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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

DAVID JOSEPH BROWN,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF OF APPELLANT

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I. INTRODUCTION

On March 22nd, 2015, Washington State Trooper Cadet Acheson, with the assistance of his field training officer Trooper Morris, chose to initiate a traffic stop for an alleged wide turn from Huntington Street to Clearwater Avenue in Kennewick Washington and ultimately charged Mr. David Joseph Brown with driving under the influence of intoxicants.

On February 4th, 2016, Mr. Brown filed his motion and memorandum to suppress and dismiss in Benton County District Court. A suppression hearing on Mr. Brown's motion was held on February 18th, 2016, at which point Judge Steve T. Osborne granted Mr. Brown's motion finding that the officer lacked a reasonable basis to believe a traffic infraction was committed by Mr. Brown to justify the stop. Judge Osborne found that once Mr. Brown signaled his intent to enter the left-turn-only lane after which his turn signal naturally cycled off there was no need to re-indicate the left turn as there was no other possible direction for Mr. Brown to travel. The left turn was done properly, with reasonable safety, and Trooper Acheson testified that not only did he know where Mr. Brown was going to travel from the dedicated left-turn-only lane but there was also no other direction Mr. Brown could have gone. Finding no reasonable basis for the stop, Judge Osborne granted Mr. Brown's motion and dismissed the case.

On February 29th, 2016, the State filed a motion for reconsideration which was heard by Judge Osborne on March 31st, 2016. Judge Osborne again reviewed and considered his ruling on or about April 28th, 2016, at which time he signed and entered Findings of Fact, Conclusions of Law, and Order Granting Defendants Motion for Dismissal.

On April 28th, 2016, the State filed its Notice of Appeal contending the District Court erred in finding no infractions were committed by Mr. Brown. Those findings, specifically the conclusions of law, were reviewed by the Superior Court for errors of law.

On appeal to Benton County Superior Court the State argued, as it did at the District Court level, that Mr. Brown committed four separate traffic infractions. Benton County Superior Court Judge Alex Ekstrom heard the State's appeal on December 8th, 2016. After reviewing the video evidence of the stop and considering the lack of case law directly on point addressing RCW 46.61.305 and when a signal is required, or more specifically whether a signal is in fact required to be re-activated in a dedicated turn lane after already signaling one's intent to enter followed by entering the dedicated turn lane while the signal was activated after which it cycles off, Judge Ekstrom ruled the Court was not going to disturb the lower court rulings as to the first three of the alleged four infractions. Judge Ekstrom ultimately

reversed the District Court stating that the only reason he was reversing the District Court was due to RCW 46.61.305 containing the word "continuously." This overlooked the fact that RCW 46.61.305 also contained the language stating "a signal **when required** shall be given continuously....." The District Court had concluded the "when required" language as applied to the facts of this case was an occasion contemplated by the legislature and statute of an instance when a turn signal is not required to be re-activated to lawfully complete the turn after it had already been activated to notify others where the driver was going. Judge Ekstrom disagreed, ruling that due to Mr. Brown's failure to re-activate his signal or continuously signal from the dedicated left-turn-only lane from Clearwater Avenue to north bound SR-395 and reversed the District Court. Mr. Brown appealed and this Court granted review to address the matter as it involves a matter of public interest and to clarify the "when required" portion of RCW 46.61.305 as applied to re-activating a turn signal while in a dedicated turn lanes and the facts of this case.

II. ASSIGNMENT OF ERROR

ASSIGNMENT OF ERROR 1: The Superior Court erred when it found that RCW 46.61.305 required Mr. Brown to have his turn signal activated continuously during the execution of his left turn from the

dedicated left-turn-only lane after he had already signaled his intent to turn left prior to and during his entrance into the turn lane after which the signal simply cycled off and overlooked the fact that RCW 46.61.305 also includes the language "when required" indicating an instance such as the facts before the Court that a continuous signal is not required given there was no other possible direction for Mr. Brown to travel and the left turn was done with reasonable safety as statute states shall be done.

III. STATEMENT OF THE CASE

On March 22nd, 2015, at approximately 10:15 p.m. Trooper Cadet Acheson was on patrol with his field training officer Robert Morris for what was the third, or at most fourth, night on duty as a new Trooper Cadet. *CP at 11.* Trooper Cadet Acheson's training and experience was limited to the standard trooper academy training and only three or four days on the job experience. *Id.*

At approximately 10:15 p.m. Trooper Cadet Acheson was traveling east on Clearwater Avenue when he and his field training officer Robert Morris observed Mr. Brown make a right turn onto east Clearwater Ave. from Huntington St. *CP at 12.* While making the turn the left side tires of Mr. Brown's vehicle very briefly crossed over the white dashed lane divider line by approximately one tire width after which the vehicle fully returned to

the right lane of travel of the two east bound lanes. *Id.* The testimony presented during the suppression hearing on February 18th, 2016, clearly indicated there were no safety concerns for pedestrians, other concerns for other traffic, or any community care taking function that warranted stopping Mr. Brown based upon this turn. *Id.*

Mr. Brown then signaled his intent to change lanes and move to the left lane by activating his left turn signal which blinked numerous times prior to executing the lane change to the left of the two east bound lanes. *Id.* As Mr. Brown then approached the left-turn-only lane where Clearwater Ave. consists of three east bound lanes he again signaled his intent to enter the dedicated left-turn-only lane and while doing so maneuvered his vehicle into the left-turn-only lane and straightened his vehicle out at which point his vehicles left turn signal naturally cycled off. *Id.*

Mr. Brown then stopped his vehicle in the dedicated left-turn-only lane while waiting for the light to turn green to begin traveling onto north bound SR 395. *Id.* Once the light turned green, Mr. Brown began to execute the left turn onto north bound SR 395 at which point Trooper Cadet Acheson activated his patrol vehicle's emergency light to conduct a stop of Mr. Brown for what he reported, testified to, and informed Mr. Brown, was the wide turn from Huntington St. to Clearwater Ave. *Id.* It was only during the

District Court suppression hearing, and in response to the States line of questioning, that Trooper Cadet Acheson added that the lack on a continuous signal from Clearwater Avenue to SR 395 was also the basis for the stop. After stopping Mr. Brown near the intersection of Yelm St. and SR 395 Trooper Cadet Acheson began an investigation for suspicion of a driving under the influence of intoxicants charge after which Mr. Brown was ultimately arrested for driving under the influence. *Id.*

IV. ARGUMENT

A. The Superior Court erred when it found that RCW 46.61.305 required Mr. Brown to have his turn signal activated continuously during the execution of his left turn from the dedicated left-turn-only lane after he had already signaled his intent to turn left prior to and during his entrance into the turn lane after which the signal simply cycled off and overlooked the fact that RCW 46.61.305 also includes the language "when required" indicating a time such as the facts before the Court that a continuous signal is not required to be given as there was no other possible direction for Mr. Brown to travel and the left turn was done with reasonable safety as the statute clearly states as a prerequisite and primary concern to making a movement on the roadway.

Given the lack of case law on point in Washington, and the lack of a statutory definition of what "when required" contained in RCW 46.61.305 means to clarify whether or not a signal shall be indicated continuously from a dedicated left turn lane, Benton County District Court Judge Osborne properly ruled that Trooper Cadet Acheson lacked a reasonable basis to stop Mr. Brown. Judge Osborne also properly ruled that Mr. Brown was NOT

required to re-activate his left turn signal as he had already indicated his intent to do so when he signaled to enter the dedicated left-turn-only lane after which he made a proper and lawful left turn with reasonable safety from the dedicated left-turn-only lane without needing to signal again. *CP at 13.* Mr. Brown's lack of such an unnecessary act of re-activating his turn signal from the dedicated left-turn-only lane is likely an occurrence that happens in Washington State so often that it's unrecognizable to most yet it is a significant question for the public due to the lack of clarity in case law or legislation and as long as the turn is done with reasonable safety it would be a lawful and proper turn after the initial indication to enter said turn lane.

The legislature drafted RCW 46.61.305 to contemplate occasions when a turn signal is not required to be re-activated by including the prerequisite that the movement not be made unless and until such movement may be made with reasonable safety otherwise the specific language stating "a signal of intention to turn or move right or left ***when required....***" would not have been included giving rise to the question of when isn't a signal required. A dedicated turn lane is precisely the occasion contemplated where re-activating the signal after initially activating it to indicate the entering of the turn lane is NOT required and thus not a violation of RCW 46.61.305 nor is it a legal basis for stopping Mr. Brown. *CP at 13-14.*

Here, there was no reason to believe traffic safety or general welfare of the public was a concern or an issue to justify the traffic stop. Similarly, in 2006 the State of Texas, in *Texas v. Dixon,* 206 S.W.3d 587, 588, 591 (2006), took up exactly the same issue although it was later reversed due to the specific language of the statute being much more clear than that in question here. In *Dixon*, identical to the Benton County District Court ruling, the trial court granted the Defendant's motion to suppress and the State appealed. On appeal the Court of Appeals affirmed the judgment of the trial court. The State Prosecuting Attorney filed a petition for discretionary review and the Court affirmed the court of appeals holding that two separate un-signaled turns, one from a dedicated right-turn-only lane and one from a dedicated left-turn-only lane, were lawful turns thus upholding the suppression of evidence and dismissing the charge. To illustrate the difference from Washington's signaling statute, the Texas signaling turns statute reads in part as follows:

> **Sec. 545.104. SIGNALING TURNS; USE OF TURN SIGNALS.**
> **(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.**

Notably, the Texas signaling turns statute lacks not only the "when required" language but also the prefacing requirement that the turn or movement not be done until such movement can be done with "reasonable safety" as contained in Washington's RCW 46.61.305. Thus, as noted above, Washington chose to draft the signal statute to contemplate occasions, as with a dedicated left-turn-only lane and the facts of this case, when re-activating a signal is not required and thus not a traffic infraction giving rise to a basis for law enforcement to conduct a traffic stop for failing to re-indicate such a signal as long as the turn is done with reasonable safety as it was in this case and the intent to initially enter the turn lane had been indicated with a signal. Texas on the other hand drafted their signaling statute more restrictive to impose the requirement of signaling a turn at all times making the Texas Traffic Code highly distinguishable and less questionable.

The clear inclusion of the additional language stating "when required" makes clear the legislature contemplated occasions when as long as the movement is done with reasonable safety and is initially signaled the re-activation of the signal is not required if the purpose of signals is to notify other drivers where someone is going to travel. As the case is here, Mr. Brown initially signaled and Trooper Acheson testified he knew where Mr.

Brown was going and there is no dispute the turn was done with reasonable safety. *CP at 12-13.* Thus, Mr. Brown's left turn was not a violation of RCW 46.61.305 nor was it a reasonable basis for the stop.

As the legislation stands, without a definition or clarification of "when required" as contained in RCW 46.61.305, in conjunction with the "reasonable safety" portion of the statute, Mr. Brown was illegally seized for NOT re-activating his left turn signal given Trooper Acheson knew where Mr. Brown was going and the turn was made with reasonable safety after notice from an activated left turn signal notified the only other vehicle in the area, Trooper Acheson, of where he intended to travel from the dedicated left-turn-only lane.

In the current case, the Superior Court stated the only reason the Court was reversing the District Court holding was due to the word continuously being included in RCW 46.61.305. *CP at 112, RP at 38, (December 8th, 2016).* This ruling however, overlooks the additional fact that our legislature chose to also include the language "when required" yet failed to define the occasion or occasions when a signal in not required to be re-activated and logic would lead one to conclude our legislature in fact contemplated the exact occasion before the court as one of those instances when a signal does not need to be re-activated AND by not doing so is NOT a reasonable basis

to conduct a traffic stop. The District Court ruled correctly when it stated the law doesn't require an unnecessary act as Mr. Brown had already signaled his intent to enter the dedicated left-turn-only lane and properly proceeded to make a left turn with reasonable safety after his vehicles turn signal had naturally cycled off.

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. Trooper Acheson's testimony made clear he knew where Mr. Brown was going to go and thus, if the intent of signals is to notify other drivers of where the vehicle is going Mr. Brown did so the moment he signaled his intent to enter the dedicated left-turn-only turn lane with no other direction for him to go. Based upon RCW 46.61.305 prefacing any movement left or right on the roadway being done with reasonable safety and indicating such by use of a signal "when required",

Mr. Brown executed a proper left turn when he signaled his intent to enter the dedicated left-turn-only turn lane after which the signal simply and naturally cycled off and given the facts presented to this Court the stop of Mr. Brown by Trooper Acheson was an unlawful and unreasonable stop. For those reasons, Mr. Brown respectfully requests that this Court remand to Superior Court for entry of a reversal Order of the Superior Court ruling followed by a remand to District Court for dismissal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 30th day of January, 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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