91215-7

No. _____

Court of Appeals No. 70727-2-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JANE CHO,

Plaintiff/Petitioner,

vs.

CITY OF SEATTLE, et al.,

Defendant/Respondent,

RESPONDENT CITY OF SEATTLE'S ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Respondent City of Seattle answers appellant Jane Cho's petition for discretionary review by the Supreme Court. For the reasons set forth below, the City asks that the petition be denied.

Fairly read, appellant's petition is a re-argument of the case she presented to the Court of Appeals. While it pays lip service to the formal requirements of RAP 13.4(b), it presents no compelling argument that Division I, in affirming the trial court's grant of summary judgment, has departed from well-settled principles of tort law in Washington. The petition raises no questions of policy, implicates no constitutional issues, and points to no wrong turn the appellate court has taken in applying the common law. Rather, it seeks the very relief appellant failed to obtain below, implicitly, and improperly, asking this Court to hear the matter as a court of error.

STATEMENT OF THE CASE

On the evening of October 28, 2010, Jane Cho was among a crowd leaving the Showbox theatre, an entertainment venue on First Avenue South in Seattle. Along with several other pedestrians, she was struck by a drunk driver as she crossed the street in an unmarked crosswalk. CP 4, 109. The driver, Juanita Mars had a blood-alcohol level of 0.29, and admitted that she was not looking ahead as her car approached the

crosswalk. CP 111, 397. Mars didn't see the pedestrians, or other cars that had stopped or were slowing for them. CP 9, 109, 397. Cho had already crossed the two northbound lanes of First Avenue, and was halfway across the southbound lanes when she was hit. CP 109.

Cho sued the City, Showbox Two, LLC (the owner of the theatre), and Mars. On May 31, 2013, the City's and Showbox Two's motions for summary judgment were granted. CP 500-506. On July 31, 2013, following the trial court's denial of her motion for reconsideration, Cho filed a notice of appeal of the summary judgment in favor of the City. CP 682-692. Division One of the Court of Appeals affirmed on October 20, 2014, and granted the City's motion to publish on December 12, 2014.

ARGUMENT

The City's motion for summary judgment argued that, questions of duty and breach aside, the street design defects alleged by Cho did not proximately cause the accident. In affirming the judgment, Division One rejected Cho's argument that the accident would not have happened if a signal had been present to control traffic, or a pedestrian island available at the scene. The court found expert opinions offered in support of this argument to be speculative. These included the opinion that Mars was an attentive driver who would have responded to traffic controls, and that a traffic island would have prevented the accident by giving the pedestrians

both a place of safety and an opportunity to determine gaps in traffic. The court also rejected as speculative Cho's testimony that had a traffic island be present she would have used it to wait for traffic to pass, and had a traffic light been there, she would have waited for the green light. Given that traffic had already stopped, and a number of pedestrians were already crossing the street, the court did not find it reasonable that Cho alone would have waited for all traffic to pass before crossing.

Appellant's petition is based on nothing more than its disagreement with Division One's analysis of proximate cause in this case. For example, asserting that her expert's opinion "was based on careful engineering study and peer-reviewed research, " *Petition,* p. 7, Cho does not explain why that fact should negate the court's finding that such opinion, "does not create an inference that had there been a red light, Mars, who was not looking ahead, would have stopped." *Opinion*, p. 10. The petition likewise challenges Division One's analysis of proximate cause in other road design cases, including *Lowman v. Wilber*, 178 Wash.2d 165, 309 P.3d 387 (2013), without devoting a single word to the manner in which the court distinguished those cases on the facts.

No important point of law or policy is raised by this petition. It seeks, in effect, de novo review of the case without demonstrating that the Court of Appeals fundamentally misunderstood or misapplied the law, or

that the law itself merits review in the circumstances of this case. Accordingly, the City asks that the petition be denied.

Respectfully submitted this 12th day of January, 2015.

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By: 

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PROOF OF SERVICE

TAMARA STAFFORD certifies under penalty of perjury under the laws of the State of Washington that the following is true and correct.

I am employed as a Legal Assistant with the Seattle City Attorney's office.

On January 12, 2015, I caused to be filed and served a true and correct copy of the foregoing document to the following:

Original: Washington State Supreme Court Clerk's Office 415 12th Avenue SW Olympia, WA 98501	☑ By Electronic Mail for filing Supreme@courts.wa.gov
Ronald L. Unger, WSBA #16875 BUCKLEY & ASSOCIATES, P.S., Inc. 675 S Lane Street, Suite 300 Seattle, WA 98104-2942 ***Attorneys for Plaintiff***	☑ By hand-delivery via ABC Legal Messengers

DATED this 12th day of January, 2015.

TAMARA STAFFORD, Legal Assistant

OFFICE RECEPTIONIST, CLERK

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Cho v. City of Seattle et al.
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