

64802-1

64802-1

No. 64802-1-I

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

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STATE OF WASHINGTON,

Respondent,

v.

A.J.A. (DOB 8/7/93),

Appellant.

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

The Honorable Carol A. Schapira

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BRIEF OF APPELLANT

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THOMAS M. KUMMEROW  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1305 Fourth Avenue, Suite 802  
Seattle, Washington 98101  
(206) 587-2711

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**A. ASSIGNMENTS OF ERROR**

1. The police officer's stop of A.J.A. improperly violated his rights under the Fourth Amendment to the United States Constitution as well as his rights under article I, section 7 of the Washington Constitution.

2. The admission of a Department of Licensing (DOL) certificate of nonexistence of a driving record violated A.J.A.'s Sixth Amendment right to confront witnesses.

**B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

1. The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution bar warrantless seizures absent reasonable suspicion or probable cause. A police officer may stop a vehicle for a suspected traffic violation where the officer has probable cause to believe a violation has been committed. Here, the State alleged A.J.A. crossed the fog line on three occasions in a quarter mile at 1:00 a.m., but there was no evidence A.J.A.'s driving presented a danger to any other cars on the road. Did the singular act of crossing the fog line on three occasions in a quarter mile provide probable cause to believe A.J.A. had committed a traffic violation?

2. The Sixth Amendment to the United States Constitution guarantees a defendant the right to confront and cross-examine witnesses against them. Testimonial hearsay statements made by a non-testifying declarant violate the right to confrontation. A clerk's certification of nonexistence of a driver's license created for the sole purpose of providing evidence against the defendant is inadmissible testimonial hearsay. Here, the State introduced a certified copy of nonexistence of a driver's license, which was created by the prosecution for the sole purpose of proving A.J.A. was driving without a valid driver's license, and provided the only proof of that element of the offense. Did the admission of the certified copy violate A.J.A.'s right to confrontation requiring reversal of his conviction and remand for a new trial?

### C. STATEMENT OF THE CASE

On September 11, 2008, A.J.A. was driving northbound on West Valley Highway when his tires crossed over the fog line on the right side of the highway three times. CP 32; Appendix A at 2.<sup>1</sup> Pacific Police Officer David Newton stopped A.J.A. after observing what he believed to be traffic violations. CP 32; Appendix A at 2.

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<sup>1</sup> The parties stipulated to the admission of the Officer's report in lieu of his testimony at the CrR 3.6 hearing. The report was admitted as Exhibit 2. A copy of the police report is in Appendix A attached to this brief and is being designated in a Supplemental Designation filed simultaneously with this brief.

Officer Newton testified he knew A.J.A. from prior contacts and believed him to be under sixteen years of age. CP 33; Appendix A at 2.

Upon request, A.J.A. provided Officer Newton with his name and birthdate. CP 33; Appendix A at 2. Using this information, Officer Newton confirmed that A.J.A. did not have a valid driver's license. CP 33; Appendix A at 2. A.J.A. was subsequently charged with driving with no valid operator's license. CP 1. A.J.A. unsuccessfully moved to suppress the evidence that he was an unlicensed driver on the basis that the officer lacked probable cause to stop him. CP 2-10.

At trial, over defense objection, the State was allowed to prove the fact A.J.A. did not have a license by admitting Department of Licensing (DOL) certification of nonexistence of a driving record for A.J.A. RP 6-12, 26-27. A.J.A. was subsequently found guilty as charged. CP 33.

#### D. ARGUMENT

1. OFFICER NEWMAN'S TRAFFIC STOP OF  
A.J.A. WAS WITHOUT PROBABLE CAUSE  
AND VIOLATED A.J.A.'S RIGHT TO BE FREE  
FROM UNLAWFUL SEIZURES

a. Warrantless searches and seizures are

presumptively unlawful. The Fourth Amendment to the United States Constitution provides: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .” Similarly, the Washington Constitution provides that “no person shall be disturbed in his private affairs, or his home invaded, without authority of law.” This provision differs from the Fourth Amendment in that article I, section 7 “clearly recognizes an individual's right to privacy with no express limitations.” *State v. White*, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982). *See also State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008) (“By contrast [to the Fourth Amendment], article I, section 7 is unconcerned with the reasonableness of the search, but instead requires a warrant before any search, reasonable or not.”). Accordingly, while article I, section 7 necessarily encompasses those legitimate expectations of privacy protected by the Fourth Amendment, its scope is not

limited to subjective expectations of privacy but, more broadly, protects “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.” *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984).

b. The stop of A.J.A. lacked probable cause. A traffic stop is a “seizure” for purposes of our constitutional analysis. *State v. Ladson*, 138 Wn.2d 343, 350, 979 P.2d 833 (1999). Therefore, it is subject to the reasonableness criteria of *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Traffic stops are constitutional if the officer has probable cause to believe the driver has violated the traffic code. *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). Probable cause exists if the officer’s knowledge of the facts and circumstances are “sufficient to warrant a person of reasonable caution to believe that an offense has been committed.” *Clement v. Department of Licensing*, 109 Wn.App. 371, 375, 35 P.3d 1171 (2001).

Officer Newton stopped A.J.A. for crossing over the fog line on the right side of the roadway. CP 32. Under RCW 46.61.140(1):

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

“A vehicle crossing over the line for one second by two tire widths on an exit lane does not justify a belief that the vehicle was operated unlawfully.” *State v. Prado*, 145 Wn.App. 646, 649, 186 P.3d 1186 (2008). This Court’s decision in *Prado* further noted that “this is particularly so as the officer testified that there was no other traffic present and no danger posed to other vehicles.” *Id.* This Court found the subsequent stop and search of the driver unlawful. *Id.*

Here, Officer Newton’s police report noted the right tires of A.J.A.’s car crossed the fog line on the right side of the highway at least three times in a quarter mile. This occurred at 1:00 a.m. on September 11, 2008 on West Valley Highway South. Under *Prado*, this action by A.J.A. did not provide a valid basis for the ensuing traffic stop by Officer Newton.

The *Prado* decision was not premised merely on one lane incursion; it was that incursion *plus* the fact the driver’s actions did

not present a danger to any other vehicles. *Prado*, 145 Wn.App. at 649. As this Court noted in *Prado* regarding RCW 46.61.140(1):

We believe the Legislature’s use of the language “as nearly as practicable” demonstrates a recognition that brief incursions over the lane lines will happen.

*Prado*, 145 Wn.App. at 649. It is notable this Court used the term “incursions” to denote something more than just one incursion.

This argument is buttressed by the decision this Court relied on in deciding *Prado*, *State v. Livingston*, 206 Ariz. 145, 75 P.3d 1103 (2004). In *Livingston*, a police officer stopped a driver for a lane-usage violation based upon the following:

While patrolling in an unmarked vehicle, Officer Torres of the Department of Public Safety began following Livingston’s car northbound on Highway 77. Torres testified Livingston’s right side tires crossed the white shoulder line on one occasion.

Although Torres characterized that stretch of highway as rural, curved, and dangerous, he conceded that Livingston had been driving within the speed limit and that she did not weave or engage in any erratic driving. On the stretch of highway in question, only twelve inches of shoulder is paved. The remaining shoulder is dirt. According to Torres, Livingston’s wheels stayed on the paved portion of the highway at all times, and she did not “jerk []” her vehicle or overcorrect after crossing the white line. Torres conceded “there was no other traffic around” and that when Livingston crossed the right-hand line, that deviation had not affected any other traffic.

206 Ariz. at 147. The trial court ruled there was no lane change violation and the appellate court affirmed. *Id.*

Again, if it was merely the singular act of crossing the fog line, neither *Prado* nor *Livingston* would have spent as much time as they do talking about the fact the driving did not endanger anyone else on the road. Thus, it is not merely the act of crossing the line that is evidence of a lane change violation, but whether it created a danger to any other cars on the road.

Here, one can assume that at 1 a.m. there was little if no traffic present, thus A.J.A.'s action presented no danger to other vehicles. If there had been traffic present, or had A.J.A.'s actions presented a danger to other vehicles, one could be certain Officer Newton would have included those facts in his report. He did not. Further, Officer Newton did not state that he was investigating A.J.A. for suspected driving while under the influence; the stop was based solely on the incursions over the lane line. Appendix A at 2. The facts in *Livingston* are strikingly similar to A.J.A.'s matter but for the fact he crossed the line two additional times. Thus the lane incursions alone do not support the resulting traffic stop absent an

indication A.J.A.'s driving presented a danger to other drivers.

*Prado*, 145 Wn.App. at 649; *Livingston*, 206 Ariz. at 147.<sup>2</sup>

c. The resulting discovery by Officer Newton that A.J.A. did not have a valid driver's license must be suppressed.

Where a traffic stop was without probable cause, all evidence resulting from that stop must be suppressed. *State v. Larson*, 93 Wn.2d 638, 611 P.2d 771 (1980), citing *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *State v. Byrd*, 110 Wn.App. 259, 39 P.3d 1010 (2002).

Here A.J.A. was unlawfully seized when Officer Newton stopped his vehicle without probable cause. The fact of an invalid stop is all that is required to suppress any resulting evidence seized pursuant to that stop. *Prado*, 145 Wn.App. at 649. As a result, this Court should order the evidence that A.J.A. was driving without a valid driver's license suppressed and reverse his conviction.

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<sup>2</sup> The state does not dispute that *Livingston* otherwise drove safely on a dangerous, curved road apart from her alleged isolated and minor breach of the shoulder line. Under such circumstances, the trial court did not abuse its discretion when it found that *Livingston* committed no violation and implicitly found that the officer had lacked a reasonable basis for the stop.

*Livingston*, 206 Ariz. at 148.

2. THE ADMISSION OF A CERTIFIED COPY OF  
THE NON-EXISTENCE OF A DRIVING  
RECORD VIOLATED A.J.A.'S SIXTH  
AMENDMENT RIGHT TO CONFRONTATION

a. The Confrontation Clause bars admission of

testimonial hearsay absent an opportunity to confront the declarant.

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to confront and cross examine witnesses. The Confrontation Clause “applies to ‘witnesses’ against the accused - in other words, those who ‘bear testimony.’ ” *Crawford v. Washington*, 541 U.S. 36, 51, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) (citation omitted). It also “bars ‘admission of testimonial statements of a witness who did not appear at trial unless [the declarant] was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.’ ” *Davis v. Washington*, 547 U.S. 813, 821, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006), quoting *Crawford*, 541 U.S. at 53-54. The State has the burden of establishing the witness's statements were not testimonial. *United States v. Arnold*, 486 F.3d 177, 192 (6th Cir.2007), cert. denied, 552 U.S. 1103, 128 S.Ct. 871, 169 L.Ed.2d 736 (2008).

A challenge to the admission of out-of-court testimony under the Confrontation Clause is reviewed *de novo*. *State v. Mason*, 160 Wn.2d 910, 922, 162 P.3d 396 (2007), *cert. denied*, 553 U.S. 1035, 128 S.Ct. 2430, 171 L.Ed.2d 235 (2008).

b. The DOL certified record of nonexistence of a driving record was testimonial and its admission at trial was barred by the Confrontation Clause. The admission of the certified copy of DOL's certificate of nonexistence of a driving record at trial was used to prove A.J.A. had no valid operator's license and thus, violated his right to confrontation.

The United States Supreme Court has ruled that admission of lab reports without the lab technician testifying violated the Confrontation Clause. *Melendez-Diaz v. Massachusetts*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009). In *Melendez-Diaz*, the defendant was charged with distributing and trafficking in cocaine. To prove that the substance officers seized from him was in fact cocaine, the prosecutor submitted three "certificates of analysis" sworn to by laboratory analysts before a notary public. The certificates stated simply, "The substance was found to contain: Cocaine." *Melendez-Diaz*, 129 S.Ct. at 2531. The Supreme Court concluded under a "rather straightforward"

application of *Crawford* that the certificates were inadmissible. *Melendez-Diaz*, 129 S.Ct. at 2531. After determining the certificates were “quite plainly affidavits,” the Court held that they constituted “testimonial” statements because they were “functionally identical to live, in-court testimony, doing ‘precisely what a witness does on direct examination.’” *Melendez-Diaz*, 129 S.Ct. at 2532, quoting *Davis*, 547 U.S. at 830. Moreover, the statements were “‘made under circumstances which would lead an objective witness reasonably to believe that the statement[s] would be available for use at a later trial.’” *Melendez-Diaz*, 129 S.Ct. at 2532, quoting *Crawford*, 541 U.S. at 52. Consequently, the analysts were “witnesses” for Confrontation Clause purposes and *Melendez-Diaz* had the right to confront them. *Melendez-Diaz*, 129 S.Ct. at 2532. Because he was not given this opportunity, the evidence should not have been admitted. *Melendez-Diaz*, 129 S.Ct. at 2542. The Court concluded, “The Sixth Amendment does not permit the prosecution to prove its case via *ex parte* out-of-court affidavits, and the admission of such evidence against *Melendez-Diaz* was error.” *Melendez-Diaz*, 129 S.Ct. at 2542.

Regarding certifications or affidavits by clerks, the Court held that in some cases these can be testimonial: “A clerk could by

affidavit *authenticate* or provide a copy of an otherwise admissible record, but could not do what the analysts here did here: *create* a record for the sole purpose of providing evidence against a defendant.” *Id.* at 2539 (italics in original).

No cases from Washington have addressed the scope of *Melendez-Diaz* as it applies to DOL certifications. Two decisions from other jurisdictions have addressed the identical issue and concluded the DOL certification violates the Confrontation Clause in light of *Melendez-Diaz*. In *Washington v. State*, and relying on *Melendez-Diaz*, the Florida Court of Appeal ruled that a “certification of non-licensure” prepared by the State of Florida Licensing Division, Construction Industry Licensing Board, in a unlicensed contractor criminal matter violated the Confrontation Clause, because it

is accusatory, was introduced to establish an element of the crime, was prepared at the request of law enforcement as part of its investigation in this case, and is evaluative in the sense that it represents not simply production of an existing record, but an assertion regarding the individual’s search of a database or databases. As such, the admission of the document, over the defendant’s *Crawford* objection, was error and a violation of the defendant’s Sixth Amendment rights.

18 So.3d 1221, 1224 (Fla.App.Ct. 2009).

Similarly, in *Tabaka v. District of Columbia*, the District of Columbia Court of Appeals, again relying on *Melendez-Diaz*, ruled that the admission of a Department of Motor Vehicles (DMV) certification that a search of its records revealed no license for the defendant (CNR) in a prosecution for driving without a driver's license violated the Sixth Amendment. 976 A.2d 173, 175-76 (D.C.Ct.App. 2009). The Court ruled:

The Supreme Court's analysis [in *Melendez-Diaz*] conclusively shows that the CNR in this case, "a clerk's certificate attesting to the fact that the clerk searched for a particular relevant record and failed to find it," was inadmissible over objection without corroborating testimony by the DMV official who had performed the search. The contrary conclusion reached by a division of this court in an analogous setting, (attesting to no record of license to carry a pistol or registration of firearm not "testimonial"), cannot survive the holding and analysis of *Melendez-Diaz*. And, because the CNR was the sole and sufficient proof of appellant's non-licensure to operate a motor vehicle, her conviction for that offense cannot stand.

*Id* at 176 (citations omitted).

In a slightly different scenario but still relevant to the issue here, in *United States v. Martinez-Rios*, the Fifth Circuit ruled the admission of a certificate of nonexistence of record (CNR) in a undocumented alien prosecution violated the Sixth Amendment. 595 F.3d 581, 585-86 (5<sup>th</sup> Cir. 2010).

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 since business records are not testimonial. *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). After *Melendez-Diaz* this overly broad statement is incorrect and in violation of the right to confrontation under the Sixth Amendment to the United States Constitution and, as such, must be reexamined in light of *Melendez-Diaz*.<sup>3</sup>

Here, A.J.A. objected to the admission of the DOL certified copy prior to trial and during trial on confrontation clause grounds. CP 16-21; RP 6-12. Further, counsel noted that the DOL certification was created solely for this litigation in order to prove an element of the offense. RP 7.

As a consequence, the clerk's action here is identical to the clerk's actions in *Takada* and *Washington*. The clerk's certification was not merely to the copy's authenticity, but was the result of a

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<sup>3</sup> The Supreme Court has granted review of this Court's decision in *State v. Lui*, 153 Wn.App. 304, 221 P.3d 948 (2009), *review granted*, 168 Wn.2d 1018 (2010), which applied *Melendez-Diaz* and ruled reports by a non-testifying pathologist and laboratory technician did not violate the Sixth Amendment.

search by the clerk of the DOL database for “A.J.A.” and an analysis to determine whether the “A.J.A.” she found was indeed the “A.J.A.” in this case. As a result, the admission of this certified copy violated A.J.A.’s right to confrontation. *Melendez-Diaz*, 129 S.Ct. at 2539.

c. The error in admitting the DOL certification was not harmless. Confrontational clause errors are subject to a harmless error analysis. *Lily v. Virginia*, 527 U.S. 116, 140, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999); *State v. Shafer*, 156 Wn.2d 381, 395, 128 P.3d 87, *cert. denied*, 549 U.S. 1019 (2006). Constitutional error is presumed to be prejudicial and the State bears the burden of proving beyond a reasonable doubt that the error was harmless. *Chapman v. California*, 386 U.S. 18, 23, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); *State v. Guloy*, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985).

The certified copy of the nonexistence of a driving record was the *only* proof the State offered of the element that A.J.A. drove a motor vehicle without a valid operator’s license. The certification was generated by the prosecution for the sole purpose of proving that element at trial and was the result of the clerk searching the DOL database for the name of “A.J.A.” As a

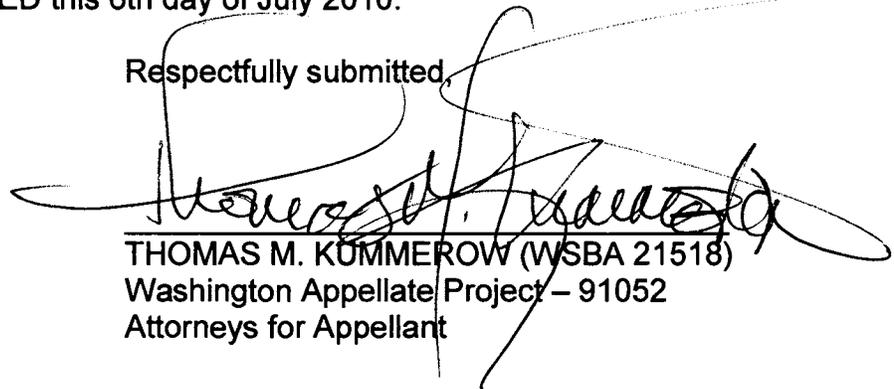
consequence, the error in admitting the DOL certification was not harmless. A.J.A. is entitled to reversal of his conviction and remand for a new trial.

E. CONCLUSION

For the reasons stated, A.J.A. submits this Court must reverse his conviction and remand for dismissal or a new trial.

DATED this 6th day of July 2010.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Thomas M. Kummerow', is written over the typed name and extends upwards into the 'Respectfully submitted' line.

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

## APPENDIX A

ORIGINAL

AGENCY: <b>Pacific PD</b>	WA0172100	CASE NUMBER <b>2008-1193</b>	FILE NUMBER	PCN NUMBER	<b>SUPERFORM</b>
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ARREST INFORMATION		ACCOMPLICES
DATE & TIME OF VIOLATION <b>9/11/2008 1:01 AM</b>	CRIMINAL TRAFFIC CITATION ATTACHED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
DATE OF ARREST/TIME <b>9/11/2008 1:01 AM</b>	ARREST LOCATION <b>100 W Valley HW N Algona, WA 98001</b>	

SUSPECT INFORMATION		DOB	ALIAS, NICKNAMES
NAME (LAST, FIRST, MIDDLE/JR, SR, 1st, 2nd) <b>Archuleta, Andrew J</b>		<b>8/7/1993</b>	
ARMED/DANGEROUS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IDENTITY IN DOUBT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	CITIZENSHIP	
PHYSICAL DETAILS			
SEX <b>M</b>	WEIGHT <b>510</b>	WEIGHT <b>215</b>	SKIN TONE <b>A</b>
RACE <b>A</b>	EYE <b>BRO</b>	HAIR <b>BLK</b>	SCARS, MARKS, TATTOOS, DEFORMITIES
IDENTIFICATION DETAILS			
CCN	PRIOR BA # <b>0</b>	AFIS #	FBI #
STATE ID #	DRIVER'S LICENSE #	STATE	SSN
RESIDENCE		EMPLOYMENT / SCHOOL	
LAST KNOWN ADDRESS <b>741 1st AV E Pacific, WA 98047</b>		EMPLOYER, SCHOOL (ADDRESS, SHOP/UNION NUMBER)	
RESIDENCE PHONE <b>2538760942</b>		BUSINESS PHONE	OCCUPATION
EMERGENCY CONTACT			
PERSON TO BE CONTACTED IN CASE OF EMERGENCY <b>Tullefano, Fofo T</b>		RELATIONSHIP <b>Mother</b>	Address <b>741 1st AV E Pacific, WA 98047</b>
			PHONE <b>2538339895</b>

CHARGE INFORMATION			
OFFENSE <input type="checkbox"/> DV <input type="checkbox"/> FUGITIVE	<b>M - No Valid Operator License Without ID</b>	RCW / ORDF <b>46320.005</b>	COURT / CAUSE # <b>King County Juvenile /</b>
OFFENSE <input type="checkbox"/> DV <input type="checkbox"/> FUGITIVE		RCW / ORDF	COURT / CAUSE #
			CITATION #

WARRANT / OTHER				
WARRANT DATE	WARRANT NUMBER	OFFENSE	AMOUNT OF BAIL	WARRANT TYPE
ORIGINATING POLICE AGENCY		ISSUING AGENCY	WARRANT RELEASED TO: (SERIAL # / UNIT / DATE / TIME)	

RECEIVED  
OCT 22 2008

PROPERTY INFORMATION	
LIST VALUABLE ITEMS OR PROPERTY LEFT FOR ARRESTEE AT JAIL	
LIST VALUABLE ITEMS OR PROPERTY ENTERED INTO EVIDENCE (SIMPLE DESCRIPTION, IDENTIFYING MARKS, SERIAL #)	
LIST ITEMS ENTERED INTO SAFEKEEPING	
TOTAL CASH OF ARRESTEE <b>\$0.00</b>	WAS CASH TAKEN INTO EVIDENCE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO AMOUNT: <b>\$0.00</b>
SIGNATURE OF JAIL STAFF RECEIVING ITEMS / SERIAL #	

RECEIVED

OFFICER INFORMATION		
ARRESTING OFFICER / SERIAL # <b>Newton, Dave 2104</b>	TRANSPORTING OFFICER / SERIAL #	SUPERVISOR SIGNATURE / SERIAL # <i>[Signature]</i>
SUPERFORM COMPLETED BY (SIGNATURE/SERIAL #) <i>[Signature]</i> <b>2104</b>	CONTACT PERSON FOR ADDITIONAL INFORMATION (NAME/SERIAL#/PHONE) <b>Newton, D 2104 2539291130</b>	

King County Juvenile Division

COURT FILE		
SUPERIOR COURT FILING INFO <input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE <input type="checkbox"/> OUT ON BOND	COURT CAUSE (STAMP OR WRITE)	
COURT/DIST CT NO	DIST. CT. BOND \$	SUP. CT. DATE

EXTRADITE			
PERSON APPROVING EXTRADITION	SEAKING-LOCAL ONLY WACIC-STATE WIDE <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM ID & OR ONLY <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM OR, ID, MT, WY, CA, NV, UT, CO, AZ, NM, HI, AK <input type="checkbox"/>
	NCIC-WILL EXTRADITE FROM FROM ALL 50 STATES <input type="checkbox"/>		
E N T R Y	CCN _____ WAC _____ NCIC _____	DOE _____ TOE _____ OP _____	C L E A R A N C E DOC _____ TOC _____ OP _____

# PACIFIC POLICE DEPARTMENT

## GENERAL REPORT

Case No

2008-1193

Disclosure Information  
 O.K to Disclose  
 Do Not Disclose

Arrest Property <input checked="" type="checkbox"/>	Vehicle Medical <input checked="" type="checkbox"/>	Juvenile Domestic Viol <input checked="" type="checkbox"/>	Report Name/Offense <b>NO VALID OPERATOR LICENSE WITHOUT ID</b>
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Type of Premise (For Vehicles State Where Parked) <b>CITY STREET</b>	Entry Point	Method
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Weapon/Tool/Force Used	Date Reported <b>09-11-2008</b>	Time Reported <b>0101</b>	Date Occurred <b>091108</b>	Time Occurred <b>0101</b>	Day of Week <b>Thurs</b>
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Location of: Incident  Address   
**100 BLOCK WEST VALLEY HIGHWAY N ALGONA, KING COUNTY, WASHINGTON**

PERSON/BUSINESS/INVOLVED	Code: C (Person Reporting Complaint) V (Victim) W (Witness) P (Parent) VB (Victim Business) O (Other) J (Juvenile)									
	Code	Name: Last First Middle (Maiden)			Race	Sex	Dob	Home Phone		
	<b>P</b>	<b>TUILEFANO FOFO T</b>			<b>P</b>	<b>F</b>	<b>6-18-69</b>	<b>253-833-9895</b>		
	Address: Street City State Zip				Place of Employment/School			Business Phone		
	<b>741 1<sup>ST</sup> AVE E PACIFIC WA 98047</b>				<b>Costco-Tukwila</b>			<b>206-574-7005</b>		
	Code	Name: Last First Middle (Maiden)			Race	Sex	Dob	Home Phone		

Additional Persons On Report Continuation Sheet (People)

PERSON NUMBER 1	Code: A (Arrest) S (Suspect) SV (Suspect Verified) R (Runaway) M (Missing Person)									
	Code	Name: Last First Middle (Maiden)			Home Phone			Business Phone		
	<b>A</b>	<b>ARCHULETA ANDREW J</b>			<b>253-876-0942</b>					
	Address: Street City State Zip				Occupation			Place of Employment/School		Relation to Victim
	<b>741 1<sup>ST</sup> AVE E PACIFIC WA 98047</b>									

PERSON NUMBER 2	Dob	Race	Sex	Height	Weight/Bld	Hair	Eyes	Clothing Scars, Marks, Tattoos, Peculiarities, A.K.A			
	<b>080793</b>	<b>A</b>	<b>M</b>	<b>5-10</b>	<b>215</b>	<b>BLK</b>	<b>BRO</b>				
	Number <input type="checkbox"/> Booked <input type="checkbox"/> Cited		Charge Details (Include Ordinance or R.C.W Number)								
	Filed		<b>RCW 46.20.005 NO VALID OPERATOR LICENSE W/O ID</b>								
	<input type="checkbox"/> Additional Persons On Report Continuation Sheet (People)										

VEHICLE #1	Stolen <input type="checkbox"/> Victim <input type="checkbox"/> Impounded <input checked="" type="checkbox"/>		License No.		Lic. State		Lic. Year		Lic Type		Vin.	
	Recovery <input type="checkbox"/> Suspect <input checked="" type="checkbox"/> Hold <input type="checkbox"/>		<b>400VNN</b>		<b>WA</b>		<b>2009</b>		<b>PC</b>		<b>1GHDT13W6R2703340</b>	
	Year		Make		Model		Body Style		Color		Peculiarities	
	<b>1994</b>		<b>OLDS</b>		<b>BRAV</b>		<b>UTIL</b>		<b>BLU</b>			

Ori. & Case No.		Registered Owner: Name			Address		City		State		Zip		Home Phone	
		<b>ROBERT WARD III</b>			<b>741 1<sup>ST</sup> AVE E</b>		<b>PACIFIC</b>		<b>WA</b>		<b>98047</b>			

OFFICER'S NAME AND NUMBERS: <b>D. Newton #2104</b>										VIDEO RECORDED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		APPROVAL <i>[Signature]</i>	
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<b>STOLEN *</b>	Divorce/Separation in Progress? <input type="checkbox"/> Yes <input type="checkbox"/> No	Payments Delinquent <input type="checkbox"/> Yes <input type="checkbox"/> No	Car Locked <input type="checkbox"/> Yes <input type="checkbox"/> No
	Key In Switch <input type="checkbox"/> Yes <input type="checkbox"/> No	Key Needed <input type="checkbox"/> Yes <input type="checkbox"/> No	Permission to Drive Given <input type="checkbox"/> Yes <input type="checkbox"/> No

**STATEMENT OF PERSON REPORTING**

I, the undersigned, declare this to be a true and correct report. I will testify, in court, under oath, to the facts herein. I understand that I may be charged with violation of R.C.W 9A.76.020 "Obstructing a Public Servant" if filing a false report. If reporting a stolen vehicle, I understand I am liable for all towing and storage costs incurred in the recovery of the vehicle.

Date \_\_\_\_\_ Time \_\_\_\_\_ Signature \_\_\_\_\_

<b>MEDICAL</b>	Type of Injury or Illness			Hospital Taken Too		By ?		<input type="checkbox"/> Employee <input type="checkbox"/> On Duty	
	Extent of Injuries				Attending Physician		Suicide Note <input type="checkbox"/> Found <input type="checkbox"/> None		
<b>PROPERTY</b>	Stolen	<input type="checkbox"/>	Evidence	<input type="checkbox"/>	Recovered	Theft Inventory Att.	<input type="checkbox"/>	Total Theft Amount \$	Total Damaged Amount \$
	Lost	<input type="checkbox"/>	Damaged	<input type="checkbox"/>	Narrative	Theft Inventory Left	<input type="checkbox"/>		

Damaged and Minor Property Loss

	Insurance Company
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<b>PARENT/GUARDIAN NOTIFICATION</b>	Name and Relationship of Person Notified	Date and Time Notified	Notified By
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On 091108, at about 0101 hours, I observed a blue Oldsmobile driving in the 400 Block of West Valley Highway S in Algona, King County, Washington. I closed distance with the vehicle and was observing its driving as it proceeded north on the roadway. I observed the right tires of the vehicle cross the white "fog line" in its lane of travel. From 1<sup>st</sup> Ave N to the 800 block of West Valley Highway, the vehicle's right tires touched or crossed the fog line at least 3 times in a quarter mile. I stopped the vehicle, bearing Washington plate 400VNN for this violation.

I contacted the driver, who I recognized from previous contacts as Andrew ARCHULETA. I know ARCHULETA to be under the age of 16 and I asked if he had any form of ID, to which he replied that he did not. I gathered ARCHULETA's information to run a check through the Department of Licensing. There was no record for ARCHULETA.

I returned to the vehicle and asked ARCHULETA to step out, which he did without incident. I advised ARCHULETA he was under arrest for driving without a license and placed him in handcuffs, gauging and double-locking the cuffs. I advised ARCHULETA of his Rights and Juvenile Warning, to which ARCHULETA stated he understood.

I placed ARCHULETA in the back of my patrol vehicle and a search of the vehicle was conducted with the assistance of a narcotics K9, finding nothing of interest. I called King County Juvenile Court Services to see if there were pending matters involving ARCHULETA. I was informed by the staff there was nothing pending for ARCHULETA.

I completed an impound form and the vehicle was impounded to Valley Towing. I transported ARCHULETA to his residence, where he was released. I returned to the Pacific Police Department and entered the vehicle in WACIC as impounded. This case will be forwarded to the King County Juvenile Prosecuting Attorney for filing of charges.

Disposition: Cleared by arrest

I certify (declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. R.C.W. 9A.72.085



9-11-08

PACIFIC, WA

Officer Newton #2104

DATE

PLACE

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 64802-1-I
v.	)	
	)	
A.J.A.,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7<sup>TH</sup> DAY OF JULY, 2010, 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:

<p>[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104</p>	<p>(X) ( ) ( )</p>	<p>U.S. MAIL HAND DELIVERY</p> <hr/>
<p>[X] ANDREW J.A. (NO VALID ADDRESS) C/O COUNSEL FOR APPELLANT WASHINGTON APPELLATE PROJECT</p>	<p>( ) ( ) (X)</p>	<p>U.S. MAIL HAND DELIVERY RETAINED FOR MAILING ONCE ADDRESS OBTAINED</p>

FILED  
COURT OF APPEALS DIV #1  
STATE OF WASHINGTON  
2010 JUL -7 PM 4:27

**SIGNED** IN SEATTLE, WASHINGTON THIS 7<sup>TH</sup> DAY OF JULY, 2010.

X \_\_\_\_\_ 

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