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Division III
State of Washington
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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

DAVID JOSEPH BROWN,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

Despite Respondents misrepresentation of the facts, Appellant reiterates the only issue to be considered by the Court is why the Legislature of Washington State chose to include the two simple words of “when required” contained within RCW 46.61.305(2) and apply that language to the facts before the Court. The Court will then decide if Mr. Brown was required to re-activate his left turn signal when he had already done so and the arresting Trooper testified he knew where Mr. Brown was going despite not re-activating the left turn signal because he had already signaled his intent to enter the dedicated left turn only lane. The State would like this Court to focus on the one hundred foot language which simply, and common sense makes clear, applies only to lane changes and not a turn at an intersection from a dedicated left turn only lane in which case one hundred feet is pointless.

Respondent also attempts to confuse the issue before the Court by claiming facts not in the record. Specifically, to assert three other directions of travel may not know or be able to discern where Appellant was traveling utterly and completely disregards the facts of the case before this Court. Respondent also misguides this Court by citing to unpublished opinions that merely define what a continuous signal is which also doesn't address the

issue this Court chose to accept review of and that being once a driver has signaled the intent to enter, and does enter, a designated left turn only lane by using a turn signal after which that same signal cycles off, does RCW 46.61.305 contemplate the specific instance when reactivation of that signal not being required and thus not a violation of the statute to not do so?

IV. ARGUMENT

- A. The Respondent mischaracterizes Appellants position on relevant case law and statutory interpretation given the distinction between Washington's RCW and out of state signaling statutes that lack the "when required" elements Washington chose to include in the statute and should be given the plain meaning of the words to mean there are occasions when a signal is not required to be reactivated or such words should be removed.

Respondent incorrectly asserts that the Appellant is asking the Court to add language to RCW 46.61.305 to get to what the legislative meaning of "when required" being included in the statute. Citing to *Huffman* is misguided and should be disregarded by this Court as Appellant is not asking the Court to add any language to the statute. To the contrary, Appellant points to the common sense and plain reading of the statute as written and asserts that the plain reading and meaning of the "when required" language is the existence of occasions such as the facts before the Court when it is not a traffic infraction to not reactivate a turn signal when such notice of the turn has already been given and there is no other possible

direction to travel. Unlike the cases cited to by Respondent and unlike many of the statutes within Respondents argument and out of state cases, RCW 46.61.305 includes the “when required” language. Many out of state cases and statutes, such as *Texas v. Dixon* and Texas signaling turns statute Sec. 545.104 simply state “a signal shall be given in the following manner” and are thus distinguishable for Washington’s RCW 46.61.305 and its plain language. Texas chose to exclude language such as “when required” making it clear when signals are required by stating:

(a) An operator shall use the signal authorized by Section 545.106 to indicate an intention to turn, change lanes, or start from a parked position.

(b) An operator intending to turn a vehicle right or left shall signal continuously for not less than the last 100 feet of movement of the vehicle before the turn.

If Washington’s legislature wants to rewrite RCW 46.61.305 to eliminate the “when required” language it may do so to meet Respondents argument and agree with out of State statutes but unless and until that is done, Respondents argument is misguided. Simply put, RCW 46.61.310 is not at issue to be considered by this Court as it was not considered for review when the Court accepted Appellants request for review.

Respondent also incorrectly references RCW 46.61.290, the two way turn lane statute, as was argued and rejected by the court during oral arguments on Appellants motion for discretionary review to add emphasis to

their argument that a signal must be activated during the last 100 feet of a turn when entering a two way turn lane. Appellant made the clear distinction between the need to activate a turn signal when entering a dedicated two way turn lane as such is required for safety of the potential for oncoming traffic to enter the same turn lane potentially causing a head on collision. Such an argument is clearly distinguishable from the facts before the Court and for two way turn lanes that Respondent characterizes as “turn only lanes.” The issue Respondent attempts to confuse the Court with was already rejected by the Court during oral argument on the Motion For Discretionary Review. A dedicated left turn only lane and the one hundred foot rule contained within RCW 46.61.290 for signaling the intention to enter a two way dedicated turn lane as where two vehicles traveling in opposite directions entering the same lane to both turn left from their respective directions is entirely distinguishable and should not be considered by this Court when reviewing the language contained in RCW 46.61.305 as applied to the facts before the Court on review.

Interestingly, Respondent cites to unpublished and many out of State and Federal cases trying to support the arguments made but all of the cases cited and statutes referenced in those cases are distinguishable from RCW 46.61.305. It should not be persuasive to this Court to cite to unpublished

and out of State cases and statutes that are distinguishable and lack similar language. The statutes cited by Respondent all contain clear requirements that a driver “shall” indicate a signal in a particular manner. The legislature in Washington chose to draft the statute at issue before the Court, RCW 46.61.305, to contain language calling into question occasions such as the facts before the Court that re-activating a turn signal is not necessary and thus not a traffic infraction to not do so. An unnecessary act such as that lacks common sense and ignores the plain reading of the statute as applied to the facts of Appellants case.

V. CONCLUSION

Mr. Brown signaled his intent to enter a dedicated left-turn-only lane after which he straightened out the vehicle and the left turn signal simply and naturally cycled off. Mr. Brown came to a stop and waited for the traffic control device to turn green after which he made an appropriate and reasonably safe left turn, as RCW 46.61.305 states shall be done, from a dedicated left-turn-only lane with no other possible direction to go and no other traffic present in the area except for Trooper Acheson in his police vehicle directly behind him.

Based upon the previous Brief along with this Reply Brief, Mr. Brown respectfully requests that this Court reverse the Benton County Superior

Court decision finding that traffic stop was lawful and reinstate the ruling made by Benton County District Court and remand for dismissal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on the 15th day of May, 2018, I caused a true and correct copy of this Brief of Appellant to be served on the following by U.S. Mail.

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