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No. 39381-6-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

APPELLANT,

vs.

ANNA WEAVER

RESPONDENT.

Appeal from the Superior Court of Washington for Lewis County

APPELLANT'S OPENING BRIEF

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¹ For brevity purposes, throughout this document the main statute at issue in this case, RCW 46.61.210 ,is referred to as the "failure to yield" statute.

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ASSIGNMENTS OF ERROR

1. The Superior Court erred when it ruled that RCW 46.61.210(1), the "failure to yield to emergency vehicles" statute², applies only if the emergency vehicle is responding to an "actual emergency."

2. The Superior Court erred when it held that RCW 46.61.210(1), the "failure to yield to emergency vehicle" statute does not apply when the emergency vehicle is making a traffic stop.

3. The Superior Court's interpretation of the "failure to yield to emergency vehicles" statute is untenable, and brings about an absurd result because it allows other motorists to second-guess the duty to yield based upon the motorists' determination of whether the driver of the emergency vehicle is properly responding an "actual" emergency.

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² For brevity purposes, throughout this document the main statute at issue in this case, RCW 46.61.210, is referred to as the "failure to yield" statute.

to the right for approaching emergency vehicles as stated in RCW 46.61.210.

Issues Pertaining to Assignments of Error

Does the failure to yield to emergency vehicles statute, require that the emergency vehicle be responding to an "actual" emergency to trigger the duty of other motorists to yield to the right? (RCW 46.61.210)

Is a motorist required to comply with the failure to yield statute where the approaching emergency vehicle is performing a traffic stop on the motorist? (RCW 46.61.210)

Does the failure to yield statute allow motorists to decide whether they should yield to an approaching emergency vehicle based on the motorists' determination as to whether the emergency vehicle is responding to an "actual" emergency? (RCW 46.61.210)

Does the Superior Court's interpretation of the failure to yield statute being conditioned on the emergency vehicle's responding to an "actual" emergency before the duty to yield is triggered bring about an absurd result?

STATEMENT OF THE CASE

This case began in Lewis County District Court. On March 19, 2009, a contested infraction hearing was held in the District

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Court of Lewis County, in the matter of State of Washington v. Anna Weaver, No. 9Y6026219, before a Court Commissioner. The infraction at issue in this appeal is the infraction for "failure to yield to emergency vehicle" under RCW 46.61.210. RP 1.³ There were other infractions issued to Ms. Weaver, but they were otherwise disposed of and are not the subject of this appeal.

The following statement of the case is taken from the verbatim transcript of the contested infraction hearing in Lewis County District Court.

The Washington State Trooper who issued Ms. Weaver's infractions did not appear in person to testify at the contested hearing in this matter. RP 2. Instead, the Trooper submitted a sworn affidavit, which the prosecutor read into the record at the hearing. RP 2. The Trooper's affidavit contained the following facts: On February 3, 2009, Respondent Anna Weaver was driving northbound on I-5 in the vicinity of milepost 77, near Chehalis, Washington, in Lewis County. RP 3, 5. Washington State Patrol Trooper D. Pardue ("Trooper") was "working radar" while parked on the right shoulder of northbound I-5 near milepost 76 or 77. RP 3.

³ There are two transcripts of proceedings in this case. The first is the transcript of proceedings of the contested hearing in Lewis County District Court. That is cited herein as "RP." The second transcript is the hearing and argument on the RALJ appeal in Superior Court. That transcript is referenced herein as "2RP."

Using his radar equipment, the Trooper observed that Ms. Weaver's vehicle was exceeding the speed limit, estimating a speed of 76 miles per hour.⁴ RP 3. Upon seeing that Ms. Weaver was speeding, the Trooper activated his emergency lights and siren and pulled behind Ms. Weaver to perform a traffic stop regarding the speeding issue. RP 3.

Trooper Pardue noted in his affidavit that Ms. Weaver then slowed down, signaled to the left, and attempted to pull to the "narrow left shoulder." RP 3. Trooper Pardue further noted that, "no traffic in the area prevented a lane change to the right and eventually the right shoulder as required." RP 3. Trooper Pardue stated that Ms. Weaver "came to complete stop while still in the roadway." RP 3. Trooper Pardue contacted Ms. Weaver, who told the Trooper she thought the speed limit was 70, and "did not know what to do when patrol car was behind her." RP 4.

Ms. Weaver testified at the hearing, and what follows are facts taken from Ms. Weaver's testimony alone. On February 3, 2009, Ms. Weaver was travelling from her home in Oregon to Seattle to visit her parents. RP 5. Ms. Weaver was driving

⁴ Ms. Weaver requested that the disposition of the speeding infraction be deferred, and the trial court granted the deferral pursuant to statute.

northbound on I-5 when she saw the Trooper pull out from where he was parked and "turned on just his headlights" and follow her to about exit 77. RP 6, 7. Ms. Weaver said the officer then activated his emergency lights and siren and she slowed down and signaled to the left and pulled onto the left shoulder. RP 6. Ms. Weaver said she pulled onto the left shoulder where she thought there was room for a full car to fit. RP 6. She rolled down her window and heard "over the bull horn" the Trooper asking her to pull over to the right shoulder. RP 6. Ms. Weaver pulled back into the left lane, turned on her right-hand signal and pulled over to the right shoulder. RP 6. Ms. Weaver said there were two northbound lanes on that section of I-5. RP 6. Ms. Weaver had been in the left lane when the Trooper began following her. RP 7. Ms. Weaver said there was "no other traffic" on the road at that time. RP 8. Ms. Weaver was asked by her attorney whether there appeared "to be any sort of emergency, or event, that Trooper Pardue was responding to." RP 8. Ms. Weaver said, "no." RP 8. Ms. Weaver agreed that she immediately pulled over to the left of the roadway upon seeing the Trooper's emergency lights. RP 8. Ms. Weaver said she thought pulling to the left side of the road was "the safest course of action." RP 9.

Ms. Weaver said that it appeared the left shoulder and the right shoulder of the highway were about the same width. RP 9. Ms. Weaver said that when she initially pulled over to the left shoulder, the Trooper did not pass her. RP 10. Ms. Weaver said that the Trooper told her that pulling to the left was very dangerous and wondered why she had not pulled over to the right instead. RP 11. Ms. Weaver said she told him she thought that was the safest thing to do. RP 11. Ms. Weaver said the officer then asked her "what do you do to yield to an emergency vehicle?" Ms. Weaver said she told him she pulled to the right, but she didn't think that applied to "getting pulled over." RP 11. Ms. Weaver said that the Trooper told her several times that it was very dangerous course of action to pull over to the left. RP 11. Ms. Weaver was cited for speeding, no proof of insurance, and for failure to yield to an emergency vehicle. RP 11.

At the contested hearing, Ms. Weaver argued that the "failure to yield to emergency vehicles" statute does not apply to her "type of situation" because there "is a completely separate statutory scheme that governs traffic stops, which is what this was." RP 12. Ms Weaver argued that under the "traffic infraction" statutes it only says to "stop"--those statutes do not say *where* a

driver is to stop. RP 12. Ms. Weaver argued that the "failure to yield" statute "has been consistently interpreted to apply in situations where there is an ongoing emergency." RP 13. Ms. Weaver argued that the failure to yield statute applied only to those situations where the emergency vehicles or police vehicles were actually responding to a "real" emergency. RP 14. Ms. Weaver also argued that the "failure to yield to emergency vehicle" statute did not apply to her case because at the time she was traveling on the highway, "there was no one else around. . . [t]here was no emergency and there was no testimony before the court . . . based upon the officer's report, that he was responding to an emergency or believed that he was. He was affecting a traffic stop." RP 15. Thus, according to Ms. Weaver, there was no "real emergency" when the Trooper activated his emergency lights and siren behind her, so Ms. Weaver did not have to pull to the right side of the roadway under the "failure to yield" statute. RP 15.

Ms. Weaver further noted that there were no Washington cases interpreting this statute, but there were cases from a couple of other jurisdictions that had considered a nearly-identical statute. RP 15, 16. Ms. Weaver said that one of those cases from another jurisdiction held that a person violates the failure to yield to

emergency vehicle statute "when he *fails to yield the right of way in order to permit an emergency vehicle to pass*. To violate the statute an individual must obstruct the roadway *thereby preventing* an emergency vehicle from proceeding upon its route in pursuit of a fleeing suspect or other emergency." RP 16 (emphasis in transcript). Thus, argued Ms. Weaver, since there was no "actual" emergency in this case, the "failure to yield" statute does not apply here, and her ticket for that offense should be dismissed. RP 16. Ms. Weaver further stated, "I have absolutely no doubt that if the Court of Appeals were to take a look at this case, that the court would rule the same way that the Jackson court did in Georgia." Id.

The State responded that the failure to yield to emergency vehicles statute applied to *all* situations where a driver sees an approaching emergency vehicle with its lights and siren activated. RP 17. The State argued that Ms. Weaver's argument that the statute applied only if the emergency vehicle were responding to a "real" emergency relied "upon the driver's personal belief" as to whether there was a "real" emergency. RP 17.

The District Court Commissioner acknowledged Ms. Weaver's arguments and references to the cases and statutes from other jurisdictions. RP 19. The commissioner discussed at length

her reasons for disagreeing with Ms. Weaver's interpretation of the failure to yield statute, and the commissioner's reasoning was as follows:

. . . . our statute specifically refers to a police officer and says when they are passing or otherwise directed by police officer, which appears to me to be directly talking about somebody being talked to by a police officer per a police stop. . . . why would that language be in there if it was always--if this statute was only supposed to apply to a situation where an emergency vehicle . . . of whatever sort was going by and not stopping? You wouldn't have that here because this specifically gives police another situation that is, when a policeman is stopping you. . . . But generally, a police officer is getting into the fast lane to pursue someone, which is an aside because it has nothing to do with your case. But if there's no other traffic and you are driving in the fast lane you can be cited for that because that's against the law. You're not allowed to stay in the fast lane if you are able to pull over. . . . You are supposed to always be on the right except when you're passing another vehicle so anytime on the freeway if you are going along and there's not a car in your [sic] right you are supposed to get over. All the time. Get over, get over, get over. And there are signs that say that all along the freeway. . . . But in all practicality, I think that the Trooper used the statute because pulling to the left is a huge safety problem [RP 19,20]. Not only for them, but for the car that stopped and for other traffic that is oncoming because when you are to the left that is where the faster traffic is going and they are generally, whether it was true in this situation or not, there generally isn't as much shoulder there because the right is made for people to pull over if they have any kind of a situation, whether a flat tire or whatever. People don't go to the left to deal with those, they pull to the right. And so generally, this shoulder is much better on the right than it ever is on the left. . . .

And so the situation that I get is a lot of times on these tickets, somebody has pulled to the left, they have not gotten all the way off the roadway which is what the Trooper said happened here, and I told this story many, many time, but there was a lot of publicity about this a couple of years ago in Lewis County--a woman did that, or a driver did that . . . the Trooper came up behind and was trying to get the car to move to the right, another car came up and wasn't able to--they were out on the roadway partially--and there was a terrible accident. A young woman . . . has permanent injuries. . . as a result of that wreck. And since there was a Trooper involved, they were local, it got a lot of publicity--ever since then I have gotten a lot of these tickets in front of me, people getting cited for pulling to the left, because I think the Troopers consider it a big safety issue [RP 21]. . . not a, you know, a formality that you didn't go to the right direction, but they're concerned for people's safety and they are trying to educate people and to get people to pull to the right.

And I really do understand your argument and maybe another court would read this and say it has to be in this other statute, but to me it doesn't have to be in another statute because the language is pretty clear here that an officer, whether it's an officer or whether it's a fire truck, whether it's an ambulance, whoever, an emergency vehicle, if they've got their audible signal on and they come up behind you, your duty is to pull to the right. [RP 21,22].

And in this case you pulled to the left because you made a call but you're not, the law does not allow you to make that call. The law says "to the right" I do think that it's not just a formality, that it is a big safety issue, and it's an expensive ticket and I usually would reduce it way down . . . because all I am after is people figuring it out and getting it right. But as far as finding that this statute doesn't apply to this fact situation, I deny that motion because I feel

that it does apply to it and I can clearly distinguish the language of our statute from the language of the Georgia statute. [RP 22].

The District Court Commissioner then found that Ms. Weaver committed the infraction for failure to yield to an emergency vehicle.

RP 24. Ms. Weaver appealed.

On appeal to the Superior Court, the Superior Court reversed the District Court, adopting Ms. Weaver's argument that the failure to yield statute applies only when the approaching emergency vehicle is responding to an "actual" emergency--not when that emergency police vehicle is making a traffic stop. In reversing the District Court's ruling, the Superior Court quoted the Georgia case Ms. Weaver had cited, stating that,

[i]n Jackson, supra, the court agreed that a person only violates the statute "when he fails to yield the right-of-way in order to permit an emergency vehicle *to pass*"(emphasis in Jackson). The court dismissed the charge because there was no evidence that Jackson had obstructed the roadway and prevented the officer from passing him. In the present case, we are faced with the same facts. The trooper neither attempted nor intended to pass Ms. Weaver. The failure to yield statute, RCW 46.61.210(1) does not apply to traffic infraction stops and accordingly Ms. Weaver did not commit the infraction when she pulled to the left shoulder when stopped by the trooper. The decision of the District Court is reversed and the infraction is hereby deemed not committed.

Appendix A(Superior Court Ruling on Appeal) at 4. The State filed a timely notice of appeal and submits this opening brief.

ARGUMENT

A. THE SUPERIOR COURT ERRED WHEN IT HELD THE "FAILURE TO YIELD TO EMERGENCY VEHICLE" STATUTE REQUIRES THAT THE EMERGENCY VEHICLE BE RESPONDING TO AN "ACTUAL" EMERGENCY TO TRIGGER OTHER MOTORISTS' DUTY TO YIELD TO THE RIGHT PURSUANT TO RCW 46.61.210.

The Superior Court reversed the District Court's decision denying Ms. Weaver's motion to dismiss her "failure to yield" infraction because the Superior Court interpreted the failure to yield statute as requiring other motorists to yield to an emergency vehicle only if the emergency vehicle is responding to an "actual" emergency. *See Appendix A.* The Superior Court reasoned that because the emergency police vehicle in this case was performing a traffic stop, Ms. Weaver had no duty to yield to the right under the failure to yield statute. The Superior Court relied in part on cases from other jurisdictions, cited by Ms. Weaver, in support of its decision that the failure to yield statute is conditioned on the emergency vehicle responding to an actual emergency. The State disagrees, and herein presents equally on-point authority from other jurisdictions stating the opposite conclusion--the better-reasoned authority in the State's opinion. Accordingly, the State believes the Superior Court erred in reversing the ruling of the District Court, and urges this Court to reverse the Superior Court

and remand for reinstatement of Ms. Weaver's infraction for failure to yield the right-of-way to an emergency vehicle.

This appeal involves analyzing the meaning of certain statutes set out in title 46 of Washington's vehicle code. The interpretation of a statute is a question of law reviewed *de novo*. State v. Tarabochia, 150 Wn.2d 59, 63, 74 P.3d 893 (2006). "Unambiguous statutory language is not subject to interpretation; the meaning is derived entirely from the subject matter and context." State v. Ritts, 94 Wn.App. 784, 787, 973 P.2d 493(1999), *citing* State v. Sunich, 76 Wn.App. 202, 206, 884 P.2d 1 (1994). "We may not read unwritten language into a statute." Ritts, *supra*(emphasis added), *citing* State v. Malone, 106 Wn.2d 607,610, 724 P.2d 364 (1986). Moreover, common sense should inform the court's analysis, and a statute should not be interpreted in a way that will lead to absurd results. Tingey v. Hatch, 159 Wn.2d 652, 657, 152 P.2d 1020 (2007).

Drivers of non-emergency vehicles on the highways of the State of Washington must yield to the right and stop when approached by any emergency vehicle equipped with proper lights and signals. RCW 46.61.210 ("fail to yield statute"). Failure to abide by this statute is a civil infraction. RCW 46.63.020; City of

Bremerton v. Spears, 134 Wn.2d 141, 150, 949 P.2d 347 (1998).

A police patrol car is an "authorized emergency vehicle." RCW

46.04.040. The "failure to yield" statute states, in pertinent part as follows:

(1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of RCW 46.37.190, or of a police vehicle properly and lawfully making use of an audible signal only the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

RCW 46.61.210(1)(emphasis added). Notably, this statute does not state that other drivers must yield to an emergency vehicle only if the emergency vehicle is responding to an "actual" emergency.

Id. This "failure to yield" statute is also referenced elsewhere in the statutory scheme. For example, RCW 46.37.190 states, in pertinent part that:

(1) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive marking required by this chapter, be equipped with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal.

* * *

(5) The use of the signal equipment described in this section shall impose upon drivers of other vehicles the obligation to yield right-of-way and stop as prescribed in RCW 46.61.210, 46.61.370, and 46.61.350.

RCW 46.374.190(1)(5)(emphasis added). Also significantly, like RCW 46.61.210 ("failure to yield"), RCW 46.37.190 does not limit the "failure to yield" rule only to circumstances where the emergency vehicle is responding to an "actual" emergency. In other words, no requirement is stated in these statutes that the authorized emergency vehicle must be responding to an "actual" emergency to trigger the "must yield" requirement. Rohrkaste v. City of Terre Haute, 470 N.E.2d 738, 745(1985). Had the Legislature intended for the "failure to yield" statute to apply only if the approaching emergency vehicle were responding to an "actual emergency," it would surely have said so in the statute. It did not, and we are not to read words into a statute that *are not there*. State v. Malone, 106 Wn.2d at 610.

Nor does this statutory scheme pertaining to "authorized emergency vehicles" and the duty of other motorists to yield to the right when approached by such vehicles contain any *exception* for an emergency police vehicle making a traffic stop--as argued by Ms. Weaver. In fact, one of the statutes cited below by Ms. Weaver

as standing for her "don't-have-to-yield-unless-an-actual-emergency-exists" claim actually states in the same sentence using the "when responding to an emergency" language, that emergency vehicles pursuing suspected violators of the law--*i.e.*, police vehicles as here--are entitled to the same "privileges" waiving some of the traffic rules as are those emergency vehicles that are "responding to an emergency." See, RCW 46.61.035, which states, in pertinent part,

(1) The driver of an authorized emergency vehicle, when responding to an emergency call **or when in the pursuit of an actual or suspected violator of the law** or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein state. . . [going on to state which traffic rules such vehicles may ignore in such circumstance.]

(3) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of visual signals meeting the requirements of RCW 46.37.190, except that:(a)An authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle. . . .

Id.(emphasis added). Thus, contrary to Ms. Weaver's argument in the Superior Court where she cited the "responding to an emergency" language but not the "or pursuing a suspect" language, this statute clearly states that a police vehicle in pursuit of a suspect--as happened here-- is accorded the same leeway to

disobey some traffic rules in such cases as are emergency vehicles "responding to an emergency call." RCW 46.61.035(1); 2RP 4 (where Ms. Weaver apparently references this statute, stating that this statute's purpose is to allow "a clear and speedy pathway for the operation of emergency vehicles, when actually responding to an emergency call." Weaver also claims that because there is a separate statute "that sets forth the general duty to stop, when signaled to do so by a police officer" and because that particular statute does not say *where* the motorist must stop--then the "failure to yield" statute does not apply to such "traffic stops." 2RP 5,6. But why would the "traffic stop" statute need to say where a motorist must stop, when the "failure to yield" statute does say where other motorists must go when approached by emergency vehicles, and that is to the right side of the road. RCW 46.61.210.

Weaver further argues that because Weaver's vehicle was the "target vehicle" of the approaching emergency police vehicle, that the "failure to yield" statute does not apply to such a traffic stop. However, that is not what the "failure to yield" statute says. Furthermore, if the Legislature wanted to exclude traffic stops from the "failure to yield" statute, it could have done so. It did not. RCW 46.61.210. Weaver also argues that because the "failure to

yield" statute uses the words "until such vehicle has passed" means that a motorist being signaled by an emergency police vehicle for a traffic stop is exempt, because the police vehicle does not intent to "pass." This argument defies common sense, because in reality, a motorist who sees an emergency police vehicle approaching from behind with lights and siren activated has *no idea* whether that police vehicle is "passing" or performing a targeted traffic stop *until the other motorist has yielded and stopped*. There is simply no way that the failure to yield statute can be enforced if the duty to yield is conditioned upon other motorists' perception as to whether the emergency vehicle is responding to an "actual" emergency.

Contrary to what Ms. Weaver argued below, Courts in other jurisdictions examining nearly identical failure to yield statutes *have* agreed with the State's argument that the failure to yield statute is not conditioned upon whether the emergency vehicle is responding to an "actual" emergency. Indeed, as noted in one legal treatise on this topic, "[w]hile some statutory provisions requiring motorists to yield the right-of-way to emergency vehicles condition this privilege on the emergency vehicle being on an emergency run, or responding to an emergency call, *many, if not most, do not.*" See, e.g., **CONSTRUCTION AND APPLICATION OF STATUTORY**

PROVISION REQUIRING MOTORISTS TO YIELD RIGHT OF WAY TO EMERGENCY VEHICLE, 87 ALR 5th 1, 52(emphasis added). These cases from other jurisdictions analyze nearly-identical-to-Washington failure to yield statutes, and, most importantly, these cases further note that "no requirement is stated that the authorized emergency vehicle be on an emergency run for the [failure to yield] statute to apply." Rohrkaste v. City of Terre Haute, 470 N.E.2d 738, 745 (Indiana Ct. App. 1985).

Similarly, a Missouri case discusses a nearly-identical "failure to yield" statute--although there it is a crime (as it is in the Georgia cases cited by Ms. Weaver). In City of St. Louis v. Jameson, 972 S.W.2d 302 (Missouri 1998), the failure to yield statute provides,

Upon the immediate approach of a vehicle displaying at least one lighted, flashing light visible under normal atmospheric conditions. . . or upon the immediate approach of a vehicle giving an audible signal by bell or siren, the driver of every other vehicle shall yield the right of way, shall immediately drive to a position parallel to and as close as possible to the right hand or curb of the roadway . . . and shall stop and remain in such position until the emergency vehicle has passed.

Id., citing St. Louis City Ordinance 17.14.030. This statute is not materially different from the requirements of Washington's failure to yield statute. RCW 46.61.210. Like Ms. Weaver does here, the

appellant in the Jameson case argued that the failure to yield statute did not apply if the emergency vehicle was not responding to an "actual" emergency. But the Jameson Court disagreed, stating,

[i]t is of no consequence, for purposes of finding a violation of failure to yield to an emergency vehicle, if the vehicle displaying the lighted flashing lights and or giving an audible signal pursuant to St. Louis City Ordinance 17.02.230 is in fact responding to an emergency situation. Instead, the fact that the vehicle is displaying the visual and audible characteristics of an emergency vehicle is enough to trigger the duty to yield.

Jameson, 972 S.W. 2d at 305 (emphasis added). And, more to the crux of the issue in the instant case, the Jameson Court further reasoned that

[w]e conclude that as a matter of public policy, we cannot have drivers second-guessing whether the driver of a vehicle displaying lights and giving audible signals . . . is properly responding to an emergency situation.

Id. (emphasis added).

Similarly, the Indiana case, Rohrkaste v. City of Terre Haute, 470 N.E.2d 738 (1985), also analyzed a nearly-identical-to-Washington's failure to yield statute, and addressed the argument that the failure to yield statute did not apply unless the emergency vehicle was responding to an "actual" emergency. The Rohrkaste Court rejected this interpretation of the statute and held that the

duty to yield to an emergency vehicle "is imposed without regard to whether the emergency vehicle is on an emergency run."

Rohrkaste 470 N.E.2d at 745 (1985)(emphasis added).

Likewise, in a Wisconsin case, Merlino v. Mutual Service Casualty Ins. Co., 127 N.W.2d 741 (Wis. 1964) the Court analyzed a nearly-identical failure to yield statute in the context of a party's claim that the statute did not apply unless the emergency vehicle was responding to an "actual" emergency. The Merlino Court rejected this argument, stating, "the obligation imposed by [the failure to yield] statute upon drivers of other vehicles is not contingent on whether the ambulance was then carrying out an emergency call." Id. at 583,584 (emphasis added).⁵

Indeed, even the State of Georgia--one of the jurisdictions Ms. Weaver cites to--has a more recent case that *contradicts* the Georgia cases cited by Ms. Weaver and the Superior Court. See, e.g., Hersh v. Griffith et al, 643 S.E.2d 309 (Ga.App. 15 2007). Ms. Weaver is correct that the Georgia failure to yield statute is substantially the same as the Washington statute. However,

⁵ This Court did, however, point out that the question of whether the emergency vehicle was actually responding to a "real" emergency "would be material in considering the issue of whether the ambulance driver was guilty of negligence in failing to observe certain rules of the road." Merlino, 127 N.W.2d at 584. But that is not the issue in the present case.

Such an interpretation reads words into the statute that are not there, and renders the failure to yield statute impossible to enforce, because other motorists quite simply cannot know whether the approaching emergency vehicle is "really" responding to an "actual emergency," and furthermore, such an interpretation allows motorists to claim that the emergency vehicle "wasn't really responding to an actual emergency"--and consequently the other motorist was not required to yield. Furthermore, public safety concerns *demand* that drivers of emergency vehicles with lights and siren activated may *presume* that other motorists will *always* yield to the right pursuant to RCW 46.61.210. Highway safety quite simply demands this strict reading of this statute.

Because the Superior Court erred when it held that the failure to yield statute does not apply unless the emergency vehicle is responding to an "actual" emergency, and because the weight of authority contradicts such a ruling, this Court should reverse the ruling of the Superior Court and remand with instructions to reinstate Ms. Weaver's infraction for failing to yield to an emergency vehicle.

CONCLUSION

For the reasons set out above, this Court should reverse the Superior Court's opinion reversing the District Court's ruling, and should remand with instructions to reinstate Ms. Weaver's infraction for failure to yield to an emergency vehicle.

RESPECTFULLY SUBMITTED THIS 8th day of March, 2010.

MICHAEL GOLDEN
LEWIS COUNTY PROSECUTING ATTORNEY

by:

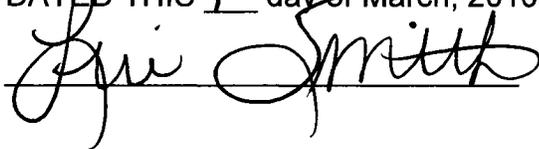

LORI SMITH, WSBA 27961
Deputy Prosecuting Attorney

DECLARATION OF SERVICE

The undersigned certifies that a copy of this opening appellant's brief was served upon the Respondent by placing said document in the United States mail, postage prepaid, addressed to Respondent's attorney as follows:

Allen Shabino
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Seattle, WA 98154

DATED THIS 9th day of March, 2010.



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR LEWIS COUNTY

12

STATE OF WASHINGTON,
Plaintiff / Respondent,
vs.
ANNA E. WEAVER,
Defendant / Appellant

No. 09-2-00404-6
RULING ON APPEAL FROM
DISTRICT COURT NO. 9Y6026219
(RALJ)

I.
FACTS

On February 3, 2009, shortly before midnight, Appellant was driving northbound on I-5 in Lewis County. She passed a Washington State Patrol trooper who was stopped on the right shoulder of I-5 running radar. He observed appellant exceeding the speed limit, pulled in behind her and followed her for approximately one mile in the left lane before activating his lights and siren to stop her. The officer's intent and ultimate action was not to pass the appellant but rather to stop her for the speeding he had observed. Appellant had seen the officer pull in behind her and upon being signaled pulled over to the left shoulder. The trooper stopped behind her and then advised her over his loudspeaker to move across the freeway to the right shoulder. Appellant immediately complied with those directions. She was cited for, among other things, failure to yield to an emergency vehicle under RCW 46.61.210.

Ms. Weaver contested the infraction and filed a motion to dismiss the infraction, contending that, as a matter of law, RCW 46.61.210 did not apply to vehicles contacted for a traffic infraction stop. At the motion hearing to dismiss heard by the District Court Commissioner, appellant offered authority from the State of Georgia, which has a statute that is

1 nearly identical to the Washington statute. The commissioner declined to review the Georgia
2 case authority that interpreted that statute. The motion was denied and the infraction was found
3 to have been committed. This appeal timely followed:

4 II.

5 ASSIGNMENTS OF ERROR

6 The Appellant asserts that the Traffic Court erred in finding that RCW 46.61.210, the
7 “failure to yield right-of-way to an emergency vehicle” statute, rather than RCW 46.61.021, the
8 “traffic infraction stop” statute, governs the obligations of a driver signaled to stop for a traffic
9 infraction.

10 III.

11 STANDARD OF REVIEW

12 The interpretation of a statute is a question of law reviewed *de novo* by the appellate
13 court. *State v. Tarabochia*, 150 Wn.2d 59, 63, 74 P.3d 893 (2006). Pursuant to RALJ 1.1 the
14 Superior Court is sitting as an appellate court in this matter reviewing the decision of the Lewis
15 County District Court.

16 IV.

17 AUTHORITY AND DECISION

18 The question that resolves this case is whether RCW 46.61.210 applies when a law
19 enforcement officer is merely signaling a driver to stop for a routine traffic infraction. I find that
20 it does not and reverse the District Court.

21 RCW 46.61.210(1) provides:

22 Upon the immediate approach of an authorized emergency vehicle making
23 use of audible and visual signals meeting the requirements of RCW
24 46.37.190, or of a police vehicle properly and lawfully making use of an
25 audible signal only the driver of every other vehicle shall yield the right-of-
26 way and shall immediately drive to a position parallel to, and as close as
27 possible to, the right-hand edge or curb of the roadway clear of any
28 intersection and shall stop and remain in such position until the authorized
29 emergency vehicle has passed, except when otherwise directed by a police
30 officer.

The definition of “right-of-way” is provided by RCW 46.04.672:

“Vehicle or pedestrian right-of-way” means the right of one vehicle
or pedestrian to proceed in a lawful manner in preference to another vehicle

1 or pedestrian approaching under such circumstances of direction, speed,
2 and proximity as to give rise to danger of collision unless one grants
precedence to the other.

3 The purpose of the failure to yield statute, RCW 46.61.210 is to clear a path for
4 emergency vehicles actually responding to emergency calls.

5 Through the enactment of [the statute now codified as RCW
6 46.61.210]... the legislature has declared it to be the express public policy
7 of this state that a clear and speedy pathway shall be provided for the
8 operation of emergency vehicles when actually responding to an
emergency call.

9 *Lakoduk v. Cruger*, 48 Wn.2d 642, 654, 296 P.2d 690 (1956).

10 In the present case, it is undisputed that the trooper did not intend to pass Ms. Weaver
11 and go on to some emergency. His sole intent, as correctly deduced by Ms. Weaver, was to
12 simply stop her for a traffic citation. When she pulled over, the trooper first stopped behind her
13 on the left side of the freeway and then, after she moved, he stopped behind her on the right
14 shoulder. Accordingly, since the trooper did not intend to pass and was not impeded in any way
15 by Ms. Weaver, the failure to yield statute simply does not apply.

16 The non-applicability of the failure to yield statute is made clearer by the existence of a
17 specific statute regarding traffic infraction stops. RCW 46.61.021(1) provides: "Any person
18 requested or signaled to stop by a law enforcement officer for a traffic infraction has a duty to
19 stop." This specific statute is silent as to the location where a driver must stop. Accordingly, Ms.
20 Weaver did not violate this statute when she pulled over to the left side of the road.

21 Finally, the court can look to authorities from other jurisdiction for guidance when
22 interpreting statutes. In *City of Bellingham v. Schampera*, 57 Wn.2d 106, 111, 356 P.2d 292
23 (1960) the court found that cases from other jurisdictions that construed "acts quite similar to our
24 own, i.e. the Uniform Motor Vehicle Act," to be convincing. The District Court Commissioner
25 erred when she refused to consider or even look at the outside authority offered by counsel at the
26 infraction hearing.

27 Here, no Washington case addresses the applicability of the failure to yield statute to
28 traffic stops. Accordingly, it is appropriate to look to other states' decisions to interpret this
29 uniform act. In *Jackson v. State*, 223 GA. App. 27, 477 S.E. 2d 28 (1996) the court dealt with a
30 statute nearly identical to RCW 46.61.210. In that case, a defendant was pursued for speeding,

