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Division III  
State of Washington

No. 33270-5-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Plaintiff/Respondent

v.

ESTEBAN JOEL FLORES,

Respondent/Appellant

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APPEAL FROM THE SUPERIOR COURT  
OF WALLA WALLA COUNTY  
THE HONORABLE M. SCOTT WOLFRAM

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RESPONDENT'S RESPONSE BRIEF

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Respectfully submitted:

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**A. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

**B. RELIEF REQUESTED**

The State asserts Mr. Flores' Disposition was correctly decided and should stand.

**C. ISSUE**

Whether a conviction for Disturbing School Activities can carry a detention sentence, probationary supervision, and court costs.

**D. STATEMENT OF THE CASE**

Esteban Flores (Appellant) was at Walla Walla High School ("Wa-Hi") on February 14, 2014, at approximately 9:30 AM. CP 52. Wa-Hi is located at 800 Abbott Road, Walla Walla, Washington, in Walla Walla County. CP 52. School was in session on that day and at that time. CP 52. Mr. Flores was seventeen years old and a student at Wa-Hi at that time. CP 53. While at Wa-Hi, Mr. Flores threw a blow at another student, and Mr. Flores subsequently ran from Walla Walla Deputy Sheriff Scott Brashear. CP 53. Deputy Brashear and Assistant Principal Stacy Estes observed Mr. Flores throw the punch. CP 53. Both physical fighting and assault are described as causing "disruptions to the education of other students" in the Walla Walla High School Handbook, at page 20. CP 53.

Mr. Flores was found guilty of Disturbing School for willfully creating a disturbance on school premises during school hours. CP 53.

Prior to disposition, Mr. Flores filed a Memorandum of Authorities in Reference to Authority to Impose Juvenile Detention and Community Supervision, in which he argued that RCW 28A.635.030 is a special statute, and the penalty was limited to a fine, which could be no greater than fifty dollars. CP 30-33. Mr. Flores then argued that the court should go through a statutory construction analysis, and he argued the statute was ambiguous. CP 39-51. The State responded that the statute was not a special statute, and since RCW 28A.635.030 does not address imprisonment, it does not affect imprisonment as a penalty. CP 34-38. The court agreed with the State and entered Conclusions of Law on Sentencing to that effect. CP 55-57. Mr. Flores moved the court to reconsider, but that motion was denied. CP 66-72, 77-79. Mr. Flores' Order of Disposition was entered February 26, 2015. CP 58-65.

#### **E. ARGUMENT**

##### **1. Silence as to Imprisonment in RCW 28A.635.030, Disturbing School, Implies the Status Quo is Unaltered, and Detention is an Available Penalty**

The issue is whether the reference to a fine cap under RCW 28A.635.030 reflected a legislative intent to entirely disallow imposition

of standard sentencing conditions for misdemeanors. Generally, misdemeanors are punishable by imprisonment up to ninety days in jail, or a \$1,000 fine, or both. RCW 9A.20.021(3). Juvenile dispositions are guided exclusively by the Juvenile Justice Act. RCW 13.40.160(1); RCW 13.40.0357. Mr. Flores was convicted of Disturbing School Activities, a misdemeanor. RCW 28A.635.030. An individual commits the crime of Disturbing School activities if he “willfully create[s] a disturbance on school premises during school hours or at school activities or school meetings. . . .” Mr. Flores argues that when the legislature addressed the penalty for Disturbing School Activities — “the penalty . . . shall be a fine in any sum not more than fifty dollars” — the legislature intended to not only limit the fine, but it intended also to preclude imprisonment. RCW 28A.635.030. However, because courts should infer that silence as to a standard criminal penalty implies the penalty remains enforceable, detention was appropriate in Mr. Flores’ case.

Mr. Flores’ interpretation of penalties for Disturbing School is appealing: it is simple. It is entirely plausible that the legislature *could* have intended to limit this particular misdemeanor to a fine only. However, the legislative history for this crime does not support this theory, as the sole discussion in the history for Disturbing School refers to simplifying collection of fines. RCW 28A.635.030; 1984 c 258 §§ 302-

340, § 301. There is nothing about curbing imprisonment for school offenses. Further, the implications of having a fine-only misdemeanor likely go beyond what the legislature considered if its intent truly was to limit the crime's penalty to a fine. For example, right to counsel only attaches when liberty is at stake, CrR 3.1, but if the Court accepts Mr. Flores' interpretation, then defendants charged with this and other similarly worded crimes may no longer have a right to court-appointed counsel. Thus, someone could face criminal history without access to an attorney.

Where the legislature deviates from a standard penalty, the Court should infer that any conditions not expressly limited remain unaltered. *See State v. Shannahan*, 69 Wn. App. 512, 516, 849 P.2d 1239 (1993). In *State v. Shannahan*, the court addressed the imposition of restitution in a negligent driving case. At that time, negligent driving had not been split into first and second degrees, and RCW 46.61.525 specifically stated: negligent driving "is not punishable by imprisonment or by a fine exceeding two hundred fifty dollars." RCW 46.61.525 (amended 1996). The defendant there argued that since the penalty was limited to a fine, the court could not impose restitution. *Shannahan*, 69 Wn. App. at 514, 849 P.2d 1239. The court held otherwise, reasoning:

Since the Legislature specifically reduced the standard misdemeanor penalty in the case of negligent driving without reference to restitution, the compelling inference is that the Legislature did not intend to remove the restitution authority generally applicable to misdemeanors.

*Id.* at 516, 849 P.2d 1239. The court upheld the imposition of restitution.

*Id.* at 521, 849 P.2d 1239.

Here, Mr. Flores has raised an almost identical issue raised in *Shannahan*: that the language limiting part of the standard penalty for misdemeanors excludes all other potential penalties not addressed by the statute. However, as addressed squarely by the *Shannahan* court, courts should infer exactly the opposite of what Mr. Flores is proposing. Rather, “the compelling inference is that the Legislature did not intend to remove [punitive] authority generally applicable to misdemeanors” when it addressed capping the fine for Disturbing School. *Id.* Also telling is the fact that RCW 46.61.525 (amended 1996) specifically addressed imprisonment *and* fines, demonstrating that the legislature can easily eliminate imprisonment as an option if it deigns to do so. The fact that the Disturbing School statute lacks similar language demonstrates the legislature’s clear intent to leave that penalty unaltered. Indeed, had the legislature intended for the misdemeanor Disturbing School to have no other penalty, it could easily have indicated so by including the word “only” (i.e., “the penalty for which shall be *only* a fine in any sum not

more than fifty dollars.”), or it could have paralleled the language in the pre-1996 negligent driving statute (i.e., “Disturbing School is not punishable by imprisonment or by a fine exceeding fifty dollars.”). RCW 46.61.525 (amended 1996). The legislature did not do so. Thus, the inference is that all standard penalties, with the exception of the fine, remain unaltered for Disturbing School.

Turning to the legislative intent for RCW 28A.635.030, it is evident that the purpose in addressing the fine was to streamline imposition and collection of monetary penalties. “It is the intent of the legislature to assure accountability, uniformity, economy, and efficiency in the collection and distribution by superior, district, and municipal courts of fees, fines, forfeitures, and penalties assessed and collected for violations of state, statutes, and county, city, and town ordinances.” RCW 28A.635.030; 1984 c 258 §§ 302-340, § 301. Thus, the legislature’s intent was not to otherwise curb criminal sentencing when it addressed the fine in RCW 28A.635.030.

Because imprisonment was not addressed in RCW 28A.635.030, the standard range remains unaltered: up to 90 days for misdemeanors. RCW 9A.20.021(3). Since local sanctions for misdemeanors include a maximum of 30 days in detention, RCW 13.40.0357, a sentence of four days does not exceed the sentence an adult could face, and the proposed

sentence is lawful, RCW 13.40.160(11). Since the Court can impose detention, conditions of release are also appropriate and available options.

**2. The Penalty for Disturbing School “Shall Be a Fine” Is Properly Interpreted to Mean a Fine Should Be Imposed, Notwithstanding Other Disposition Conditions**

Mr. Flores asserts that because the legislature used the word “penalty” in addressing the fine for Disturbing School, the only consequence for Disturbing School is a fine. Appellant’s Brief at 10. However, in *Shannahan*, the court effectively addressed the link between the words “penalty” and “punishment.” There, the court stated: “Shannahan contends that the negligent driving statute, RCW 46.61.525, under which he was convicted does not authorize restitution in lieu of the *penalty*, a fine of \$250, set forth therein.” 69 Wn. App. at 514, 849 P.2d 1239 (emphasis added). That sentence is immediately followed by footnote 1, which cites to the language of RCW 46.61.525. That language is, in relevant part: “such offense is not *punishable* by imprisonment or by a fine exceeding two hundred fifty dollars.” *Id.* at n.1 (emphasis added). Regardless of the interchangeability of the terms “penalty” and “punishment,” the court determined that standard conditions applicable to misdemeanors that were not otherwise abrogated remained in full effect. *Id.* at 516, 849 P.2d 1239. Therefore, the penalty, punishment, and

consequence of Mr. Flores' conduct could appropriately include community supervision, community service, and all other local sanctions, with the caveat for the fine.

**3. Washington Has Penalties That Range a Broad Spectrum, But the Legislature Specifically Addresses Fines and Imprisonment Separately When It Chooses to Deviate From the Standard Maximum and Minimum Sentences**

Mr. Flores seems to argue that offenses relating to school property and personnel are unique in that the Washington Legislature has crafted separate penalties for several of the offenses enumerated in Chapter 28A.635 RCW, and for some of those offenses, the penalties are limited to fines only. Appellant's Brief at 6-8. Mr. Flores argues that the statutory construction of Chapter 28A.635 RCW as a whole leads to the inexorable conclusion that the legislature has carefully crafted sentencing deviations for several offenses under Chapter 28A.635 such that the clear legislative intent was to impact both fines and imprisonment. Appellant's Brief at 5-10.

However, from a practical standpoint, Mr. Flores' argument oversimplifies the Legislature's sometimes-incongruous methodology in addressing sentencing. Misdemeanors are generally defined as "[a]ny crime punishable by a fine of not more than one thousand dollars, *or by*

imprisonment in a county jail for not more than ninety days, *or by* both such fine and imprisonment.” RCW 9A.20.010 (emphasis added). Thus, in the very definition of the offense, fines and imprisonment are dealt with separately. In addressing sentencing, the legislature may not have a uniform approach to drafting language, but its general practice in deviating from the standard penalties includes reference to both fines *and* imprisonment when it chooses to impact both.

Washington has myriad misdemeanors that have specially drafted sentencing provisions. To adequately analyze the seeming discrepancy between school offenses and “typical” misdemeanors, the Court should broaden its gaze to recognize how disparately the legislature treats various less-charged offenses.

For example, Washington has an entire section dedicated to “Miscellaneous Crimes.” RCW 9.91. Some “miscellaneous” statutes specifically cite RCW 9A.20 with reference to defining the classification and punishment of the crimes. *E.g.*, RCW 9.91.142 (trafficking in food stamps a class C or gross misdemeanor depending on value of stamps); RCW 9.91.150 (Tree spiking is a “gross misdemeanor under chapter 9A.20 RCW.”); RCW 9.91.175(1) (Interfering with search and rescue dog a gross misdemeanor “punishable according to chapter 9A.20 RCW, except when (a)(ii) of this subsection applies.”). Other miscellaneous

crimes make no reference to punishment or chapter 9A.20. RCW 9.91.010 (denial of civil rights a misdemeanor); RCW 9.91.020 (operating railroad, steamboat, vehicle, etc. while intoxicated a gross misdemeanor); RCW 9.91.060 (leaving children unattended in parked automobile a gross misdemeanor); RCW 9.91.160 (possession by an individual under eighteen of personal protection spray device may be a misdemeanor). Only one statute provides language of limitation regarding the fine while remaining silent as to imprisonment. RCW 9.91.130 (disposal of trash in charity donation receptacle is a misdemeanor, “and the fine for such violation shall be not less than fifty dollars for each offense.”).

The legislature did not limit its disparate sentencing guidelines and practices to the “Miscellaneous Crimes,” though. For example, an accountancy violation can result in a \$30,000 fine, or six month jail sentence, or both, even though the underlying crime is only a misdemeanor. RCW 18.04.370(1)(a) (“Any person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than thirty thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment.”).<sup>1</sup> Transporting or confining domestic animals in an

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<sup>1</sup> The legislature *increased* the maximum sentence for this misdemeanor, but by Mr. Flores’ interpretation, if the legislature had chosen to leave the imprisonment range unchanged and had remained silent as to jail time, imprisonment would have been

unsafe manner, RCW 16.52.080, and docking horses, RCW 16.52.090, are both misdemeanors, but a person convicted of either “shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution.” RCW 16.52.165.

Turning to Chapter 28A.635, the language addressing penalties is similarly inconsistent. Abusing or insulting a teacher requires a fine between ten dollars and one hundred dollars. RCW 28A.635.010. Willfully disobeying school administrative personnel or refusing to leave public property is punishable “as provided in chapter 9A.20 RCW.” RCW 28A.635.020. Disclosing examination questions requires a fine between one hundred dollars and five hundred dollars. RCW 28A.635.040. Participating in corrupt practices as a school official is simply characterized as a misdemeanor, with no reference to penalty and no reference to Chapter 9A.20. RCW 28A.635.050. Interference with the administration and discharge of school personnel performing their duties is a misdemeanor, which may result in a fine not over five hundred dollars, or imprisonment in jail for not more than six months, or both such fine and imprisonment. RCW 28A.635.090. The same penalty applies to

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entirely eliminated as a potential consequence for an accountancy violation simply because the legislature addressed the fine.

someone who intimidates school personnel. RCW 28A.635.100. Thus, even within this one chapter, the legislature has addressed penalties in at least four different ways. Mr. Flores asserts this disparate treatment connotes a clear legislative intent to smoothly square away any question about sentencing. However, the only clear conclusion one draws from Chapter 28A.635 — and all other crimes referenced above — is that the legislature has the capability to address imprisonment when it chooses to do so. When the legislature chose to modify the jail sentence, it specifically did so, in addition to addressing the fine separately. RCW 28A.635.090; .100.

Further, as previously addressed, prior to 1996, the penalty for Negligent Driving was specifically limited to a fine, and the statutory language explicitly disallowed imprisonment. RCW 46.61.525 (amended 1996) (Negligent driving “is not punishable by imprisonment or by a fine exceeding two hundred fifty dollars”). However, after 1996, the legislature amended the Negligent Driving statutes to create two offenses: Negligent Driving in the First Degree, a misdemeanor with standard penalties, RCW 46.61.5249, and Negligent Driving in the Second Degree, an infraction with only a fine, RCW 46.61.525. The change reflects a likely recognition that a “crime” that only has a penalty of a fine is better

characterized as an infraction.<sup>2</sup> Thus, the legislature has demonstrated time and again that it has the ability to specifically limit or eliminate imprisonment when it chooses to do so. The Court should not interpret silence to be explicit language of limitation when the legislature has the ability to act explicitly.

In undergoing a statutory construction analysis, the Court first looks to whether the statute is clear on its face. *State v. Chapman*, 140 Wn.2d 436, 450, 998 P.2d 282 (2000) (citing *Rettkowski v. Dep't of Ecology*, 128 Wn.2d 508, 515, 910 P.2d 462 (1996); *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 329, 815 P.2d 781 (1991)). A statute that is not ambiguous is not open to judicial interpretation. *Id.* at 450, 998 P.2d 282 (citing *State v. Mollichi*, 132 Wn.2d 80, 87, 936 P.2d 408 (1997)). First, there is no ambiguity in the statute: it is simply silent as to imprisonment. Contrast this with several other statutes within the same chapter, which demonstrates the legislature's ability to address fines

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<sup>2</sup> From a practical standpoint, the reason defendants have the right to appointed counsel is that they face potential loss of liberty. CrR 3.1(a); see *State v. Ponce*, 93 Wn.2d 533, 537-38, 611 P.2d 407 (1980). By the same token, the reason the State has to prove all the elements of the crime beyond a reasonable doubt is the potential loss of liberty. If the only penalty is a fine, then there can be no loss of liberty, making the practical effect tantamount to an infraction. Thus, reading the statute as Respondent proposes would be contrary to the underlying premises of criminal law, as the State would be required to meet the higher burden of proof, despite the relative minimal jeopardy. Furthermore, if the only penalty for Disturbing School and similarly worded misdemeanors is a fine, then individuals charged with those offenses would not be entitled to court-appointed attorneys. CrR 3.1(a) ("The right to a lawyer shall extend to all criminal proceedings for offenses *punishable by loss of liberty* regardless of their denomination as felonies, misdemeanors, or otherwise." (emphasis added)). It is unlikely the legislature intended such consequences when its sole action was to limit fines for certain offenses.

and imprisonment when it chooses to do so. Even if the statute were ambiguous, the legislature explicitly stated its intent in addressing fines was to streamline courts' ability to collect financial obligations. 1984 c 258 §§ 302-340, § 301. Considering the myriad issues with collecting legal financial obligations, it is not too great a stretch of the imagination to conclude the legislature was trying to alleviate the financial burden on individuals who committed offenses at school. *Cf., State v. Lundy*, 176 Wn. App. 96, 308 P.3d 755 (2013) (analyzing burdens associated with legal financial obligations).

It is well-settled law that statutes should not be interpreted to contain superfluous words or language. *E.g., State v. Ervin*, 169 Wn.2d 815, 823, 239 P.3d 354 (2010); *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005). However, according to Mr. Flores' interpretation, the language in the pre-1996 Negligent Driving statute had superfluous language because it specifically addressed disallowing imprisonment. RCW 46.61.525 (amended 1996). Indeed, under Mr. Flores' theory of statutory construction, silence in such cases would be laden with meaning, and the legislature would be required to create new, never-before-used language to reimpose an imprisonment term that it never eliminated in the first place. Adopting Mr. Flores' interpretation would render superfluous any future language of limitation and would

create a potential ambiguity if the legislature ever decided to draft a statute that was intended to impact the fine while leaving imprisonment unaffected.

Penalties for misdemeanors are disjunctive, meaning someone can be sentenced to one, both, or neither. RCW 28A.635.030 is silent as to imprisonment. An express limit as to one penalty should not be extended to limit what is not otherwise addressed within the statute.

**4. Juvenile Courts Had the Authority to Impose Court Costs and Crime Victim Compensation Assessments at the Time of Respondent's Conviction**

Mr. Flores asserts that the juvenile court may not impose court costs. Appellant's Brief at 13-14. Juvenile court may impose court costs. RCW 13.40.192. Mr. Flores' argument fails.

**F. CONCLUSION**

For the foregoing reasons, the State respectfully submits that the Order of Disposition should be affirmed.

Respectfully submitted this 3rd day of November, 2015.

  
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**Certificate of Mailing or E-mailing**

I certify that I sent a true and correct copy of the foregoing Respondent's Response Brief to Susan Marie Gasch, Attorney for Appellant

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