

Supreme Court No. 90487-1
COA No. 44079-2-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMES V. MEYERS,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner James Meyers, the appellant below, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Meyers seeks review of Division Two's unpublished opinion in *State v. Meyers*, No. 44079-2-II (Slip Op. filed June 10, 2014). No Motion for Reconsideration has been filed in the Court of Appeals. A copy of the opinion is attached hereto.

C. ISSUE PRESENTED FOR REVIEW

1. The trial court found RCW 46.16A.200(5)(a)(iii) and (7)(c) to be constitutional. Did this ruling constitute probable error that violates Meyers' right to due process? RAP 13.4(b)(3); RAP 13.4(b)(4).

D. STATEMENT OF THE CASE

On May 17, 2013, Meyers filed a brief alleging that the trial court had erred in regards to the above-indicated issue. The brief set out facts and law relevant to this petition and are hereby incorporated herein by reference.

E. PROCEEDINGS ON APPEAL.

On appeal, Meyers argued that the trial court erred in denying his suppression motion and that RCW 46.16A.200(5)(a)(iii) and (7)(c) are unconstitutionally vague as applied. Brief of Appellant at page 7. The Court rejected Meyers' argument. For the reasons set forth below, he seeks review.

F. ARGUMENT

It is submitted that the issue raised by this Petition should be addressed by this Court because the decision of the Court of Appeals raises a significant question under the Constitution of the State of Washington as set forth in RAP 13.4(b).

1. THIS COURT SHOULD ACCEPT REVIEW BECAUSE THE LOWER COURT ERRED WHEN IT FOUND RCW 46.16A.200(5)(A)(III) AND (7)(C) TO BE CONSTITUTIONAL AS APPLIED TO MEYERS

RCW 46.16A.200(5)(a) provides:

(5)(a) Display. License plates must be:

... (iii) Kept clean and be able to be plainly seen and read at all times[.]

RCW 46.16A.200(7) provides in relevant part:

...
(c) Use holders, frames, or other materials that change, alter, or make a license plate or plates illegible. License plate frames may be used on license plates only if the frames do not obscure license tabs or identifying letters or numbers on the plates and the license plates can be plainly seen and read at all times;

The legislature's failed to define "plainly seen and read" and "at all times" in the phrase "be able to be plainly seen and read at all times" in RCW 46.16A.200(5)(a)(iii), and failure to define "illegible" in the phrase "other materials that change, alter, or make a license plate or plates illegible" in RCW 46.16A.200(7)(c) are unconstitutionally vague as applied to the facts of this case.

The person challenging a statute on vagueness grounds must prove vagueness beyond a reasonable doubt. *State v. Coria*, 120 Wn.2d 156, 163, 839 P.2d 890 (1992); *Spokane v. Douglass*, 115 Wn.2d at 178. When a criminal statute fails to abide either of these requirements, the court will hold it void and reverse a conviction obtained under it. *State v. Smith*, 111 Wn.2d 1, 5, 759 P.2d 372 (1988).

The sufficient definiteness requirement protects individuals from being held criminally accountable for conduct where a statute is framed in terms so vague that persons of common intelligence must "necessarily guess at its meaning and differ as to its application." *State v. Eze*, 111 Wn.2d 22, 26, 759 P.2d 366 (1988) (citation omitted).

The second requirement, that of ascertainable standards, is intended to protect against "arbitrary, erratic, and discriminatory enforcement." *Spokane v. Douglass*, 115 Wn.2d at 180. See also *Kolender v. Lawson*, 461 U.S. 352, 358, 75 L. Ed. 2d 903, 103 S. Ct. 1855 (1983); *Tacoma v. Luvane*, 118 Wn.2d 826, 844, 827 P.2d 1374 (1992); *State v. Smith*, 111 Wn.2d 1, 4-5, 759 P.2d 372 (1988). When assessing the statute under this prong of the vagueness test, a court examines the terms of the statute to determine if they contain adequate standards to guide law enforcement officials. *State v. Myles*, 127 Wn.2d at 812.

Even using the standard that the underlying statute must be shown to be "grossly and flagrantly unconstitutional", the constitutional defects of RCW 46.16A.200(5)(a)(iii) and (7)(c) are sufficiently flagrant to invalidate the stop and

resulting search. Here, the statute providing that a license plate must be "plainly seen and read at all times" and cannot be "illegible" is unconstitutionally vague under both prongs of the vagueness doctrine. The statute is unconstitutionally vague because it fails to provide adequate notice of the prohibited activity. The possibility of arbitrary enforcement stems from fact that visibility of a license plate depends entirely on the officer's perspective. If he or she is close to a subject car from a high vantage point, or if he or she views the plate from an oblique angle, the plate may be visible. It is left to the discretion of the officer in question. The statute is flagrantly unconstitutional because it invites an inordinate amount of police discretion.

As applied to Meyers' conduct, the statute fails to provide any meaningful guidance as to what display of a license plate is prohibited and also leaves Meyers subject to arbitrary enforcement of the statute. The flagrant constitutionality of the statute is made clear because it is wholly dependant on an observer's perspective. An officer directly behind a vehicle in a standard patrol vehicle may not be able to see a part of a license plate, but if an officer views the rear of the vehicle from an oblique angle, the entire plate may be visible. An officer in a vehicle that is higher than a passenger car, such as a sports utility vehicle, would conceivably be able to view the entire plate. Similarly, a motorcycle officer, where the officer will sit higher than in a passenger car, may be able to have a clear view of the plate. Moreover, a motorist would be in violation

of the statute if towing a trailer, motorcycle trailer, or boat trailer. An officer behind the vehicle would *a priori* be unable to see the plate because of the trailer, boat, or other towed object.

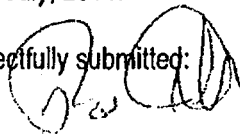
In summary, RCW 46.16A.200(5)(a)(iii) and (7)(c) can and has been arbitrarily applied and leaves people of common intelligence guessing as to its prohibitions. The trial court's ruling that the challenged statutes are constitutional violates due process as applied to Meyers, and renders the statute vague as applied to Meyers. In light of the foregoing, the petition raises a significant question of law in the Washington Constitution. RAP 13.4(b)(3).

F. CONCLUSION

For the foregoing reasons, Meyers respectfully requests this petition for review be granted.

DATED this 9th day of July, 2014.

Respectfully submitted:

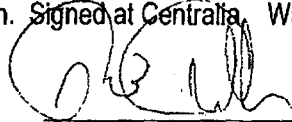


PETER B. TILLER, WSBA 20835
Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that on July 9, 2014, that this Petition for Review was e-filed to (1) the Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402-4454, and true and correct copies of this petition were mailed by U.S. mail, postage prepaid, to the appellant, Mr. James V. Meyers, 4933 NE Mason St., Portland, OR 97218, **LEGAL MAIL/SPECIAL MAIL.** and Ms. Sara Beigh, Deputy Prosecuting Attorney, Lewis County Prosecutor's Office, 345 W. Main Street, 2nd Floor, Chehalis, WA 98532-1900.

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on July 9, 2014.

A handwritten signature in black ink, appearing to read 'P. B. Tiller', written over a horizontal line.

PETER B. TILLER

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DIVISION II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BY  DEPUTY

STATE OF WASHINGTON,

No. 44079-2-II

Respondent,

v.

JAMES VINCENT MEYERS,

UNPUBLISHED OPINION

Appellant.

HUNT, J. – James Vincent Meyers appeals his jury trial convictions for unlawful possession of a controlled substance (morphine) and third degree driving with a suspended license (DWLS). He argues that the trial court erred in denying his motion to suppress evidence because the statutory basis for the initial stop, RCW 46.16A.200(5)(a)(iii) and (7)(c)¹, which require that vehicle license plates be kept clean, plainly visible, and not obstructed, are unconstitutionally vague as applied. Disagreeing, we affirm.

FACTS

On May 20, 2012, at about 11:30 PM, Centralia Police Officer William Phipps was on routine patrol when he observed a van pull away from the curb and onto the main roadway.² Driving behind the van, Phipps noticed that the van's "trailer ball hitch" obscured two of the

¹ The legislature amended RCW 46.16A.200 twice in 2014. LAWS OF 2014, ch. 80, § 1, ch. 181, § 2. The amendments did not alter the statute in any way relevant to this case; accordingly, we cite the current version of the statute.

² We base our recitation of the facts on the trial court's written findings of fact issued following the suppression hearing, which Meyers does not challenge.

characters on the van's rear license plate. Clerk's Papers (CP) at 99 (Findings of Fact (FF) 3). Believing this to be a traffic infraction, Phipps stopped the van, driven by James Vincent Meyers. Phipps arrested Meyers after learning that his license was suspended and that there was a warrant for his arrest. During a search of Meyers incident to his arrest, Phipps found a single morphine pill.

The State charged Meyers with unlawful possession of a controlled substance (morphine) and third degree DWLS. Meyers moved to suppress the evidence found during the search incident to arrest, arguing that RCW 46.26A.200(5) and (7) did "not make it unlawful to have a trailer ball hitch that may obstruct a partial view of the license plate," that photographic evidence showed that the "trailer ball hitch" did not obscure the license plate, and that the stop was unlawful. CP at 10.

The trial court denied Meyers' suppression motion,³ concluding:

1. RCW 46[.]16A[.]200(5)(a)(iii) requires that vehicle license plates be kept clean and be able to be plainly seen and read at all times[.] RCW 46[.]16A[.]200(7)(c) makes it unlawful to use holders, frames, or other materials that change, alter, or make a license plate or plates illegible[.] The obstruction of a license plate from view by a trailer ball hitch is a civil infraction[.]
2. Officer Phipps had a reasonable suspicion that the Defendant committed a traffic infraction prior to stopping the Defendant's vehicle[.] Specifically, Officer Phipps observed that the Defendant's rear license plate was illegible because it was obstructed by the vehicle's trailer ball hitch[.]

³ The trial court also found that although Meyers had submitted photographs showing the license plate was clearly visible from some angles, "the angles from which the pictures [were] taken [were] not the same as the vantage point that Officer Phipps had while he was driving in his vehicle." CP at 99 (FF 4).

3. The basis for the traffic stop in this case was reasonable suspicion of a traffic infraction[.] There is no evidence suggesting that the traffic stop was a pretext stop[.]

CP at 100 (Conclusions of Law 1-3). Based on this admitted evidence, a jury found Meyers guilty of unlawful possession of a controlled substance and third degree DWLS. Meyers appeals.

ANALYSIS

Meyers contends that the trial court erred in denying his suppression motion. He argues that RCW 46.16A.200(5)(a)(iii) and (7)(c) are unconstitutionally vague as applied to the facts of this case and, therefore, cannot provide a legal basis for the traffic stop. This argument fails.

“When reviewing the denial of a suppression motion, [we] determine . . . whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law.” *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Because Meyers does not challenge any of the trial court’s findings of fact, they are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Nor, aside from challenging the constitutionality of the statutory basis for the stop, does Meyers otherwise challenge the reasonableness of the officer’s stop. Thus, we confine our analysis to his constitutional challenge; we review this legal issue, including the trial court’s pertinent conclusions of law, de novo. *Garvin*, 166 Wn.2d at 249.

A stop based on reasonable suspicion is generally valid even if it is predicated on a statute that the courts subsequently find unconstitutional because the officer’s reasonable suspicion determination rests on the facts and circumstances known to the officer at the time of the stop. *See State v. Carnahan*, 130 Wn. App. 159, 165, 122 P.3d 187 (2005) (citing *Michigan*

v. *DeFillippo*, 443 U.S. 31, 37-38, 99 S. Ct. 2627, 61 L. Ed. 2d 343 (1979); *State v. White*, 97 Wn.2d 92, 103, 640 P.2d 1061 (1982)); see also *State v. Potter*, 156 Wn.2d 835, 842-43, 132 P.3d 1089 (2006).⁴ “Police are charged to enforce laws until and unless they are declared unconstitutional.” *Carnahan*, 130 Wn. App. at 165 (quoting *DeFillippo*, 443 U.S. at 38). A stop “is invalid only if the statute at issue is ‘so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws.’” *Carnahan*, 130 Wn. App. at 165 (quoting *White*, 97 Wn. App. at 103 (internal quotation marks omitted)); see also *State v. Brockob*, 159 Wn.2d 311, 342 n.19, 150 P.3d 59 (2006). Such is not the case here.

Not having been ruled otherwise, RCW 46.16A.200(5)(a)(iii) and (7)(c)⁵ were presumptively valid when Phipps stopped Meyers. Meyers argues that these statutory provisions are vague because whether the license plate is clearly visible “depends entirely on the officer’s perspective,” which creates “an inordinate amount of police discretion” and leads to their arbitrary application. Br. of Appellant at 13. Meyers does not, however, assert that these

⁴ We acknowledge that these cases address arrests rather than initial traffic stops. But because the “reasonable suspicion” standard applicable to traffic stops is less burdensome than the “probable cause” standard applicable to arrests, these cases are equally pertinent here.

⁵ RCW 46.16A.200 provides in part:

(5)(a) **Display.** License plates must be:

...
(iii) Kept clean and be able to be plainly seen and read at all times[.]

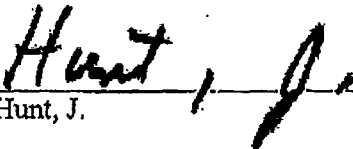
...
(7) **Unlawful acts.** It is unlawful to:

...
(c) Use holders, frames, or other materials that change, alter, or make a license plate or plates illegible. License plate frames may be used on license plates only if the frames do not obscure license tabs or identifying letters or numbers on the plates and the license plates can be plainly seen and read at all times[.]

No. 44079-2-II

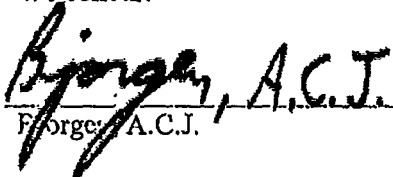
provisions are so grossly and flagrantly unconstitutional that any reasonable person could see their flaws⁶; nor does it appear to us to be the case. Because Meyers fails to show that RCW 46.16A.200(5)(a)(iii) and (7)(c) are grossly and flagrantly unconstitutional, we need not address the underlying constitutionality of these statutory provisions, and his challenge to the statutory basis for his stop fails. Holding that the trial court did not err in denying Meyers' motion to suppress, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

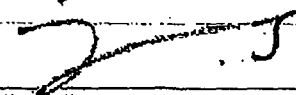


Hunt, J.

We concur:



George, A.C.J.



Lee, J.

⁶ Instead of applying this proper test, both Meyers and the State focus on whether RCW 46.16A.200(5)(a)(iii) and (7)(c) are unconstitutionally vague under the facts here.

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