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No. 39675-1-II STATE OF WASHINGTON

BY:   
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STATE OF WASHINGTON,

Appellant,

v.

ANNA WEAVER,

Respondent

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Appeal from the Superior Court of the State of Washington in  
and for Lewis County

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BRIEF OF RESPONDENT, ANNA WEAVER

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## INTRODUCTION

The Superior Court in this case correctly invalidated a citation for “failure to yield right-of-way” under RCW 46.61.210(1), which was issued solely because a driver targeted for a traffic ticket pulled to the left (near) shoulder, rather than the *right* (far) shoulder when she was signaled by a law enforcement officer to stop. The Superior Court correctly held that traffic stops are governed by the traffic infraction stop statute, RCW 46.61.021(1), and not by RCW 46.61.210(1), which is a “right-of-way” statute that requires all drivers on the road to yield the right-of-way upon the immediate approach of an authorized emergency vehicle responding to an emergency call. In its attempt to overturn this ruling, the State mischaracterizes the nature and effect of the Superior Court ruling, ignores controlling Washington statutes and case law, and selectively ignores key rules of statutory construction. The ruling of the Superior Court was correct and should be affirmed.

Respondent Anna Weaver was targeted for a simple traffic stop by a State trooper while travelling in the left hand lane of northbound I-5 in Lewis County. The trooper was not responding to an emergency call, and he did not intend, need or even want to pass Ms. Weaver, as he pulled in behind her when she stopped. CP 21. Ms. Weaver stopped *immediately* upon being signaled to do so. But *solely* because Ms. Weaver stopped

initially on the left shoulder rather than the right, CP 28: 1-4<sup>1</sup>, the trooper issued her a \$1,062.00 citation for “failure to yield to an emergency vehicle” which carries a penalty that is *more than six times greater* than her primary offense of speeding. However, the “failure to yield” statute does not apply to vehicles targeted for traffic stops. The plain language of the statute, the statutory definition of “right-of way”, RCW 46.04.672, the legislative history of the Washington Motor Vehicle Code, as well as both Washington cases that have applied the statute in the civil damages arena, and non-Washington cases that have interpreted “failure to yield” statutes in the traffic infraction context, all lead to the same conclusion: the “right-of-way” statute does not apply to vehicles targeted for traffic infraction stops. Traffic infraction stops are governed by RCW 46.61.021(1), which Ms. Weaver did not violate.

Ms. Weaver filed a motion to dismiss the “failure to yield” citation, but the court commissioner hearing the matter refused to consider the out-of-state authorities Ms. Weaver cited. However, in doing so she at the same time claimed that the statutes were distinguishable, which is incorrect. CP 30-33. Ms. Weaver appealed to the Lewis County Superior

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<sup>1</sup> CP 28:1-4 (“Prosecutor: . . . The issue in this case is not whether or not Ms. Weaver stopped. Clearly, she did stop. The problem is the manner in which she stopped. I am not even going to address 46.61.021, which addresses the requirement to stop, because it is undisputed the driver did stop.”)

Court, and Judge Lawler correctly reversed the commissioner’s decision and dismissed the “failure to yield” citation. The State now appeals.

But the State’s proposed construction of the “failure to yield” statute is without support in the statute’s plain language, its legislative history, in non-Washington cases that have applied identical statutes in the same context, or in Washington cases that have applied the statute in the civil arena. Indeed, the State’s proposed construction ignores well-accepted principles of statutory interpretation and would render meaningless not only a significant portion of the “failure to yield” statute itself, but a separate statute—RCW 46.61.021(1)—that specifically *does* apply to vehicles targeted for traffic stops. Accordingly, for the reasons set forth below, Judge Lawler’s decision must be affirmed.

### **ASSIGNMENTS OF ERROR**

Appellant’s assignment of error no. 2 states the only issue before this court: whether RCW 46.61.210(1), the “failure to yield right-of-way to emergency vehicle” statute, applies to a vehicle targeted for a traffic stop when the driver of the emergency vehicle does not intend to pass that while responding to an emergency call.

Respondent objects to Appellant’s assignment of error no.1 as incorrectly characterizing the ruling of the Superior Court, and objects to assignments of error 3 and 4 as being argument and not assignments of

error at all. Respondent raises similar objections to Appellant's characterization of issues pertaining to assignments of error.

### **STATEMENT OF THE CASE**

The facts of this case are simple, fundamentally undisputed, and will not be repeated in detail here.<sup>2</sup> Trooper Pardue targeted Ms. Weaver for a traffic infraction stop on I-5 northbound in Lewis County because she was exceeding the speed limit. Ms. Weaver testified that Trooper Pardue first followed her for about a mile without activating his overhead lights or siren. CP 17:10 – CP 18:20. Ms. Weaver was aware that she was going to get pulled over for a traffic ticket. CP 18:18-20. Both parties agree that as soon as Trooper Pardue activated his overhead lights and siren, Ms. Weaver *immediately* signaled and pulled off the freeway to the left shoulder. CP 19:11-22; CP 28:1-4. Ms. Weaver testified that she believed this was the safest course of action. CP 20:7-15; CP 22:3; CP 22:12-13. Both parties also agree that when Trooper Pardue instructed Ms. Weaver to move to the right shoulder, she again immediately complied. Ms. Weaver did not believe that the laws regarding yielding right-of-way to an emergency vehicle applied to a traffic stop, CP 22:4-5, and this is precisely the issue presented in this case.

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<sup>2</sup> Respondent does not concede that all of the State's characterizations of arguments or rulings below are correct. However, the record speaks for itself on those points.

The Superior Court’s Ruling on Appeal succinctly states the facts and the applicable law, and reaches the only conclusion that can be reached under a straightforward application of rules of statutory construction and controlling cases.

### **ARGUMENT**

#### **A. STANDARD OF REVIEW/PRINCIPLES OF STATUTORY INTERPRETATION**

The underlying facts are undisputed. The sole issue is one of pure statutory interpretation: whether RCW 46.61.210(1)—the “failure to yield right-of-way to emergency vehicle” statute—applies to the driver of a vehicle being signaled to stop for a routine traffic infraction. Statutory interpretation is a question of law that the appellate court reviews *de novo*. *Thompson v. Hansen*, 167 Wn.2d 414, 419, 219 P.3d 659 (2009); *Phillipides v. Barnard*, 151 Wn.2d 376, 383, 88 P.3d 939 (2004).

The court’s purpose in interpreting a statute is to determine the intent of the legislature. *City of Spokane v. Spokane County*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006). In so doing, the court must consider the entire statute in which a particular provision is found, including other relevant provisions in the same act. *Id.*; *Skamania County v. Columbia River Gorge Comm’n*, 144 Wn.2d 30, 45, 26 P.3d 241 (2001). The court must also look to other terms in same or related statutes, *Dep’t of Ecology*

*v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002), as well as consider the entire sequence of all statutes relating to the same subject matter. *Connick v. City of Chehalis*, 53 Wn.2d 288, 290, 333 P.2d 647 (1958); *State ex rel. Washington Mut. Sav. Bank v. City of Bellingham*, 183 Wash. 415, 421, 48 P.2d 609 (1935). Statutes are to be construed so as to avoid rendering any word or provision meaningless. *State v. Contreras*, 124 Wn.2d 741, 747, 88 P.2d 1000 (1994).

The question before this court, as before the Superior Court, is the proper application of the Washington Motor Vehicle Act to the facts presented. For the reasons set forth below, RCW 46.51.210(1) simply does not apply to vehicles targeted for traffic stops. Rather, traffic infraction stops are specifically governed by RCW 46.61.021(1), which does not require that the target vehicle stop on any particular side of the road.

**B. THE PLAIN LANGUAGE OF RCW 46.61.210(1) SHOWS THAT IT DOES NOT APPLY TO TRAFFIC INFRACTION STOPS, BUT GIVES AN EMERGENCY VEHICLE RIGHT-OF-WAY TO PASS OTHER TRAFFIC WHILE RESPONDING TO AN EMERGENCY CALL**

RCW 46.61.210(1) provides:

Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of RCW 46.37.190, or of a police vehicle properly and lawfully making use of an audible signal only the driver of every other vehicle *shall yield the right-of-way* and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of

the roadway clear of any intersection and shall stop and remain in such position ***until the authorized emergency vehicle has passed***, except when otherwise directed by a police officer.

RCW 46.61.210(1) (emphasis supplied). Accordingly, the plain language of the statute grants emergency vehicles “right-of-way” to “pass” other traffic, and does not refer or apply to vehicles targeted for traffic stops, as the very concept of “right-of-way” does not apply to such a situation.<sup>3</sup>

“Right-of-way” is a defined term in the Washington Motor Vehicle Act. It is not mere surplusage. Rather, this term informs the scope and meaning of all portions of the Act that use it. RCW 46.04.672 defines “vehicle or pedestrian right-of-way” as granting “precedence” to another vehicle so the other vehicle can “proceed . . . in preference”:

‘Vehicle or pedestrian right-of-way’ means the right of one vehicle or pedestrian ***to proceed*** in a lawful manner ***in preference to another vehicle*** or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless ***one grants precedence to the other***.

RCW 46.04.672 (emphasis supplied). Webster’s Third New International Dictionary similarly defines “right-of-way” as “precedence in passing:”

Right-of-way: . . . 3: ***a precedence in passing*** accorded to one vehicle . . . over another either by custom, by decision of an appropriate officer (as a train dispatcher), by municipal ordinance, or by statute. 4: the customary or

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<sup>3</sup> The State’s phrase “yield to the right” is found nowhere in the statute. It does violence to the plain language and meaning of the statute by deleting a key phrase (“right-of-way”) specifically defined in the Washington Motor Vehicle Act.

legal *right of traffic to take precedence over any other traffic* . . .

Consistent with these definitions, the Washington Supreme Court has already recognized that the purpose of the “failure to yield to emergency vehicle” statute is to clear a path for emergency vehicles actually responding to emergency calls:

Through the enactment of [the statute now codified as RCW 46.61.210] . . . the legislature has declared it to be the express public policy of this state *that a clear and speedy pathway shall be provided for the operation of emergency vehicles when actually responding to an emergency call.*

*Lakoduk v. Cruger*, 48 Wn.2d 642, 654, 296 P.2d 690 (1956) (emphasis supplied). *Accord Grabos v. Loudin*, 60 Wn.2d 634, 637-38, 374 P.2d 673 (1962) (quoting *Lakoduk, supra*).

Here, it is undisputed that the trooper did not intend, need or even want, to “pass” Ms. Weaver. CP 6:10-15; CP 14-15. Nor was he responding to an emergency call. The trooper was simply signaling Ms. Weaver to stop for a traffic infraction. When Ms. Weaver did stop, the trooper did not pass her but stopped behind her, twice: first on the left shoulder, and then on the right. CP 14-22. Accordingly, because no “right-of-way” was required by the trooper at all, the fact that RCW 46.61.210(1) requires drivers to “yield the right-of-way” (to grant “precedence” to the

other vehicle) by moving to the right instead of the left is irrelevant. Only a stop was required.

The State's proposed construction reads "right-of-way" entirely out of the statute and ignores the meaning and significance of RCW 46.04.672. This is improper.

1. The State Misapprehends the Requirement that the Driver of an Authorized Emergency Vehicle Must be "Actually Responding" to an Emergency Call

The State sets up a straw man by contending that the Superior Court erred in ruling that emergency vehicle must be responding to an "actual emergency." Ms. Weaver made no such argument, nor did the Superior Court make any such ruling.<sup>4</sup> The Supreme Court has held that for the statute to apply, an emergency vehicle must be "**actually responding to an emergency call.**" *Lakoduk, supra* at 654 (emphasis supplied). As the Supreme Court stated in *Lakoduk*:

The test for determining whether a publicly owned motor vehicle is at a given time responding to an emergency call . . . 'is not whether an emergency in fact exists at that time but rather whether the vehicle is then being used in responding to an emergency call. *Whether the vehicle is being so used depends upon the nature of the call that is received and the situation as presented to the mind of the driver.*'

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<sup>4</sup> The Superior Court correctly stated that "[t]he purpose of the failure to yield statute . . . is to clear a path for emergency vehicles *actually responding* to emergency calls," relying on *Lakoduk, supra*. CP 6:3-4 (emphasis supplied).

*Lakoduk, supra* at 657-58 (citations omitted) (emphasis supplied). *Accord Macon v. Smith*, 117 Ga.App. 363, 160 S.E.2d 622, 627 (Ga. App. 1968) (same; expressly following *Lakoduk*).<sup>5</sup>

Ms. Weaver has never argued that application of RCW 46.61.210(1) depends upon the existence of an “actual” emergency. Indeed, such an argument would be inconsistent with Washington law. *See Lakoduk, supra* at 657-58. However, neither the “failure to yield” nor the traffic law exemption statute, RCW 46.61.035, applies unless the driver of the emergency vehicle is in fact *responding to an emergency call*.<sup>6</sup> It is undisputed that that was not the case here.

**C. RCW 46.61.021(1) SPECIFICALLY GOVERNS TRAFFIC INFRACTION STOPS**

It is telling that the State completely ignores the fact that traffic infraction stops are governed by an entirely separate statute, RCW 46.61.021(1). That statute succinctly states:

Any person requested or signaled to stop by a law enforcement officer for a traffic infraction has a duty to stop.

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<sup>5</sup> This is in fact the prevailing view in the United States. *See Gurganas v. W.K. Huntemann & Son Funeral Home*, 252 A.2d 911, 912 & n.3 (D.C. 1969) (citing *Lakoduk, supra*);

<sup>6</sup> This requirement makes complete sense, given the extremely high fine for violation of RCW 46.61.210(1). Clearing the “right-of-way” for vehicles “actually responding” to an emergency call is extremely important. The precise manner of stopping for a traffic infraction is not nearly as important. *Cf.* RCW 46.61.021(1).

RCW 46.61.021(1). Unlike the “failure to yield” statute, *the traffic infraction stop statute says nothing about the manner or location where the target driver must stop*. A driver who stops immediately upon being signaled to do so, but does so on the left rather than the right, does not violate this statute.

The State spends considerable time arguing that not applying the “failure to yield” statute to traffic infraction stops would lead to an “absurd” result. Precisely the opposite is true: the State’s proposed construction of the “failure to yield” statute would render the traffic infraction stop statute meaningless. Such a result would not only itself be “absurd,” but would contravene well-settled principles of statutory interpretation.

“[W]hen a legislature enacts a law, it is presumed to be familiar with its prior enactments and judicial decisions.” *Leonard v. City of Bothell*, 87 Wn.2d 847, 853-54, 557 P.2d 1306 (1976). The traffic infraction stop statute was enacted in 1978, over *forty years* after the failure to yield statute was first enacted in 1937.<sup>7</sup> If the “failure to yield” statute was intended to apply to vehicles targeted for traffic stops, there would have been no need to enact a specific statute imposing a general duty to stop when signaled to do so. Under the State’s interpretation, the

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<sup>7</sup> Compare Laws 1979, Ex. Sess., ch. 136, 4 with Laws 1937, ch. 189 §93 (as amended and re-codified).

“failure to yield” statute would already impose that duty. This court cannot assume, as the State’s argument would require, that the legislature engaged in a useless gesture when it enacted RCW 46.61.021(1). The only sensible interpretation of the two statutes is that the “failure to yield” statute was never intended to apply to traffic stops, which are governed by a completely separate statute.<sup>8</sup>

It is undisputed that Ms. Weaver did not violate the traffic infraction stop statute, as she stopped *immediately* upon being signaled to do so. CP 17, 19. Indeed, the prosecutor agreed that Ms. Weaver complied with the statute, and that the citation was based solely upon “the manner in which she stopped”:

Prosecutor: . . . The issue in this case is not whether or not Ms. Weaver stopped. Clearly, she did stop. The problem is the manner in which she stopped. I am not even going to address 46.61.021, which addresses the requirement to stop, because it is undisputed the driver did stop.

CP 28 (Dist. Ct Tr. at 17: 1-4). The trooper issued this citation only because Ms. Weaver initially pulled off to the left instead of the right, as the prosecutor stated that “[n]o traffic in the area prevented a lane change to the right and eventually to the left shoulder as required.” CP 14 (Dist.

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<sup>8</sup> Not only is the traffic infraction stop statute the *more recent*, see *Tunstall v. Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691 (2000), *cert. denied*, 532 U.S. 920 (2001) (more recently enacted statute prevails), it is clearly more specific to Ms. Weaver’s situation, since of the two statutes it is *the only one that clearly and specifically applies to vehicles targeted for traffic stops*. Cf. *Wescott Homes, LLC v. Chamness*, 146 Wn.App. 728, 734, 192 P. 3d 394 (2000).

Ct. Tr. at 3:20-21). However, the traffic infraction stop statute *does not require* the driver to pull to the right, as opposed to the left. Accordingly, the Superior Court was correct in holding that the failure to yield citation did not apply and, therefore, in dismissing it.

**D. BOTH WASHINGTON AND NON-WASHINGTON CASES HOLD THAT “FAILURE TO YIELD” STATUTES DO NOT GOVERN TRAFFIC INFRACTION STOPS**

1. Non-Washington Cases Specifically hold that the “Failure to Yield” Section of the Uniform Vehicle Code does not Govern Traffic Stops.

Although no Washington cases specifically address the application of RCW 46.61.210(1) to traffic infraction stops, courts in other jurisdictions have construed functionally identical statutes based on the Uniform Vehicle Code, and have held that such statutes do not apply in this situation. The material terms of RCW 46.61.210(1) are based on the Uniform Vehicle Code propounded by the National Committee on Uniform Traffic Laws and Ordinances beginning in 1925.<sup>9</sup> One of the

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<sup>9</sup> The 1937 statute stated:

Upon the immediate approach of an authorized emergency vehicle, when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the public highway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a peace officer. Upon the immediate approach of an authorized emergency vehicle, street cars shall be stopped unless otherwise directed by a peace officer. When the operator of any vehicle is complying with

principal goals of the Uniform Vehicle Code was and is to promote uniformity of traffic laws throughout the United States.<sup>10</sup> Washington adopted much of the Uniform Vehicle Code in 1937, and has given it only modernizing updates since then.<sup>11</sup> Indeed, in a 1968 study, Washington ranked first in the nation for conformity to the Uniform Vehicle Code.<sup>12</sup> Washington's close adherence to the Uniform Vehicle Code language through the years accounts for the close similarity in statutory wording between the Washington statute and those of other states.

Our Supreme Court has recognized the importance of uniformity of traffic laws across the country, and has expressly stated that cases from other states that have "construed acts quite similar to our own, i.e., the Uniform Motor Vehicle Act," are "convincing." *City of Bellingham v. Schampera*, 57 Wn.2d 106, 111, 356 P.2d 292 (1960). Thus it is appropriate to look at out-of-state cases that have interpreted virtually

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the provisions of this section, he shall give proper hand signal indicating his intended movement.

Laws 1937, ch. 189, §93, codified as Rem. Rev. Stat. 6360-93. In 1961 the Motor Vehicle Act was re-codified and this section became RCW 46.60.210. Laws 1961, ch.12, §46.60.210. In 1965, the Rules of the Road were repealed and re-enacted and re-codified in RCW chapter 46.61. Laws 1965, Ex. Sess., ch. 155, §91. This particular section was re-enacted, with slight modifications not relevant here, in Laws 1965, Ex. Sess., ch. 155, §32, which is the statute's current form.

<sup>10</sup> See *A Contemporary Overview of Traffic Law Uniformity in the United States: 1968-1978* (U.S. Dept. of Transportation, Sept. 1980) at iii. CP 90-113.

<sup>11</sup> See footnote 10, *supra*. See also *City of Seattle v. Williams*, 128 Wn.2d 341, 908 P.2d359 (1995) (discussing history of Motor Vehicle Code and need for uniformity).

<sup>12</sup> *A Contemporary Overview of Traffic Law Uniformity in the United States: 1968-1978* (U.S. Dept. of Transportation, Sept. 1980) at 6. CP 97.

identical “failure to yield” statutes *in the same context*.<sup>13</sup> Appellate courts in Georgia and Alabama, construing “failure to yield” statutes that are in all material respects identical to ours, have expressly rejected attempts to apply these statutes to vehicles targeted for traffic stops.

In *Jackson v. State*, 223 Ga. App. 27, 477 S.E. 2d 28 (1996), the driver of a target vehicle was pursued for speeding. The defendant did not initially stop in response to the officer’s signals<sup>14</sup> and was charged with both speeding and failure to yield to an emergency vehicle under a statute virtually identical to Washington’s.<sup>15</sup> Like Ms. Weaver, the defendant contended that the Georgia statute simply did not apply to vehicles targeted for traffic stops, and the Georgia court agreed:

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<sup>13</sup> None of the cases relied upon by the State involve situations where a “failure to yield” statute was applied to a vehicle targeted for a traffic stop, much less situations in which the sole basis for the citation was the driver having stopped on the left rather than the right.

<sup>14</sup> Here, it is undisputed that Ms. Weaver, unlike the defendant in *Jackson*, immediately responded to the trooper’s signal to stop.

<sup>15</sup> The Georgia statute provides in pertinent part:

Upon the immediate approach of an authorized emergency vehicle or a vehicle belonging to a federal, state, or local law enforcement agency making use of an audible signal and visual signals meeting the requirements of Code Section 40-6-6, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle or law enforcement vehicle has passed, except when otherwise directed by a police officer.

*Jackson*, *supra* at 27 (quoting OSGA §40-6-74 (a)).

[U]nder the plain language of the statute, a person violates [the statute] when he fails to yield the right-of-way in order to permit an emergency vehicle *to pass*.

*Id.* at 28 (emphasis in original). The court dismissed the failure to yield conviction *precisely because* the officer's purpose was to stop the defendant for speeding, not to pass him:

The evidence is uncontroverted that the officer was pursuing Jackson rather than seeking to pass him. The officer's stated purpose was to *stop* Jackson for speeding. Therefore, the State failed to prove the most fundamental element of the statute charged: that Jackson obstructed the roadway and prevented the officer from *passing* him. In light of this fact, Jackson's conviction for failing to yield to an emergency vehicle must be reversed.

*Id.* at 28 (emphasis in original). The same result should occur here.

Other courts considering this issue agree. *See Burrell v. State*, 225 Ga.App. 264, 483 S.E. 2d 679 (1997) (following *Jackson*); *McFerrin v. State*, 339 So. 2d 127 (Ala. Crim. App. 1976) (failure to yield statute not applicable to police vehicle in pursuit of target vehicle). The court in *McFerrin, supra*, also construing a functionally identical statute to Washington's, held:

[t]he language of the statute is very clear that [it] should apply where an emergency vehicle or police vehicle on an authorized emergency call must be in a position to have traffic proceeding in front of them to *yield the right of way to allow the emergency vehicle to pass without any hindrance whatsoever*.

*McFerrin, supra* at 131 (emphasis added).<sup>16</sup>

The Traffic Court Commissioner erred when she refused to consider this case law from states whose statutory language was identical to Washington's, as the Superior Court below correctly recognized. CP 30-33. As our Supreme Court has stated, these cases are not only persuasive, but convincing, authority that the "failure to yield" section of the Uniform Vehicle Code does not apply to traffic stops. *See Schampera, supra* at 111.

2. Washington Decisions Considering RCW 46.61.210(1) in Civil Cases Compel the Conclusion that the Statute does not Apply to Vehicles Targeted for Traffic Stops.

That Washington courts have not construed RCW 46.61.210(1) in the traffic infraction context does not mean that no authority exists on whether the statute applies to traffic stops. To the contrary, the reasoning employed by Washington courts that have considered the statute in the civil damages context compels the result reached by the Superior Court below. The State wholly ignores the Washington cases interpreting this statute and in fact argues for a result that is contrary to those cases.

*Lakoduk v. Cruger, supra*, involved an intersection collision between a pickup truck and a fire truck with its lights and siren activated

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<sup>16</sup> The State argued at the Superior Court level that these out-of-state cases somehow did not apply because the statutes involved were criminal in nature, and not civil traffic infractions, and that, therefore, they were inapplicable because the burden of proof was different. Not surprisingly, the State appears to have abandoned this contention.

while en route to a fire. The fire truck entered the intersection on a red light, and the issue was whether the operators were negligent despite the separate statute that relieves authorized emergency vehicles from compliance with certain traffic laws. In reaching its decision, the Supreme Court clearly articulated the policies underlying the failure to yield statute:

Through the enactment of the Washington motor vehicle act . . . the legislature has declared it to be *the express public policy of the state that a clear and speedy pathway shall be provided for the operation of emergency vehicles when actually responding to an emergency call.*

48. Wn.2d at 654 (emphasis added). *Grabos v. Loudin*, 60 Wn.2d 634, 374 P.2d 673 (1962) cited and relied upon *Lakoduk*. *Grabos* also involved an intersection collision with a police vehicle that entered the intersection on a red light. Although the issue was, again, civil negligence, the court emphasized that the reason the other driver had a duty to yield was because the police vehicle was on *an emergency call*. *Id.* at 635.

Here, the trooper did not claim he was responding to an emergency call, but admittedly targeted Ms. Weaver for a traffic infraction, as she correctly understood. CP 13-15 (Dist. Ct.Tr. at 2:21-3:11). He followed Ms. Weaver for about a mile before activating his overhead lights and siren. CP 18 (Dist. Ct. Tr. at 7: 7-12). As the traffic infraction stop statute does not contain any requirement that the driver being stopped do so only on the right shoulder, it was entirely permissible for Ms. Weaver to stop

on the left shoulder which, in any event, was nearest her position and could reasonably be considered the safest choice. CP 20: 7-10.

**E. APPLYING THE “FAILURE TO YIELD” STATUTE IN A MANNER CONSISTENT WITH THE LEGISLATURE’S INTENT IN NO WAY “CONDITIONS” ITS “ENFORCEMENT” UPON THE PERCEPTIONS OF THE TARGET DRIVER.**

The State’s principal argument appears to be that if RCW 46.61.210(1) is held not to apply to traffic stops, then “enforcement” of the statute somehow will depend upon “other motorists’ perception[s] as to whether the emergency vehicle is responding to an ‘actual’ emergency.” App. Br. at 18. This argument is absurd on its face. While it may be true that the driver of a vehicle approached from behind by a police vehicle does not know if the officer intends to pass or stop the vehicle, whether or not the statute *actually applies*—in the words of the State, the statute’s “enforcement”—has nothing to do with the perceptions of the driver.

Like its other argument that the driver of the emergency vehicle need not be responding to an “actual” emergency, the State’s contention that not applying the “failure to yield” statute to vehicles targeted for traffic stops would render its application dependent upon the “perception” of the driver is nothing but a straw man. The Superior Court’s construction will not render RCW 46.61.210(1) “impossible to enforce.” App. Br. at 23. Vehicles that the driver of an emergency vehicle intends to pass while

responding to an emergency call either will pull to the right and stop as required, or not. If not, and the offending vehicle is not merely one targeted for a traffic stop, the driver will have violated the statute. However, if the vehicle is merely targeted for a traffic stop, it is sufficient that the driver stop immediately. Application of the failure to yield statute depends not upon the perceptions of the defendant, but upon the objective conditions existing at the time.

1. The Cases Relied Upon by the State do not Support its Position.

The State relies upon a certain out-of-state cases for the proposition that exempting vehicles targeted for traffic stops from the purview of the “failure to yield” statute would result in drivers “second guessing” whether a following police vehicle is “properly responding to an emergency situation.” App. Br. at 20 (*quoting City of St. Louis v. Jameson*, 972 S.W.2d 302 (Mo. 1998)). None of these cases support this argument. First, and most important, *not one* of the cases involve the issue before this court: whether “failure to yield” statutes apply to vehicles *targeted for traffic stops*. They certainly do not involve the application of such statutes based solely upon a driver’s prompt move to the left, rather than the right.

For example, in *Jameson, supra*, a police vehicle that was dispatched to a drug store security guard in need of aid ran a red light at an

intersection while en route and collided with the defendant, who was charged under a typical “failure to yield” statute. The defendant tried to argue that the statute did not apply because officer was not actually responding to an emergency call because the police dispatcher had, unbeknownst to the officer, terminated the call before the collision. Accordingly, there was no “actual” emergency at the time of the collision. The court correctly held that it did not matter whether the officer was “in fact responding to an [actual] emergency situation.”<sup>17</sup> *Id.* at 305. Indeed, the court’s holding in *Jameson* is entirely consistent with Washington law which, as already discussed, requires only that the emergency vehicle be *actually responding to an emergency call*. See *Lakoduk, supra* at 657-58<sup>18</sup>

In *Rohrkaste v. City of Terre Haute*, 470 N.E.2d 738 (Ind. App. 1985), the plaintiff in a personal injury action collided with the driver of a city ambulance that ran a red light at an intersection. The plaintiff contended that the trial court should have instructed the jury that it was the City’s burden to prove that the ambulance was responding to an emergency. The court first noted that the Indiana statutes dealing with emergency vehicles differ, in that the statute exempting emergency

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<sup>17</sup> Although the court used the phrase “responding to an emergency”, it was the absence of an actual emergency that was the basis for the defendant’ contention that the failure to yield statute did not apply.

<sup>18</sup> Moreover, as the defendant was not targeted for a traffic stop, but failed to yield *entirely*, the question presented here was not addressed in *Jameson*.

vehicles from traffic laws—the analog to RCW 46.61.035(1)—requires that the driver be responding to an emergency, while the “failure to yield” statute does not. Based upon this difference, the court held that the plaintiff’s proposed instruction misstated the law, in that the duty to stop and yield exists under the Indiana statute without regard to whether the authorized emergency vehicle is on an emergency run.

*Rohrkaste* is inapposite for several reasons. First, like *Jameson*, *Rohrkaste* did not involve a driver targeted for a traffic stop, but a driver who had failed *entirely to yield to an emergency vehicle actually responding to an emergency call*. Second, despite the court’s statement that the proposed instruction misstated the law, the court nonetheless approved that portion of the instruction which stated:

*[I]n this case the defendant has the burden of proving that the ambulance . . . , at the time in question, was responding to an emergency call and was operating in an emergency.*

*Id.* at 745 (emphasis supplied). By approving this portion of the plaintiff’s proposed instruction, the court appears to recognize that for the Indiana “failure to yield” statute to apply, the emergency vehicle *indeed does* have to be *responding to* an emergency call. Finally, and most important, whatever the holding in *Rohrkaste*, *our* Supreme Court has clearly held that the emergency vehicle *must be responding to an emergency call*. See *Lakoduk, supra* at 654; *Grabos, supra* at 637-38.

*Merlino v. Mut. Service Cas. Ins. Co.*, 23 Wis.2d 571, 127 N.W. 2d 741 (Wis. 1964) is also a civil damages case arising from an accident between a police ambulance and a trolley bus. The ambulance, which was transporting the plaintiff's daughter to the hospital, swerved to avoid a vehicle that had cut in front of it and rear-ended the bus. The trial court instructed the jury on what an "emergency call" was, but the plaintiff argued that, because his child was not seriously ill, *no real emergency existed*. Accordingly, although the court stated that the duty to yield "is not contingent upon whether the ambulance was *carrying out* an emergency call," *id.* at 748 (emphasis supplied), the court did not hold that it is unnecessary that the emergency vehicle actually be *responding to* an emergency call.

*Hersh v. Griffith*, 284 Ga.App. 15, 643 S.E.2d 309 (Ga. App. 2007) is yet another civil damages case that arose when the plaintiff's vehicle collided with a house that was being moved while being escorted by two police vehicles, both of which had their emergency lights activated. While other vehicles on the road moved to the right in response, the plaintiff instead *passed* one of the police escorts and, in so doing, struck the front corner of the house. The trial court instructed the jury on the Georgia "failure to yield" statute as well as the statute exempting emergency vehicles from certain traffic laws, but the plaintiff argued that the

instruction should not have been given because the police escort was not responding to an emergency call. The appellate court rejected this argument, stating that the instruction was appropriate because the evidence showed the plaintiff failed to yield entirely and, in fact, in doing so had caused the escort vehicle to swerve to avoid it. The court in *Hersh* did not even purport to address the issue here: whether the driver of a vehicle targeted for a traffic stop, who does stop immediately but does so on the left rather than the right, can be cited under the Georgia “failure to yield” statute. Therefore, the State’s assertion that *Hersh* “contradicts” the Georgia cases relied upon by Ms. Weaver—*Jackson and Burrell, supra*—is plainly false. Indeed, it is significant that the court in *Hersh* did not even mention *Jackson* or *Burrell*. It did not do so because there was no need, as *Hersh* did not involve the same issue.

### **CONCLUSION**

RCW 46.61.210(1) does not apply to the drivers of vehicles targeted for traffic infraction stops. The plain language of the statute, principles of statutory construction, and both Washington and non-Washington cases necessitate this conclusion. Our legislature has enacted a statute that specifically addresses traffic infraction stops—RCW 46.61.021(1)—and, as the Superior Court correctly recognized, it is silent as to where the driver of the target vehicle must stop. Obviously, Ms.

Weaver did not violate this statute, the only one that applies to her situation.

Yet in its strained attempt to contort the “failure to yield” statute to apply to Ms. Weaver, the State proposes a construction that would not only render meaningless the statute that *does* apply—RCW 46.61.021(1)—but essential elements of RCW 46.61.210(1) itself. In so doing, it is the State’s argument which, if adopted, would lead to an “absurd” result. That is something that this court should not countenance. Accordingly, the Superior Court’s order must be affirmed.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of April, 2010

Allen N. Shabino, P.S.

By:   
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**Declaration of Service**

The undersigned certifies that a copy of Respondent's Brief was served upon the Appellant via the following methods:

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DATED THIS 26th day of April, 2010

  
Allen Shabino, WSBA #14815

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