

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	No. 65008-4-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
YEVGENIY I. MIKHAYLOV,	)	
	)	FILED: July 25, 2011
Appellant.	)	
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Appelwick, J. — Mikhaylov appeals his conviction for vehicular assault based on reckless driving. He argues that the trial court erred by declining to give a jury instruction he requested, based on a statutory rule of the road. The trial court properly read the instruction and the rule as inapplicable, because the accident did not involve a vehicle approaching from the opposite direction. We affirm.

**FACTS**

On June 13, 2008, Jennifer June was driving along Marine View Drive on the Tulalip Indian Reservation. Marine View Drive is a two lane surface street with one lane of travel in either direction. She had four cars behind her. June decided to turn left at an intersection onto another road. She put on her left turn signal and slowed to make the turn. The four cars behind her also slowed down. June checked the oncoming lane of traffic and observed that no one was

approaching. She then began to make the left turn.

At that point, a fifth car behind June, driven by Yevgeniy Mikhaylov, attempted to pass the five cars that had slowed down in front of him. He was travelling in the same direction as June and the other cars and attempted to pass in the left hand lane, the oncoming lane of travel. The other drivers and a detective from the Snohomish County Sheriff's Office Collision Investigation Unit estimated that Mikhaylov was driving at approximately 60 or 70 miles per hour at the time. As June's vehicle was turning left, Mikhaylov's vehicle struck the left rear side of hers.

The state charged Mikhaylov with vehicular assault, and the jury convicted him as charged. He was sentenced within the standard range. Mikhaylov timely appealed.

#### DISCUSSION

Mikhaylov's sole argument on appeal is that the trial court erred by refusing to give one of his proposed jury instructions. A trial court's refusal to give a proposed jury instruction is reviewed for an abuse of discretion. In re Det. of Pouncy, 168 Wn.2d 382, 390, 229 P.3d 678 (2010). The right to due process of law requires that the jury be fully instructed on the defense's theory of the case. State v. Staley, 123 Wn.2d 794, 803, 872 P.2d 502 (1994). Defendants are not entitled to instructions that inaccurately represent the law or for which there is no evidentiary support. Id. Jury instructions are sufficient if they allow the parties to argue their theories of the case, are not misleading, and properly inform the jury of the applicable law. State v. Barnes, 153 Wn.2d 378, 382, 103

P.3d 1219 (2005).

The State proposed standard pattern instructions on vehicular assault. Mikhaylov proposed three nonpattern instructions that were taken from Washington's rules of the road, chapter 46.61 RCW. The trial court decided on a combined instruction that included some rules of the road, as Mikhaylov requested, which the court deemed applicable in this case. That instruction included, for example, the basic rules about driving on the right-hand side of the road, RCW 46.61.105; passing on the left, RCW 46.61.110, .120; and not passing when approaching within one hundred feet of an intersection, RCW 46.61.125. In addition to those basic instructions, however, Mikhaylov also requested that the court give an instruction based on RCW 46.61.185, a provision requiring left turning vehicles to yield to oncoming traffic. The requested instruction and rule of the road provides:

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

RCW 46.61.185. The trial court declined to give this instruction, because the collision did not involve a vehicle approaching from the opposite direction. The court stated: "Well, [RCW] 46.61.185 is inapplicable to the facts of this case. I'm not going to give instructions dealing with oncoming vehicles because there is no oncoming vehicle in this case."

Mikhaylov does not dispute the fact that there was no vehicle approaching from the opposite direction, but argues that RCW 46.61.185 could nonetheless

be read to apply to vehicles approaching from the same direction. His reading of RCW 46.61.185 relies on the word “or” in the statute, and the clause that follows it. A left turning vehicle must yield to an oncoming vehicle which is within the intersection, “or so close thereto as to constitute an immediate hazard.” RCW 46.61.185. He argues that the statute requires a left-turning vehicle to yield to *any* vehicle that poses an immediate hazard, regardless of which direction it is approaching from. His reading of the statute is unpersuasive and unsupported by a plain reading of the language. The clause following the word “or” refers exclusively to a vehicle approaching from the opposite direction and serves only to extend the yielding requirement from oncoming vehicles in the intersection to also include oncoming vehicles that are in hazardous proximity. A vehicle turning left must yield to such oncoming vehicles if they are either “within the intersection or so close thereto as to constitute an immediate hazard.” RCW 46.61.185.

This court has formerly considered this issue and reached the same conclusion. State v. Brown, 119 Wn. App. 473, 81 P.3d 916 (2003). In Brown, the court stated that “RCW 46.61.185 concerns the duty to yield the right-of-way to *oncoming* vehicles.” Id. at 477. The court went on to state that two cases involving following or passing cars—cars moving in the same direction—had no reason to apply RCW 46.61.185. Id.

At its essence, RCW 46.61.185 provides that “[a left turning vehicle] shall yield . . . to any [oncoming vehicle] which is within the intersection or so close thereto as to constitute an immediate hazard.” There is nothing in its plain

language to support Mikhaylov's reading that the yielding requirement extends to any kind of vehicle close enough to pose a hazard. Rather, the language only addresses vehicles approaching from the opposite direction. The trial court correctly concluded that the law under RCW 46.61.185 was inapplicable here, where there was no vehicle approaching from the opposite direction.

Mikhaylov also argues that, because there are two possible interpretations of the statute, the trial court should have applied the rule of lenity and resolved the ambiguity in his favor, as the defendant. He contends that the trial court should have given the instruction and allowed argument on the defense's theory of the case, leaving the jury with the discretion to decide how to apply the law. But, where the language of a statute is clear and plain, we may not engage in statutory construction, nor may we consider nontextual considerations such as the rule of lenity. State v. Bolar, 129 Wn.2d 361, 366, 917 P.2d 125 (1996); City of Kent v. Jenkins, 99 Wn. App. 287, 290-91, 992 P.2d 1045 (2000).

The trial court did not abuse its discretion in refusing to give a jury instruction containing the language of RCW 46.61.185. We affirm.

Appelwick, J.

WE CONCUR:

Cox, J.

Becker, J.