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

NO. 44079-2

STATE OF WASHINGTON,

Respondent.

vs.

JAMES VINCENT MEYERS,

Appellant.

On Appeal from the Superior Court of Lewis County

STATE'S RESPONSE BRIEF

PROSECUTING ATTORNEY
Law and Justice Center
345 W. Main St. 2nd Floor
Chehalis WA 98532
360-740-1240

By: _____
J. BRADLEY MEAGHER
WSBA #18685

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

FACTS

The state accepts the facts as presented by the Appellant with the following additions:

Officer Phipps testified that when sitting in his patrol car, he could not see the middle two numbers on the defendant's license plate due to the trailer ball being mounted directly behind those two numbers. RP 10, 11.[1] If Phipps drove his vehicle to the left, he might have only seen one, or a partial, of the two numbers, but then he would be in the oncoming traffic lane. RP 10. If Phipps drove to the right, it would be possible that one of the numbers might become clearer, but then he would be risking a collision with parked cars on the road's shoulder. RP 10.

James Meyers (Appellant/Defendant) testified at the 3.6 hearing. He limited his testimony to the angle at which his photograph of the trailer hitch was taken. RP 15-16. Meyers did not testify regarding whether or not he thought RCW 46.16A.200 was vague or somehow difficult to obey.

[1] All "RP" references in this brief will be to the report of proceedings transcript of the CrR 3.6 hearing held on July 12, 2012.

ARGRUMENT

I. The Defendant/Appellant did not meet his burden of proving the vagueness of the ordinance beyond a reasonable doubt.

A statute or ordinance is presumed to be constitutional. *State v. Halstien*, 122 Wn.2d 109, 118, 857 P.2d 270 (1993), cited in *State v. Myles*, 127 Wn.2d 807, 812, 903 P.2d 979 (1995). A party challenging the ordinance's constitutionality on the theory that the ordinance is vague has the heavy burden of proving the ordinance's unconstitutionality beyond a reasonable doubt. *Spokane v. Douglass*, 11 Wn.2d 171, 177, 795 P.2d 693 (1990).

Normally, the State would not comment on lack of testimony by a defendant. But where the burden is on the defendant to prove beyond a reasonable doubt that the ordinance is vague, the State would be remise in not pointing out to the court that the defendant did not offer any testimony whatsoever in order to meet his burden. The only testimony he offered was in support of his photograph, which was taken at an observation point different than that of the officer in the patrol car. RP 16; RP 10. The defendant simply has not met his burden of proof beyond a reasonable doubt, and the court should affirm his conviction on that basis alone.

II. The Statute requiring a license plate be "kept clean and be able to be plainly seen and read at all times" (RCW 46.16A.200 (5)(a)(iii)) is not vague.

Under the due process clause, an "ordinance is unconstitutional when it forbids conduct in terms so vague that persons of common intelligence must guess at its meaning and differ as to its application. *Spokane v. Douglass*, 11 Wn.2d at 179 (1990), *citing Burien Bark Supply v. King County*, 106 Wn.2d 868, 871, 725 P.2d 994 (1986). If persons of ordinary intelligence can understand what the ordinance proscribes, notwithstanding some possible areas of disagreement, the ordinance is sufficiently definite. *Spokane v. Douglass*, 11 Wn.2d at 179 (1990).

It is hard to imagine an ordinance more clearly written than RCW 46.16A.200. The words "kept clean and be able to be plainly seen and read at all times" require no interpretation other than their plain meaning in the English language. Plainly stated, if a person cannot read the license plate at all times, he is in violation of the statute. If some of the characters on the plate are obscured by a trailer hitch, then the plate cannot be "plainly seen and read" until the hitch is removed. A person who puts a trailer hitch in front of a license plate necessarily knows that whatever he places in front of the hitch will block some or all of the characters.

On page 14 of his opening brief, Appellant presents a long list of visual "perspectives" an office could take in viewing a rear license plate. None of those perspectives and the conclusions Appellant derives from them are supported by the record. Appellant argues that if a person is towing a trailer, then one cannot see the license plate. That is not the fact pattern here. Moreover, if the Appellate want's to engage in arguing scenarios, then one can argue that the very reason a trailer hitch is removable is so that it can be removed anytime the defendant is not towing a trailer *because* it is illegal to cover the license plate.

Appellant challenges RCW 46.16A.200 (5)(a)(iii) based on the test outlined in *State v. Myles*, 127 Wn.2d 807, 812, 903 P.2d 979 (1995); Appellant's opening brief page 13. Myles was convicted of unlawful possession of a dangerous weapon under RCW 9.41.250. *State v. Myles*, 127 Wn.2d at 809. The Court of Appeals reversed based on insufficiency of evidence. The Washington State Supreme Court overturned the Appellate Court and affirmed the decision. The Court analyzed the vagueness of the statute by simply looking at the plain meaning of the words used in the statute. *State v. Myles*, 127 Wn.2d at 813. The Court held that the statute defined the offense with sufficient definiteness

to inform ordinary people what conduct is proscribed. *State v. Myles*, 127 Wn.2d at 814.

Applying this analysis to Mr. Meyers' case, the term "read" in the context of RCW 46.16A.200 (5)(a)(iii) means to "perceive, receive or comprehend".[2] You cannot perceive or comprehend the license plate number if part of the number is covered up by a trailer hitch ball. No further explanation of the term is necessary. The fact that a person may be able to ascertain all of the letters by placing himself at an obscure angle unavailable to an officer sitting in a patrol car misses the point. The statute makes clear that the view of the license plate is to be unobstructed.

CONCLUSION

The plain language in RCW 46.16A.200 (5)(a)(iii) is not at all vague. An ordinary person of common intelligence would read that statute and understand that the license plate number should not in any way be blocked.

The Trial Court should be affirmed.

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[2] *The American Heritage Dictionary*, Houghton Mifflin Company (1987)

RESPECTFULLY SUBMITTED this 1 day of August, 2013.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

BY: _____
J. BRADLEY MEAGHER, WSBA #18685
Chief Criminal Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

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The undersigned declares that a copy of the State's Response Brief was served upon Appellant by EMAILING said document to Appellant's attorney, Peter Tiller, at the following email address: slong@tillerlaw.com

Dated this 1st day of August, 2013, at Chehalis, Washington.

Casey L. Cutler

LEWIS COUNTY PROSECUTOR

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