

1/31/87

NO. 23192-5-III  
COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**CHARLIE BERNNETT DAY,**

Defendant/Appellant.

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**REPLY BRIEF**

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## ARGUMENT

The State, in its brief, relies upon RCW 46.63.020 to support its argument that an infraction under WAC 352-20-010 should be designated a traffic infraction as opposed to a civil infraction.

RCW 46.63.020 states, in part:

**Failure to perform any act required ... by this title or an equivalent administrative regulation ... 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 ... .

(Emphasis supplied.)

It is undisputed that the infraction being investigated at the time Deputy Hayter contacted Mr. Day was a parking infraction. The question is whether or not it is a civil or traffic-related infraction.

RCW 46.04.381 states:

“Park or parking” means the standing of a vehicle, whether occupied or not, otherwise then temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

Mr. Day had parked his car next to the Yakima River. No finding of fact was entered concerning why the car was parked in that location.

RCW 46.61.560 through RCW 46.61.590 deal with “stopping, standing, and parking” infractions.

RCW 46.61.585 and .587 pertain to winter recreational parking which requires a special permit authorized by the parks and recreation commission.

There is no evidence in the record that the area along the Yakima River is a winter recreational parking area.

Other than RCW 46.61.585 and .587, no other provision is contained in the “stopping, standing, and parking” section of Title 46 RCW involving parking permits. In fact, the balance of those statutory provisions require that parking be highway related. This interpretation is given impetus by RCW 46.61.005 which states, in part:

The provisions of this chapter relating to the operation of vehicles refer **exclusively** to the operation of vehicles upon highways . . . .

(Emphasis supplied.)

There are no findings of fact indicating that the parking area along the Yakima River is a highway. RCW 46.04.197 defines highway.

Highway means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

The Infraction Rules for Courts of Limited Jurisdiction recognize that there is a difference between a traffic infraction and a parking infraction.

IRLJ 2.1(a) states:

Traffic infraction cases shall be filed on a form entitled “Notice of Traffic Infraction” prescribed by the Administrator for the Courts; **except that the form used to file cases alleging the commission of a parking, standing or stopping infraction shall be approved by the Administrator for the Courts.**

(Emphasis supplied.)

Moreover, IRLJ 4.1(b) specifically declares that “[t]he court shall not notify the Department of a parking, standing, stopping, or pedestrian infraction, except as allowed by RCW 46.20.270(3).”

RCW 46.20.270(3) relates to issuance of an infraction observed by electronic means. It is inapplicable under the facts and circumstances of Mr. Day’s case.

WAC 352-20-010 specifically provides that the infraction in this case is an infraction under Chapter 7.84 RCW.

RCW 7.84.020 references various RCWs. Title 46 RCW is not included in that reference.

Mr. Day contends that the language of the WAC and its reference to Chapter 7.84 RCW precludes the infraction being considered “an equivalent administrative regulation” as that term is used in RCW 46.63.020.

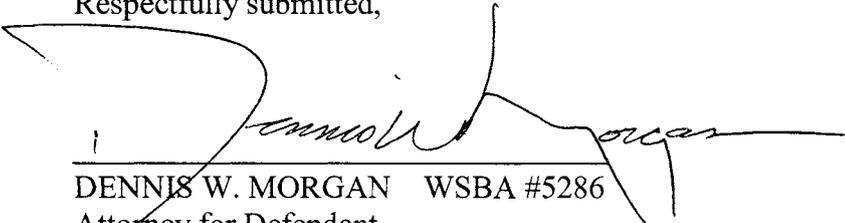
Moreover, the language of IRLJ 1.1(a) supports this position. "Infractions are non-criminal violations of law defined by statute." The WAC's are not statutes. However, since the WAC provision specifically identifies Chapter 7.84 RCW, it removes this particular infraction from Title 46 RCW.

### CONCLUSION

The infraction is a civil infraction; not a traffic infraction. The deputy's search of the car was not constitutionally permissible. All evidence should have been suppressed.

DATED this 12<sup>TH</sup> day of April, 2005.

Respectfully submitted,



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