

FILED  
Court of Appeals  
Division III  
State of Washington  
11/9/2018 8:00 AM  
No. 352412

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III

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STATE OF WASHINGTON,

Plaintiff/Respondent,

v.

ERICKA HELLER,  
also known as, ERICKA MCCANDLESS

Defendant/Appellant.

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APPELLANT'S SUPPLEMENTAL BRIEF

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**1. The term “accident,” as used in RCW 46.52.020, should not apply to an officer’s Post PIT maneuver during a high speed chase where the defendant is charged with attempting to elude the pursuing police vehicle.**

The State cites *State v. Silva*, 106 Wash.App. 586 (Div. 1, 2001) as binding authority that the Post PIT maneuver employed by Deputy Rassier constitutes an “accident.” In this case, Silva was pulled over for expired tabs. The officer was standing next to the driver’s side window when the Silva put the car in gear and attempted to drive away. The officer reached in through the open window and tried to turn the ignition off then grabbed onto the steering wheel while the car “took off at a high rate of speed.” The officer then jumped away from the car and slid to a stop in the gravel. *Id.* at 479-480.

On appeal, defendant Silva argued there was no “accident” because “there was nothing accidental about the incident.” Instead, it was intentional acts by the officer and the defendant.

The Court applied the definition of “accident” found in dictionaries, including the 1990 edition of Black’s Law Dictionary, and determined that the definition of “accident” did not exclude events involving intentional acts. The 2014 Edition of Black’s Law Dictionary defines “accident” generally as:

**accident** *n.* (14c) **1.** An unintended and unforeseen injurious occurrence; something that does not occur in the

usual course of events or that could not be reasonably anticipated; any unwanted or harmful event occurring suddenly, as a collision, spill, fall, or the like, irrespective of cause or blame <the accident was staged as part of an insurance scam>. **2. Equity practice.** An unforeseen and injurious occurrence not attributable to the victim's mistake, negligence, neglect, or misconduct; an unanticipated and untoward event that causes harm.

Black's Dictionary also provides definitions of "accident" in different contexts, including "car accident":

- **car accident** An accident in which a motor vehicle collides with another vehicle or with a person, animal, or object, usu. causing damage or injury. — Also termed *automobile accident; motor-vehicle accident; vehicular accident; traffic accident; traffic collision.*

There is no place among the 2014 Black's Law Dictionary definitions of "accident" that specifically and expressly includes a Post PIT maneuver during an attempt to elude, particularly, as here, where defendant received the 12-month sentence enhancement because the eluding endangered someone besides the person attempting to elude and the pursuing officer.

Further, RCW 46.52.020 "is aimed at protecting accident victims." *Seattle v. Stokes*, 42 Wash. App. 498, 502, 712 P.2d 853 (1986). Its "underlying rationale" is to "facilitat[e] investigation of accidents and provid[e] immediate assistance to those injured." *State v. Vela*, 100 Wash.2d 636, 641, 673 P.2d 185 (1983). These legislative goals are not

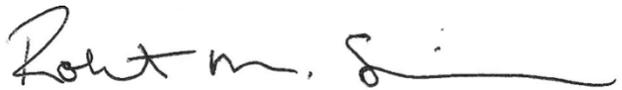
served by applying the statute to a driver who is struck by a patrol car during a high-speed chase.

And, the facilitation of accident investigation and provision of immediate assistance to those injured is not implicated where the accident occurs during an active police chase and the attempt to elude fails when the perpetrator is caught shortly thereafter.

**2. Defendant concedes that if defendant failed to adequately preserve the issue for appeal, then this appellate court need not address and consider this issue.,**

DATED this 8th day of November, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Seines", written over a horizontal line.

Robert M. Seines, WSBA 16046  
Attorney for Ericka Heller,  
aka, Ericka McCandless

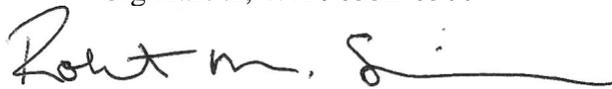
**CERTIFICATE OF SERVICE**

I, Robert M. Seines, do hereby certify under penalty of perjury that on November 8, 2018 I provided e-mail service by prior agreement (as indicated), a true and correct copy of the annexed Appellant's Supplemental Brief to:

scpaappeals@spokanecounty.org

KCORNELIUS@spokanecounty.org

And to: Erica McCandless  
No. 776981 JB19L  
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Gig Harbor, WA 98332-8300



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s/Robert M. Seines

**3. The Hit and Run statute should not be applied where a person is hit by a pursuing police officer while that person is attempting to elude the officer.**

Ms. McCandless repeats and incorporates the law and argument in her opening brief. The legislative goals underlying the Attempt to Elude and Hit and Run statutes are not furthered by charging both when the collision occurs during the eluding event.

Facilitating an accident investigation and providing immediate assistance to those injured is not implicated where the accident occurs during an active police chase and the attempt to elude fails when the perpetrator is caught. See, *Seattle v. Stokes*, 42 Wash. App. 498, 502, 712 P.2d 853 (1986); *State v. Vela*, 100 Wash.2d 636, 641, 673 P.2d 185 (1983).

Further, the crime of Attempt to Elude a Pursuing Police Vehicle adequately punishes fleeing motorists and protects the public, particularly with its 12-month enhancement if the eluding endangers someone besides the person attempting to elude and the pursuing officer.

**4. The trial court erred by not designating how the credit for time served should be allocated between the Sentence for the felony and the consecutive sentence for the gross misdemeanors.**

a. Number of days served prior to sentencing. Ms.

McCandless was booked into the Spokane County jail during the evening of November 2, 2016. She remained in jail continuously until her sentencing on April 14, 2017. However, the Judgment and Sentence was not filed until April 18, 2017.

The State is correct that there are 163 days from November 2, 2016 and April 14, 2017. There are 167 days from that date to April 18, 2017.

b. Allocation of credit for time served.

The State misunderstands Ms. McCandless's argument regarding credit for time served.<sup>3</sup> The Petitioner agrees that the sentence for the felony conviction is served in State custody, and that the gross misdemeanors are served in the County Jail as stated in the Order Clarifying Judgment and Sentence. CP 195-196. The problem is that the

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<sup>3</sup> See Respondent's brief at 23-24.

judgment and sentence (CP 159-173) and order clarifying the judgment and sentence are both silent how the pre-sentence credit for time served was to be allocated between the felony Eluding sentence and the consecutive sentence for the Hit and Run and Obstructing gross misdemeanors. CP 164-65. This requires a remand to superior court to verify, and if necessary, correct the actual credit for time served, and then allocate the credit for time served between these sentences. See; 13B Wash.Prac., Criminal Law § 4201 (2017-2018), *Citing, State v. Besio*, 80 Wash.App. 426, 432 n.1, 907 P.2d 1220, 1223 n.1 (1995).

#### **IV. CONCLUSION**

For the reasons stated, this Court should reverse the convictions for Attempting to Elude (and the enhancement) and Hit and Run for lack of evidence and the State's violation Ms. McCandless's 6th Amendment right of confrontation. The Hit and Run charge should also be dismissed on grounds that the Hit and Run statute should not be applied as here, when the accident occurred with a pursuing patrol during an attempt to elude. In the alternative, if the Eluding conviction survives, this Court should merge the Obstructing charge into the Eluding charge. This case should be remanded to the superior court to calculate and allocate the pre-sentence credit for time served.

DATED this 14th day of April, 2018.

Respectfully submitted,



Robert M. Seines, WSBA 16046  
Attorney for Ericka Heller,  
aka, Ericka McCandless

### **CERTIFICATE OF SERVICE**

I, Robert M. Seines, do hereby certify under penalty of perjury that on April 16, 2018, I provided service by email and USPS, a true and correct copy of the annexed Appellant's Opening Brief to:

scpaappeals@spokanecounty.org  
KCORNELIUS@spokanecounty.org

And to: Erica McCandless  
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9601 Bujacich Rd. NW  
Gig Harbor, WA 98332-8300



s/Robert M. Seines

**November 08, 2018 - 5:33 PM**

**Transmittal Information**

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