92550-6



**Case No. 46179-8-II**

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON
Plaintiff/Respondent,

vs.

APRIL HANCOCK,
Defendant/Appellant.



Appeal from the Court of Appeals, Division II

Court of Appeals No. 46179-8-II
Superior Court Case No. 12-1-00520-6
District Court Case No. 2Z327384

# PETITION FOR DISCRETIONARY REVIEW

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A. IDENTITY OF PETITIONER

April Hancock asks this court to accept review of the decision designated in Part B of this motion.

B. DECISION

On October 27, 2015[1], the Court of Appeals, Division II filed its opinion, finding that DWOL is a lesser included offense within DWLS under the plain language of the statute, but ruled that the elements of the lesser included offence are not included in the greater offense, in contradiction to the legal definition of lesser included offenses. The Appellant asks that the Supreme Court review this decision. A copy of the decision of the Court of Appeals, the decision of the Superior Court, and the trial court memorandum opinion is in the Appendix at pages A-1 through A-3.

C. ISSUES PRESENTED FOR REVIEW

1. Whether a lesser included offense is composed of some, but not all, of the elements of the greater crime, and which does not have any element not included in the greater offense, making it impossible to commit the greater offense without committing the lesser offense.

2. Whether the legislature is presumed to be aware of and understand the judicial construction and meaning of the legal terms used in statutes drafted and passed by the legislature.

3. Whether the legislature may draft statutes that affect or impact the interpretation and implementation of other statutes.

4. Whether the court may ignore legislation that affect or impact the interpretation and implementation of other statutes.

[1] The Court of Appeals was closed on November 26 and 27.



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5. Whether the legislature maintained the public highway requirement for DWLS when it moved the requirement making DWOL a lesser included offense from the DWLS statute to the DWOL statute and referred back to the greater offense.

6. Whether a court is required to derive "plain meaning" "from the context of the entire act as well as any 'related statutes which disclose legislative intent about the provision in question.'"

D. STATEMENT OF THE CASE

On April 3, 2012, April Hancock asked a friend to use her car to drive her to a doctor's appointment because she had a suspended license. While on the way, they decided to stop at a convenience store and gas station on Highway 3 and parked in the private parking lot next to the store. Both April Hancock and her friend entered the store and made purchases. April Hancock completed her purchases first and waited outside by the car. At that time, a Mason County sheriff's deputy observed April Hancock standing next to her car in the parking lot of a convenience store and gas station as he passed by in his patrol car. The deputy recognized Hancock from a previous contact, searched her driving status in his computer, and determined that her driver's license was revoked. He then returned to the gas station and observed Hancock's car backing up about 20 feet to the gas pumps in the same parking lot. The deputy used his patrol car to block the car at the pumps and saw that Hancock was driving the vehicle. The deputy never observed Hancock driving anywhere outside the private parking lot.



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At the time, Hancock's driver's license was revoked in the first degree. The State charged Hancock with one count of first degree DWLS contrary to RCW 46.20.342(1)(a).

Hancock's case proceeded to the district court, where she moved to dismiss the charge. Ms. Hancock argued that the legislature had specifically made RCW 46.20.005 DWOL "a lesser included offense within the offenses described in RCW 46.20.342(1)." The DWOL statute also includes the element of driving "upon a highway." Therefore, Hancock argued that because all elements of a lesser included offense are required to be wholly contained within the elements of the greater offense, driving "upon a highway" must also be an element of DWLS. Thus, because there was no evidence that she drove upon a highway, she could not be convicted. The district court denied Hancock's motion to dismiss, concluding that "the defendant was in a parking lot intended to be used by and open to the general public." Findings of Fact and Conclusions of Law, Appendix A-3.

The jury found Hancock guilty of DWLS. Hancock appealed to the Superior Court, which affirmed her conviction. However, the Superior Court ruled that DWOL was not a lesser included offense, but rather it was a lesser degree offense. Memorandum Opinion and Order Affirming Conviction, Appendix A-2. Hancock then sought discretionary review by


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the Court of Appeals, which was granted.

The Court of Appeals ruled that DWOL was a lesser included offense within DWLS because the legislature had determined it to be such. However, the Court upheld the conviction, ruling that because DWLS did not list the "public highway" element, it could rely on the plain language and need not meet the judicial test. State v. Hancock, No. 46149-8-II (Wash. Ct. App. Aug. 22, 2014) at 8 - 9. Thus, DWOL is a lesser included offense, but need not have the same elements of the greater offense.

Hancock now seeks discretionary review of the decision of the Court of Appeals.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

*1. Review should be approved by the Supreme Court*

Review should be approved by the Supreme Court because it satisfies the requirements of RAP 13.4(b) as follows:

(1) The decision of the Court of Appeals is in conflict with decisions of the Supreme Court because it changes the definition of a "lesser included offense" in that the elements of the lesser included offense, are not included in the greater offense as required by *State v. Workman,* 90 Wn.2d 443, 584 P.2d 382 (Wash. 1978); *State v. Berlin,* 133 Wash.2d 541, 947 P.2d 700 (Wash. 1997). The decision also fails to derive plain meaning from the context of the entire act as well as any


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related statutes which disclose legislative intent as required by *State v. Evans*, 298 P.3d 724 (Wash. 2013); *State v. J.P.*, 69 P.3d 318, 149 Wn.2d 444 (Wash. 2003).

(2) The decision of the Court of Appeals is in conflict with other decisions of the Court of Appeals because it changes the definition of a "lesser included offense" in that the elements of the lesser included offense are not included in the greater offense as required by *(State v. Allen,* 116 Wn.App. 454, 66 P.3d 653 (Wash.App. Div. 3 2003)*; State v. Walden,* 67 Wn.App. 891, 841 P.2d 81 (Wash.App. Div. 1 1992).

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved because changing the legal definition of lesser included offense denies the public of constitutionally required notice relating to the elements of a crime. *See, State v. Berlin,* 133 Wash.2d 541, 947 P.2d 700 (Wash. 1997).

(4) The petition involves an issue of substantial public interest that should be determined by the Supreme Court because the decision of the lower court changing the legal definition of a lesser included offense and eliminating a required element denies the Public ability to understand what acts are illegal, to rely on legislative enactments, and court decisions on those enactments. Further, the issue is one that is unlikely to be appealed by the average citizen due to the cost of an appeal as compared to the fine.


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*2. A lesser included offense is composed of some, but not all, of the elements of the greater crime, and does not have any element not included in the greater offense, making it impossible to commit the greater offense without committing the lesser offense.*

The Court of Appeals ruled that DWOL is a lesser included offense of DWLS because the legislature defined it as such. *State v. Hancock*, 46149-8-II, at 9 - 10. However, the Court of Appeals then ruled that the elements of the lesser included offense did not need to be included in the greater offense. *Id.* at 10 - 11. This is in direct contradiction to the long established legal definition of greater and lesser included offenses. Effectively, this means that lesser included offenses need not be lesser included offenses, but can now be entirely different crimes.

A "lesser included offense" is defined as being "composed of some, but not all, of the elements of the greater crime, and does not have any element not included in the greater offense." Black's Law Dictionary, 812 (5th ed. 1979). Conversely, the greater offense must include all of the elements of the lesser crime, such that it is impossible to commit the greater crime without also committing the lesser included offense.

In Washington, as in all other states, a lesser included offense is one where all of the elements of the lesser offense are also elements of the greater offense. *State v. Allen*, 116 Wn.App. 454, 463, 66 P.3d 653 (Wash.App. Div. 3 2003); *State v. Aumick*, 126 Wn.2d 422, 426, 894 P.2d


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1325 (Wash. 1995); *State v. Berlin,* 133 Wash.2d 541, 545 - 546, 548, 550, 947 P.2d 700 (Wash. 1997); *State v. Walden*, 67 Wn.App. 891, 893, 841 P.2d 81 (Wash.App. Div. 1 1992); *State v. Workman,* 90 Wn.2d 443, 447 - 448, 584 P.2d 382 (Wash. 1978). If all the elements of a crime are not elements of what is alleged to be a greater crime, then it cannot be a lesser offense, because it would be possible to commit the greater offense without committing the lesser offense. *State v. Allen*, at 464; *State v. Aumick*, at 428; *State v. Walden*, at 893. In other words, if the elements of the lesser included offense are not "included" in the greater offense, it is not a lesser included offense. It would be an entirely separate crime.

The Washington Supreme Court set out the test determining when a defendant was entitled to an instruction for a lesser included offense in *State v. Workman.* That test was set out in two prongs as follows:

> First, each of the elements of the lesser offense must be a necessary element of the offense charged. Second, the evidence in the case must support an inference that the lesser crime was committed.

*State v. Workman,* at 447 - 448 (internal cites omitted). The first element is the legal definition of a lesser included offense. It is this definition that is controlling in this case, because it is the definition used in Washington. The Supreme Court has stated that the first element is the "legal prong" precisely because it is the legal definition of a lesser included offense.


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*State v. Berlin,* at 546. It is the legal prerequisite for obtaining a jury instruction under the *Workman* test. *State v. Aumick*, at 429. However, it also follows that the legal definition is the "prerequisite" for a crime actually being a "lesser included offense." A crime is either a "lesser included offense" or it is not. Further, this legal definition is of additional importance because it provides constitutionally required notice relating to the elements of a crime. In *State v. Berlin*, the Supreme Court stated that

> Because the defendant must have notice of the offense of which he or she is charged, the elements of any lesser included offense must necessarily be included in the elements of the offense as charged. A defendant thus implicitly receives constitutionally sufficient notice.

*State v. Berlin*, at 545. For such notice to be effective, the accused must be able to rely on the legal definition of a "lesser included offense," as does the legislature when it drafts a law.

It is a universal maxim that ignorance of the law is no defense. *See, Rekhter v. Dep't of Social & Health Services*, 323 P.3d 1036, 180 Wn.2d 102, 150 (Wash. 2014); *State v. Minor*, 174 P.3d 1162, 162 Wn.2d 796, 803 (Wash. 2008). The State is then able to obtain a conviction even when the defendant did not know they were committing a crime. But if that is true, it is also true that a defendant cannot be convicted of doing an act he believes is illegal if it is in fact, legal. Similarly, the State cannot convict someone of a legal act simply because the state is ignorant of the law that


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makes the act legal. It follows that a person should be able to rely on a law and court rulings that makes his/her actions legal. In this case, RCW 46.20.005 is a lesser included offense within RCW 46.20.342(1), requiring the elements of the lesser included offense to also be elements of the greater offense. The Court of Appeals ruling denies this fact and makes it impossible to rely on the law and court rulings. It also denies the express declaration of the legislature that RCW 46.20.005 is a lesser included offense within RCW 46.20.342(1). Further, because the ruling denies that RCW 46.20.005 is a lesser included offense except when the court is using the Workman test to determine if an instruction on lesser included offenses should be given, it allows the State the benefit of treating DWOL as a lesser included offense when seeking to convict a defendant, but denies a defendant that ability to use the same law when claiming innocence. This is an unequal and unfair application of the law.

Because all elements of a lesser included offense must be included in the greater offense, and because changing this definition of lesser included offense allows the elements to change to suit the State's case making the change an unequal and unfair application of the law, the decision of the Court of Appeals should be overturned.

*2. The legislature is presumed to be aware of and understand the judicial construction and meaning of the legal terms used in statutes drafted and passed by the legislature.*



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In *State v. Bobic,* the Supreme Court stated that:

> When our Legislature enacts a statute, it is presumed to be familiar with judicial interpretations of statutes and, absent an indication it intended to overrule a particular interpretation, amendments are presumed to be consistent with previous judicial decisions.

*State v. Bobic,* 140 Wash.2d 250, 264, 996 P.2d 610 (2000). Thus when the legislature enacts a statute, the language that is used reflects the existing legal definitions unless the legislature has defined the term differently in the statute. Further, "[t]he legislature is presumed to enact laws with full knowledge of existing laws." *Thurston County v. Gorton,* 85 Wash.2d 133, 138, 530 P.2d 309 (1975). RCW 46.20.005 states:

> Except as expressly exempted by this chapter, it is a misdemeanor for a person to drive any motor vehicle upon a highway in this state without a valid driver's license issued to Washington residents under this chapter. This section does not apply if at the time of the stop the person is not in violation of RCW 46.20.342(1) or *46.20.420 and has in his or her possession an expired driver's license or other valid identifying documentation under RCW 46.20.035. A violation of this section is a lesser included offense within the offenses described in RCW 46.20.342(1) or *46.20.420.

RCW 46.20.005. Here the legislature used specific legal language, "lesser included offense" that has a specific legal meaning, namely that all of its elements are included in the greater offense. *State v. Allen*, 116 Wn.App. 454, 463, 66 P.3d 653 (Wash.App. Div. 3 2003); *State v. Aumick*, 126 Wn.2d 422, 426, 894 P.2d 1325 (Wash. 1995); *State v. Berlin,* 133


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Wash.2d 541, 545 - 546, 548, 550, 947 P.2d 700 (Wash. 1997); *State v. Walden*, 67 Wn.App. 891, 893, 841 P.2d 81 (Wash.App. Div. 1 1992); *State v. Workman,* 90 Wn.2d 443, 447 - 448, 584 P.2d 382 (Wash. 1978). Further, the legislature went on to specifically list RCW 46.20.342(1) DWLS as the greater offense, demonstrating an understanding of what a lesser included offense is. This is a clear statement of legislative intent that the courts are obligated to honor. *State v. J.P.*, 69 P.3d 318, 149 Wn.2d 444, 450 (Wash. 2003). The Court of Appeals recognized this when it ruled that "[t]he legislature has the authority to define offenses within constitutional constraints." *State v. Hancock*, 46149-8-II, at 9, citing *State v. Kier*, 164 Wn.2d 798, 803, 194 P.3d 212 (2008). The Court of Appeals ruled that "the legislature has spoken: DWOL is a lesser included offense of DWLS. *Id.* However, the Court then ruled that the *Workman* test is a judicial construction, and that the Court can, therefore, rely on the "plain language" of RCW 46.20.342(1) and ignore the requirements of RCW 46.20.005. However, "plain meaning" is not determined in this way (*State v. Evans*, 298 P.3d 724, 192 (Wash. 2013) citing *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010); *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).), and the effect of the ruling is to exclude the "highway" requirement of DWOL from the greater offense. By definition, such a ruling makes it impossible for DWLS to be


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a greater offense of DWOL and DWOL to be a lesser included offense as defined by the legislature. The decision also ignores the fact that "plain meaning is derived from the context of the entire act as well as any 'related statutes which disclose legislative intent about the provision in question.'" *Jametsky v. Rodney A.*, 317 P.3d 1003, 1006, 179 Wn.2d 756 (Wash. 2014); see also *State v. J.P.*, 69 P.3d 318, 149 Wn.2d 444 450 (Wash. 2003). In short, the Court of Appeals was required to look at the "plain meaning" of RCW 46.20.005 as well, to discern the meaning of RCW 46.20.342(1). The failure to do so is a violation the rules judicial construction and ignores the clear intent of the legislature.

The Court of Appeals supported its finding by noting that the legislature removed the highway language from the DWLS statute in 1990 although it was already included in RCW 46.20.005. *State v. Hancock*, 46149-8-II, at 8 - 9. The Court believed that this showed an intent by the legislature to create a DWLS statute that was no longer subject to the highway requirement. *Id.* However, this also means that DWLS can no longer be a greater offense of DWOL. The result is that the Court of Appeals has effectively ruled that the legislature is not presumed to understand or allowed to rely on the existing "judicial interpretations" and meaning of the term "lesser included offense." This is in direct conflict with the Supreme Court's ruling in *State v. Bobic.*


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That the legislature not only understood the meaning of "lesser included offense," but also intended DWLS to be a greater offense to DWOL, is supported by the legislative history. The Court of Appeals reviewed the legislative history and found that prior to 1985, the DWLS statute referred to the DWOL statute and made it a lesser included offense. In 1985, the language was moved from RCW 46.20.342(1) to RCW 46.20.005 and changed to refer back to the DWLS statute. *State v. Hancock*, 46149-8-II, at 4. Because the legislature is presumed to know the meaning of "lesser included offense," this modification did not change the effect or meaning of "lesser included offense," it only changed the location of that language. *State v. Bobic*, 996 P.2d 610, 140 Wn.2d 250, 264 (Wash. 2000). This puts the Court of Appeals decision in conflict with the Supreme Court's ruling in *State v. Bobic.* It is also in conflict with the rules of statutory construction that require the court to "discern and implement the intent of the legislature." *State v. J.P.*, 69 P.3d 318, 149 Wn.2d 444, 450 (Wash. 2003). Because the decision of the Court of Appeals denies the legislature the ability to rely on existing court decisions and legal definitions, and should be overturned.

*3. The legislature may and does draft statutes that affect or impact the interpretation and implementation of other statutes.*

Although it may be true that RCW 46.20.005 is the only example



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of a statute that makes itself a lesser included offense of another statute, it is not improper for one statute to specifically affect the enforcement of another. It is common practice for the legislature to pass laws that impact other existing laws. A very common example is the use of definitions. RCW 46.04 contains definitions without which DWLS and DWOL cannot be interpreted. For example, RCW 46.04.320 defines the term "motor vehicle" that is used in both RCW 46.20.342(1) and RCW 46.20.005. That RCW 46.04.320 is intended to apply to other sections is further demonstrated by the fact that it exempts part of the definition from RCW 46.61.

The Court of Appeals ruling that it may only look at the plain language of RCW 46.20.342(1) without looking at related statutes, effectively precludes a court properly interpreting the meaning of "motor vehicle" as used in the DWLS statute. This is because the "plain meaning" of "motor vehicle" as it relates to DWLS would almost certainly mean an automobile or any motorized vehicle. RCW 46.20.320 makes it clear that the definition is neither so narrow nor so broad as might be thought. In RCW 46.20.320 "'Motor vehicle' means every vehicle that is self-propelled;" exceptions are made for wheelchairs, and "a golf cart is not considered a motor vehicle, except for the purposes of chapter 46.61 RCW." Thus, statutes that impact or modify another statute are properly


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considered, before a court may use a "plain meaning" to end its analysis. This is because a statute that impacts or modifies another statute is, essentially, part of the statute that it modifies and its language is part of the plain meaning. This is a reason why courts will examine the statutory scheme of a law at issue. *See*, *State v. J.P.*, 69 P.3d 318, 149 Wn.2d 444, 450 (Wash. 2003); *State v. Evans*, 298 P.3d 724, 192 (Wash. 2013) citing *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010); *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

The decision of the Court of Appeals should be overturned because it fails to properly interpret the "plain meaning" and legislative intent of the DWLS/DWOL statutes.

*4. The court may not ignore legislation that affect or impact the interpretation and implementation of other statutes.*

The court is required to give effect to the intent of the legislature. While this may be done when the plain meaning is clear from the text of the statute, however, it is improper to do so without understanding the statutory scheme. When examining plain language, courts must consider the specific text of the relevant provision, the context of the entire statute, any related provisions, and the statutory scheme as a whole. *State v. Evans*, 177 Wn.2d at 192. This is because so many statutes are



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interdependent upon one another. The Court of Appeals specifically acknowledged this. *State v. Hancock*, at 3. The Court noted that it will "neither add language to nor delete language from an unambiguous statute; instead, all language must be given effect, without rendering any part of the statute meaningless or superfluous." *Id.* citing *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). However, it is not necessary to add or delete language, because RCW 46.20.342(1), RCW 46.20.005, and the definitions in RCW 46.04 are all interdependent. They are part of the same statutory scheme. In this case, RCW 46.20.342(1) DWLS cannot be read in a vacuum. Doing so ignores the statutory scheme, ignores legislative intent, ignores the plain meaning of interdependent statutes, changes the existing legal definition of "lesser included offense," and applies the law in a manner it was not intended. Further,

> *5. The legislature maintained the public highway requirement for DWLS when it moved the requirement making DWOL a lesser included offense from the DWLS statute to the DWOL statute and referred back to the greater offense.*
>
> The legislative history of the DWLS/DWOL statute is as follows:
>
> 1979 - RCW 46.20.021 DWOL is made a lesser included offense withing the text of RCW 46.20.342(1).
> 1985 - the language making RCW 46.20.021 a "lesser included offense" within DWLS is moved from RCW 46.20.342(1) to RCW 46.20.021.
> 1990 - the "highway" wording is removed from RCW


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46.20.342(1), but no changes are made to RCW 46.20.021.[2]
1997 - RCW 46.20.021 is renumbered as RCW 46.20.005.

*See, State v. Hancock*, 46149-8-II, at 4 - 6.

The Court of Appeals viewed the removal of the highway requirement from DWLS and placement in RCW 46.20.005 as demonstrating the intent to eliminate the requirement from the greater offense. However, this makes no sense in light of the legal definition of lesser included offense. A much more likely and rational explanation is that the legislature wanted to clarify that "driving on a highway" was a requirement for both crimes. Generally, placing additional elements in the greater offense is acceptable because they are not required and do not apply to the lesser included offense. Conversely, it is not necessary that the elements of the lesser included offense be repeated in the greater offense because they are, by definition, automatically included. DWOL has been a lesser included offense to DWLS since 1979 and it has always included the highway element. Deleting a listing of that element from DWLS did not delete the element because the legislature did not change the status of DWOL as a lesser included offense within DWLS.

---

[2] There is no explanation in the legislative record for the removal of "highway" from RCW 46.20.342(1), however, judges who testified at public hearings considered DWOL as an included offense within DWLS and did not believe that elements of RCW 46.20.342(1) had been changed. *See*, Senate Committee on Law & Justice, SSB 6608, Synopsis as Enacted, June 7, 1990; Transcript of Public Hearing SB 6608, January 23, 1990 (See, Appendix A).



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Although the legislature moved DWOL to different sections, the "public highway" requirement was always maintained by the legislature because it was always part of the DWOL statute, which was specifically defined by the legislature as a "lesser included offense" within DWLS. For this reason the decisions of the lower courts holding that "public highway" is not an element of the greater offense, are in error and should be overturned.

> *6. A court is required to derive "plain meaning" "from the context of the entire act as well as any 'related statutes which disclose legislative intent about the provision in question.'"*

As already discussed above, "plain meaning is derived from the context of the entire act as well as any 'related statutes which disclose legislative intent about the provision in question.'" *Jametsky v. Rodney A.*, 317 P.3d 1003, 1006, 179 Wn.2d 756 (Wash. 2014); see also *State v. J.P.*, 69 P.3d 318, 149 Wn.2d 444 450 (Wash. 2003). A court may not ignore the plain meaning of related statutes that directly impact on the section at issue. It is necessary to look at the statutory scheme as a whole and determine the legislative intent to properly read a statute. *See*, *State v. J.P.*, 69 P.3d 318, 149 Wn.2d 444, 450 (Wash. 2003); *State v. Evans*, 298 P.3d 724, 192 (Wash. 2013) citing *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010); *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The fact that the *Workman* test is used for


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determining whether a jury instruction is to be given for a lesser included offense, does not allow a court to ignore legal definitions, the statutory scheme as disclosed in "related statutes which disclose legislative intent about the provision in question," or ignore the "plain meaning" of those related statutes. As a result, the lower court was required to apply the rules of statutory construction and derive the plain meaning from related statutes where the legislature made driving on a "public highway" an element of DWOL and defined DWOL as a "lesser included" offence within DWLS.

Because the Court of Appeals did not properly determine the "plain meaning [as] derived from the context of the entire act as well as any 'related statutes which disclose legislative intent about the provision in question,'" it decision should be overturned.

F. CONCLUSION

The Washington State legislature has specifically defined DWOL as a lesser included offense within DWLS, and it has been defined as such since 1979. The legal definition of a lesser included offense requires that all of its elements be elements within the greater offense. The Court of Appeals acknowledged that the legislature could define a statute as a lesser included offense. However, when the Court of Appeals ruled that the legal definition does not apply, the Court overruled the intent of the


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legislature, overruled the legal definition of a lesser included offense, established a rule that allows a court to change the elements of a crime without notice, and made it impossible for the public to rely on legislative enactment to determine what is and is not illegal. As a result, this Court should accept review for the reasons indicated in Part E and overturn the decision of the Court of Appeals. This Court should find that DWOL is a lesser included offense within DWLS and that the elements of the lesser offense are included in the greater offense as required by the legal definition of lesser included offense, vacate the guilty verdict and direct the trial court to enter a verdict of not guilty.

**DATED** this 30th day of November, 2015.

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# APPENDIX

A-1 DECISION OF THE COURT OF APPEALS - Published Opinion

A-2 DECISION OF THE SUPERIOR COURT - Memorandum Opinion and Order Affirming Conviction

A-3 DISTRICT COURT - Findings of Fact and Conclusions of Law

A-4 STATUTES



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A-1 DECISION OF THE COURT OF APPEALS
Published Opinion

Filed
Washington State
Court of Appeals
Division Two

October 27, 2015

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
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| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>APRIL HANCOCK,<br><br>Petitioner. | No. 46149-8-II<br><br><br><br><br><br>PUBLISHED OPINION |

WORSWICK, J. — April Hancock appeals her conviction for one count of driving while license suspended or revoked[1] (DWLS), which offense she committed in a parking lot. She argues that (1) DWLS must include all of the elements of driving without a license[2] (DWOL), including DWOL's element of driving "upon a highway"; (2) insufficient evidence supports her conviction because the State did not prove that she drove upon a highway; and (3) the jury instructions were erroneous because they did not include the "highway" element. We disagree and affirm her conviction.

This case presents the issue of first impression whether the legislature added elements to an offense by stating that another offense is a lesser included offense of the first offense. Specifically, we must decide whether the statute defining the crime of DWOL, which provides

[1] RCW 46.20.342(1).

[2] RCW 46.20.005.

that DWOL is a lesser included offense of DWLS, imports an additional element into the statute defining the crime of DWLS.

FACTS

A Mason County sheriff's deputy observed April Hancock standing next to her car in the parking lot of a convenience store and gas station. The sheriff recognized Hancock from a previous contact, searched her driving status in his computer, and determined that her driver's license was revoked. He then observed Hancock's car backing up about 20 feet towards the gas pumps in the same parking lot. The deputy stopped the car and saw that Hancock was indeed driving the vehicle. The deputy never observed Hancock driving anywhere outside the parking lot.

At the time, Hancock's driver's license was revoked in the first degree. The State charged Hancock with one count of first degree DWLS contrary to RCW 46.20.342(1)(a).

Hancock's case proceeded to the district court, where she moved to dismiss the charge. She argued that the statute defining DWOL imports the element of driving "'upon a highway'" into DWLS because the DWOL statute says that DWOL is a lesser included offense of DWLS. Clerk's Papers (CP) at 189-90. Thus, she argued that because there was no evidence that she drove upon a highway, she could not be convicted. The district court denied Hancock's motion to dismiss.

The district court also denied Hancock's proposed jury instruction including this element. The district court instead instructed the jury that DWLS occurs when a person, "having been found by the Department of Licensing to be a habitual traffic offender, drives a motor vehicle while an order of revocation is in effect." CP at 111.

The jury found Hancock guilty of DWLS. Hancock appealed to the superior court, which affirmed her conviction. Hancock then moved for discretionary review in this court, which we granted. Order Granting Motion to Modify Ruling, *State v. Hancock*, No. 46149-8-II (Wash. Ct. App. Aug. 22, 2014).

## ANALYSIS

### I. STANDARD OF REVIEW

Both the superior court and we review the district court's decision under RALJ 9.1. *State v. McLean*, 178 Wn. App. 236, 242, 313 P.3d 1181 (2013), *review denied*, 179 Wn.2d 1026 (2014). We review questions of law de novo. *State v. Gresham*, 173 Wn.2d 405, 419, 269 P.3d 207 (2012).

We also review statutory interpretation de novo. *State v. Evans*, 177 Wn.2d 186, 191, 298 P.3d 724 (2013). When engaging in statutory interpretation, we endeavor to determine and give effect to the legislature's intent. *Evans*, 177 Wn.2d at 192. We determine the legislative intent by using the plain language of the statute whenever possible. *Evans*, 177 Wn.2d at 192. When examining plain language, we consider the specific text of the relevant provision, the context of the entire statute, any related provisions, and the statutory scheme as a whole. *Evans*, 177 Wn.2d at 192. If the statute is unambiguous after this reading, it requires no construction; we apply its plain language. *Evans*, 177 Wn.2d at 192. We neither add language to nor delete language from an unambiguous statute; instead, all language must be given effect, without rendering any part of the statute meaningless or superfluous. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

We attempt to construe potentially conflicting provisions in a way that harmonizes them and maintains their integrity when possible. *Anderson v. Dep't of Corr.*, 159 Wn.2d 849, 858-59, 154 P.3d 220 (2007). We presume that the legislature is familiar with judicial interpretations of statutes. *In re Dependency of M.P.*, 185 Wn. App. 108, 121, 340 P.3d 908 (2014). "If the legislature uses a term well known to the common law, it is presumed that the legislature intended it to mean what it was understood to mean at common law." *State v. Dixon*, 78 Wn.2d 796, 804, 479 P.2d 931 (1971). We presume that the legislature does not intend absurd results, so we avoid interpreting ambiguous language to produce such results. *State v. Ervin*, 169 Wn.2d 815, 823-24, 239 P.3d 354 (2010).

## II. STATUTORY HISTORY

The history of the frequent amendments to the two provisions at issue is important to understanding the statutory scheme. Originally, both DWLS and DWOL required proof that the defendant drove upon a "public highway." *See* LAWS OF 1967, ch. 167, § 7; LAWS OF 1961, ch. 134, § 1. In 1979, the legislature amended the DWLS statute, adding explicit language making DWOL a lesser included offense of DWLS. LAWS OF 1979 EXTRAORDINARY SESSION, ch. 136, § 62 (providing that DWOL, former RCW 46.20.021 (1979) was a "lesser included offense" of DWLS, former RCW 46.20.342 (1979)). In 1985, the legislature removed this express "lesser included offense" language from the DWLS statute, but added language to the DWOL statute, stating that DWOL was a lesser included offense of DWLS. LAWS OF 1985, ch. 302, §§ 2-3. In other words, the legislature retained the express statement that DWOL was a lesser included offense of DWLS, but moved the location of this statement. Thus, since 1985, the DWOL statute has provided that DWOL is a lesser included offense of DWLS. Then, as now, DWOL

was also expressly a lesser included offense of driving with a suspended or revoked out-of-state license.[3] *See* LAWS OF 1985, ch. 302, § 5; *see also* RCW 46.20.345.

In 1990, the legislature amended the DWLS statute to remove the highway element. Until this point, DWLS read: "Any person who drives a motor vehicle *on any public highway of this state* . . . ." *See* LAWS OF 1987, ch. 388, § 1 (emphasis added). The amended version read: "Any person who drives a motor vehicle *in this state*. . . ." LAWS OF 1990, ch. 210, § 5 (emphasis added). The DWLS statute has not since been amended in relevant part.

Finally, in 1997, the legislature divided the DWOL statute into two sections: a criminal section at issue here (RCW 46.20.005), and a separate traffic infraction section (former RCW 46.20.015 (1997)). The new criminal DWOL section retained the language requiring the defendant to drive "upon a highway in this state," and it retained the language: "A violation of this section is a lesser included offense within the offenses described in RCW 46.201.342(1)." LAWS OF 1997, ch. 66, § 1; *see also* RCW 46.20.005. This section also retained language making DWOL a lesser included offense of driving with an invalid out-of-state license (former RCW 46.20.420 (1990), since recodified as RCW 46.20.345).

The legislative history is sparse regarding the above amendments and it is silent about why the legislature removed the "highway" language from the DWLS statute in 1990. *See* Br. of Appellant at 15-16. The legislative history regarding the 1997 modification of DWOL demonstrates that the legislature was primarily concerned with separating the misdemeanor of DWOL from the traffic infraction. *See* FINAL B. REP. ON S.S.B. 5060, 55th Leg., Reg. Sess.

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[3] Even in 1985, driving with a suspended or revoked out-of-state license did *not* have any "highway" element. *See* LAWS OF 1985, ch. 302, §5.

(Wash. 1997) ("The misdemeanor of driving without a valid license is made a separate RCW section. The traffic infraction of driving without a valid license is made a separate RCW section."). And the final bill report clarifies that this amendment is "strictly a technical change to current law which will end the confusion for courts and police." FINAL B. REP. ON S.S.B. 5060, 55th Leg., Reg. Sess. (Wash. 1997). Thus, the legislative history shows that the legislature was not seeking to alter the elements of the criminal driving statutes by enacting this provision.

In their current form, the statutory provisions at issue read as follows. The DWLS statute states:

> It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

RCW 46.20.342(1). And the DWOL statute states:

> Except as expressly exempted by this chapter, it is a misdemeanor for a person to drive any motor vehicle *upon a highway* in this state without a valid driver's license issued to Washington residents under this chapter. . . . A violation of this section is a lesser included offense within the offenses described in RCW 46.20.342(1) or [former] 46.20.420 [(1990)].

RCW 46.20.005 (emphasis added).

## III. STATUTORY INTERPRETATION

Hancock argues that because the DWOL statute specifically provides that DWOL is a lesser included offense of DWLS, it necessarily imports the element of "upon a highway" into DWLS. Thus, Hancock argues that the State was required to prove that she drove "upon a highway" to convict her of DWLS. The State argues that despite the statute's language, DWOL is not a lesser included offense of DWLS under the judicial definition of "lesser included offense"; thus, it does not import any elements into DWLS. We hold that although DWOL is a

lesser included offense of DWLS under the plain language of the statute, the DWOL statute does not import the "upon a highway" element into DWLS.

A. *Lesser Included Offenses—General Principles*

Lesser included offenses serve several functions in the criminal law. For example, a criminal defendant can be convicted of a lesser included offense even if she is charged only with the greater offense. RCW 10.61.006. Lesser included offenses need not be charged in a charging information. *State v. Gamble*, 168 Wn.2d 161, 168, 225 P.3d 973 (2010); *State v. Fernandez-Medina*, 141 Wn.2d 448, 453-54, 6 P.3d 1150 (2000). Instead, a defendant may receive an instruction on and be validly convicted of a lesser included offense regardless of whether it was included in the charging information. *Gamble*, 168 Wn.2d at 181. Lesser included offenses also offer protection from double jeopardy because a lesser included offense is the same in law as the greater offense for double jeopardy purposes. *State v. Villanueva-Gonzalez*, 175 Wn. App. 1, 6, 304 P.3d 906 (2013), *aff'd*, *State v. Villanueva-Gonzalez*, 180 Wn.2d 975, 329 P.3d 78 (2014); *see also Brown v. Ohio*, 432 U.S. 161, 166, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977).

B. *Plain Language Analysis*

The statutory provisions at issue here are unique. Nowhere else in Washington law does a statute explicitly state that one particular offense is a lesser included offense of another. All other statutes are silent about their potential status as lesser included offenses.

Washington courts generally use a judicial test to determine whether one offense is a lesser included offense of another, and whether a defendant is entitled to an instruction on the lesser included offense. *State v. Workman*, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978). Under

the *Workman* test, a defendant is entitled to an instruction on a lesser included offense if both the legal and factual prongs of the test are met. *Workman*, 90 Wn.2d at 447-48. Under *Workman*'s legal prong, the court determines whether an offense is a lesser included offense of another as a matter of law if the elements of the lesser offense are invariably included in the larger offense. *Workman*, 90 Wn.2d at 447-48; *see also State v. Harris*, 121 Wn.2d 317, 323, 849 P.2d 1216 (1993). In other words, it must be impossible to commit the greater offense without also committing the lesser offense. *State v. Aumick*, 126 Wn.2d 422, 426-27, 894 P.2d 1325 (1995). Then, under *Workman*'s factual prong, evidence must support the inference that the defendant committed the lesser offense. *Workman*, 90 Wn.2d at 448. The *Workman* test, therefore, is how the judiciary determines whether an offense is a lesser included offense when the statutes are silent. It also determines whether a particular defendant is entitled to a lesser included offense instruction.

Here, DWOL is not a lesser included offense of DWLS under the *Workman* test because DWOL, but not DWLS, requires proof that the defendant drove "upon a highway." Thus, it is possible to commit DWLS without committing DWOL. *See Aumick*, 126 Wn.2d at 426-27. But because the DWOL statute is not silent about being a lesser included offense, we do not use the *Workman* test.

We give effect to the plain language of a statute whenever possible. *Evans*, 177 Wn.2d at 192. Here, the statutes' plain language is clear on two points: there is no highway element in DWLS, and DWOL is a lesser included offense of DWLS. The legislature deleted the words "on any public highway" from DWLS. LAWS OF 1990, ch. 210, § 5. This deletion evinces clear legislative intent that the "highway" element should no longer apply to DWLS. And we do not

add language to an unambiguous statute. *J.P.*, 149 Wn.2d at 450. Further, the DWOL statute expressly states that DWOL is a lesser included offense of DWLS. RCW 46.20.005. The legislature has the authority to define offenses within constitutional constraints. *State v. Kier*, 164 Wn.2d 798, 803, 194 P.3d 212 (2008). Therefore, we apply the plain language of DWOL and conclude that it is a lesser included offense of DWLS.

Hancock goes further, and asks us to read the "highway" element into DWLS. Her argument is based on the premise that a statutorily defined lesser included offense must also meet the judicial test. But there is no precedent for courts reading elements into unambiguous statutes based on the *Workman* test. Instead, because the legislative intent is clear from the DWOL statute that it is a lesser included offense, we do not to alter the DWLS statute's plain language and its elements. By making DWOL a lesser included offense of DWLS, the legislature plainly intended to protect defendants from double prosecutions for DWLS and DWOL for the same actions, and to permit juries to convict defendants of DWOL even where only DWLS was charged.

Stated differently, the legislature has spoken: DWOL is a lesser included offense of DWLS. RCW 46.20.005. Only where the legislature is silent does the court need to apply the *Workman* test to determine whether an offense is a lesser included offense of another. But because the legislature is not silent here, we do not second-guess the elements of the offenses the legislature has unambiguously written. We can harmonize these two statutes by applying the plain language of each: DWLS does not require proof of driving upon a highway, and (where the evidence supports a conviction for DWOL), DWOL is a lesser included offense. No judicial construction is necessary. *Evans*, 177 Wn.2d at 192.

This analysis is analogous to that for double jeopardy. To determine whether the legislature intended to create multiple punishments for behavior, we first consider whether there is express or implicit legislative intent to do so. *Kier*, 164 Wn.2d at 804. Only if the legislative intent is unclear on that point does the court then evaluate whether multiple punishments are permissible under the *Blockburger v. United States* test. *Kier*, 164 Wn.2d at 804 (citing 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932)). In that context, as here, the legislature has the power to define offenses. If the legislative intent to create multiple punishments is clear, we look no further. Similarly, in this case, we do not second-guess the legislature's clear definitions of DWLS and DWOL by rewriting the statutes to fit the judicial test for lesser included offenses. Because the legislative intent to make DWOL a lesser included offense is plain on the statute's face, no further judicial analysis is necessary.

Hancock argues that not requiring the "highway" element in DWLS leads to absurd results, because people may be convicted for driving a lawn mower on private property or for moving their cars in their private driveways. But we construe statutes to avoid absurd results only if the statutes are ambiguous, and these statutes are not ambiguous. *Evans*, 177 Wn.2d at 192. Moreover, it is not absurd to strictly prohibit driving with a suspended or revoked license anywhere in the state, but to prohibit driving without a license only on highways. It is not absurd to treat people whose privilege to drive has been suspended or revoked as more dangerous than those who have simply never obtained a license. Thus, it is not absurd to prohibit driving with a suspended or revoked license anywhere in the state.

In conclusion, we agree with Hancock that the plain language of the statutes makes DWOL a lesser included offense of DWLS. But this plain language does not alter the elements

of either offense. Therefore, we hold that DWLS does not include a "highway" element.[4] The district court did not err by so ruling.

## IV. Sufficiency of the Evidence and Jury Instructions

Hancock argues that the evidence was insufficient to support her conviction for DWLS because the State did not prove that she drove upon a highway, and that the jury instructions were erroneous because they did not instruct the jury on the highway element. Because we hold that there is no highway element in DWLS, we disagree with these arguments.

### A. *Sufficiency of the Evidence*

Hancock argues that the evidence was insufficient to convict her for DWLS because the State did not present any evidence that Hancock drove upon a highway. As stated above, driving upon a highway is not an element of DWLS; instead, all the State must prove is that the defendant drove "in the state." RCW 46.20.342(1). Hancock does not argue that the State failed to prove this element, or any other element of DWLS. Her sufficiency argument fails.

### B. *Jury Instructions*

Hancock argues that the jury instructions were insufficient because they failed to include the element of driving upon a highway. Again, we disagree. "'Jury instructions are sufficient when they allow counsel to argue their theory of the case, are not misleading, and when read as a whole properly inform the trier of fact of the applicable law.'" *State v. Aguirre*, 168 Wn.2d 350,

[4] The superior court held that DWOL was an inferior degree offense to DWLS. Hancock disputes this holding. This issue does not affect the outcome of this appeal, but Hancock is correct. As stated above, the legislature plainly made DWOL a lesser included offense of DWLS; it did not make it an inferior degree of DWLS. The superior court's erroneous conclusion does not affect our analysis.

363-64, 229 P.3d 669 (2010) (emphasis omitted) (internal quotation marks omitted) (quoting *Keller v. City of Spokane*, 146 Wn.2d 237, 249, 44 P.3d 845 (2002)). Apart from arguing that the jury instructions should have included the highway element, Hancock does not argue that the jury instructions were deficient. Because we hold that driving upon a highway is not an element of DWLS, the jury instructions were sufficient.

CONCLUSION

We hold that although DWOL is a lesser included offense of DWLS under the plain language of the statute, the DWOL statute does not import the "upon a highway" element into DWLS. We further hold that sufficient evidence supports Hancock's conviction, and that the jury instructions were proper.

We affirm the decisions of the district and superior courts, thus affirming Hancock's conviction.

Worswick, J.

We concur:

Johanson, C.J.

Melnick, J.

A-2 DECISION OF THE SUPERIOR COURT
Memorandum Opinion and Order Affirming Conviction

MASON COUNTY SUPERIOR COURT
STATE OF WASHINGTON

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| STATE OF WASHINGTON,<br><br>Respondent,<br><br>vs.<br><br>APRIL HANCOCK,<br><br>Appellant, | No. 12-1-00520-6<br><br>MEMORANDUM OPINION AND ORDER AFFIRMING CONVICTION |

The appeal of this case presents a question of law. The issue is whether in order to prove a violation of RCW 46.20.342(1), even though the Legislature has removed from RCW 46.20.342(1) the element that driving occur on a highway, the State must nonetheless prove that the driving occurred on a highway because RCW 46.20.005, which includes as an element that the driving occur on highway, states that it is a lesser included offense to RCW 46.20.342(1).

The facts are that on April 3, 2012, Deputy Gaynor of the Mason County Sheriff's Office was traveling southbound on State Route 3 in

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Mason County when he saw the defendant, April Hancock, standing next to her car. Deputy Gaynor recognized her from a previous contact, so as he passed he typed the vehicle information into his computer and received a hit indicating that her license was suspended. Deputy Gaynor turned around and headed back to Deer Creek Store. When he turned, he saw the car in the gas station of the Deer Creek store, in motion, backing up to the gas pumps. Deputy Gaynor pulled up to the back of the car and activated his overhead police lights. The deputy only observed the car move approximately 20 feet in the store parking lot, and he never saw it move or being operated outside of the private parking area. He contacted the driver and identified her as April Hancock.[1] Hancock's license was revoked in the first degree at the time of driving. The state charged her with driving while revoked in the first degree. The jury returned a guilty verdict. Ms. Hancock appeals this verdict.

Appellant, April Hancock, was charged in this case with the offense of driving with license suspended in the first degree in violation of RCW 46.20.342(1)(a). The plain language of RCW 46.20.342 provides that it is an offense to drive in this State while ones license is suspended. The plain

[1] Ms. Hancock was accompanied by a passenger named Chris Griner. At trial, Mr. Griner testified that he had been asked by Ms. Hancock to drive her to the doctor and that on the way to the doctor they had stopped off at the Deer Creek Store. Mr. Griner testified that while at the store, he asked Ms. Hancock to back the car up to the gas pumps, which she did.

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language of RCW 46.20.342 does not limit the application of the driving to any particular place in the State. Appellant points out that a different statute, RCW 46.20.005, provides that it is a lesser included offense to RCW 46.20.342(1). The plain language of RCW 46.20.005 provides that to violate that statute, the driving must occur on a public highway. Appellant contends that because the language of RCW 46.20.005 states that it is a lesser included offense to RCW 46.20.342(1), proof of a violation of RCW 46.20.342(1) therefore requires that the State must also prove the elements of RCW 46.20.005, which contains as an additional element that the driving occur on a public highway.

The court holds that proof of a violation of RCW 46.20.342(1) does not require the State to also prove the elements of RCW 46.20.005. The legislature removed the element of driving on a public highway from RCW 46.20.342(1). Notwithstanding that RCW 46.20.005 requires proof that driving occur on a public highway, while proof of RCW 46.20.342(1) does not, the legislature nonetheless said that RCW 46.20.005 is a lesser included offense to RCW 46.20.342(1). Statutory rules of construction require the court to give statutory language its plain meaning and to not read in something that is not there. The plain language of RCW 46.20.342(1) provides that the offense of driving with a suspended license may be committed if one drives while suspended anywhere in the State, and it does

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not require that the driving occur on a public highway. By an amendment that occurred prior to the offense in the instant case, the legislature specifically removed the element of driving on a public highway from RCW 46.20.342(1).

Courts have been quite clear that the test for whether an offense is a lesser included offense of another offense is that each of the elements of the lesser offense must be included in the elements of the greater offense, so that it is impossible to commit the greater offense without also committing the lesser offense. *State v. Peterson*, 133 Wn.2d 85, 942 P.2d 351 (1997). That is not the circumstance in the instant case. Instead, the circumstances of the instant case are that RCW 46.20.005 is a lesser degree offense rather than a lesser included offense to RCW 46.20.342(1).

The court holds that to sustain the conviction for RCW 46.20.342(1) the State was not required to prove that the defendant's driving occurred on a public highway, and the jury conviction for RCW 46.20.342(1)(a), on the facts of the instant case, is supported by sufficient evidence. Because there is sufficient evidence to support a finding that the defendant drove on the gas station lot, the court need not, and does not in this case, address the issue of whether there was sufficient evidence to support a finding that the defendant also drove upon the public highway.

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It is, therefore, ordered that Appellant's appeal is denied and the jury's conviction is sustained. Costs in the amount of $3,288.48 were incurred by Appellant at public expense in this appeal. Appellant is ordered to pay costs in the amount of $3,288.28. This matter is remanded to the District Court for imposition of sentence and further action as deemed necessary by the District Court.

Dated this 14th April, 2014.

The Honorable Judge Amber Finlay

Presented by:

Tim Higgs (25919)
Deputy Prosecutor

Reviewed and agreed by:

Eugene Austin
Attorney for Appellant

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A-3 DISTRICT COURT
Findings of Fact and Conclusions of Law

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON

IN AND FOR MASON COUNTY

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>vs.<br>APRIL HANCOCK,<br>Defendant | Case No.: 2Z0327384<br><br>FINDINGS OF FACT<br>AND<br>CONCLUSIONS OF LAW<br>CrRLJ 8.3 |

This matter came regularly before the court for a CrR ~~3.6~~ 8.3 hearing on August 6, 2012, regarding the defendant's motion to dismiss. The defendant was present and represented by Christopher Taylor. The State was represented by Deputy Prosecuting Attorney Melissa Bohm. The court considered the arguments of counsel and the pleadings, records and file herein. Now, pursuant to CrRLJ 8.3, the court makes the following findings and conclusions:

**UNDISPUTED FACTS**

1. On April 13, 2012, Deputy Gaynor observed a white vehicle in the parking lot of the Deer Creek Store with a female standing outside of the vehicle.
2. Deputy Gaynor recognized the vehicle from previous contacts and recalled the female had a suspended driver's license. Deputy Gaynor later verified the female was April J. Hancock and was suspended in 1st in DOL.
3. Deputy Gaynor later observed Ms. Hancock drive as if leaving the parking lot, but that before the vehicle left the parking lot, Ms. Hancock put the vehicle in reverse and pulled up to a gas pump.
4. Deputy Gaynor then activated his overhead emergency lights and began to conduct a traffic stop.



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5. Deputy Gaynor cited Ms. Hancock for driving while license suspended 1st.

**DISPUTED FACTS**

There are no disputed facts.

Based upon the foregoing findings of fact, the court hereby makes the following:

**CONCLUSIONS OF LAW**

1. RCW 46.20.005 statutorily states that driving without a license is a lesser included of a violation of RCW 46.20.342. It would not be a lesser included, except for the statute.
2. The language in RCW 46.20.342 is clear and unambiguous with no qualifying or limitation to "driving" on a "highway".
3. In *State v. Day*, 96 Wn.2d 646, 638 P.2d 546 (1981), the court ruled that a driver in a field owned by the parents who was arrested for driving under the influence was an unreasonable exercise of police power. There was no threat to the public and no the public had no right to be there.
4. This case is distinguishable from *Day*. Here, the defendant was in a parking lot intended to be used by and open to the general public.

DNE IN OPEN COURT this 31st day of August, 2012.

JUDGE

Presented by:

MELISSA BOHM, WSBA #42961
Deputy Prosecuting Attorney

Copy received and approved for entry:

CHRISTOHER TAYLOR, WSBA #38413
Attorney for the Defendant



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# A-4 STATUTES

**RCW 46.04.320**

**Motor vehicle.**

"Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Motor vehicle" includes a neighborhood electric vehicle as defined in RCW **46.04.357**. "Motor vehicle" includes a medium-speed electric vehicle as defined in RCW **46.04.295**. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. A golf cart is not considered a motor vehicle, except for the purposes of chapter **46.61** RCW.

[2010 c 217 § 1; 2007 c 510 § 1. Prior: 2003 c 353 § 1; 2003 c 141 § 2; 2002 c 247 § 2; 1961 c 12 § 46.04.320; prior: 1959 c 49 § 33; 1955 c 384 § 10; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

**NOTES:**

**Effective date—2007 c 510:** "This act takes effect August 1, 2007." [2007 c 510 § 6.]

**Effective date—2003 c 353:** "This act takes effect August 1, 2003." [2003 c 353 § 12.]

**Legislative review—2062 c 247:** See note following RCW **46.04.1695**.

**RCW 46.20.005**

**Driving without a license—Misdemeanor, when.**

Except as expressly exempted by this chapter, it is a misdemeanor for a person to drive any motor vehicle upon a highway in this state without a valid driver's license issued to Washington residents under this chapter. This section does not apply if at the time of the stop the person is not in violation of RCW **46.20.342**(1) or **46.20.420** and has in his or her possession an expired driver's license or other valid identifying documentation under RCW **46.20.035**. A violation of this section is a lesser included offense within the offenses described in RCW **46.20.342**(1) or **46.20.420**.

[1997 c 66 § 1.]

**NOTES:**

***Reviser's note:** RCW **46.20.420** was recodified as RCW **46.20.345**, June 1999.

**RCW 46.20.342**

**Driving while license invalidated—Penalties—Extension of invalidation.**

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this

or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be a habitual offender under chapter **46.65** RCW, who violates this section while an order of revocation issued under chapter **46.65** RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW **46.61.502** or **46.61.504**, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW **46.65.080**.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. For the purposes of this subsection, a person is not considered to be eligible to reinstate his or her driver's license or driving privilege if the person is eligible to obtain an ignition interlock driver's license but did not obtain such a license. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW **46.20.265**, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW **46.20.410**, relating to the violation of restrictions of an occupational driver's license, a temporary restricted driver's license, or an ignition interlock driver's license;

(v) A conviction of RCW **46.20.345**, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW **46.52.020**, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW **46.61.024**, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW **46.61.212**(4), relating to reckless endangerment of emergency zone workers;

(ix) A conviction of RCW **46.61.500**, relating to reckless driving;

(x) A conviction of RCW **46.61.502** or **46.61.504**, relating to a person under the influence of intoxicating liquor or drugs;

(xi) A conviction of RCW **46.61.520**, relating to vehicular homicide;

(xii) A conviction of RCW **46.61.522**, relating to vehicular assault;

(xiii) A conviction of RCW **46.61.527**(4), relating to reckless endangerment of roadway workers;

(xiv) A conviction of RCW **46.61.530**, relating to racing of vehicles on highways;

(xv) A conviction of RCW **46.61.685**, relating to leaving children in an unattended vehicle with motor running;

(xvi) A conviction of RCW **46.61.740**, relating to theft of motor vehicle fuel;

(xvii) A conviction of RCW **46.64.048**, relating to attempting, aiding, abetting, coercing, and committing crimes;

(xviii) An administrative action taken by the department under chapter **46.20** RCW;

(xix) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection; or

(xx) A finding that a person has committed a traffic infraction under RCW **46.61.526** and suspension of driving privileges pursuant to RCW **46.61.526** (4)(b) or (7)(a)(ii).

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter **46.29**RCW, (iii) the person has failed to comply with the provisions of chapter **46.29** RCW relating to uninsured accidents, (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW**46.20.289**, (v) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, (vi) the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, (vii) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under RCW **46.20.267** relating to intermediate drivers' licenses, or (viii) the person has been certified by the department of social and health services as a person who is not in compliance with a child support order as provided in RCW**74.20A.320**, or any combination of (c)(i) through (viii) of this subsection, is guilty of driving while license suspended or revoked in the third degree, a misdemeanor. For the purposes of this subsection, a person is not considered to be eligible to reinstate his or her driver's license or driving privilege if the person is eligible to obtain an ignition interlock driver's license but did not obtain such a license.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter **46.65** RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an

additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended.

[2015 c 149 § 1; 2011 c 372 § 2. Prior: 2010 c 269 § 7; 2010 c 252 § 4; 2008 c 282 § 4; 2004 c 95 § 5; 2001 c 325 § 3; 2000 c 115 § 8; 1999 c 274 § 3; 1993 c 501 § 6; 1992 c 130 § 1; 1991 c 293 § 6; prior: 1990 c 250 § 47; 1990 c 210 § 5; 1987 c 388 § 1; 1985 c 302 § 3; 1980 c 148 § 3; prior: 1979 ex.s. c 136 § 62; 1979 ex.s. c 74 § 1; 1969 c 27 § 2; prior: 1967 ex.s. c 145 § 52; 1967 c 167 § 7; 1965 ex.s. c 121 § 43.]

**NOTES:**

***Rules of court:*** *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

**Application—Effective date—2011 c 372:** See notes following RCW **46.61.526**.

**Effective date—2010 c 269:** See note following RCW **46.20.385**.

**Effective date—2010 c 252:** See note following RCW **46.61.212**.

**Effective date—2008 c 282:** See note following RCW **46.20.308**.

**Finding—2000 c 115:** See note following RCW **46.20.075**.

**Effective date—2000 c 115 §§ 1-10:** See note following RCW **46.20.075**.

**Severability—1990 c 250:** See note following RCW **46.18.215**.

**Effective date—Expiration date—1987 c 388:** "Sections 1 through 8 of this act shall take effect on July 1, 1988. The director of licensing shall take such steps as are necessary to insure that this act is implemented on its effective date. Sections 2 through 7 of this act shall expire on July 1, 1993." [1987 c 388 § 13.]

**Severability—1987 c 388:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 388 § 16.]

**Effective date—1980 c 148:** See note following RCW **46.10.490**.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW **46.63.010**.

*Impoundment of vehicle: RCW **46.55.113**.*

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

| | |
|---|---|
| STATE OF WASHINGTON<br><br>Plaintiff/Respondent,<br><br>vs.<br><br>APRIL HANCOCK,<br><br>Defendant/Appellant. | **Case No. 46149-8-II**<br>Superior Court Case No. 12-1-00520-6<br>District Court Case No. 2Z327384<br><br>**MOTION ~~TO~~ FOR ORDER OF INDIGENCY** |

April Hancock, defendant, files a notice of appeal in the above-referenced criminal case, and moves the court for an Order of Indigency authorizing the expenditure of public funds to prosecute this appeal wholly at public expense.

The following certificate is made in support of this motion.

**DATED** this 24th day of ~~February~~ November, 2015.

April J. Hancock
April Hancock
Defendant/Petitioner

Eugene C. Austin, WSBA # 31129
Attorney for Defendant/Petitioner



Austin Law Office, PLLC
PO Box 1753
Belfair, WA 98528
360-551-0782

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Belfair, WA 98528
360-551-0782

CERTIFICATE

I, April Hancock, certify as follows:

1. I am the defendant and I wish to appeal the judgment that was entered in the above-entitled cause denying my RALJ appeal from the District Court.

2. I have previously been found to be indigent by order of the court on December 28, 2012. There has been no change in my financial status since that time and I continue to lack sufficient funds to seek review in this case;

3. I ask the court to order the following to be provided at public expense: all filing fees, attorney fees, preparation, reproduction, and distribution of briefs, preparation of verbatim report of proceedings, and preparation of necessary clerk's papers.

4. I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.

5. I will immediately report any change in my financial status to the court.

6. I seek review in good faith. The following is a brief statement of the nature of the case and the issues sought to be reviewed. This case



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results from a conviction in the District Court for RCW 46.20.342(1) DWLS 1st, and the issues for appeal include:

a. Whether RCW 46.20.005 is a lesser included offense within RCW 46.20.342(1), making the operation of a "motor vehicle upon a highway" an element of RCW 46.20.342(1), that the State was required to prove at trial.

b. Whether RCW 46.20.342(1) prohibits a person with a suspended license from operating a motor vehicle anywhere within the state of Washington, including private property

c. Whether the rules of statutory construction require the court consider the language of RCW 46.20.342(1), without consideration or giving effect to any other related statutes.

d. Whether the rules of statutory construction require the court to reconcile conflicting statutes so as to give effect to both.

e. and any other issues as may be proper.

I, April Hancock, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

**DATED** this 24th day of November, 2015, in Mason County, WA.

April Hancock
Defendant/Petitioner



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Belfair, WA 98528
360-551-0782

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the MOTION FOR ORDER OF INDIGENCY, proposed Order of Indigency, and Indigency Screening Form was sent, via

____ U.S.P.S. First Class mail, to the Mason County Prosecutor's Office, PO Box 639, Shelton, WA 98584.

____ Hand delivered to the Mason County Prosecutor's Office, 521 N 4th St #B, Shelton WA 98584.

____ Faxed to the Mason County Prosecutor's Office at 360-427-7754.

__X__ Emailed to the Timothy Higgs at the Mason County Prosecutor's Office.

**DATED** this 30th day of November, 2015.

Eugene C. Austin



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**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

| | |
|---|---|
| STATE OF WASHINGTON<br><br>Plaintiff,<br><br>vs.<br><br>APRIL HANCOCK,<br><br>Defendant. | **Case No. 46149-8-II**<br>Superior Court Case No. 12-1-00520-<br>District Court Case No. 2Z327384<br><br>ORDER OF INDIGENCY<br>(Criminal) |

The court finds that the defendant lacks sufficient funds to prosecute an appeal and applicable law grants defendant a right to review at public expense to the extent defined in this order. The court orders as follows:

1. The filing fee is waived.

2. April Hancock is entitled to counsel for review wholly at public expense.

3. The appellate court shall appoint counsel for review pursuant to RAP 15.2

4. April Hancock is entitled to the following at public expense:

(a) Those portions of the verbatim report of proceedings reasonably necessary for review as follows:



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Final order of the Supreme Court.

(b) A copy of the following clerk's papers:

Copies of the District Court, Superior Court, and Court of Appeals Record and Trial Transcripts.

(c) Preparation of original documents to be reproduced by the clerk as provided in rule 14.3(b).

(d) Reproduction of briefs and other papers on review that are reproduced by the clerk of the appellate court.

(f) Other items:

DATE: _____

_____

Justice of the Supreme Court

Presented by:
Eugene C. Austin, WSBA # 31129
Attorney for Defendant



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Belfair, WA 98528
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SAMPLE INDIGENCY SCREENING FORM **CONFIDENTIAL**
[Per RCW 10.101.020(3)]

Name April Hancock
Address 11 E. Sea Vista Ct.
City Grapeview State WA. Zip 98546

1. Place an "x" next to any of the following types of assistance you receive:

| | |
|---|---|
| ____**Welfare** | ____**Poverty Related Veterans' Benefits** |
| __X__**Food Stamps** | ____**Temporary Assistance for Needy Families** |
| ____**SSI** | ____**Refugee Settlement Benefits** |
| ____**Medicaid** | ____**Aged, Blind or Disabled Assistance Program** |
| ____**Pregnant Women Assistance Benefits** | |
| ____**Other – Please Describe**____ | |

Recipients of public assistance are presumed indigent, but may be found able to contribute to the costs of their defense under RCW 10.101.010. *State v. Hecht*, 173 Wash. 2d 92 (2011).

---

2. Do you work or have a job? ___yes __X__no. If so, take-home pay: $_____

   Occupation: _____ Employer's name & phone #:_____

3. Do you have a spouse or state registered domestic partner who lives with you? ___yes __C__no

   Does she/he work? ____yes ____no If so, take-home pay: $_____

   Employer's name: _____

4. Do you and/or your spouse or state registered domestic partner receive unemployment, Social Security, a pension, or workers' compensation? ____yes ____no

   If so, which one? _____ Amount: $_____

5. Do you receive money from any other source? ___ yes __X__no If so, how much? $_____

6. Do you have children residing with you? ____ yes __X__no. If so, how many? _____

7. Including yourself, how many people in your household do you support? ___1___

8. Do you own a home? ___yes __X__no. If so, value: $_____ Amount owed: $_____

9. Do you own a vehicle(s)? ___yes _X_no. If so, year(s) and model(s) of your vehicle(s):_____ Amount owed: $_____

10. How much money do you have in checking/saving account(s)? $ 0

11. How much money do you have in stocks, bonds, or other investments? $ 0

12. How much are your routine living expenses (rent, food, utilities, transportation) $ [redacted] Apt. 700 00

13. Other than routine living expenses such as rent, utilities, food, etc., do you have other expenses such as child support payments, court-ordered fines or medical bills, etc.? If so, describe: NO

14. Do you have money available to hire a private attorney? ____yes ___X_no

15. ***Please read and sign the following***:

**I understand the court may require verification of the information provided above. I agree to immediately report any change in my financial status to the court.**

**I certify under penalty of perjury under Washington State law that the above is true and correct. (Perjury is a criminal offense-see Chapter 9A.72 RCW)**

April Hancock 11/24/15
Signature Date

Grapview WA.
City State

FOR COURT USE ONLY - DETERMINATION OF INDIGENCY

_____ Eligible for a public defender at no expense

_____ Eligible for a public defender but must contribute $_____

_____ Re-screen in future regarding change of income (e.g. defendant works seasonally)

_____ Not eligible for a public defender

_____
JUDGE

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

| | |
|---|---|
| STATE OF WASHINGTON<br><br>Plaintiff/Respondent,<br><br>vs.<br><br>APRIL HANCOCK,<br><br>Defendant/Appellant. | **Case No. 46149-8-II**<br>Superior Court Case No. 12-1-00520-6<br>District Court Case No. 2Z327384<br><br>**CERTIFICATE OF SERVICE** |

I certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the PETITION FOR DISCRETIONARY REVIEW with Appendix was sent via

1. Emailed to

Tim Higgs
Mason County Prosecutor's Office
TimH@co.mason.wa.us

2. USPS and email to

April Hancock
Defendant/Appellant
11 E. Sea Vista Ct.
Grapeview, WA 98546
ajhancock1967@gmail.com

**DATED** this 30th day of November, 2015.

Eugene C. Austin, WSBA # 31129



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