

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2/25/2019 8:00 AM  
BY SUSAN L. CARLSON  
CLERK

rec'd by email at 4:59pm on  
2/22/19

NO. 96525-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JAMES VINES,

Petitioner.

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ON DISCRETIONARY REVIEW FROM  
THE COURT OF APPEALS, DIVISION II  
Court of Appeals No. 50517-7-II (consolidated with No. 52297-7-II)  
Clallam County Superior Court No. 16-1-00481-3

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ANSWER TO PETITION FOR REVIEW

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## I. IDENTITY OF RESPONDENT

The respondent is the State of Washington. The answer is filed by Clallam County Deputy Prosecuting Attorney Jesse Espinoza.

## II. COURT OF APPEALS DECISION

The State respectfully requests that this Court to deny review of the Court of Appeals unpublished decision reversing the conviction for Attempting to Elude a Pursuing Police Vehicle and remanding the case for resentencing on the lesser included crime in *State v. Vines*, No. 50517-7-II (Oct. 23, 2018), a copy of which is attached to the petition for review. *See also State v. Vines*, 5 Wn. App.2d 1049, 2018 WL 5279097, at \*1 (2018).

The Court of Appeals, in conformity with well-established principles held “insufficient evidence exists to support Vines’s conviction for attempting to elude because the State failed to produce any evidence that the police vehicle was equipped with sirens.” *State v. Vines*, 5 Wn. App.2d 1049, 2018 WL 5279097, at \*1 (2018); *see also* RCW 46.61.024(1) (“[T]he vehicle shall be equipped with lights and sirens.”).

Additionally, the Court of Appeals held that, “The jury necessarily found the elements of this lesser included crime [refusal to cooperate with an officer] when it decided the attempting to elude charge. Accordingly, we remand for the trial court to enter a conviction for and resentence on the lesser included offense of refusal to cooperate with an officer.” *Id.* at \*6 (citing *State v. Green*, 94 Wn.2d 216, 234–35, 616 P.2d 628 (1980); RCW 46.61.020(1).)

### III. COUNTERSTATEMENT OF THE ISSUES

The question presented is whether this Court should decline to accept review because none of the criteria set forth in RAP 13.4(b) are met, because:

1. The Court of Appeals decision does not conflict with any decision of this Court or the Court of Appeals; and
2. The petition fails to present a significant question of law under the Constitution of the State of Washington and of the United States; and
3. The petition fails to present any issue of substantial public interest that should be determined by this Court?

### IV. STATEMENT OF THE CASE

On October 26, 2016, the State filed an information charging Vines with Attempting to Elude a Pursuing Police Vehicle. CP 159.

#### **December 23, 2016, Pre-trial Hearing (RP 20–29)**

Mr. Oakley was initially appointed defense counsel for Vines on the instant cause, Clallam County Superior Court cause 16-1-00481-3. CP 142. Additionally, Mr. Oakley was appointed counsel on a post-conviction matter involving Vines under cause 14-1-[00]501-5 in which the State filed a petition to revoke a DOSA sentence. RP 20, 36. Vines had informed counsel that he wanted to move to withdraw his plea of guilty in that prior case, 14-1-00501-5. RP 20. Mr. Oakley stated that, based upon Vines' "basis for seeking to withdraw his plea, there's gonna have to be a whole lot of mental health evaluations, extensively and intensively." RP 21. Additionally, concerning the instant cause, Mr. Oakley

moved to withdraw on that case as well after filing a motion to suppress evidence in the instant case (16-1-000481-3):

If the pending motion to suppress the evidence is successful then that will not, I don't believe that would need to be pursued in the 2016 case, because that would be dispositive. However, if the motion to suppress does not succeed then we're gonna have to go through similar extensive and intensive mental health evaluations and in the interest of continuity of representation the court might want to replace me with conflict counsel in the 2016 case . . . . RP 21.

The State objected to the motion to withdraw on the instant case because Mr. Oakley had no conflict in the instant case and he had just filed a CrR 3.6 motion to suppress and the State was of the opinion that it should be litigated first before a motion to withdraw was considered. RP 22, 23.

The parties and court agreed that there would be no motion to withdraw or appoint new defense counsel on the instant case (16-1-00481-3) until after the CrR 3.6 motion to suppress was ruled upon by the court because it made sense to have Mr. Oakley, the attorney that filed the motion, argue it rather than a newly appointed attorney (RP 20, 23):

THE COURT: It seems like you've done the work now, you might as well just see what happens.

MR. OAKLEY: Yes.

RP 23.

As for the older case (14-1-00501-5), the court was about to appoint the next conflict counsel in line when Vines noted on the record that he has paid attention

in his pod in the jail and the word was that this particular conflict attorney's health issues resulted in numerous continuances for other defendants. RP 24–25. Accordingly, Vines requested that the court appoint a different attorney. RP 25. Then the court appointed Ms. Unger instead. RP 25. It was agreed that the trial would be reset after the court ruled upon the motion to suppress. RP 27-28. January 24, 2017, CrR 3.6 hearing (RP 40–57)

Mr. Oakley proceeded with litigating a CrR 3.6 suppression hearing on behalf of Vines. RP 21, 41. During argument for the CrR 3.6 hearing, Vines interjected stating that he wasn't driving anywhere and that he was just sitting still in his vehicle and did not turn it around. RP 43. After the hearing Vines again stated, "I was just sitting still. I seen a flashlight in my rearview mirror and I put it in reverse and was gonna back down the driveway, so what." RP 54. Vines told the court that he would not mess up the trial after the court warned Vines about speaking out in court. RP 53.

After the court denied the motion to suppress (RP 51), Mr. Oakley renewed his motion to withdraw as counsel "for purposes of continuity of representation since these cases" as both cases were now going to require a lot of mental health evaluations. RP 52. The court did not quite remember the prior discussion of this issue but vaguely remembered putting that issue on hold until after the determination of the suppression motion. RP 52–53. The court asked Vines if that sounded correct. RP 53.

Vines replied: "You said; well, it seems like you've done all the work already, you might as well at least follow through with this motion." RP 53.

Vines also interjected: “Your Honor, I didn’t even roll one foot when I seen that flashlight ahead of me.” RP 53.

The court admonished Vines in order to stop Vines from damaging his case. RP 53. Vines stated: “I’m not gonna mess up nothing at my trial, cuz I’m gonna tell the truth and the truth will set you free.” RP 53.

Then Vines claimed again: “I was just sitting still. I seen a flashlight in my rearview mirror and I put it in reverse and was gonna back down the driveway, so what.” RP 54. Vines apologized for interrupting after the court informed Vines that he should stop talking. RP 54.

Then the court appointed Ms. Unger to represent Vines on the instant case after Vines affirmed to the court that he was getting along with Ms. Unger. RP 54. The State then requested that the matter be set over to a date that Ms. Unger would be available to set a trial date and expressed concern that there was still no trial date. RP 55–56.

Vines pointed out that this was the State’s fault in part:

Well, actually, it was your vacation I think for two weeks, a scheduled vacation that they postponed it one time.

RP 56; *see also* RP 60.

The case was set over to February 3, 2017 to set a trial date. RP 56–57.

### **March 17, 2017, Pretrial Hearing (RP 73–84)**

Defense counsel, Ms. Unger, asked the prosecutor to provide dash cam video of the incident. RP 76. Vines interjected and offered that he believed there should be dash cam videos as there were three police vehicles present. RP 76.

Vines stated that he wanted the dash cam videos because it would show the



conditions of the driveway on which he was accused of eluding the police. RP 76. Then Vines stated that the matter was going to trial and there would be no plea of guilty for the case:

THE DEFENDANT: This is going to go to trial. There's no way I'm going to plea guilty to this.

MS. UNGER: Well, I'm not asking you to and like I said, I'm prepared to go to trial on the 27th.

THE DEFENDANT: Thank you.

RP 77.

Ms. Unger also informed the court that Vines wanted a mental health evaluation claiming Vines didn't believe he was competent to go to trial. RP 82. Vines interjected again stating:

THE DEFENDANT: Oh, no, I believe I'm competent to go to trial, but I believe there's issues that come into sentencing, when it comes to sentencing that I...

RP 82.

Vines pointed out that he had written several letters to the court because he believed them to be relevant. RP 83–84. In particular, Vines wrote a lengthy letter to the court explaining his history as a victim of a stabbing in 1994 and the effect that it has had on his mental health. CP 147, RP 421. In these letters, Vines asked the court to give him another chance to complete his DOSA sentence. CP 155.

#### **March 27, 2017, CrR 3.5 Hearing and Motions in Limine (RP 85–117)**

The court held a CrR 3.5 hearing to determine the admissibility of Vines statements. RP 87. After the CrR 3.5 hearing and during Motions in Limine,

Vines stated that he would be good after the court warned him that he could not just take the stand and say whatever he wanted to. RP 103–04.

During the motion in limine, the state expressed concern that at trial, Vines would take the stand and use the opportunity to tell the jury about his mental health issues as a way to gain sympathy although the issue would not be relevant to a defense. RP 100. Ms. Unger made it clear that the defense at trial was to be a general denial and that there was no diminished capacity defense. RP 100. The State continued and stated that it was concerned Vines would stray away from the events at issue and speak out uncontrollably. RP 101. Eventually, Vines stated, “I’ll be good.” RP 104.

**March 28, 2017, Trail (RP 118–415)**

**Jury Trail Testimony**

Clallam County Sheriff’s Deputy Federline was on duty in the area of 266 Deer Park Road on October 21, 2016 in Port Angeles, Clallam County, when he made contact with Vines. RP 243–44. Federline was initially looking for a suspect in an unrelated assault complaint. RP 245. After Federline was told that the suspect left in a vehicle, he spotted a vehicle enter the 300 foot shared driveway for 266 Deer Park Road and incorrectly expected that it might be his suspect. RP 245–46.

Federline identified himself to the driver of the vehicle and yelled, “Stop, Police,” and the vehicle tires spun out and the vehicle accelerated down the approximately 300 foot hillside driveway. RP 246, 268. Federline ran down the

hill after the vehicle and announced over the radio identifying the vehicle as a Toyota Camry. RP 247.

After the Camry got to the bottom of the hill, the vehicle did a three point turn and began to drive back up the driveway. RP 249. At that point, Federline made eye contact with the driver and recognized James Vines. RP 249. Federline was aware Vines had an outstanding warrant and intended to place Vines under arrest. RP 249. Federline yelled “stop, police,” but Vines continued to drive up the hill back to Deer Park Road. RP 250. Federline had to move quickly out of the way to avoid getting hit by Vines’ vehicle as Vines continued back up the driveway. RP 250.

As Vines accelerated up the hill toward Deer Park Road, Federline watched Sgt. John Hollis in his marked patrol vehicle with red and blue emergency lights on enter the driveway and come down the roadway from Deer Park Road towards the Camry. RP 251. Federline watched the two vehicles mirror each other’s movements as they approached each other. RP 251–52. It appeared to Federline that Vines was attempting to drive his vehicle around Sgt. Hollis’s patrol vehicle. RP 252.

The two vehicles approached each other until they both stopped bumper to bumper almost colliding about halfway up the hill. RP 252. Then Federline watched as Vines placed his vehicle in reverse and slammed the accelerator. RP 252. Federline had followed behind and had to dive out of the way to avoid being hit by Vines’ Camry a second time. RP 252. Vines went backwards down the road and got the vehicle stuck on the side on an embankment. RP 253. Federline

estimated that Vines' vehicle traveled backwards about 55 feet before getting stuck. RP 258, 269.

After Vines got stuck, Federline could hear the accelerator running and the wheels turning. RP 269. Sgt. Hollis got out of his patrol vehicle and ordered Federline to break out the passenger side window after Federline tried to open the door. RP 269. Federline broke the window out with his flashlight and Vines then placed his hands out and screamed, "Okay, okay!" RP 269. Federline then opened the door and removed Vines from the vehicle and placed him in restraints. RP 270. Federline put Vines' vehicle in park read Vines his Miranda rights and then asked Vines why he ran. RP 270. Vines replied, "I was scared." RP 270.

Federline testified that Sgt. Hollis was wearing his department issued uniform and was driving his department issued marked patrol vehicle which says Sheriff's Office on the side of the vehicle, with overhead red and blue overhead emergency lights on. RP 274. Federline described Sgt. Hollis' new department issued Ford SUV patrol vehicle like a Christmas tree with flashers and lights all over them. RP 299, 300.

Sgt. John Hollis, Clallam County Sheriffs' Office, testified that he was on duty October 21, 2016 in the area of the 200 block of Deer Park Road. RP 304–05. Hollis was wearing his uniform and was driving a marked Ford Explorer Cross-Over which he described as "quite an Explorer." RP 305. The vehicle was marked with Sheriff's office stickers and a light bar and was equipped with overhead lights, spot lights, and flood lights. RP 305. Hollis responded to the

assault complaint with Federline and heard Federline over the radio in his vehicle report that somebody was leaving the area. RP 306.

While in the area, Federline told Hollis that a vehicle was leaving and it needed to be stopped to identify who was leaving. RP 307. Hollis could hear Federline yell, "Stop, police!" Hollis rounded the corner at the top of the hill on Deer Park Road off the driveway and could see a smaller car coming up the hill. RP 307. Hollis turned his overhead lights on and drove down the hill toward the vehicle and as the vehicle went left, Hollis mirrored the action of the vehicle he was approaching to stay in front of the vehicle. RP 307-09.

The two vehicles were inches away from each other when they came to a stop at which point Vines' vehicle reversed and went back down the hill before getting stuck. RP 309-10. Hollis followed Vines and stopped his vehicle bumper to bumper with Vines' vehicle to box him in. RP 310, 323. Hollis testified that as Vines was coming up the hill, Hollis was trying to stop Vines. RP 311. Hollis kept positioning his vehicle to prevent Vines vehicle from getting around his patrol vehicle. RP 320.

After defense counsel, Ms. Unger, examined a defense witness, Mr. Hann, Ms. Unger asked the court to advise Vines of his right to testify or not. RP 346. The court advised Vines of his right to testify or not and then Ms. Unger spoke with Vines and then the defense rested without further testimony. RP 347-48.

The jury returned a verdict of guilty. CP 78.

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**April 20, 2017, Post-conviction hearing (RP 416–433)**

Vines' attorney, Ms. Unger, did not believe that Vines' competency was at issue either before trial or after. RP 417. Ms. Unger did not believe that a mental health evaluation would be relevant as to mitigating information for sentencing purposes. RP 417–18, 427–28. Nevertheless, Vines requested a mental health evaluation for the purpose of mitigation at sentencing. RP 418, 422, 425, 428. Vines' referred to other inmates that received post-conviction evaluations at the State's expense prior to sentencing. RP 419, 426.

Ms. Unger expressed her concern about Vines dissatisfaction with her representation and pointed out the work she did to prepare for Vines' trial. RP 422–423. Ms. Unger also pointed out that an evaluation could be detrimental to Vines' position. RP 423. The court pointed out that it had read Vines' letter and believed that a lie detector test would be irrelevant. RP 420, 424. Vines alluded to his severe mental health issues stemming from an even in which he was stabbed 57 times in 1994. RP 421; CP 147. The court pointed out that it had multiple mental health evaluations and that they were on the record. RP 421. The court declined to order another mental health evaluation but allowed that it could be readdressed. RP 425, 432.

As the parties were setting a sentencing date, the court expressed that it wasn't sure what was happening around April 27. RP 430–31. Vines interrupted to point out that the judge had a judicial conference coming up. RP 431.

Finally, after the court pointed out that there would be a new motion for a mental health evaluation at the next hearing, Vines stated that his last one was

seven years ago. RP 433. The court corrected Vines and pointed out that 2014 was not seven years ago. RP 433.

**April 27, 2017, Sentencing hearing (RP 434–474)**

The parties reconvened for sentencing but addressed another motion for a mental health evaluation first. RP 435–436. Ms. Unger pointed out that Vines wanted an evaluation because he believed it would have some bearing on the sentencing. RP 437. The court denied the motion and pointed out that, although it appreciated that Vines had mental health issues (RP 438), Vines had an evaluation and was found to be competent as recently as September 2014 and that the court found no legal basis for another mental health evaluation. RP 438.

Upon sentencing, the State recommended the high end of the 22–29 month sentence range. On behalf of Vines, Ms. Unger pointed out that she did not believe there was a mental health basis to ask for a sentence below the guideline range and did not believe it would be ethical to argue such. RP 443. However, Ms. Unger recommended the low end of the sentence range. RP 443.

Vines, given the opportunity to speak on his own behalf upon sentencing, explained that he wrote numerous letters to the court because he was outraged, claiming that the officers version of events was not the truth. RP 445, 447. Vines consistently contested the veracity of the officers. RP 43, 45, 53, 54, 446–447, 454, 455. Vines then told the court he was planning to appeal the conviction and raise the issue of ineffective assistance of counsel. RP 451.

The court pointed out that it appeared Vines had thought things out very carefully in a calculating way. RP 451. The court referred to the scheduling

hearing when Vines pointed out that the judge would be going to a judicial conference. RP 452. Vines alluded to his mental health issues again and the court expressed sympathy about Vines unfortunate past. RP 454. Vines then stated that he didn't think he should be sentenced to 29 months.

Ultimately, the court imposed 26 months and mandatory legal financial obligations. RP 458. Vines responded that he has a disability and "any fines whatsoever, I'm unable to pay." RP 459. The court continued to discuss with Vines the terms of the judgement and sentence as well as the appeal process at length in which Vines affirmed information that he understood and asked questions where he did not. RP 459-73.

Vines now Petitions the Court to review the Court of Appeals decision.

## V. ARGUMENT

### A. THE PETITIONER HAS NOT ESTABLISHED ANY OF THE CONSIDERATIONS GOVERNING ACCEPTANCE OF REVIEW SET FOR IN RAP 13.4(b).

RAP 13.4(b) sets forth the considerations governing this Court's acceptance of review:

A petition for review will be accepted by the Supreme Court only:

If the decision of the Court of Appeals is in conflict with a decision by the Supreme Court; or

If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or

If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.



Here, the Petitioner, rather than addressing why this case should be accepted for review under RAP 13.4(d), expresses his disagreement and displeasure with the Court of Appeals decision. This is insufficient as a basis for review.

This Court should decline to accept review because Vines has failed to establish any of the above criteria.

### CONCLUSION

Vines presents no authority which conflicts with a decision by the Washington State Supreme Court or Court of Appeals. Vines' Petition does not present a significant question of law under the Washington State or U.S. Constitutions.

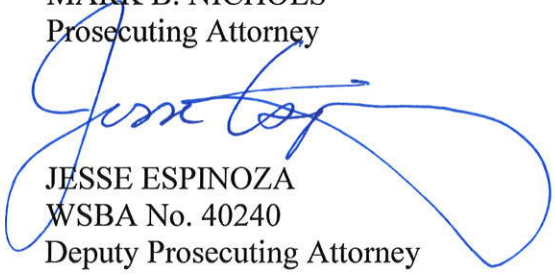
Vines' petition also fails to present any issue of substantial public interest.

Therefore, Vines has not established any of the criteria set forth under RAP 13.4 (b).

For the foregoing reasons, the State respectfully requests that the Court deny Vines' Petition for Review.

DATED February 22, 2019.

Respectfully submitted,  
MARK B. NICHOLS  
Prosecuting Attorney

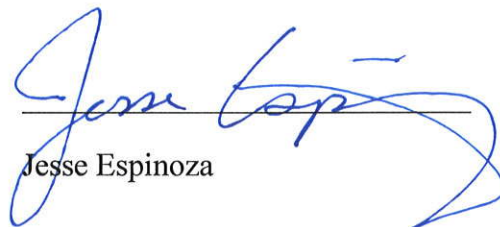


JESSE ESPINOZA  
WSBA No. 40240  
Deputy Prosecuting Attorney

**CERTIFICATE OF DELIVERY**

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was mailed to James Vines at P.O. Box 1365, Port Angeles, WA 98531-0058 on 2/22/2018.

MARK B. NICHOLS, Prosecutor



Jesse Espinoza

**CLALLAM COUNTY DEPUTY PROSECUTING ATTORN**

**February 22, 2019 - 5:07 PM**

**Transmittal Information**

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