69663-7

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COA No. 69663-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JOSE MARTINES,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 JUN 28 PM 4:47

ON APPEAL FROM THE SUPERIOR COURT
OF SNOHOMISH COUNTY

The Honorable Mariane C. Spearman

APPELLANT'S OPENING BRIEF

OLIVER R. DAVIS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. ASSIGNMENTS OF ERROR

1. In Jose Martines' trial on a charge of Felony Driving Under the Influence (Felony DUI) based on alcohol and drug intoxication, the trial court erred in denying Mr. Martines' motion to suppress the results of drug testing conducted on Mr. Martines' blood.

2. The trial court committed manifest constitutional error in admitting the drug testing evidence where the warrant failed to authorize drug testing.

3. The trial court failed to meet the requirement of filing written CrR 3.6 Findings of Fact, where the prosecutor as prevailing party neglected to draft proposed findings or present them to the court following the hearing, as required by the Rule.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the unwarranted and unauthorized testing of Mr. Martines' blood was a search under the Fourth Amendment to the United States Constitution, and an intrusion into Mr. Martines' private affairs under the Washington Constitution, Article 1, § 7.

2. Whether the trial court erred in denying Mr. Martines' motion to suppress the results of the drug testing conducted on his blood, where the issuing court did not particularly authorize the testing of his blood for drugs based on a required determination of

probable cause.

3. Whether the trial court committed manifest constitutional error in admitting the drug testing evidence where the warrant failed to authorize drug testing.

4. Whether the failure to file written CrR 3.6 Findings of Fact independently requires reversal, where the trial court did not issue any detailed oral ruling on the question of the existence of facts constituting probable cause for the drug testing.

C. STATEMENT OF THE CASE

Jose Martines was charged with Felony DUI pursuant to RCW 46.61.502(6) and RCW 46.61.522(1)(b). CP 1, 22. According to witnesses, the defendant's Toyota 4-Runner was merging onto State Route 167 when it "clipped" another vehicle that it attempted to pass at high speed. The Toyota then swerved and flipped over. 11/6/12RP at 11, 27, 96; 11/8/12RP at 3. The other vehicle pulled over to the side of the highway, whereupon the occupants observed Mr. Martines crawl out from the driver's side of the Toyota, and saw a female emerge from the front passenger area. 11/6/12RP at 23-24, 33-34. An off-duty Tukwila police detective, Daniel Lindstrom, also stopped to assist, and he observed Mr. Martines remove the remains of a 6-pack of beer from

the Toyota and toss it into the bushes. 11/6/12RP at 60-67, 119-20.

Trooper Dennis Tardiff responded to the scene, and arrested Mr. Martines for DUI after smelling the odor of alcohol on his breath, and observing him stumble as if he had been drinking alcohol. 11/6/12RP at 111, 116-17, 139; see also 11/6/12RP at 69 (observations of alcohol intoxication by off-duty detective Lindstrom, communicated to Tardiff). Trooper Tardiff then obtained a warrant for extraction of Mr. Martines' blood, which was drawn at Valley Medical Center. The blood was subsequently tested for the presence of alcohol and drugs. 11/6/12RP at 129-33; 11/8/12RP at 43; Supp. CP ___; Sub #69 (warrant and affidavit) (Appendix A).

According to the Washington State Patrol toxicologist at trial, Mr. Martines' blood contained an alcohol percentage that equated to a .121 BAC value within an hour after the incident. 11/8/12RP at 43-47, 57-58. Mr. Martines' blood also contained Diazepam (Valium) in an amount of 0.05 milligrams per liter. 11/8/12RP at 45-46. The toxicologist testified that both the alcohol and the Diazepam can affect driving ability. 11/8/12RP at 45-55, 58-59.

The jury rejected Mr. Martines' contention that he had not been the person driving the Toyota, and found him guilty pursuant

to the jury instructions setting forth two different statutory alternatives for the crime under RCW 46.61.502(1):

> (a) driving while under the influence of or affected by "intoxicating liquor or a drug," or
> (b) driving while under the "combined influence of or affected by intoxicating liquor and a drug."

CP 45 (Jury Instr. no. 8 ("to-convict" instruction); see RCW 46.61.502. Following the verdict, Mr. Martines was given a standard range term. CP 73-81. He appeals. CP 83-93.

D. ARGUMENT

THE BLOOD TESTING RESULTS WERE ILLEGALLY OBTAINED, REQUIRING SUPPRESSION AND REVERSAL OF THE DEFENDANT'S DUI CONVICTION.

1. The trial court declined to suppress the drug testing results. Mr. Martines argued that the search warrant was defective because of the absence of any probable cause for drug testing. CP 7-12; 11/5/12RP at 30-55; Appendix A (search warrant); Appendix B (warrant affidavit). The prosecutor urged the court that the specific question presented was whether constitutional probable cause had been established in the warrant. 11/5/12RP at 40. The trial court ruled that probable cause for alcohol testing of blood also necessarily establishes probable cause to test blood for drugs,

including under the implied consent statute's incorporation of the probable cause standard.[1] 11/5/12RP at 54-55.

2. The testing of extracted blood constitutes a search and an intrusion into private affairs, requiring authorization by a warrant, supported by probable cause. The collection and the testing of biological samples such as blood from an individual constitute a search for purposes of the Fourth Amendment. Ferguson v. City of Charleston, 532 U.S. 67, 76, 121 S.Ct. 1281, 149 L.Ed. 2d 205 (2001); Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 616, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989); State v. Olivas, 122 Wn.2d 73, 83-84, 856 P.2d 1076 (1993); State v. Dunivin, 65 Wn. App. 501, 507, 828 P.2d 1150 (1992). Such actions also implicate the privacy interests protected by Article I, section 7 of the Washington Constitution. State v. Curran, 116 Wn.2d 174, 184, 804 P.2d 558 (1991).

Under both the federal and state constitutions, the collection and subsequent analysis of biological evidence from a person is not

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[1] Washington's implied consent statute, RCW 46.20.308, codifies the circumstances that allow for a blood drug test. An officer who has reasonable grounds to believe that an arrested driver is under the influence of a drug can request that driver to submit to a blood test administered by a qualified person. RCW 46.20.308(2). "'Reasonable grounds,' when used in the context of a law enforcement officer's decision to make an arrest, means probable cause." RCW 46.04.455; see State v. Dunivin, 65 Wn. App. 501, 507, 828 P.2d 1150 (1992).

a single search, but rather, are two separate invasions of privacy.

The Supreme Court has said:

> [I]it is obvious that this physical intrusion, penetrating beneath the skin, infringes an expectation of privacy that society is prepared to recognize as reasonable. The ensuing chemical analysis of the sample to obtain physiological data is a further invasion of the tested employee's privacy interests.

Skinner, 489 U.S. at 617 (Internal citations omitted); see also Robinson v. Seattle, 102 Wn. App. 795, 822 n.105, 10 P.3d 452 (2000).

3. The warrant fails to grant any authority to test Mr. Martines' blood.[2] A search warrant must provide authority for the search or intrusion conducted by law enforcement. The Fourth Amendment establishes the right to be free from unreasonable searches and seizures, and further, requires that no warrants may

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[2] Below, Mr. Martines raised the question of the legality of the drug testing as a search requiring authority of law, primarily arguing that Trooper Tardiff, the warrant affiant, had not set forth facts establishing a basis for drug testing of Mr. Martines' blood, as opposed to alcohol testing. CP 7-12 (CrR 3.6 motion to suppress). However, Mr. Martines is also challenging the question of the authority granted by the search warrant, for the first time on appeal, under RAP 2.5(a)(3). In this case, there is no dispute that the direct fruit of a law enforcement search not authorized by law is constitutional error. Further, where the question is the constitutional adequacy of the written affidavit and the authority of the warrant document, an alleged error is "manifest" if there is a sufficient and complete record for this Court to review and determine the presence or absence of the error assigned. See State v. Kirkpatrick, 160 Wn.2d 873, 880–81, 161 P.3d 990 (2007). Such record is present in this case.

issue, except upon probable cause. See U.S. Const. amend. 4. Similarly, article I, section 7 of the Washington Constitution requires that a trial court may issue a search warrant only based on a determination of probable cause. State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002).

In addition, the Fourth Amendment provides that search warrants must particularly describe "the place to be searched, and the persons or things to be seized." U.S. Const. amend. 4. Article I, section 7 also requires that a search warrant describe with particularity the thing to be seized. State v. Dodson, 110 Wn. App. 112, 119-20, 39 P.3d 324 (2002); State v. Wright, 61 Wn. App. 819, 824 n. 8, 810 P.2d 935, review denied, 117 Wn.2d 1012 (1991). This requirement is an inextricable aspect of probable cause. State v. Maddox, 116 Wn. App. 796, 805, 67 P.3d 1135 (2003).

The purposes of the search warrant particularity requirement are the prevention of general searches and warrants issued on loose, vague, or doubtful bases. 2 W. LaFave, Search and Seizure § 4.6(a), at 234–36 (2d ed. 1987) (citing Marron v. United States, 275 U.S. 192, 48 S.Ct. 74, 72 L.Ed. 231 (1927)). Indeed, the prevention of general searches under which anything can be searched for was "the specific evil . . . abhorred by the colonists" at

the time of the framing of the federal constitution. Coolidge v. New Hampshire, 403 U.S. 443, 467, 91 S.Ct. 2022, 2038, 29 L.Ed.2d 564, reh'g denied, 404 U.S. 874, 92 S.Ct. 26, 30 L.Ed.2d 120 (1971).

In this case, the search warrant document directs that blood may be taken from Mr. Martines, but fails to authorize any blood testing. Appendix A (search warrant). Review of the warrant is de novo. State v. Perrone, 119 Wn.2d 538, 549, 834 P.2d 611 (1992). The constitutional requirements for a valid search warrant authorizing the intrusion into privacy are met if the warrant describes the thing to be seized with reasonable specificity under the circumstances. State v. Chambers, 88 Wn. App. 640, 643, 945 P.2d 1172 (1997) (citing Perrone, 119 Wn.2d at 546-47, 834 P.2d 611).

Here, the two-page search warrant states that there is probable cause for the crime of Driving Under the Influence, and authorizes the officer to, with the assistance of an appropriate medical practitioner, "extract a sample of blood . . . from the person of Martines, Jose Figueroa". Appendix A. Other than directing the safe-keeping of the blood samples, the warrant does not authorize

or address any post-extraction law enforcement intrusion or conduct. Appendix A.

The form search warrant document does incorporate the sworn complaint, referring to the search warrant affidavit which references alcohol and drug testing. Appendix A. And it is also true that the warrant must be evaluated in a commonsense, practical manner, rather than in a hypertechnical sense. Chambers, 88 Wn. App. at 643 (citing Perrone, 119 W .2d at 549). However, the warrant in this case does not establish authority for testing, including drug testing. As the United States Supreme Court has stated,

> [T]he problem [posed by the general warrant] is not that of intrusion per se, but of a general, exploratory rummaging in a person's belongings. . .. [The Fourth Amendment addresses the problem] by requiring a 'particular description' of the things to be seized."

Andresen v. Maryland, 427 U.S. 463, 480, 96 S.Ct. 2737, 2748, 49 L.Ed.2d 627 (1976) (quoting Coolidge, at 467). In addition, the particularity requirement eliminates the danger of unlimited discretion in the executing officer's determination of what to search for. United States v. Blakeney, 942 F.2d 1001, 1026 (6th Cir.), cert. denied, 502 U.S. 1035, 112 S.Ct. 881, 116 L.Ed.2d 785

(1992); State v. Gronlund, 356 N.W.2d 144, 146 (N.D.1984) (particularity requirement eliminates chances that executing officer will exceed the permissible scope of the search).

Thus, under a proper warrant, "[a]s to what is to be taken, nothing [must be] left to the discretion of the officer executing the warrant." Marron, 275 U.S. at 196, 48 S.Ct. at 76; State v. Trasvina, 16 Wn. App. 519, 522, 557 P.2d 368 (1976), review denied, 88 Wn.2d 1017 (1977); see also 2 W. LaFave § 4.6(a), at 234. Here, the 2-page search warrant authorizes only the extraction of blood. Where a search warrant affidavit fails to authorize an evidentiary search on the basis of probable cause the evidence obtained as a result should be suppressed. See generally State v. Huft, 106 Wn.2d 206, 720 P.2d 838 (1986). Absent the admission of any blood testing results, the evidence of DUI is insufficient, and the constitutional error in admitting the testing results is not harmless beyond a reasonable doubt.

4. There was no probable cause for drug testing of Mr. Martines' blood for the presence of drugs. A warrant "may issue only upon a determination of probable cause." State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (citing State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995)). In order to pass

constitutional muster under this standard, an "application for a warrant must state the underlying facts and circumstances on which it is based in order to facilitate a detached and independent evaluation of the evidence by the issuing magistrate." Thein, 138 Wn.2d at 140 (citing State v. Smith, 93 Wn.2d 329, 352, 610 P.2d 869 (1980)). Probable cause exists where the application sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is involved in criminal activity, and crucially, that evidence of that criminal activity can be found by the search. State v. Maddox, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004).

Here, Trooper Tardiff's search warrant affidavit fails to set forth facts indicating, much less establishing a probability of cause, that Mr. Martines was driving under the influence of drugs, and therefore does not establish probable cause for a search for drugs in Mr. Martines' blood. In the warrant application, the affiant, Officer Tardiff, states that he is trained in "DUI detection." The affiant relates his investigation at the crash scene on SR 167, including his observations of "a strong odor of alcohol" on the defendant, Mr. Martines' physical appearance, and the defendant's

conduct of tossing beer into the bushes. Appendix B (search warrant affidavit).

Facts standing alone that would not support probable cause can do so when viewed together with other facts. State v. Garcia, 63 Wn. App. 868, 875, 824 P.2d 1220 (1992). However in this case, notably, although the affiant indicates he was a Drug Recognition Expert, he stated no additional facts, nor indeed any basis of belief that Mr. Martines' was affected by a drug. There is no basis for concluding that drugs were involved where the expert in drug intoxication does not even so state himself. See State v. Baity, 140 Wn.2d 1, 18, 991 P.2d 1151 (2000) (Drug Recognition Expert ("DRE") testimony may be admissible under ER 702 where it is helpful to the jury).

The trial court erred in concluding that the existence of probable cause to test blood for alcohol per se establishes probable cause to test for the presence of drugs. See 11/5/12RP at 54-55. There were no facts in the search warrant affidavit supporting any suspicion of drug intoxication and, absent probable cause, the drug testing results were therefore improperly admitted at trial. U.S. Const. amend. 4; Const. art. 1, § 7.

5. Reversal of DUI conviction. Evidence obtained illegally must be suppressed. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); see also Segura v. United States, 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599, 615 (1984). Admission of such material as trial evidence is constitutional error, and as such it is presumed prejudicial, requiring reversal unless the State can prove, beyond any reasonable doubt, that the admission of the evidence was harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); State v. Smith, 165 Wn. App. 296, 316, 266 P.3d 250 (2011) (citing State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985)).

In the present case, the illegally-obtained drug testing results were the only evidence of Mr. Martines' being under the influence of the identified drug of Diazepam, and reversal is required where the defendant was convicted of an alternative means DUI crime by general, rather than special verdict specifying the means relied upon. See generally State v. Martin, 69 Wn. App. 686, 688-89, 849 P.2d 1289 (1993) (error in DUI "to-convict" instruction required reversal where substantial evidence must support both alternative means charged).

6. Reversal is independently required for the failure to file written CrR 3.6 Findings. The prosecutor did not submit written findings of fact and conclusions of law to the trial court. CrR 3.6 requires the entry of written findings following a suppression hearing, which must set forth the disputed and undisputed facts, the court's findings as to the latter, and the court's legal conclusions. CrR 3.6(b).

In this case, the absence of findings requires reversal, where the trial court failed to make any findings regarding the existence or absence of facts to support probable cause. See State v. Emery, 161 Wn. App. 172, 201-092, 253 P.3d 413 (2011), aff'd, 174 Wn.2d 741, 278 P.3d 653 (2012) (on review of a suppression ruling, appellate court must be able to review the trial court's findings as to the facts arising prior to the search). The court below did not address these factual issues.

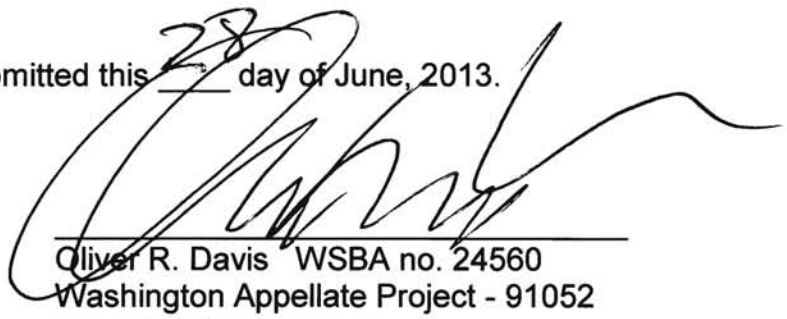
Further. the absence of written findings of fact and conclusions of law as CrR 3.6(b) requires may be excusable, but only if the trial court made detailed oral findings of fact and conclusions of law. State v. Riley, 69 Wn. App. 349, 352–53, 848 P.2d 1288 (1993). Here, in the absence of either, this Court should follow the rule of reversal, which is the presumptive outcome

where written CrR 3.6 findings are not filed. State v. Smith, 68 Wn. App. 454, 458, 610 P.2d 357 (1980).

E. CONCLUSION

Based on the foregoing, Mr. Martines requests that this Court reverse the trial court's denial of his CrR 3.6 motion, and reverse his conviction.

Respectfully submitted this 28 day of June, 2013.



Oliver R. Davis WSBA no. 24560
Washington Appellate Project - 91052
Attorneys for Appellant

Appendix A

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STATE OF WASHINGTON
King COUNTY District COURT

STATE OF WASHINGTON, Plaintiff, v. Martines, Jose Figeroa Defendant.	NO. BLR01255 12 AFFIDAVIT/DECLARATION SEARCH WARRANT FOR EVIDENCE OF A CRIME, TO WIT: ☒ DRIVING WHILE UNDER THE INFLUENCE, RCW 46.61.502 ☐ PHYSICAL CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE, RCW 46.61.504 ☐ DRIVER UNDER TWENTY-ONE CONSUMING ALCOHOL, RCW 46.61.503 ☐

I, Dennis R. Tardiff, being duly sworn and upon oath, depose and say--

I am a duly appointed, qualified, and acting law enforcement officer for the Washington State Patrol.

I am charged with responsibility for the investigation of criminal activity occurring within King County and the State of Washington, and have probable cause to believe, and do, in fact, believe, that

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evidence of the crime(s) of:

- ☒ Driving While under the Influence, RCW 46.61.502
- ☐ Physical Control of Vehicle While under the Influence, RCW 46.61.504
- ☐ Driver under Twenty-one Consuming Alcohol, RCW 46.61.503
- ☐

is concealed in, about or upon the person of Martines, Jose Figeroa, who is currently located within the County of King, my belief being based upon information acquired through personal interviews with witnesses and other law enforcement officers, review of reports and personal observations, said information being as further described herein

My training and experience regarding investigations of the above- crime(s) is as follows:
The facts supporting the initial contact with Martines, Jose Figeroa are as follows:
I have been a Trooper with the Washington State Patrol for 13 years. In the academy I was trained in DUI detection and enforcement. I was trained to administer Standardized Field Sobriety tests per NHSTA standards at the Washington State Patrol Academy. I took part in a wet lab where I was trained to detect the effects of alcohol and or drug impairment in a controlled environment. I have arrested approximately 400 DUI's in my career and assisted in many other arrests by other Troopers. I have attended numerous refresher trainings in my career including BAC recertification. I have completed all required training to this date.

At approximately 2251 hours, I was advised of a 2 car rollover collision North SR 167 just north of SR 18. While in route to the collision I was advised by WSP communications of a possible verbal altercation in progress between the defendant and others at the scene. At approximately 2256 hours, I arrived at the scene and observed the two vehicles involved in the collision. The defendant vehicle was a White Toyota 4 Runner bearing Washington State registration ACF2196. The 4 runner was overturned and facing east in the northbound lanes blocking lane 1 of 3. The victim vehicle was a Green 1997 Ford Escort bearing Washington registration

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ADU7881. Facing north SR 167 cleared to the right shoulder. Just prior to my arrival communications advised of an off duty Tukwila officer and a King County Deputy were passing by and stopped to assist with the collision. The deputy observed a verbal altercation in progress. The altercation was between the defendant and the occupants of the victim vehicle the Green Ford Escort. The deputy stopped the altercation by placing the defendant into custody. Upon arrival I observed the defendant and the Deputy standing next to the over turned 4 Runner.

THE TUKWILA OFFICER DANIEL LINDSTROM. WHO WITNESSED THE ACCIDENT, INCLUDING DEFENDANT'S DRIVING AT TIME OF THE ACCIDENT

I contacted the deputy and he advised me he detected a strong odor of alcohol coming from the defendant in custody. The Deputy released custody of the defendant to me. While taking custody of the defendant I detected a strong odor of alcohol coming from his breath and observed his blood shot watery eyes. The defendant had a flush face and a fresh wound on his nose from the collision. I asked the defendant what he had to drink. The defendant said he had one Blue Moon. I advised him he was in custody for DUI. I escorted the defendant to my patrol car. While walking back to my car the defendant walked in a slow and deliberate manner. I placed the defendant into my car. As the defendant was attempting to get into my car he seemed off balance and struck the door frame as he entered the car.

At 2330 hours I advised the defendant of constitutional rights. The defendant responded to his rights by saying he did not understand. I attempted to clarify what he did not understand about his rights and he continued to stare straight ahead and stated he didn't understand.

Once the defendant was secured in my car I continued my investigation of the collision. During my investigation I contacted the occupants of the Green Ford Escort. I was advised by the witnesses that the defendant kicked his window out and crawled out of his vehicle. The witnesses claimed the defendant climbed back into his vehicle and retrieved a bag and threw it into the bushes. I recovered the bag from the bushes on the shoulder and observed a full Blue Moon Beer bottle in a 6 pack container.

THE WITNESSES ARE:
STEVEN GOLDIR-WELLS, MICHELLE FRANCIS, ALAN PRUITT.

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The defendant was identified by his Washington State License as Martines, Jose Figeroa DOB: 1972-07-06. DOL indicated the defendant had a prior conviction for Vehicular Assault.

The defendant, Martines, Jose Figeroa:

☐ declined to take a breath alcohol test on an instrument approved by the State Toxicologist.

☐ is at a location that lacks an instrument approved by the State Toxicologist for performing breath testing and the defendant has refused to submit to a blood test.

☒ was not offered an opportunity to take a breath alcohol test on an instrument approved by the State Toxicologist because:

- ☐ the available instrument is currently out of order.
- ☐ the defendant does not speak English and the implied consent warnings are not available in a language that the defendant understands.
- ☐ a low alcohol concentration reading on a portable breath test device makes it probable that any impairment is the result of a substance or drug other than alcohol.
- ☒ The person has ever previously been convicted of: Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522

☐ submitted to a breath test on an instrument approved by the State Toxicologist but the breath alcohol concentration reading of _____ is not consistent with the defendant's level of impairment suggesting that the defendant is also under the influence of a drug.

A sample of Martines, Jose Figeroa's blood, if extracted within a reasonable period of time after he/she last operated, or was in physical control of, a motor vehicle, may be tested to determine his/her current blood alcohol level and to detect the presence of any drugs that may have impaired his/her ability to drive. This search warrant is being requested 4 hours after Martines, Jose Figeroa ceased driving/was found in physical control of a motor vehicle.

The Legislature has specifically authorized the use of search warrants for blood in cases in which the implied consent statute applies. *See* RCW 46.20.308(1) ("Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or

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blood."). The Legislature has also specified specific classes of people as being qualified to withdraw blood for alcohol testing. *See* RCW 46.61.506(5).

Therefore, I request authority to cause a sample of blood, consisting of one or more tubes, to be extracted from the person of Martines, Jose Figeroa by a physician, a registered nurse, a license practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood.

Trooper Dennis R. Tardiff, Washington State Patrol# 596 Printed Name of Peace Officer, Agency, and Personnel Number	Signature of Peace Officer

SUBSCRIBED AND SWORN to before me this 17th day of June, 2012.

JUDGE DAVID E. MEYER

Distribution if warrant obtained in person—Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Officer).
Distribution if warrant obtained telephonically.—If search warrant was obtained telephonically, this complaint must be read in its entirety to the judge after the officer is placed under oath. Original (Prosecutor); 1 copy (Officer).

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STATE OF WASHINGTON
King COUNTY District COURT

STATE OF WASHINGTON, Plaintiff, v. Martines, Jose Figeroa, Defendant.	NO. BUR 01125812 SEARCH WARRANT FOR EVIDENCE OF A CRIME, TO WIT: X DRIVING WHILE UNDER THE INFLUENCE, RCW 46.61.502 ☐ PHYSICAL CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE, RCW 46.61.504 ☐ DRIVER UNDER TWENTY-ONE CONSUMING ALCOHOL, RCW 46.61.503 ☐

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON:

WHEREAS, upon the sworn complaint heretofore made and filed and/or the testimonial evidence given in the above-entitled Court and incorporated herein by this reference, it appears to the undersigned Judge of the above-entitled Court that there is probable cause to believe that, in violation of the laws of the State of Washington, evidence of the crime(s) of:

X Driving While under the Influence, RCW 46.61.502

☐ Physical Control of Vehicle While under the Influence, RCW 46.61.504

☐ Driver under Twenty-one Consuming Alcohol, RCW 46.61.503

☐

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is concealed in, about or upon the person of Martines, Jose Figeroa, who is currently located within the County of King.

NOW, THEREFORE, in the name of the State of Washington, you are hereby commanded with the necessary and proper assistance of a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood, to extract a sample of blood, consisting of one or more tubes, from the person of Martines, Jose Figeroa, within 4 hours of the issuance of this search warrant and to ensure the safe keeping of the same and to make a return of said warrant within three (3) days; with a particular statement of all the articles seized and the name and title of the person who extracted the sample of blood. A copy of said warrant shall be served upon the person from whom the blood is to be extracted and upon the person who extracted the sample of blood together with a receipt for the blood that was extracted.

GIVEN UNDER MY HAND this 17th day of June, 2012.

@ 4:05 AM

JUDGE

DAVID E. MEYER

Printed or Typed Name of Judge

This warrant was issued by the above judge, pursuant to the telephonic warrant procedure authorized by CrR 2.3 and CrRLJ 2.3 on 17th day of June, 2012, at _____ (time).

Trooper Dennis R. Tardiff WSP # 596 Printed Name of Peace Officer, Agency, and Personnel Number	Signature of Peace Officer Authorized to Affix Judge's Signature to Warrant

Distribution—No copies made until after Judge signs or approves an officer signing in the judge's stead after the entire warrant is read to the judge. Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Officer); 1 copy to give to person from whom the blood is extracted, 1 copy to give to person who extracted the blood.

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STATE OF WASHINGTON
King COUNTY District COURT

STATE OF WASHINGTON, Plaintiff, v. Martines, Jose Figeroa, Defendant.	NO. BUR0125512 INVENTORY AND RETURN OF PROPERTY TAKEN UNDER SEARCH WARRANT

A sample of blood consisting of 2 tubes was extracted from the person of, Martines, Jose Figeroa in the County of King June 17th, 2012, at 0504 (time) by Alexey Kosinga, who is employed by Valley Medical Hospital as a ☐ physician ☐ registered nurse ☐ licensed practical nurse

☐ nursing assistant as defined in chapter 18.88A RCW ☐ physician assistant as defined in chapter 18.73 RCW ☐ health care assistant as defined in chapter 18.135 RCW ☑ technician trained in withdrawing blood.

Acknowledged by Person from whom blood was extracted: Refuse to Sign

Date: June 17th, 2012 Time: 0504

Acknowledged by Person who extracted the blood: Alexey Kosinga

Date: June 17th, 2012 Time: 0504

Distribution—Original filed with Court Clerk within 3 days of service of warrant; 1 copy (Prosecutor), 1 copy (Officer).

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STATE OF WASHINGTON
King COUNTY District COURT

STATE OF WASHINGTON, Plaintiff, v. Martines, Jose Figeroa, Defendant.	NO. BUR0125512 RECEIPT FOR PROPERTY TAKEN

The following property was taken from the person of Martines, Jose Figeroa pursuant to a Search Warrant having the same cause number:

A sample of blood consisting of 2 tubes.

Acknowledged by Person from whom blood was extracted: Refuse to Sign

Date: June 17th 2012 Time: 0504

Acknowledged by Person who extracted the blood: Alexey Kusinga

Date: June 17th, 2012 Time: 0504

Distribution—Original Receipt left with the person from whom the blood was drawn or left with medical staff if person is unavailable; 1 copy (Court Clerk); 1 copy (Prosecutor); 1 copy (Officer); 1 copy (person who extracted the blood).

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 69663-7-I
v.	)	
	)	
JOSE MARTINES,	)	
	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF JUNE, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] JOSE MARTINES 311755 WASHINGTON CORRECTIONS CENTER PO BOX 900 SHELTON, WA 98584	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF JUNE, 2013.

X_____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710