honor, I would request to be
9 released at this point, I have a hearing in Pacific
10 County at 1:30. It's going to take about an hour for me
11 to get there. I think Mr. Johnson can handle verifying
12 the judgment and sentence from here.

13 THE COURT: Okay. Do you have any objection
14 to Mr. Gray leaving?

15 MR. JOHNSON: No.

16 THE COURT: Okay. So what all are you wanting
17 me to add that's not part of the form?

18 MR. O'ROURKE: Well, I think there is a couple
19 of things that aren't, and this is something I would
20 address with the court in general because it comes up on
21 DUIs on proving priors felonies. 7.3, procedures
22 following conviction, says judgment shall at a minimum,
23 the judgment and record of the sentencing proceedings
24 shall include, then here's the list (a) through (k). So
25 there is a number of those that don't show up on

1 judgments in this court. Now, whether or not it renders
2 them definitively, I don't know, but it seems pretty
3 clear that it says that it is a shall.

4 THE COURT: What are ID numbers?

5 MR. O'ROURKE: I don't know and I read that as
6 being the case number, et cetera. I think the case
7 number and the defendant's name are on there, so I don't
8 think that's the issue. The arraignment date, I don't
9 think appears on there, which is (c). I know in the
10 past Judge Buzzard, or whoever it might have been, just
11 shorthanded it, it's written in.

12 THE COURT: Okay, I show arraignment was on
13 September 22nd of '08.

14 MR. O'ROURKE: That's correct.

15 THE COURT: Okay, date of lawyer's appearance,
16 he had a prior attorney it looks like.

17 MR. O'ROURKE: Yeah, there was an attorney.

18 MR. JOHNSON: I think it's in the record with
19 notice of withdrawal and the notice of appearance.

20 THE COURT: He appeared on October 1st.

21 MR. O'ROURKE: I don't think Mr. Gray ever
22 appeared. I think he -- well, Mr. Johnson filed a
23 notice of appearance pro se on January 2nd or
24 January 5th of 2009. And then I believe Mr. Gray was
25 just appointed standby counsel after that.

1 THE COURT: Arraignment date 9/22/08, attorney
2 then appeared 10/1/08, went through 12/17/08 attorney
3 Gray appeared 2/27/09. The parties that were present,
4 defendant Johnson, attorney Gray, the prosecuting
5 attorney O'Rourke, Deputy McKnight, and myself. Those
6 are the only things that I see that are not already on
7 the form that it specifies should be included.

8 MR. O'ROURKE: Does the court -- do we need to
9 put Mr. Johnson's own, under that reading of the rule,
10 appearance in January or whatever it was, January 5,
11 '09, Mr. Johnson appeared pro se prior to Mr. Gray.
12 Then as far as any proceedings prior to this, I don't
13 know how to read that. So if the court reads that as
14 what we have sufficient then --

15 MR. JOHNSON: I think there is a court docket.

16 THE COURT: What's the other thing?

17 MR. O'ROURKE: The only thing that's left is
18 the notation as to prior hearing, any and all prior
19 hearings, but I wouldn't expect that to have to be
20 written out. All, I think Mr. Johnson agrees, all that
21 would require would be the docket being affixed to it.
22 So we believe that to be the case.

23 THE COURT: Okay. I put, see docket for prior
24 hearings. Okay, there is the judgment and sentence.
25 Mr. Johnson need to come up here and review that. There

1 is a place for your signature then we will get you a
2 copy of that and copy to the prosecutor and a copy for
3 Mr. Gray.

4 MR. JOHNSON: I have a question, he put no
5 major traffic convictions during the next two years.

6 THE COURT: Um-hmm.

7 MR. JOHNSON: That would be moving violations
8 only?

9 THE COURT: Major traffic is criminal
10 convictions.

11 MR. JOHNSON: Driving on a suspended included,
12 that's a nonmoving violation?

13 THE COURT: Well, when you talk about moving
14 violations you're talking about traffic infractions, and
15 I'm talking about criminal convictions. Major traffic
16 violations are a DUI, a reckless driving, a driving
17 while revoked as a habitual traffic offender, driving
18 suspended while you're under a term of suspension, not
19 driving suspended third, but driving suspended second,
20 any --

21 MR. JOHNSON: I've been suspended third, would
22 that be considered major traffic?

23 THE COURT: But I already said you can't drive
24 without a valid license and insurance. So if you get a
25 driving suspended then that would be in violation of

1 that, but major traffic or criminal traffic, gross
2 misdemeanor criminal traffic. There is a signature line
3 for us to give you a -- that you have read it and that
4 we give you a copy of it. You don't have to agree to
5 it, you can just sign it saying that you have read it
6 and that we're giving you a copy of it. There is
7 nothing about signing it that says you agree with it.

8 Okay, we're adjourned.

9 MR. O'ROURKE: Thank you.

10 (Conclusion of Trial and Sentencing)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Kathleen Mahr, Notary Public, in and for the State of Washington, residing at Olympia, do hereby certify:

That the foregoing Verbatim Report of Proceedings consisting of 104 pages was reported by me and reduced to typewriting by means of computer-aided transcription;

That said transcript is a full, true, and correct transcript of my shorthand notes of the proceedings heard before Judge Wendy Tripp on the 18th day of September 2009, at the Lewis County District Court, Chehalis, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND AND OFFICIAL SEAL this 25th day of January, 2010.


KATHLEEN MAHR

Notary Public in and for the State of Washington, residing at Olympia.

