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SUPREME COURT  
STATE OF WASHINGTON  
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Supreme Court No. 96884-5

SUPREME COURT  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON,

Petitioner

v.

DAVID JOSEPH BROWN,

Respondent

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 16-1-00431-1

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SUPPLEMENTAL BRIEF OF PETITIONER

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## I. ASSIGNMENTS OF ERROR AND STATEMENT OF THE CASE

Petitioner affirms and incorporates the Assignments of Error and Statement of the Case presented in the State’s Petition for Discretionary Review.

## II. ARGUMENT

### A. **Washington traffic code clearly defines when a signal is required and how that signal can be given.**

When interpreting a statute, “the court's objective is to determine the legislature's intent.” *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). The surest indication of legislative intent is the language enacted by the legislature, so if the meaning of a statute is plain on its face, this Court will ““give effect to that plain meaning.”” *Id.* (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)). In determining the plain meaning of a provision, this Court looks to the text of the statutory provision in question, as well as “the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Jacobs*, 154 Wn.2d. An undefined term is “given its plain and ordinary meaning unless a contrary legislative intent is indicated.” *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 920–21, 969 P.2d 75 (1998). If, after this inquiry, the statute is susceptible to more than one reasonable interpretation, it is ambiguous and the Court “may resort to statutory construction, legislative history, and relevant case

law for assistance in discerning legislative intent.” *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007). *See also State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354, 356 (2010).

**1. Prior Washington court rulings have not found ambiguity in the driver’s obligation to signal.**

Previously, this Court and the Court of Appeals have had the opportunity to briefly address turn signal requirements under RCW 46.61.305. First, this Court in *State v. Nichols*, when addressing whether there was an objective basis for a traffic stop, observed in a unanimous opinion, that “[a] driver is required to signal at least 100 feet of travel before turning.” *State v. Nichols*, 161 Wn.2d 1, 13, 162 P.3d 1122, 1127 (2007) *citing* RCW 46.61.305(2). Similarly, in *State v. Lemus*, in a unanimous opinion, the Court of Appeals found “Paraphrased in the affirmative, RCW 46.61.305(1) plainly means that the driver must make a lane change safely *and* with an appropriate signal. RCW 46.61.305(2) clearly requires a signal for at least 100 feet *before* the lane change.” *State v. Lemus*, 103 Wn. App. 94, 99-100, 11 P.3d 326, 329 (2000). Similarly, when the Ninth Circuit looked at RCW 46.61.305(2), the Court reached the same conclusion based upon a plain reading of the statute. *See United States v. Holloway*, 392 F. App’x. 563, 564, 2010 WL 3258433 (9th Cir. 2010). While neither opinion expanded on why the meaning was plain and

clear, for the past 19 years, the Courts of this State have not found any ambiguity in the requirement to signal prior to turning.

**2. The turn signal requirements in RCW 46.61.305 are clear and unambiguous.**

Contrary to the majority opinion in *Brown*, the turn signal statute RCW 46.61.305 is not ambiguous.

The relevant statute, RCW 46.61.305, aptly named “When signals required-Improper use prohibited,” provides:

- (1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the *manner hereinafter* provided.
- (2) A signal of intention to turn or move right or left *when required* shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.
- (3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the *manner provided herein* to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.
- (4) The signals provided for in RCW 46.61.310 subsection (2), shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

RCW 46.61.305 (emphasis added). Relevant here is subsection (2) requiring the signaling of an intention to turn must be provided for the last one hundred feet before turning. Contrary to the majority opinion in

*Brown*, “when required” in this subpart has an important role as written by the legislature.

Noticeably unregulated are turns and right/left movements when not on a roadway. Subsection (1)<sup>1</sup> discusses “when” and provides that an appropriate signal must be given prior to any person turning a vehicle or moving right or left when on “a roadway.”<sup>2</sup> Using “when required” links the 100-foot signaling requirement in subsection (2) to the left and right movements when on roadways in subsection (1). Absent the words “when required” in subsection (2), all right or left movements, regardless of where, would have to be signaled for 100 consecutive feet. This was addressed previously by the Court of Appeals in an unrelated but similarly named, *State v. Brown*, 119 Wn. App. 473, 81 P.3d 916 (2003). In *Brown*, the driver made a right turn out of a parking lot without signaling. *Id.* at 475. At issue was whether a signal was required from a parking lot, which is not part of the roadway. The Court of Appeals, interpreting RCW 46.61.305(1) found that:

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<sup>1</sup> Subsection (1) also adds a requirement that in addition to signaling, before making the turn, or left or right movement, the driver must ensure the turn or movement will be safe. This is principally so the driver does not cut another vehicle off, or worse, strike another vehicle. Absent the reasonable safety requirement, a driver could signal and then sideswipe a vehicle without committing an offense under this statute.

<sup>2</sup> “‘Roadway’ means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder even though such sidewalk or shoulder is used by persons riding bicycles.” RCW 46.04.500.

Plainly read, RCW 46.61.305(1) does not require a driver exiting a driveway to signal. The statute applies to a vehicle turning or moving *upon* a roadway, not a vehicle turning or moving *onto* a roadway. Thus, although the State may be correct that the majority of the vehicle's turning is done on the highway itself, RCW 46.61.305(1)'s signal requirement applies only to vehicles that are already “upon a roadway.” Section (2) of RCW 46.61.305 supports this interpretation by requiring the signal to “be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.”

*Id.* at 476 (citations and quotations omitted).

Furthermore, subsection (1) ends with “giving an appropriate signal in the *manner hereinafter* provided.” RCW 46.61.305(1) (emphasis added). It is important to note that the very next provision of the statute sets forth the manner of signaling for 100 consecutive feet. RCW 46.61.305(2).<sup>3</sup> But the connections do not end there. To fully understand the legislative intent, the related provisions and statutory scheme must be considered. Specifically, look at the two sections that follow RCW 46.61.305:

**RCW 46.61.310 - Signals by hand and arm or signal lamps.**

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<sup>3</sup> See *State v. Trenary*, 183 Wn. App. 1005, 2014 WL 4197558 (2014) (unpublished) (upholding a traffic stop for failing to continuously signal when the driver repeatedly turned the signal on and off before initiating the turn, the court found regarding RCW 46.61.305 that “[i]t is clear from the language of the statute that it is the ‘flashing’ that must occur ‘continuously’ to notify other drivers of the intention to turn.”). This unpublished opinion, attached as App. A, is a nonbinding authority that has no precedential value but is cited for such persuasive value as the court deems appropriate. GR 14.1; *Crosswhite v. DSHS*, 197 Wn. App. 539, 389 P.3d 731 (2017).

- (1) Any stop or turn signal *when required herein* shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (2) *hereof*.
- (2) Any motor vehicle in use on a highway shall be equipped with, and *required signal* shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurements shall apply to any single vehicle, also to any combination of vehicles.

**RCW 46.61.315 - Method of giving hand and arm signals.**

All signals *herein required* given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

- (1) Left turn. Hand and arm extended horizontally.
- (2) Right turn. Hand and arm extended upward.
- (3) Stop or decrease speed. Hand and arm extended downward.

RCW 46.61.310; RCW 46.61.315 (emphasis added). Here, the legislature continued to use similar language like “required signal,” “required herein,” and “hereof” to cross-reference and connect the requirements between sections.

For example, consider the need for signaling the stopping or slowing of a vehicle. RCW 46.61.305(3) connects the stopping or slowing of a vehicle with the use of a signal lamp in RCW 46.61.310(1) or arm signal in RCW 46.61.315(3) by using the similar phrase “without first giving an appropriate signal in the *manner* provided *herein*.” Similar to

turn signals, the requirement to signal stopping or slowing is in one section, RCW 46.61.305(3), while the manner is set forth in separate sections that follow, depending on the manner of signaling used.

Thus, in the context of these statutes, the 100 feet of signaling required in RCW 46.61.305(2) is just one of three separate “hereinafter” manners required under RCW 46.61.305(1). The use of the term “when required” in RCW 46.61.305(2) connects the manner back to the “when” requirement in 305(1).

Accordingly, the statutory construction is quite clear. RCW 46.61.305(1) regulates turns and left or right movements upon roadways, RCW 46.61.305(2) regulates the manner of signaling by requiring a continuous signal for 100 feet, RCW 46.61.310 regulates the use of hand/arm or signal lamps, and RCW 46.61.315 regulates the manner of hand and arm signals. Together they provide clear instructions for a driver to follow and provide a clear enforceable rule for law enforcement to apply. It is also consistent with the previous clarity found by this Court in *Nichols* and the Court of Appeals in *Lemus*.

**B. Other states have reached the same result with identical or similar statutes.**

If the Court finds the statute is not clear in its plain meaning and seeks to review what has happened in other states, other states have

reached the same interpretation with the same language and have found drivers were required to signal prior to turning.

**1. North Dakota, Kansas, Idaho, and Delaware have affirmed distance based “when required” signal requirements.**

First, in North Dakota, their turn signal statute, N.D. CENT. CODE § 39-10-38, provides:

1. No person may turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety without giving an appropriate signal in the *manner hereinafter* provided.
2. A signal of intention to turn or move right or left *when required* must be given continuously during not less than the last one hundred feet [30.48 meters] traveled by the vehicle before turning.

N.D. CENT. CODE § 39-10-38 (emphasis added). This nearly identical statute was interpreted by their Supreme Court in *State v. Fasteen*, 2007

ND 162, 740 N.W.2d 60, 63. There, the Court concluded that:

the language is sufficiently clear to allow a reasonable interpretation which gives meaning to every word. We construe N.D.C.C. § 39–10–38(1) to mean that no person may turn a vehicle or move right or left upon a roadway without giving an appropriate signal and unless and until such turn or movement can be made with reasonable safety. Under N.D.C.C. § 39–10–38(2), the phrase “when required” refers to the giving of a signal as an intention to turn or move right or left “upon a roadway” as required under subsection (1).

*Id.* at 63.

Similarly, in Kansas, their turn signal statute, KAN. STAT. ANN. §

8-1548, provides:

(a) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety, nor without giving an appropriate signal in the *manner hereinafter provided*.

(b) A signal of intention to turn or move right or left *when required* shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.

KAN. STAT. ANN. § 8-1548 (2016) (emphasis added). Like North Dakota, the Kansas Supreme Court reach the same conclusion. “The plain language of K.S.A. 8-1548 provides that anyone turning a vehicle must provide an appropriate signal—namely, a turn signal given continuously for at least 100 feet before the turn. The statute does not provide any exception to this rule . . . .” *State v. Greever*, 286 Kan. 124, 138, 183 P.3d 788, 797-98 (2008).

Other state courts have reached the same result. First, in Idaho, their turn signal statute, Idaho Code § 49-808, provides:

(1) No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal.

(2) A signal of intention to turn or move right or left *when required* shall be given continuously to warn other traffic. On controlled-access highways and before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds and, in all other instances, for

not less than the last one hundred (100) feet traveled by the vehicle before turning.

IDAHO CODE ANN. § 49-808 (emphasis added). While the statute provides two different signal lengths depending on location, Idaho courts have concluded that “in all other circumstances, a vehicle must signal for at least the last 100 feet traveled *before turning*.” *State v. Brooks*, 157 Idaho 890, 894, 341 P.3d 1259, 1263 (2014) (emphasis added).

Finally, in Delaware, after their turn signal statute addresses a number of different types of turns, it provides:

- (a) No person shall so turn any vehicle without giving an appropriate signal in the *manner hereinafter provided*.
- (b) A signal of intention to turn or move right or left *when required* shall be given continuously during not less than the last 300 feet or more than 1/2 mile traveled by the vehicle before turning.

DEL. CODE ANN. tit. 21, § 4155. The statute has been held by both the State Court and Federal Court to require the use of a signal before turning. *See State v. Coursey*, 136 A.3d 316, 322 (Del. Super. Ct. 2016); *United States v. Holmes*, 530 F. Supp. 2d 687, 690 (D. Del. 2008).

In each of these examples from other states, their turn signal statutes contained the same “when required” language as Washington, and in each the statute was found to require the signaling of an intention to turn prior to turning.

**2. The out of state cases cited by the Court of Appeals do not compare to Washington's RCW 46.61.305.**

The Court of Appeals decision in this matter relied upon two out of state cases which are both based upon statutes that do not compare to Washington.

First, the Court of Appeals cited to *Bowers v. State*, 221 Ga. App. 886, 473 S.E.2d 201 (1996)<sup>4</sup>. There, the driver was not required to signal because the nearest vehicle was one hundred yards away. *Id.* However, what is important about Georgia is the difference in their statute. Their turn signal statute provides that the signal must be given “continuously for a *time sufficient* to alert the driver of a vehicle proceeding from the rear in the same direction or a driver of a vehicle approaching from the opposite direction.” GA. CODE ANN. § 40-6-123 (emphasis added). Accordingly, if there are no vehicles close enough to notify, it is unsurprising that zero time, or no signal, could be legally sufficient. Because the statute’s signal requirement is traffic-present dependent, there is a line of Georgia cases in which turn signal use is reliant on traffic conditions. *See Huynh v. State*, 239 Ga. App. 62, 63(1), 518 S.E.2d 920 (1999); *Barrow v. State*, 269 Ga. App. 635, 637(2), 605 S.E.2d 67 (2004). Thus, the statute in Georgia does

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<sup>4</sup> Recognized as not binding precedent even in Georgia. *Morgan v. State*, 309 Ga. App. 740, 743, 710 S.E.2d 922, 925 (2011).

not compare to what is required of Washington drivers under RCW 46.61.305.

Second, the Court of Appeals cited to a federal case, *United States v. Garcia*, 178 F. Supp. 3d 1250 (S.D. Ala. 2016), which interpreted Alabama law. In *Garcia*, the defendant changed lanes without signaling. *Id.* at 1251. However, the Alabama turn signal statute only provides:

- (a) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.
- (b) *A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.*

ALA. CODE § 32-5A-133 (emphasis added). As noted in the emphasis above, unlike Washington, their subpart (b) does not cover a “move right or left.” This was recognized a year later by the Eleventh Circuit.

For its part, § 32-5A-133(b), which provides the appropriate signal and 100-foot requirement, refers only to turning and does not mention changing lanes or moving “right or left upon a roadway.” Since the statute provides no other signal requirement for a “move right or left,” it is unclear whether the 100-foot signal requirement in § 32-5A-133(b) applies to both turning and changing lanes, or just to turning.

*United States v. Scott*, 693 F. App’x. 835, 837 (11th Cir. 2017) (citations omitted). The Eleventh Circuit went on to note that “we have never determined whether § 32-5A-133 requires drivers to signal at least 100 feet before a lane change, nor have the Alabama state courts.” *Id.* at 838.

However, in 2016, that is exactly what the U.S. District Court attempted to do in *Garcia*. Ultimately, in *Garcia*, trying to fit a lane change into a statute that only provides explicit requirements upon turns, the Court discerned that § 32-5A-133(a) required at least a signal of unknown length and because the driver failed to signal at all, the stop was still lawful. *Garcia*, 178 F. Supp. 3d at 1254-55. However, as to the facts of our present case, where the defendant failed to provide any signal before turning, it would still be a traffic violation under Alabama's well-defined requirements when turning.

As shown above, none of the states which have adopted a strict distance-based signal length requirement have reached the result the Court of Appeals did in this case.

**C. Finally, the defendant was lawfully stopped for failing to signal.**

Whether a traffic stop is legitimate does not turn on whether a violation in fact occurred. *State v. Nichols*, 161 Wn.2d 1, 13, 162 P.3d 1122 (2007). In Washington, an officer who has reasonable suspicion of a traffic violation may make a warrantless traffic stop. *State v. Arreola*, 176 Wn.2d 284, 292-93, 290 P.3d 983 (2012). As set forth above, when making a left turn, Washington law requires that a driver make the turn with reasonable safety, signal continuously for at least the last 100 feet

traveled prior to the turn and signal the turn with either a signal lamp or hand and arm signals. As this Court has previously stated “[a] driver is required to signal at least 100 feet of travel before turning.” *Nichols*, 161 Wn.2d at 13 (citing RCW 46.61.305(2)).

Here, after a brief signal of intent to move left,<sup>5</sup> the defendant moved left from lane two of two into the designated left-turn only lane. There, the defendant drove down the turn lane and stopped at the red traffic light. At no point did he signal with either a signal lamp or hand and arm. He did not signal continuously; he did not signal during the last 100 feet traveled; and he did not signal while stopped at the light. The defendant then made a left turn from the designated turn lane on Clearwater Avenue onto northbound SR 395, a turn he never signaled an intent to make. Therefore, Troopers Morris and Acheson, having observed the defendant make a left turn without ever signaling the turn, had reasonable suspicion to stop the defendant.

### III. CONCLUSION

Ultimately, the decision by the Court of Appeals requiring a signal only when it implicated traffic safety leaves the requirement subjective to the beliefs of the driver or the law enforcement officers and does not

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<sup>5</sup> Previously, the State has always maintained this signal was not maintained for the required 100 feet, an additional infraction justifying the stop, but it is not the basis for which this matter is currently under discretionary review.

provide a clear rule to follow or enforce. The State respectfully requests this Court reverse the Court of Appeals decision, find that the statute requires a driver to signal 100 feet continuously before turning, and that the defendant was lawfully stopped for reasonable suspicion that he failed to signal his left turn from Clearwater Avenue to SR 395.

**RESPECTFULLY SUBMITTED** this 9 day of August, 2019.

**ANDY MILLER**  
Prosecutor



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Deputy Prosecuting Attorney  
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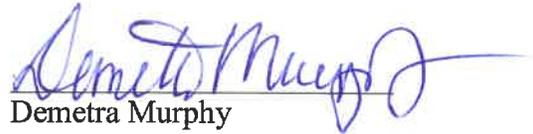
**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Randy Jameson  
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was made to the following  
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Signed at Kennewick, Washington on August 9, 2019.

  
Demetra Murphy  
Appellate Secretary

## **Appendix A**

*State v. Trenary*, 183 Wn. App. 1005, 2014 WL 4197558 (2014)  
(unpublished)

183 Wash.App. 1005

NOTE: UNPUBLISHED OPINION, SEE WA R GEN GR 14.1

Court of Appeals of Washington,  
Division 1.

STATE of Washington,  
Respondent/Cross Appellant,

v.

Louis Monroe TRENARY,  
Appellant/Cross Respondent.

No. 70015-4-I.

|  
Aug. 25, 2014.

Appeal from Snohomish Superior Court; Honorable Ellen J. Fair.

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UNPUBLISHED

COX, J.

\*1 Louis Trenary appeals his conviction for identity theft and forgery. Because the traffic stop of the car driven by Trenary was based on probable cause and not pretextual, the trial court properly denied his motion to suppress the evidence seized from the car. We affirm.

Around 10:30 p.m. on March 16, 2012, Detective William Koonce and Detective Zachariah Olesen were on patrol when they observed a car driven by Trenary make a turn without signaling properly. Both Detective Koonce and Detective Olesen are members of the Lynnwood Police Department's Special Operations unit. It is tasked primarily with intelligence gathering and other crime prevention activities, but also conducts routine patrol activities like traffic stops.

Detective Koonce activated his lights to signal Trenary to stop. After Detective Koonce made the decision to stop the car but before the car came to a complete stop, he learned the car was registered to Crystal Nelson, whom he had investigated on prior occasions for drug activity.

When Detective Koonce approached Trenary and requested identification, Trenary claimed he did not have his identification with him and gave a false name. After being instructed to give his true identity, he gave another false name. The officer arrested Trenary for failing to cooperate. A subsequent search of the car revealed evidence on which the State based charges against Trenary for two counts of identity theft and one count of forgery.

Trenary moved to suppress the evidence pursuant to CrR 3.6, claiming the lack of probable cause to stop the car and that the stop was merely a pretext to investigate suspected criminal activity. In addition to the testimony of Detective Koonce and Detective Olesen, the court reviewed a video recorded by the patrol car's dashboard video system. The video showed Trenary approaching a four-way stop. Trenary's right turn signal flashed for approximately one second, then went off. Approximately five seconds later, the right turn signal again flashed for approximately one second, then went off. Trenary slowed but did not come to a complete stop at the intersection. Approximately seven seconds later, as Trenary completed a right turn, the right turn signal again flashed briefly. The officers activated their emergency lights. As Trenary pulled onto the shoulder, his turn signal flashed continuously, showing it was functioning properly.

The court denied the motion and made the following findings of fact:

1. On 3/16/2012, Detective's [sic] Koonce and Olesen of the Lynnwood PD special ops were driving in their semi marked patrol car.
2. There was no logo on the vehicle, but there is a spotlight.
3. Both detectives were wearing plain clothes and were not in uniform.
4. Around 10:30 p.m., the Detectives were driving behind the defendant's car.
5. The defendant's vehicle signal came on, then went off, came on again, then went off again.

6. After it had been turned off, the defendant made a right turn.

\*2 7. The signal may have come on as the turn was being made indicating that the signal was working properly.

8. Though there was testimony that the defendant's vehicle also crossed over the centerline [sic], this is not shown on the dash-cam video.

9. Before the car is pulled over, Detective Olesen became aware that the car was registered to Crystal Nelson.

10. Though Crystal Nelson has prior police contacts for narcotics, she was not being investigated at that time.

11. There was no reason to believe that the vehicle or its occupants were involved in any kind of drug activity prior to the stop.

12. The car was pulled over for a traffic infraction. [ 1 ]

The court also made the following conclusions of law:

1. There was probable cause to stop the vehicle for a valid traffic infraction under RCW 46.61.305.

2. The officers were proactively looking to address criminal activity.

3. Given the information, it was a mixed-motive stop under *State v. Arreola*. [ 2 ]

4. Here, because the testimony is that Detective Koonce already made up his mind to stop the vehicle prior to finding out it belonged to Crystal Nelson, the decision to stop the vehicle for the traffic infraction was independent from any knowledge that the vehicle belonged to a known narcotics individual.

5. A traffic stop was necessary in order to address the driving that was witnessed by the officers.

6. The stop was not pre-textual. [ 3 ]

A jury found Trenary guilty as charged. Trenary appeals.

### PROBABLE CAUSE

Trenary challenges the court's denial of his motion to suppress. He argues that "the totality of the circumstances demonstrated his substantial compliance" with RCW 46.61.305 and therefore the officers lacked reasonable suspicion that a traffic violation occurred. We disagree.

As a general rule, warrantless searches and seizures are per se unreasonable.<sup>4</sup> But a warrantless seizure is valid if it falls within the scope of one of the narrowly drawn exceptions to the warrant requirement.<sup>5</sup> The State bears the burden of proving that a warrantless seizure falls within an exception to the warrant requirement.<sup>6</sup>

Law enforcement officers may conduct a warrantless traffic stop if they have a reasonable and articulable suspicion that a traffic violation has occurred or is occurring.<sup>7</sup> But officers may not use the traffic stop as a pretext to conduct a criminal investigation unrelated to driving for which reasonable suspicion is lacking.<sup>8</sup> Pretextual traffic stops violate article I, section 7, of the Washington constitution "because they are seizures absent the 'authority of law' which a warrant would bring."<sup>9</sup> When determining whether a stop is pretextual, courts consider the totality of the circumstances, including "both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior."<sup>10</sup>

The trial court's findings of fact are reviewed for substantial evidence.<sup>11</sup> Unchallenged findings of fact are verities on appeal.<sup>12</sup> We review de novo conclusions of law, such as whether a stop is pretextual.<sup>13</sup>

\*3 RCW 46.61.305 provides:

(1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.

(2) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

Trenary contends that his method of signaling did not violate RCW 46.61.305(2). He argues that the statute does not define "continuously" and does not "regulate the interval or frequency during which the light is required to flash, nor does it specifically regulate the interval between illuminations."

Without evidence of a traffic violation, Trenary argues that the stop was illegal.

The question is whether the officers had probable cause to make the stop. Trenary admits that when making a turn drivers must use “electric turn signals which shall indicate an intention to turn by flashing lights...”<sup>14</sup> It is clear from the language of the statute that it is the “flashing” that must occur “continuously” to notify other drivers of the intention to turn. A nontechnical term left undefined in a statute is given its plain and ordinary meaning, as defined in a standard dictionary.<sup>15</sup> “Continuous” is defined as “stretching on without break or interruption.”<sup>16</sup> When Trenary repeatedly turned his turn signal on and off before initiating a turn, this did not constitute signaling “continuously” within the plain meaning of the word. The officers had probable cause to stop Trenary for violating RCW 46.61.305(2).

#### PRETEXT

Trenary next contends that the stop was pretextual. But Trenary's claim is not supported by the record. Though Trenary does not articulate why he believes the stop was pretextual, we presume it was because the officers were members of a special unit that proactively investigates crime and who had discovered that Trenary was driving a car belonging to an individual with connections to drug activity. But the officers testified that in addition to their investigative duties they were also responsible for routine law enforcement activities, including traffic stops. Furthermore, the officers made the decision to stop Trenary as soon as they witnessed the traffic violation. The decision to stop Trenary occurred before the officers learned that Trenary was driving Nelson's car.

Even if the detectives were motivated by a desire to investigate suspected drug involvement, the stop was not pretextual. As the court concluded, the stop was a “mixed-motive” stop; in other words, one that is “based on both legitimate and illegitimate grounds.”<sup>17</sup> A mixed-motive stop

does not violate article I, section 7 “so long as the police officer making the stop exercises discretion appropriately.”<sup>18</sup>

Thus, if a police officer makes an independent and conscious determination that a traffic stop to address a suspected traffic infraction is reasonably necessary in furtherance of traffic safety and the general welfare, the stop is not pretextual. That remains true even if the legitimate reason for the stop is secondary and the officer is motivated primarily by a hunch or some other reason that is insufficient to justify a stop. In such a case, the legitimate ground is an independent cause of the stop, and privacy is justifiably disturbed due to the need to enforce traffic regulations, as determined by an appropriate exercise of police discretion. Any additional reason or motivation of the officer does not affect privacy in such a case, nor does it interfere with the underlying exercise of police discretion because the officer would have stopped the vehicle regardless. [ 19 ]

\*4 Here, the officers had reason to believe that Trenary had violated RCW 46.61.305(2) and that a traffic stop was reasonably necessary to address the suspected traffic infraction and to promote traffic safety and the general welfare. The fact that the officers may also have been interested in Trenary's connections to Nelson does not render the stop pretextual in light of the independent legitimate basis for the stop.

Because the stop was lawful, the evidence obtained from the stop was admissible. Therefore, the trial court properly denied Trenary's CrR 3.6 motion to suppress.

We affirm the judgment and sentence.

WE CONCUR: LAU and BECKER, JJ.

#### All Citations

Not Reported in P.3d, 183 Wash.App. 1005, 2014 WL 4197558

#### Footnotes

- 1 Clerk's Papers at 185–86.
- 2 176 Wn.2d 284, 288, 290 P.3d 983 (2012).
- 3 Clerk's Papers at 186.
- 4 *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999).

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- 5 *Id.* at 349–50.  
6 *Id.* at 350.  
7 *Id.* at 349.  
8 *Id.*  
9 *Id.* at 358.  
10 *Id.* at 358–59.  
11 *State v. Martinez*, 135 Wn.App. 174, 179, 143 P.3d 855 (2006) (citing *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)).  
12 *State v. Luther*, 157 Wn.2d 63, 78, 134 P.3d 205 (2006).  
13 *Arreola*, 176 Wn.2d at 291.  
14 RCW 46.37.200(2).  
15 *State v. Sullivan*, 143 Wn.2d 162, 174–75, 19 P.3d 1012 (2001).  
16 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 493–94 (1993).  
17 *Arreola*, 176 Wn.2d at 297.  
18 *Id.* at 298.  
19 *Id.* at 298–99.

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