

NO. 49823-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

CADE GREY HENDRICKS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 16-1-00387-6

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether failure to comply with the requirement regarding transfer of title under RCW 46.12.650(5)(a) is a traffic infraction under RCW 46.63.020?
2. Whether the stop of the vehicle was valid because Deputy Federline had reasonable suspicion that a traffic infraction was committed due to failure to comply with the transfer of title requirements under RCW 46.12.650(5)(a)?
3. Whether the stop of the vehicle was valid because Deputy Federline had reasonable suspicion of a traffic infraction when he saw that the rear license plate of the truck was not completely visible and unobstructed at all times as required by RCW 46.16A.200?
4. Whether a claim of ineffective assistance of counsel fails because there was no prejudice from counsel's failure to move to suppress evidence on the basis that non-compliance with RCW 46.12.650(5)(a) is not a traffic infraction?
5. Whether the Court should decline to consider Hendricks' claim of insufficient evidence to support the conviction because Hendricks failed to support that claim with any argument or authority?

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II. STATEMENT OF THE CASE

On Sept. 8, 2016, the State filed an information charging Hendricks with Violation of a No Contact Order. CP 57. On Oct. 19, 2016, Hendricks filed a motion to suppress evidence under CrR 3.6. CP 51. On Nov. 7, 2016, the court held an evidentiary hearing for Hendricks' motion to suppress evidence. RP 3, 17.

During the evidentiary hearing, Clallam County Sheriff's Deputy Federline testified that he was on patrol on Sept. 7, 2016 and was running license plates on vehicles near Cotton Wood and Newbridge Road in Clallam County. RP 20. Federline observed a Mazda pickup truck and ran the license plate of the vehicle and saw that the vehicle hadn't been transferred within 45 days. RP 21. Federline also observed that it had been over 15 days when the vehicle was reported as purchased. RP 21. Deputy Federline also testified as follows:

[Before I activated my overhead lights, I saw the head obstructed license plate. I couldn't read the back license plate. I'd already run the registration on the front license plate, but I couldn't actually see all the numbers on the back license plate, so that's why...

Q You couldn't verify that the plates actually matched?

A No, no.

Q All right and so what happened after that?

A I activated my overhead red and blue lights on the marked patrol vehicle.

RP 21.

After Federline pulled the Mazda truck over, he recognized the front

passenger was Kimberlie Ciulla and the back passenger was Cade Hendricks.
RP 22, 29–30.

On Nov. 9, 2016, the trial court filed CrR 3.6 Findings of Fact and Conclusions of Law denying Hendricks' motion to suppress. CP 42. On Nov. 14, the trial court held a stipulated bench trial in which Hendricks stipulated to Deputy Federline's report. State's Ex. 6, CP 37, RP 66.

Deputy Federline outlined in his report the basis for the stop of the truck on Nov. 7, 2016 as the vehicle was reported as being purchased or acquired on Aug. 6, 2016, about a month prior, yet there was still no transfer of title. State's Ex. 6. The vehicle also had an obstructed license plate caused by a trailer ball hitch. *Id.* Federline stopped the vehicle and upon making contact with the occupants immediately recognized both Hendricks and Ciulla seated as passengers in the truck. *Id.* Federline knew Hendricks from a prior arrest for violating a no contact order protecting Ciulla. *Id.*

Dispatch informed Federline that Hendricks and Ciulla had outstanding warrants and an active Domestic Violence No Contact Order prohibiting Hendricks from having contact with Ciulla under cause no. 16-1-00100-8. *Id.* Finally, Federline checked Hendricks criminal history and discovered that Hendricks had two prior convictions for Domestic Violence Court Order Violations. State's Ex. 6.

Other exhibits for the State which were admitted include certified

copies of DOL abstracts for Hendricks and Ciulla (State's Ex. 1, 2), certified copies of the Judgment and Sentence for causes CCR 21555 and 16-1-00100-8 for violating no contact orders (State's Ex. 3, 5), and a certified copy of the Domestic Violence No Contact Order for cause no. 16-1-00100-8 (State's Ex. 4). CP 36, RP 66–67.

The trial court found Hendricks guilty of violating the domestic violence no contact order based upon the stipulated report and exhibits. CP 35, RP 74–75.

III. ARGUMENT

A. THERE WAS REASONABLE SUSPICION OF A TRAFFIC INFRACTION SUPPORTING THE STOP OF THE 3RD PARTY'S VEHICLE.

Conclusions of law in an order pertaining to suppression of evidence are reviewed de novo. *State v. Arreola*, 176 Wn.2d 284, 291, 290 P.3d 983 (2012) (citing *State v. Gaines*, 154 Wn.2d 711, 716, 116 P.3d 993 (2005)).

“Warrantless traffic stops are constitutional under article I, section 7 as investigative stops, but only if based upon at least a reasonable articulable suspicion of either criminal activity or a traffic infraction, and only if reasonably limited in scope.” *State v. Arreola*, 176 Wn.2d 284, 292–93, 290 P.3d 983 (2012).

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1. **Deputy Federline had authority to stop the vehicle because the plain language of RCW 46.63.020 shows that failure to transfer title in compliance with RCW 46.12.650(5)(a) is a traffic infraction.**

Hendricks argues that failure to transfer title within 15 days but before 45 days of acquiring a vehicle is not a traffic infraction because such act, although required by Title 46, is not within the scope of RCW 46.63.020 according to the doctrine of *ejusdem generis*. Appellant's Br. at 13.

We review questions of statutory interpretation de novo and interpret statutes to give effect to the legislature's intentions. *City of Spokane v. County of Spokane*, 158 Wash.2d 661, 672–73, 146 P.3d 893 (2006).

Whenever we are tasked with interpreting the meaning and scope of a statute, “our fundamental objective is to determine and give effect to the intent of the legislature.” *State v. Sweany*, 174 Wash.2d 909, 914, 281 P.3d 305 (2012) (citing *State v. Budik*, 173 Wash.2d 727, 733, 272 P.3d 816 (2012)). We look first to the plain language of the statute as “[t]he surest indication of legislative intent.” *State v. Ervin*, 169 Wash.2d 815, 820, 239 P.3d 354 (2010). “[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *State v. Hirschfelder*, 170 Wash.2d 536, 543, 242 P.3d 876 (2010) (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9–10, 43 P.3d 4 (2002)). We may determine a statute's plain language by looking to “the text of the statutory provision in question, as well as ‘the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.’ ” *Ervin*, 169 Wash.2d at 820, 239 P.3d 354 (quoting *State v. Jacobs*, 154 Wash.2d 596, 600, 115 P.3d 281 (2005)).

State v. Larson, 184 Wn.2d 843, 848, 365 P.3d 740 (2015).

Failure to perform *any act required* or the performance of *any act prohibited by this title* or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic

including parking, standing, stopping, and pedestrian offenses, *is designated as a traffic infraction* and may not be classified as a criminal offense except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

RCW 46.63.020.

Hendricks' argument that an act under Title 46 may only be a traffic infraction if it falls within the scope parking, standing, stopping, and pedestrian offenses, fails because the plain language of the statute shows that the legislature intended that *all* acts required or prohibited under Title 46 fall within the scope of RCW 46.63.020 where it specifically states, "Failure to perform *any act* required or the performance of *any act prohibited by this title*" (emphasis added).

That legislature intended to include *all acts* under Title 46 is also borne out by the intent expressly stated under RCW 46.63.010:

It is the legislative intent in the adoption of this chapter in *decriminalizing certain traffic offenses* to promote the public safety and welfare on public highways and to facilitate the implementation of a uniform and expeditious system for the disposition of traffic infractions.

The legislative intent behind RCW 46.63.020 is to decriminalize certain traffic offenses. The statute does this by designating as traffic infractions *all acts* required or prohibited by Title 46 and then specifically designating a long list of exceptions which constitute crimes. *See* 46.63.020. This shows that legislature intended that all acts under Title 46 be designated

either traffic infractions or crimes.

Further, considering Title 46 as a whole shows Hendricks' interpretation is erroneous. Interpreting RCW 46.63.020 by limiting the designation of traffic infractions to a scope that isn't comprehensive would create yet a third class of offense which leads to absurd results. "[Courts] must interpret statutes to avoid absurd results." *State v. Larson*, 184 Wn.2d 843, 851, 365 P.3d 740 (2015) (citing *State v. Alvarado*, 164 Wn.2d 556, 562, 192 P.3d 345 (2008)).

Limiting traffic infractions to acts within a scope including only parking, standing, stopping, or pedestrian offenses would *exclude* traffic offenses such as speeding, running a red light, running stop lights, failing to yield the right of way, and negligent driving in the second degree. These acts would not be traffic infractions but would be some undesignated third class of traffic offense. This conflicts with settled case law. "[S]peeding is a traffic infraction." *State v. Vasquez*, 109 Wn. App. 310, 319, 34 P.3d 1255 (2001) (citing RCW 46.61.400(2); RCW 46.63.020).

Additionally, Hendricks interpretation of RCW 46.63.020 would render it superfluous. "An act must be construed as a whole, considering all provisions in relation to one another and harmonizing all rather than rendering any superfluous." *State v. George*, 160 Wn.2d 727, 738, 158 P.3d 1169 (2007) (citing *State v. Greenwood*, 120 Wn.2d 585, 594, 845 P.2d 971

(1993)).

Hendricks interpretation of RCW 46.63.020 would mean that all acts required or prohibited by Title 46 that are *not included* in the scope of parking, standing, stopping, or pedestrian offenses are still subject to being designated as crimes. For example, traffic offenses such as speeding, running red lights and stop signs, and negligent driving could still be designated as crimes. This would defeat the purpose of RCW 46.63.020 of decriminalizing all acts under Title 46 by designating them as traffic infractions except for specifically designated crimes.

Further, Hendricks' interpretation defies logic because RCW 46.63.020 would only include acts within the scope of parking, standing, stopping, or pedestrian offenses and then, *from that limited group of acts*, would make an exclusive list of acts under Title 46 which would constitute crimes such as DUI, Reckless Driving, and Vehicular Assault and Homicide which obviously already fall outside the scope of parking, standing, stopping or pedestrian offenses.

Finally, RCW 46.63.020 makes more sense in this case when construing the meaning of "including" to simply illustrate a set of examples. *See Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100, 62 S.Ct. 1, 86 L.Ed. 65 (1941) ("[T]he term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the

general principle.”) (citing *Phelps Dodge Corp. v. Nat'l Labor Relations Bd.*, 313 U.S. 177, 189, 61 S.Ct. 845, 85 L.Ed. 1271 (1941)).

Hendricks argues that interpreting RCW 46.64.020 in such a manner leads to absurd results because then mere ministerial tasks would be designated as traffic infractions. Br. of Appellant, at 15.

This argument fails because legislature expressly designated such ministerial tasks as traffic infractions throughout Title 46. For example, a person who operates an all-terrain vehicle upon a public roadway is required to provide a declaration confirming inspections, payments, vin number, release of liability, and a statement of understanding of rules. RCW 46.09.457(b)(i)–(b)(vi). Then RCW 46.09.490(1) expressly makes failure to comply with the provisions of RCW 46.09 a traffic infraction:

Except as provided in RCW 46.09.470(2) and 46.09.480 as now or hereafter amended, violation of the provisions of this chapter is a traffic infraction for which a penalty of not less than twenty-five dollars may be imposed.

See, e.g., RCW 46.10.400 (requiring a person who acquires a snowmobile to apply for a transfer of snowmobile registration within 10 days); RCW 46.10.500 (violations of the provisions of chapter RCW 46.10 are designated as traffic infractions); *see also* RCW 46.18.205(7) (“Failure to return the amateur radio license plates as required under subsection (4) of this section is a traffic infraction.”).

Title 46 requires a person who recently acquires a vehicle to apply for a new certificate of title within 15 days of delivery of the vehicle. RCW 46.12.650(5)(a). Failure to comply with this provision is not specifically listed as a crime under RCW 46.63.020. Therefore, violation of RCW 46.12.650(5)(a) is a traffic infraction.

2. There was reasonable suspicion to stop the vehicle because the title had not been transferred in compliance with RCW 46.12.650(5)(a).

“The rule in Washington is that challenged findings entered after a suppression hearing that are supported by substantial evidence are binding, and, where the findings are unchallenged, they are verities on appeal.” *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

Here, Hendricks does not challenge the above findings of fact but rather only challenges whether violation of RCW 46.12.650(5)(a) is a traffic infraction. As argued above, violation of RCW 46.12.650(5)(a) is a traffic infraction.

Furthermore, the trial court found that a vehicle in which the defendant was a passenger approached Deputy Federline’s position. CP 66. The court also found that Federline ran the license plate of that vehicle using his patrol vehicle computer and the return indicated that more than 15 days had elapsed since ownership of the vehicle had changed but title had not been transferred. CP 66. With this this information, Federline pursued the vehicle.

CP 66.

The court's findings of fact show that Federline had, at the very least, reasonable suspicion that the driver was committing a traffic infraction for failure to comply with RCW 46.12.650(5)(a). Therefore, Federline lawfully stopped the driver of the vehicle because he had reasonable suspicion of a traffic infraction. This Court should affirm the conviction.

3. There was reasonable suspicion of a traffic infraction justifying the stop because the record shows that not all numbers of the rear license plate were visible as required by RCW 46.16A.200.

License plates must be kept clean and be able to be plainly seen and read at all times. RCW 46.16A.200. Failure to keep a license plate plainly observable and readable at all times constitutes a traffic infraction. RCW 46.63.020. "It is unlawful to use holders, frames, *or other materials* that change, alter, or make a license plate or plates *illegible*." RCW 46.16A.200 (emphasis added).

Here, Federline testified that he couldn't read the back license plate due to a trailer hitch that partially obscured the view and he could not verify that the back and front plates matched. RP 21; CP 66. Federline also testified that he made this observation before he turned on his overhead red and blue lights to stop the vehicle. RP 21-22.

Hendricks argues that Federline's contention was not believable

because Federline saw the front license plate. Br. of Appellant at 16.

“Credibility determinations are for the trier of fact and are not subject to review.” *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004) (citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)). “This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.” *Id.* at 874–75 (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

Hendricks also claims that Federline did not testify to any facts supporting the trial court’s finding that Federline had probable cause at the inception in order to stop the vehicle. Br. of Appellant at 17.

This argument fails because Federline testified that he could not see the complete back license plate before he initiated the stop of the vehicle because it was obstructed by a trailer hitch.

Therefore, this Court should affirm.

**B. THE STOP WAS NOT A PRETEXTUAL STOP
BECAUSE THERE WAS AN INDEPENDENT
VALID REASON FOR THE STOP.**

“So long as a police officer actually, consciously, and independently determines that a traffic stop is reasonably necessary in order to address a suspected traffic infraction, the stop is not pretextual in violation of article I, section 7, despite other motivations for the stop.” *State v. Arreola*, 176 Wn.2d 284, 288, 290 P.3d 983 (2012).

Here, Deputy Federline testified that he stopped the vehicle because the license plate had not been transferred after 15 days and because he could not see the complete back license plate, each of which were traffic infractions. Therefore, the stop was not pretextual because Deputy Federline made a conscious independent determination to stop the vehicle to address multiple suspected traffic infractions.

Therefore, this Court should affirm.

C. HENDRICKS CANNOT SHOW PREJUDICE IN ORDER TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE FAILURE TO TRANSFER TITLE IS A TRAFFIC INFRACTION AND THE STOP WAS NOT PRE-TEXTUAL.

A defendant claiming ineffective assistance of counsel must show that counsel's performance was objectively deficient and resulted in prejudice. *State v. McFarland*, 127 Wash.2d 322, 334–35, 899 P.2d 1251 (1995). . . .

The failure to show either deficient performance or prejudice defeats a defendant's claim. *McFarland*, 127 Wash.2d at 334–35, 899 P.2d 1251.

State v. Emery, 174 Wn.2d 741, 754–55, 278 P.3d 653 (2012).

Here, it is unnecessary to examine whether Hendricks' trial counsel's performance was deficient because Hendricks cannot establish prejudice. As argued above, non-compliance with RCW 46.12.650(5) constitutes a traffic infraction and Deputy Federline clearly had reasonable suspicion to stop the vehicle to address that infraction. Moreover, the stop was not pre-textual

because Federline made a conscious independent determination to stop the vehicle to address the suspected traffic infraction.

The trial court would have denied the motion to suppress the evidence had trial counsel moved to suppress the evidence on those bases. Therefore, Hendricks fails to establish prejudice and this Court should affirm.

D. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION.

Hendricks assigned error to the court's finding that there was insufficient admissible evidence to convict Hendricks of violation of the no contact order. Appellant's Br. at 2, Assignment of Error no. 9.

Appellate Courts will not consider assignments of error which are supported neither by argument nor authority unless well taken on their face. *State v. Kroll*, 87 Wn.2d 829, 838, 558 P.2d 173 (1976); *Northern State Constr. Co. v. Robbins*, 76 Wn.2d 357, 367, 457 P.2d 187 (1969); *Valente v. Bailey*, 74 Wn.2d 857, 858, 447 P.2d 589 (1968).

Hendricks advances no argument or authority supporting his contention that the evidence which was admitted was inadmissible or that the evidence which was admitted did not support the conviction for violating the no contact order. Therefore, the Court should decline to consider it.

Moreover the trial court held a stipulated bench trial in which Hendricks *stipulated* to Deputy Federline's report. State's Ex. 6. Deputy

Federline outlined in his report the basis for the stop of the truck, his recognition of both Hendricks and Ciulla seated as passengers in the truck, and the existence of the active no contact order prohibiting Hendricks from having contact with Ciulla, and the existence of Hendricks' prior convictions for violating a Domestic Contact No Contact Order. State's Ex. 4, 6.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Green*, 94 Wash.2d 216, 220–22, 616 P.2d 628 (1980). When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Partin*, 88 Wash.2d 899, 906–07, 567 P.2d 1136 (1977). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Theroff*, 25 Wash.App. 590, 593, 608 P.2d 1254, aff'd, 95 Wash.2d 385, 622 P.2d 1240 (1980).

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

A reasonable juror could infer that Hendricks had contact with Ciulla in violation of the order prohibiting Hendricks from “coming near and from having any contact whatsoever. . . .” State's Ex.4. In fact, the trial court considered such to be a reasonable inference. RP 75. Therefore, the Court should affirm.

IV. CONCLUSION

The plain language of RCW 46.63.020 shows that failure to comply with the requirements of RCW 46.12.650(5)(a) regarding transfer of title is a

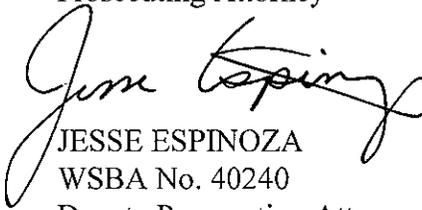
traffic infraction. Deputy Federline had reasonable suspicion that RCW 46.12.650(5)(a) had not been complied with. Additionally, Deputy Federline could not see the entire rear license plate as required under RCW 46.16A.200. Therefore, Deputy Federline had reasonable suspicion that multiple traffic infractions had been committed and therefore the vehicle stop to address them was valid.

Hendricks cannot show prejudice in order to establish ineffective assistance of counsel because his claims regarding RCW 46.63.020, the visibility of the rear license plate, and that the stop was pre-textual lack merit and would not have prevailed had trial counsel raised them. Finally, this Court should decline to consider Hendricks' claim that there was insufficient evidence to support the conviction.

Therefore, this Court should affirm the conviction.

Respectfully submitted this 18th day of October, 2017.

MARK B. NICHOLS
Prosecuting Attorney

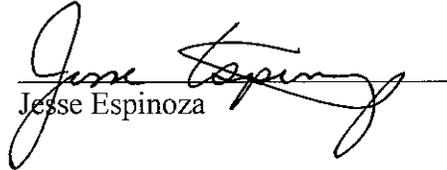


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CERTIFICATE OF DELIVERY

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 forwarded electronically or mailed to Peter B. Tiller on October 18, 2017.

MARK B. NICHOLS, Prosecutor


Jesse Espinoza

CLALLAM COUNTY PROSECUTING ATTORNEY'S OFFICE

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