

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEROME ANTHONY ALFORD,
Plaintiff-Appellant,

v.

JOI HANER, a Washington State
Patrol Officer; JOHN DOE HANER,
her husband; GERALD DEVENPECK,
Sgt., Washington State Patrol;
JANE DOE DEVENPECK, his wife,
Defendants-Appellees.

No. 01-35141

D.C. No.

CV-99-05586-RJB

Western District
of Washington,
Tacoma

ORDER

On Remand From the United States Supreme Court

Filed August 9, 2005

Before: James R. Browning, Betty B. Fletcher, and
Ronald M. Gould, Circuit Judges.

ORDER

This case has returned to us on remand from the Supreme Court. *See Devenpeck v. Alford*, 125 S. Ct. 588 (2004), *reversing Alford v. Haner*, 333 F.3d 972 (9th Cir. 2003). In turn, we now remand the case to the district court.

As the Supreme Court has pointed out, we did not, in our original disposition, decide whether the police had probable cause to arrest Alford for obstructing a law enforcement officer or for impersonating a law enforcement officer. *See* 125 S. Ct. at 595. Our review of the record below reveals that the jury did not have occasion to pass on this question either. In fact, the jury received no instruction on the elements of any

offense for which Alford might have been arrested other than a violation of Washington's Privacy Act.

We therefore REMAND the case to the district court for retrial on the alternate theories indicated by the Supreme Court.

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