

64203-1

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No. 64203-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRIAN CHRISTOPHER MARES,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mary E. Roberts

REPLY BRIEF OF APPELLANT

THOMAS M. KUMMEROW
Attorney for Appellant

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

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A. ARGUMENT

1. THE SEARCH OF THE DOL DATABASE AND CERTIFICATION THAT THIS IS THE PERSON REQUESTED CONSTITUTED INADMISSIBLE TESTIMONIAL HEARSAY

The State argues “[t]he certification simply attests to the authenticity of the document; it offers neither opinion nor exercise of discretion or judgment.” Respondent’s Brief at 10. In fact, the certification did both in this case.

The clerk here did not merely attest to the accuracy of the copy of Ms. Knopff’s driver’s license. The clerk here had to search the database for “Brittany Knopff” and determine that this particular record for “Brittany Knopff” was the person who was the person involved in this case. Thus, the certification was both an exercise in discretion, deciding among the “Brittany Knopffs” that this particular one was the individual for whom he or she was searching, and an opinion that this record is the “Brittany Knopff” requested by the prosecutor. The certification under this analysis is no different than the lab report in *Melendez-Diaz v. Massachusetts*, ___ U.S. ___, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009). Since the certification was testimonial and was admitted without Mr. Mares

being given the opportunity to cross-examine the clerk, it was error for the court to admit it.

2. PRIOR WASHINGTON CASES ARE NO LONGER VALID IN LIGHT OF *MELENDEZ-DIAZ*

The Washington Supreme Court has held that admission of a clerk's certification to the absence of DOL record for a defendant does not violate the Confrontation Clause. *State v. Kirkpatrick*, 160 Wn.2d 873, 888-89, 161 P.3d 990 (2007). See also *State v. Kronich*, 160 Wn.2d 893, 903, 161 P.3d 982 (2007) (admission of certificated DOL statement regarding revocation status of defendant's license also not violative of Sixth Amendment). The State contends that "under current Washington law (*Kirkpatrick* and *Kronich*), the driver's license was admissible." Respondent's Brief at 5.

Both *Kirkpatrick* and *Kronich* relied upon then existing decision of the United States Supreme Court interpreting the Sixth Amendment's Confrontation Clause. *Kronich*, 160 Wn.2d at 901-03; *Kirkpatrick*, 160 Wn.2d at 884-85, citing *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). But, these cases were decided before the decision in subsequent decision by the United States Supreme Court in *Melendez-Diaz*,

and as a result, are no longer good law and must be reexamined in light of the *Melendez-Diaz* decision.

B. CONCLUSION

For the reasons stated, Mr. Mares submits this Court must reverse his conviction and remand for a new trial.

DATED this 19th day of August 2010.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read 'Thomas M. Kummerow'. The signature is written over a horizontal line and extends significantly to the right, with a large loop at the end.

THOMAS M. KUMMEROW (WSBA 21518)
tom@washapp.org
Washington Appellate Project – 91052
Attorneys for Appellant

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DIVISION ONE**

STATE OF WASHINGTON,)	
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Respondent,)	
)	NO. 64203-1-I
v.)	
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BRIAN MARES,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 19TH DAY OF AUGUST, 2010, I CAUSED THE ORIGINAL **REPLY 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:

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<input checked="" type="checkbox"/> BRIAN MARES 818751 STAFFORD CREEK CORRECTIONS CENTER 191 CONSTANTINE WAY ABERDEEN, WA 98520	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 19TH DAY OF AUGUST, 2010.

X _____ 

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