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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

SARAH S. HUFFMAN,

Defendant/Petitioner.

No. 68929-1-1

Snohomish County No. 11-1-00676-4

REPLY BRIEF OF APPELLANT

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ARGUMENT

The State argues that Ms. Huffman's brief incursion over the centerline, a §100 violation was not subject to the qualifying language "as nearly as practicable" found in §140 of RCW 46.61. This same language having been held to allow for brief deviations from ones lane of travel

The Essence of the states argument is that the various sections of RCW 46.61 the rules of the road should be read individually and as standalone sections and not in a manner so as to harmonize to one another.

The specific question is whether the as nearly as practicable language should be confined so as to influence lane travel driving behavior and only lane travel behavior.

The State Cites this Court to the *City of Kent v Beigh*, 32 P.3d 258, 145 Wn.2d 33, 145 Wash.2d 33 (Wash., 2001). Ms. Huffman does not disagree with the state in this regard but differs in regard to the interpretation the *Beigh* renders. *Beigh* States as follows:

"If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself."
Cockle v. Dep't of Labor & Indus., 142 Wash.2d 801, 807, 16 P.3d 583 (2001).

There are no limiting factors found in §100, §120, §140, or §670 which would suggest that the as nearly as practicable language would be limited in application to affect only a potential violation of §140. This section is a general provision which should be read in harmony with any provision which affects lane travel. To suggest otherwise would render the language of §140 to be superfluous.

In regard to the question of statutory construction *Beigh* also quotes from *Groves v. Meyers*, 35 Wash.2d 403, 406, 213 P.2d 483 (1950).

...giving "effect to the rule that a statute should, if possible, be so construed that no clause, sentence or word shall be superfluous, void, or insignificant." *Id.* at 407, 213 P.2d 483.

The state argues that the legislature did not intend the language "as nearly as practicable" to apply because it did not appear in §100. This is illogical as the rationale for the as nearly as practicable language give cognizance to the reality of motor vehicle operation. That reality being, motor vehicles as we currently know them do not run on train tracks or by any other method limiting the capacity of lane deviation.

To read §100 or §670 of the Rules of the Road in isolation suggesting that crossing the Centerline or Edge Line for any reason other than the enumerated exceptions would render other sections of the Rules of the Road superfluous, in particular §140 containing the rule which indicates we shall drive as nearly as practicable within one's lane of travel. The proposed interpretation offered by the state would render the Lane Travel section meaningless, void or insignificant and thus either a Centerline or Edge Line crossing would be an infraction in the absence of any of the noted exceptions.

The preamble language to §140 states:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

This language does not attempt to differentiate by section or isolate by section under the Rules of the Road. It clearly and facially is an inclusive comment indicating all other (rules) consistent herewith **shall** apply. Not may apply because one apparently is of more significant risk. In both instances, movement of vehicles over the open road in opposite directions offers risk. Whether

the deviations are of the Centerline or the Edge Line. Very clearly the as nearly as practicable language applies to all movement over the roadway.

This interpretation would render the language found in §120 superfluous, this language reads:

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing other traffic proceeding in the same direction unless authorized by the provisions of RCW 46.61.100 through 46.61.160 and 46.61.212

Clearly §140 is included along with the as nearly as practicable language in this section and not excluded.

If the court were to hold that the centerline may only be crossed under the circumstances/exceptions set forth in RCW 46.61.100, the court would effectively render §140 a nullity. The relevant subparts to §100 read as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

The legislature did not intend such. As noted in *Beigh*, “A statute should be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”

Presumably *the rules governing such movement* mentioned above in sub-paragraph (a) refer to §120 which specifically mentions the authorization(s) afforded in RCW 46.61.100 through 46.61.160 and RCW 46.61.212. RCW 46.61.140 is included and not excluded and as such all of

the listed sections mentioned should be read in harmony. Nothing in these sections exists to suggest that they should not be read in harmony.

The State is certainly correct to say that §100 does not include the as nearly as practicable language, however there is no language to suggest it does not. In reality the inverse is present when §100 is viewed in harmony with RCW 46.61.100 through RCW 46.61.160 and RCW 46.61.212 there a distinct suggest to read them in harmony.

Terry Investigation

Both the trial court and the RALJ court ruled that this was not a *Terry Stop*.

The admitted brief incursion over the centerline in this matter was but a tire width, did not last but a car length which equated to less than ½ a second at 55 MPH and importantly posed no threat to others on the roadway. Trooper Eberle indicted there was no oncoming traffic. This behavior did not offer a reasonable suspicion for a lawful stop of Ms. Huffman's vehicle.

The state again argues that this was a *Terry Stop* yet ignores yet another factor from the *Terry* decision. Trooper Eberle was a rookie and his experience as a trooper was limited. Trooper Eberle had been working the road as a WSP Trooper for about 4 Months having been commissioned in June of 2010 (VRP P6 L19 and P 7 L24).

A Terry Stop is justified if the officer can point to specific articulable facts, which, taken together with rational inferences from those facts, reasonably warrant an intrusion. When reviewing the merits of an investigatory stop, a court must evaluate the totality of circumstances presented to the investigating officer. The court takes into account an officer's training and experience when determining the reasonableness of a Terry Stop.

State v Glover, 116 Wn.2d 509,514, 806 P.2d 760 (1991)

The trial court correctly ruled that this was not a Terry Stop as Trooper Eberle made no indication that he was conducting an investigatory stop.

As Trooper Eberle followed and watched Ms. Huffman he observed her to cross the centerline for a very brief moment under circumstances where no peril was visited upon her or other traffic on the roadway. Her behavior at this point was no different than countless other cars that go unnoticed under such circumstances.

The use of traffic stops must remain limited and must not encroach upon the right to privacy except as is reasonably necessary to promote traffic safety and to protect the general welfare through the enforcement of traffic regulations and criminal laws. Although traffic stops are legally authorized for the investigation of traffic infractions or criminal activity, each such investigative stop must be justified at its inception and must be reasonably limited in scope-based on whatever reasonable suspicions legally justified the stop in the first place.

State v. Arreola, 176 Wash.2d 284, 293-294, 290 P.3d 983 (Wash., 2012)

There was admittedly no peril visited upon other vehicles on the roadway in the case at hand.

The roadway was straight and offered a view down the roadway. There were no other cars on the roadway which the trooper recalled that were imperiled.

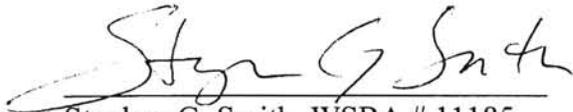
State v. Nichols, 161 Wash.2d 1, 13, 162 P.3d 1122 (2007) (warrantless traffic stop is constitutional if based upon probable cause that a traffic infraction occurred). The narrow exception to the warrant requirement for investigative stops has been extended beyond criminal activity to the investigation of traffic infractions because of “ ‘the law enforcement exigency created by the ready mobility of vehicles and governmental interests in ensuring safe travel, as evidenced in the broad regulation of most forms of transportation.’ ” *State v. Day*, 161 Wash.2d at 897, 168 P.3d 1265 (2007) (quoting *State v. Johnson*, 128 Wash.2d 431, 454, 909 P.2d 293 (1996)); *State v. Duncan*, 146 Wash.2d 166 at 174, 43 P.3d 513 (2002).

State v. Arreola, 176 Wash.2d 284, 293, 290 P.3d 983 (Wash., 2012)

CONCLUSION

For the reasons stated herein the Superior Court should be reversed.

Respectfully Submitted on March 20, 2014

A handwritten signature in black ink, appearing to read "Stephen G. Smith". The signature is written in a cursive style with a horizontal line underneath the name.

Stephen G. Smith, WSBA # 11185
Attorney for Sarah Huffman