Supreme Court No. 1003382
Court of Appeals No. 374131-III

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

VASQUEZ VISOSO, GENARO,
Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

A. Mr. Visoso drove on a clear day and chose to look for his phone that had fallen instead of paying attention to the upcoming intersection. Normally, he would pull over in this situation. He had a stop sign, as well as a "stop ahead" warning sign about 700 feet prior to the stop sign. The "stop ahead" warning sign is visible for approximately 1500 feet leading up to the warning sign. Driving at 50 MPH, Mr. Visoso would have had about 30 seconds between the time he could have seen the "stop ahead" warning sign and the stop sign at the intersection. Mr. Visoso also had an elevated blood alcohol level. Did the Court of Appeals correctly find that any rational juror could conclude beyond a reasonable doubt under the circumstances that Mr. Visoso operated a vehicle in a reckless manner or with disregard for the safety of others?

II. STATEMENT OF THE CASE[1]

A. COLLISION AND DRIVING CONDITIONS

On October 20, 2017, at approximately three in the afternoon, Mr. Kelly Norris was traveling home from work on Road 9, in rural Quincy, Washington, and came to the

[1] The State adopts Mr. Visoso's citation to the Record of Proceedings Trial Volumes 1 & 2, which are consecutively paginated, as RP ___. Additionally, the State will cite the clerk's papers as CP at __.

intersection of Road 9 Northwest and Road K Northwest. RP 411, 497, 536. Mr. Norris frequently travelled this road. RP 411. Road 9 Northwest has a speed limit of 55 MPH and does not have a stop sign at the intersection with Road K. RP 535, 540.

As Mr. Norris entered the intersection, Mr. Visoso failed to stop at his stop sign, T-boning Mr. Norris's vehicle. RP 535, 585. Mr. Norris died at the scene of the collision. RP 447, 490.

Prior to the collision, Mr. Visoso was driving at approximately 50 MPH on Road K Northwest and had a stop sign at the intersection with Road 9 Northwest.[2] RP 614, 619. Before the stop sign, there is a "stop ahead" warning about 700 feet before the stop sign. RP 547. Additionally, Sergeant

[2] Sergeant Sainsbury, the collision reconstructionist, used the speed limit to reconstruct the collision as the scene did not show evidence to the contrary. *See* RP 540, 545–46. However, he did not testify that "both parties drove the speed limit" as the Petitioner claims. Pet. for Review 3. When talking with law enforcement six days after the collision, Mr. Visoso estimated that he was going 53–58 MPH. RP 686.

Sainsbury, a collision reconstructionist, gave an approximation that a person would be able to see the "stop ahead" warning sign 1500 feet before the warning sign with a total of approximately 2200 feet between when someone could first see the "stop ahead" warning and the actual stop sign. RP 567–68. When converted to seconds, going the speed limit on Road K at 50 MPH, a person had about 30 seconds from the time they could see the "stop ahead" warning sign until the stop sign at the intersection.[3] RP 620–21.

During an interview six days after the collision with the sheriff deputies, Mr. Visoso's explanation was that the collision had occurred because he was distracted reaching for a cell phone that had fallen. RP 679–80, 688, 692. Mr. Visoso further stated that typically he would pull over in a situation like this,

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[3] The Petitioner fails to include this evidence in his Statement of the Case. Pet. for Review 3. Instead the Petitioner only acknowledges that the collision reconstructionist, Sergeant Sainsbury, calculated that it would have taken about 10 seconds to travel from the warning sign to the intersection stop sign. *Id.*

but he did not this time. RP 692. During his conversation with the deputies, Mr. Visoso estimated that he travelled the route eight to ten times before, but denied seeing any of the road signs or signs on the side of the road. RP 686, 690. Mr. Visoso also said that his car was in good mechanical condition, there were no cracks in the windshield, and that he has good eyesight and does not need corrective lenses, and he is not color blind. RP 685–86.

B. INTOXICATION RELATED FACTS

At the scene of the collision, due to Mr. Visoso's injuries, EMTs prepared to transport Mr. Visoso to Quincy Valley Hospital. RP 449–52. While helping Mr. Visoso, one of the EMTs noticed that Mr. Visoso's breath smelled like alcohol and informed Deputy Judkins. RP 449–52. Another EMT took Mr. Visoso's blood and then gave it to the Quincy Valley Hospital laboratory. RP 469, 472–73. The result for the alcohol serum blood test came back as .082 grams per 100 milliliters, which the doctors treating Mr. Visoso considered elevated. RP 765,

904, 948. A defense witness testified that the blood alcohol level may have been as low as .068. RP 1195.

Dr. Crosier, the emergency doctor who treated Mr. Visoso at Quincy Valley Hospital, testified that "ethanol can impair judgment, it can slow reaction time, and it can generally alter cognitive ability, it can affect memory and so forth." RP 917.

While Mr. Visoso was at Quincy Valley Hospital, Trooper Dawn Ferrell, a trained Drug Recognition Expert, contacted Mr. Visoso. RP 812. Trooper Ferrell attempted to get a blood sample from Mr. Visoso, but due to Mr. Visoso's veins being small and his hands cold, she was unable to get a sample. RP 813. Mr. Visoso then took a turn for the worse and was life-flighted to Confluence Health Central Washington Hospital. RP 813, 1098. During her contact with Mr. Visoso, Trooper Ferrell observed the odor of alcohol in the room where Mr. Visoso was located. RP 812. She also observed that Mr. Visoso's communication was slurred and slow like someone who was

intoxicated. RP 812–13.

The attending orthopedic surgeon at Confluence Health Central Washington Hospital, Doctor Stewart Kerr, noted that Mr. Visoso was distractible, slurring words, smelling of a sweet malty exhaled breath he attributed to alcohol, and had an elevated ethanol level, leading Dr. Kerr to believe that Mr. Visoso was intoxicated and could not give informed consent to operate. RP 1100–01. In Dr. Kerr's opinion, these things taken together demonstrated that Mr. Visoso was intoxicated, and a potential concussion or having Fentanyl administered did not adequately explain the combination of factors. RP 1104, 1106.

C. VEHICULAR HOMICIDE CHARGE AND TRIAL

The State charged Mr. Visoso with Vehicular Homicide under all three prongs: operating a vehicle 1) in a reckless manner, 2) while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.502, or 3) with disregard for

the safety of others.[4] CP 133.

During closing arguments at trial, Mr. Visoso's defense attorney, Mr. Kentner, argued that under the intoxication prong of vehicular homicide, there is a difference between "any appreciable degree" and "any degree" of a person's ability to drive being affected. RP 1235–36. Mr. Kentner argued that to convict Mr. Visoso under the intoxication prong of the vehicular homicide statute, Mr. Visoso had to be affected by alcohol to "an appreciable degree" and not just "any degree." RP 1235–36. He gave the jury a couple of dictionary definitions of "appreciable." RP 1236. Mr. Kentner opined that appreciable means "large or important, enough to be noticed. That's one dictionary's definition of appreciable. Large or important, enough to be noticed. A second one was capable of being

[4] Mr. Visoso incorrectly states, "Grant County prosecutors charged Genaro Visoso with vehicular homicide, alleging he operated a vehicle in a reckless manner while under the influence of intoxicating liquor, or with disregard for the safety of others." Pet. for Review 2.

perceived or measured. Remember, it's not any degree. It's an appreciable degree." RP 1236.

The jury found Mr. Visoso guilty of vehicular homicide. CP 300. In a special verdict form, the jury found that Mr. Visoso had committed the reckless prong and the "disregard for the safety of others" prong. CP 301. The jury was not unanimous with regards to operating a vehicle under the influence of intoxicating liquor prong. CP 301.

D. COURT OF APPEALS

Mr. Visoso appealed his conviction arguing insufficiency of the evidence to support the conviction. *State v. Visoso*, 37413-1-III, 2021 WL 4438555, at *2 (Wash. Ct. App. Sept. 28, 2021). In a thorough and well written opinion, the Court of Appeals disagreed and found that the "jury was not required to accept Mr. Visoso's explanation of the accident" and that the evidence presented at trial was sufficient to find "that Mr. Visoso drove in a reckless manner and with disregard for the safety of others." *Id.*

III. ARGUMENT FOR WHY REVIEW SHOULD BE DENIED

A. PETITIONER FAILS TO ARTICULATE ANY ARGUMENT DEMONSTRATING THAT RAP 13.4(B) APPLIES.

For this Court to accept a Petition for Review, one of the provisions in RAP 13.4(b) must be met. Petitioner claims that this Court should accept review of the Petition under RAP 13.4(b)(2), (3), and (4). Pet. for Review 4–5. These provisions are as follows:

> A petition for review will be accepted by the Supreme Court only: . . . (2) If the decision of the Court of Appeals is in *conflict with a published decision* of the *Court of Appeals*; or (3) If a *significant question of law under the Constitution of the State of Washington or of the United States* is involved; or (4) If the petition involves an issue of *substantial public interest* that should be determined by the Supreme Court.

RAP 13.4(b)(2)–(4) (emphasis added).

Mr. Visoso argues that the "Court of Appeals decision extends the definition of recklessness and disregard for the safety of others to include ordinary negligence," Pet. for Review 5. Under RAP 13.4(b)(2), Mr. Visoso fails to identify

with which Court of Appeals case(s) the Court of Appeals decision conflicts. Throughout Mr. Visoso's Petition, Mr. Visoso cites to a plethora of cases from Washington State to attempt to support his arguments. These are both Washington State Supreme Court cases and Court of Appeals cases. *See e.g.* Pet. for Review 5–7 (citing *State v. Roggenkamp*, 153 Wn.2d 614, 106 P.3d 196 (2005) (Supreme Court of Washington State); *State v. Brobak*, 47 Wn. App. 488, 736 P.2d 288 (1987) (Court of Appeals, Division Two); *State v. Baker*, 56 Wn.2d 846, 355 P.2d 806 (1960) (Supreme Court of Washington State); *State v. Hill*, 48 Wn. App. 344, 739 P.2d 707 (1987) (Court of Appeals, Division Three)). However, at no point does Mr. Visoso identify the Washington State Court of Appeals case(s) with which the Court of Appeals allegedly conflicts.

Additionally, Mr. Visoso neither identifies how this would be a significant question of law under the Washington State Constitution or the United States Constitution, nor provides any discussion regarding how this case would be of

public interest. The State asks this Court to deny Mr. Visoso's Petition based on Mr. Visoso not articulating arguments for which RAP 13.4(b) can be based. *See* RAP 10.3(a)(6).

B. The Court of Appeals Appropriately Applied Both Washington State Supreme Court Cases and Washington State Court of Appeals Cases in Its Application of the Definitions of Recklessness and Disregard for the Safety of Others.

In the alternative, the State argues that review should be denied because the Court of Appeals appropriately used Washington State Supreme Court cases and Washington State Court of Appeals cases to correctly apply the definitions of recklessness and disregard for the safety of others to the evidence in the record in the light most favorable to the State as required by law. *Visoso*, 2021 WL 4438555, at *1, *2. *4; *see also* RAP 13.4(b)(1)–(2).

The crux of the Mr. Visoso's argument is that his actions only amounted to momentary ordinary negligence, which would not render him guilty of vehicular homicide, and as such,

the Court of Appeals incorrectly applied the law. Pet. for Review 4–5, 8. However, as demonstrated below, the record demonstrates that the Court of Appeals correctly applied the law to the facts of this case.

Vehicular Homicide is criminalized in RCW 46.61.520(1), which states:

> When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:
>
> (a) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502; or
>
> (b) In a reckless manner; or
>
> (c) With disregard for the safety of others.

In turn, operating a motor vehicle in a "reckless manner" means "driving in a rash or heedless manner, indifferent to the consequences." *State v. Roggenkamp*, 153 Wn.2d 614, 618, 106 P.3d 196 (2005); *see also* CP 296 (Jury Instruction 10). Additionally, for operating a motor vehicle "with disregard for the safety of others," "disregard for the safety of others" means:

Additionally, for operating a motor vehicle "with disregard for the safety of others," "disregard for the safety of others" means:

> *an aggravated kind of negligence or carelessness*, falling short of recklessness but constituting a *more serious dereliction than ordinary negligence*. Ordinary negligence is the *failure to exercise ordinary care*. Ordinary negligence is the doing of some act which a reasonably careful person would not do under the same or similar circumstances or the failure to do something which a reasonably careful person would have done under the same or similar circumstances. Ordinary negligence in operating a motor vehicle does not render a person guilty of vehicular homicide.

CP 296 (Jury Instruction 10) (emphasis added); *see State v. Eike*, 72 Wn.2d 760, 765, 435 P.2d 680 (1967). "Some evidence of a defendant's *conscious disregard* of the *danger* to others is necessary to support a charge of vehicular homicide." *State v. Vreen*, 99 Wn. App. 662, 672, 994 P.2d 905 (2000) (emphasis added) (citing *State v. Lopez*, 93 Wn. App. 619, 623, 970 P.2d 765 (1999)), *aff'd*, 143 Wn.2d 923, 26 P.3d 236 (2001). *Eike* noted that if a death occurred in a collision due to negligence or oversight such as a defective taillight or inaudible

1. The Court of Appeals appropriately found that any rational juror could have concluded under the circumstances that Mr. Visoso operated a vehicle in a reckless manner or with disregard for the safety of others beyond a reasonable doubt.

a. Mr. Visoso was more than "momentarily negligent."

The Court of Appeals appropriately applied the standard of review to the facts of the case and found that the evidence when viewed in the light most favorable to the State, showed that Mr. Visoso was not "momentarily" distracted as Mr. Visoso argues. *Visoso*, 2021 WL 4438555, at *4, *5. As the Court of Appeals noted, "the jury was not required to accept Mr. Visoso's explanation of the accident." *Visoso*, 2021 WL 4438555, at *2.

The Court of Appeals specifically stated, "We agree that, under the facts of this case, prolonged distraction by cell phone coupled with alcohol consumption provides sufficient evidence to support a jury finding of more than ordinary evidence." *Id.* at *5.

i. Evidence of prolonged distraction

The State presented evidence that the roads were dry, the weather conditions were clear. RP 582, 649. Evidence was also provided that Mr. Visoso's view of both the stop sign and the "stop ahead" warning signs were unobstructed. RP 547.

Sergeant Sainsbury provided testimony that about 700 feet prior to the stop sign there was an unobstructed "stop ahead" warning sign. RP 547. He further testified that the warning sign was visible from greater than 1500 feet. RP 567. As such, someone would know that the intersection with the stop sign was coming up over 2200 feet away. RP 568.

When reconstructing a collision, Sergeant Sainsbury assumes that each of the vehicles were going the speed limit unless there are indications otherwise. RP 619. If Mr. Visoso was going the speed limit at 50 MPH, then from the time he could have seen the "stop ahead" warning sign until the stop sign at the intersection would be about 30 seconds. RP 620–21.

The State also provided evidence that Mr. Visoso told the officers that he believed the cause of the collision was not paying attention to the road and that he was attempting to find his cell phone which had fallen. RP 688, 692, 694–95. Mr. Visoso demonstrated that he understood the dangers of attempting to find a fallen cell phone while driving when he told the deputies that he typically pulls over in similar situations. *See* RP 692. Mr. Visoso also said that his car was in good mechanical condition, there were no cracks in the windshield, he has good eyesight and does not need corrective lenses, and he is not color blind. RP 685–86.

This demonstrates that Mr. Visoso, was not momentarily distracted. Based on the evidence provided to the jury, the jury could have concluded that Mr. Visoso drove distracted for at least 30 seconds attempting to find his phone. Mr. Visoso did this even though he knew the danger and would typically pull over in such situations.

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ii. Evidence of alcohol consumption

Here, the record shows that Mr. Visoso had an elevated blood alcohol level. RP 765, 904, 948. Multiple people testified to smelling alcohol on Mr. Visoso's breath or in the room where he was located. RP 449–51, 812, 1100. A Drug Recognition Expert (DRE) Trooper testified that Mr. Visoso's communication was slurred and slow, like someone who was intoxicated. RP 812–13. An orthopedic surgeon testified that he delayed surgery for Mr. Visoso due to his evaluation that Mr. Visoso appeared intoxicated and he did not feel he could get an informed consent. RP 1101.

While the jury did not unanimously agree that Mr. Visoso operated a vehicle, "while under the influence of intoxicating liquor," when viewed in the light most favorable to the State, a rational juror could have concluded, that Mr. Visoso was intoxicated and his driving was affected by his consumption of alcohol. *See* RP 917 (Dr. Crosier testified to alcohol's impairing effect on a person's judgment). Jury

verdicts are allowed to be inconsistent as a variety of factors may play into their decision including mistake, compromise, or lenity. *State v. Ng*, 110 Wn.2d 32, 46, 750 P.2d 632, 639 (1988). As such, any rational juror could have considered the evidence regarding Mr. Visoso's intoxication level and found Mr. Visoso's driving was affected by alcohol as he displayed impaired judgment and slow reaction time when he drove distracted for about 30 seconds trying to find his phone, even though he would have normally pulled over in this type of situation.

b. Operating a Vehicle in a Reckless Manner

Both the extended distraction and alcohol consumption support the Court of Appeals' affirmation of the conviction under the Operating a Vehicle in a Reckless Manner prong. The Court of Appeals noted that Mr. Visoso failed to acknowledge that evidence of consuming alcohol is relevant to show driving in a reckless manner. *Visoso*, 2021 WL 4438555, at *4.

As the Court of Appeals observed, case law supports the relevance of consuming alcohol in finding a person drove in a reckless manner. *Id.* (citing *State v. Fateley*, 18 Wn. App. 99, 103, 566 P.2d 959 (1977); *State v. Travis*, 1 Wn. App. 971, 974, 465 P.2d 209 (1970); *State v. Hill*, 48 Wn. App. 344, 348, 739 P.2d 707 (1987); *State v. Baker*, 56 Wn.2d 846, 849, 861, 355 P.2d 806 (1960)).

The Court of Appeals correctly summed up the reckless manner prong stating:

> In this case, Mr. Visoso admits to driving over 50 m.p.h. on a two-lane road and reaching for his cell phone on the floor. While he claims that he was only "momentarily" distracted, the evidence demonstrates that he had at least 30 seconds to see warning signs and the approaching intersection. On a clear day with no visibility limitations, he blew a stop without slowing or braking, and hit Mr. [Norris's] vehicle at full speed. This evidence supports a finding that Mr. Visoso's distraction was more than "momentary." In combination with evidence that he had alcohol in his system, the jury could find that Mr. Visoso was driving in a rash or heedless manner, indifferent to the consequences.

Visoso, 2021 WL 4438555, at *4.

c. Driving with Disregard for the Safety of Others

Similarly, the Court of Appeals found "under the facts of this case, prolonged distraction by cell phone coupled with alcohol consumption provides sufficient evidence to support a jury finding of more than ordinary negligence." *Id.* at *5. The Court of Appeals found a Texas case *Montgomery v. State*, 369 S.W.3d 188, 194 (Tex. Crim. App. 2012), persuasive in regards to the proposition that driving while being distracted by a cell phone can amount to criminal negligence. *Id.*

The Court of Appeals also succinctly summed up its reasoning for affirming that Mr. Visoso drove with disregard for the safety of others:

> Here, the record clearly supports the facts that Mr. [Norris] was killed because Mr. Visoso ran a stop sign at lethal highway speed without slowing or braking in anticipation of the intersection despite plainly visible warning signs. There was evidence that alcohol in his system likely affected his reaction times and awareness of his surroundings. Mr. Visoso admits that he was distracted and should have pulled over before reaching for the phone. His distraction and alcohol consumption posed a great and obvious

> risk to other drivers on the road and anyone with basic general awareness of safety would have known to avoid such serious failures.

Visoso, 2021 WL 4438555, at *4.

2. Mr. Visoso exaggerates the statements of law and does not provide sufficient authority.

Mr. Visoso exaggerates numerous statements of law.

a. Exaggerations Under Mr. Visoso's Discussion of "Reckless Manner"

Mr. Visoso cites *State v. Brobak*, 47 Wn. App. 488, 736 P.2d 288 (1987), as standing for the proposition that "To drive in a reckless manner requires *far more* than ordinary negligence or even disregard for others' safety. Pet. for Review 6 (emphasis added). *Brobak* simply states, "Ordinary negligence *differs* both from recklessness and from disregard for the safety of others. *Id.* at 494 (emphasis added) (citing *State v. Eike*, 72 Wn.2d 760, 765, 435 P.2d 680 (1967)).

State v. Partridge, 47 Wn.2d 640, 645, 289 P.2d 701 (1955), which dealt with a prior statute, is also cited to support the same proposition. Here again, the case does not support Mr.

Visoso's misstatement of the law. *Partridge* says, "We are satisfied that a finding of ordinary negligence is not sufficient to support a conviction under the act. To operate a motor vehicle in a reckless manner is *something more than* that." *State v. Partridge*, 47 Wn.2d 640, 645, 289 P.2d 702, 705 (1955) (emphasis added). It is not "far more," as Mr. Visoso advocates but only "something more." Mr. Visoso's definition vastly changes the standard.

In another instance, Mr. Visoso states the following: "To be sufficient to sustain a conviction for vehicular homicide, a defendant's actions must be *egregious, involving speeding or engaging in notably dangerous behavior* at the time of the accident." Pet. for Review 6 (emphasis added). Notably, Mr. Visoso does not cite any authority for this assertion. Pet. for Review 6; *see State v. Manajares*, 197 Wn. App. 798, 810, 391 P.3d 530 (2017) ("Where no authorities are cited in support of a proposition, we are not required to search out authorities, but may assume that counsel, after diligent search, has found

none.") (citing *DeHeer v. Seattle Post–Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)). The State is unaware of case law requiring "defendant's actions must be egregious" or that there must be "speeding or engaging in notably dangerous behavior at the time of the accident." The standard for "reckless manner" is "driving in a rash or heedless manner, indifferent to the consequences." *Roggenkamp*, 153 Wn.2d at 618.

In what appears as an attempt to validate this statement, Mr. Visoso discusses numerous cases.[5] Pet. for Review 6–8. However, none of the cases cited by Mr. Visoso espouse Mr. Visoso's articulation of the law. As the Court of Appeals noted, "Many of the numerous cases cited by Mr. Visoso actually support the existence of sufficient evidence in the present case." *Visoso*, 2021 WL 4438555, at *4.

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[5] Mr. Visoso discusses the following cases: *State v. Roggenkamp*, 115 Wn. App.927, 933, 64 P.3d 92 (2003); *State v. Baker*, 56 Wn.2d 846, 862, 355 P.2d 806 (1960); *State v. Hill*, 48 Wn. App. 344, 739 P.2d 707 (1987); *State v. Kenyon*, 123 Wn.2d 720, 71 P.2d 144 (1994).

In another instance, Mr. Visoso argues that since he "did not egregiously exceed the speed limit," drive too fast for road conditions, change lanes, swerve, cross the centerline of the road, or drive into oncoming traffic, he did not drive recklessly. Pet. for Review 8. Mr. Visoso states that these are "defining actions" for driving in a "rash heedless manner indifferent to the consequences" and were not present in his case. Pet. for Review 9. Mr. Visoso fails to cite any authority, and the State is unable to find authority, that demonstrates that these establish an exhaustive list of "defining actions" for what it means to drive in a "rash heedless manner indifferent to the consequences." *See Manajares*, 197 Wn. App. at 810.

b. Exaggerations Under Mr. Visoso's Discussion of "Disregard for the Safety of Others"

Mr. Visoso cites to *Vreen*, 99 Wn. App. at 671, for the proposition that, "It is a state of carelessness that requires *some evidence of a conscious disregard* of the danger *of the probability that injury to another will occur*." Pet. for Review 9

(second emphasis added). However, *Vreen* simply states, "Some evidence of a defendant's conscious disregard of the *danger to others* is necessary to support a charge of vehicular homicide." *Vreen*, 99 Wn. App. at 672 (citing *Lopez,* 93 Wn. App. at 623) (emphasis added). The State acknowledges a dissenting opinion from the 1967 case, *Eike*, that advocates adding Mr. Visoso's language. 72 Wn.2d at 769 (Hamilton, J., concurring in part dissenting in part).

Mr. Visoso also cites to *State v. May*, 68 Wn. App. 491, 496, 843 P.2d 1102 (1993). The jury instruction in this case, which includes the language Mr. Visoso advocates, however, is no longer used. *Compare State v. May*, 68 Wn. App. 491, 496, 843 P.2d 1102, 1105 (1993) (finding previous language for the jury instruction defining "reckless manner" and "with disregard for the safety of others" were basically indistinguishable); *and State v. Miller*, 60 Wn. App. 767, 807 P.2d 893 (1992) *abrogated on other grounds by Roggenkamp*, 153 Wn.2d 614; *with* WPIC 90.05 (2015).

Mr. Visoso attempts to show through citing several cases[6] that since he drove the speed limit, stayed within his lane, and was the only car on the north-south road (trial evidence did not establish this, *see* RP 606, 656, 688), the evidence was not sufficient to convict him of operating a motor vehicle with disregard for the safety of others. Pet. for Review 12. Here again, the defendant provides no authority demonstrating the cases cited provide an exclusive list of what constitutes operating a vehicle with "disregard for the safety of others." *See Manajares*, 197 Wn. App. at 810.

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[6] Mr. Visoso cites to the following cases: *State v. Imokawa*, 4 Wn. App. 2d 545, 422 P.3d 502, *rev'd on other grounds by*, 194 Wn.2d 391, 450 P.3d 159 (2019); *Eike*, 72 Wn.2d 760; *State v. Miller*, 60 Wn. App. 767, 775, 807 P.2d 893 (1992) *abrogated on other grounds by Roggenkamp*, 153 Wn.2d 614; *State v. Fateley*, 18 Wn. App. 99, 103, 566 P.2d 959 (1977); and *State v. Barefield*, 57 Wn. App. 444, 459, 735 P.2d 1339 (1987).

C. NO SIGNIFICANT QUESTION OF LAW UNDER THE CONSTITUTION OF THE STATE OF WASHINGTON OR OF THE UNITED STATES IS INVOLVED.

Mr. Visoso has not identified a significant question of law under the Constitution of the State of Washington or of the United States and the State is unaware of any. *See Manajares*, 197 Wn. App. at 810; RAP 13.4(b)(3).

D. THERE IS NO ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT THE SUPREME COURT SHOULD DETERMINE.

Mr. Visoso does not identify any substantial public interest for this Court to decide. *See Manajares*, 197 Wn. App. at 810; RAP 13.4(b)(4). Additionally, this case does not involve an issue of substantial public interest as this case is extremely fact specific.

IV. CONCLUSION

The record demonstrates that the Court of Appeals appropriately applied both Washington State Supreme Court cases and Court of Appeals cases, there is no significant question of law under the Constitution of the State of Washington or the United States, and there is no issue of substantial public interest. The Court of Appeals correctly

found that viewed in the light most favorable to the State, jurors could have found Mr. Visoso drove his vehicle in a reckless manner and in disregard to the safety of others.

As such, the State asks the Court to affirm the Court of Appeals opinion and dismiss the Petition for Review.

This document contains 4,874 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 23rd of November, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this day I served a copy of the Answer to Petition for Review in this matter by e-mail on the following parties, receipt confirmed, pursuant to the parties' agreement:

Marie Jean Trombley
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Dated: November 24, 2021.

Kaye Burns

GRANT COUNTY PROSECUTOR'S OFFICE

November 24, 2021 - 8:57 AM

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