
NO. 45919-1

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

RONALD C. RASHOFF and LORI J. RASHOFF, Individually and as
Personal Representatives of the Estate of RYAN RASHOFF,

Appellants/Plaintiffs

vs.

THE STATE OF WASHINGTON and BENJAMIN O. LAMOTTE,

Respondent/Defendant.

BENJAMIN O. LAMOTTE;

Appellant/Plaintiff,

vs.

STATE OF WASHINGTON,

Respondent/Defendant.

APPELLANT LAMOTTE'S OPENING BRIEF

JOHN L. MESSINA, WSBA #4440
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2014 JUN 23 AM 9:15
COURT OF APPEALS
DIVISION II
CLERK OF COURT
JULIA M. HARRIS

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On or about April 9, 2014, this Court granted Plaintiff/Appellant Lamotte's Motion to Consolidate Appeals with Co-Plaintiff/Appellant Rashoff pursuant to RAP 3.3.

Pursuant to RAP 10.1(g)(2) Appellant/Plaintiff Lamotte hereby joins and adopts by reference Appellant/Plaintiff Rashoff's Table of Contents with the exception those issues concerning Mr. Rashoff's pre-death pain and suffering claim.

TABLE OF AUTHORITIES

Pursuant to RAP 10.1(g)(2) Appellant/Plaintiff Lamotte hereby joins and adopts by reference Appellant/Plaintiff Rashoff's Table of Authorities with the exception those authorities concerning Mr. Rashoff's pre-death pain and suffering claim.

I. INTRODUCTION

Pursuant to RAP 10.1(g)(2) Appellant/Plaintiff Lamotte hereby joins and adopts by reference Appellant/Plaintiff Rashoff's Introduction section with the exception those statements concerning Mr. Rashoff's pre-death pain and suffering claim.

II. ASSIGNMENTS OF ERROR

Pursuant to RAP 10.1(g)(2) Appellant/Plaintiff Lamotte hereby joins and adopts by reference Appellant/Plaintiff Rashoff's Assignment of Errors with the exception those assignments concerning Mr. Rashoff's pre-death pain and suffering claim.

III. ISSUES

Pursuant to RAP 10.1(g)(2) Appellant/Plaintiff Lamotte hereby joins and adopts by reference Appellant/Plaintiff Rashoff's Statement of Issues with the exception those issues concerning Mr. Rashoff's pre-death pain and suffering claim.

IV. STATEMENT OF THE CASE

Pursuant to RAP 10.1(g)(2) Appellant/Plaintiff Lamotte hereby joins and adopts by reference Appellant/Plaintiff Rashoff's Statement of the Case with the exception those sections concerning Mr. Rashoff's pre-death pain and suffering claim.

V. AUTHORITY

A. STANDARD OF REVIEW AND ARGUMENT

Pursuant to RAP 10.1(g)(2) Appellant/Plaintiff Lamotte hereby joins and adopts by reference Appellant/Plaintiff Rashoff's Authority, Standard of Review and Argument with the exception those issues and arguments concerning Mr. Rashoff's pre-death pain and suffering claim.

VI. CONCLUSION

Decisive factual issues exist as to whether or not State Route 12 at its intersection with Williams Street was or was not reasonably safe for motorists attempting to cross SR 12. These issues of fact should have precluded summary judgment as a matter of law under CR 56(c). The trial court erred in granting summary judgment.

Because summary judgment was erroneously granted, the trial court's order should be reversed and the case remanded for trial.

RESPECTFULLY SUBMITTED this 18th day of June, 2014.

MESSINA BULZOMI CHRISTENSEN

By 
JOHN L. MESSINA 4440
JOHN R. CHRISTENSEN 18860
Attorneys for Appellant

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**AFFIDAVIT OF FILING OF APPELLANT
LAMOTTE'S OPENING BRIEF**

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
CLERK OF COURT

STATE OF WASHINGTON)
 : ss.
County of Pierce)

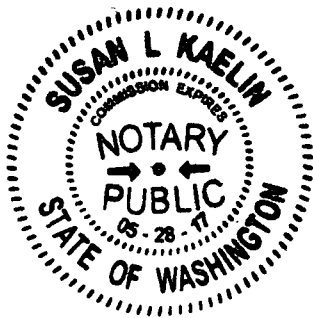
Heather Stamer, being first duly sworn,
on oath deposes and says:

On June 10, 2014, I filed, via Legal Messengers, the original and 1 copies of Appellant Lamotte's Opening Brief with the Clerk of the Court of Appeals, District II, of the State of Washington.

Heather Stamer

SIGNED AND SWORN to before me on the 10 day of June, 2014, by Heather Stamer.

Susan L Kaelin
Notary Public in and for the State of Washington, residing at Tacoma.
My appointment expires 5-28-2017



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BENJAMIN O. LAMOTTE;

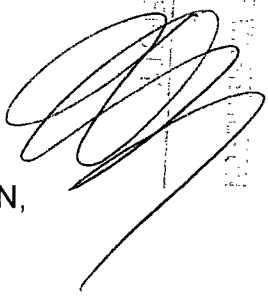
Appellant/Plaintiff,

vs.

STATE OF WASHINGTON,

Respondent/Defendant.

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
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BENJAMIN O. LAMOTTE



**AFFIDAVIT OF SERVICE OF APPELLANT
LAMOTTE'S OPENING BRIEF**

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STATE OF WASHINGTON)
 : ss.
County of Pierce)

Heather Stamps, being first duly sworn,

on oath deposes and says:

That on June 18, 2014, I delivered, via electronic mail, a
copy of Appellant Lamotte's Opening Brief for service upon:

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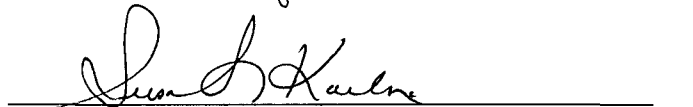
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SIGNED AND SWORN to before me on the 18 day of
June, 2014, by Heather Stanger.



Notary Public in and for the State of
Washington, residing at Tacoma.
My appointment expires 5-28-2017

