

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 96847-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRIAN J. SMITH,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Charles R. Snyder, Judge

SUPPLEMENTAL BRIEF
RE: *STATE v. IMOKAWA*

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A. ISSUE BEFORE THE COURT

This Court directed the parties to file supplemental briefs regarding any applicability of *State v. Imokawa*, Supreme Court No. 96217-1, on this case.

Petitioner presented in his appeal to the Court of Appeals Supplemental Assignment of Error No. 12:

Appellant was denied due process when the court failed to instruct the jury unambiguously that the State had the burden to prove the absence of a superseding cause.

Supplemental Brief of Appellant Re: *State v. Imokawa*, Court of Appeals No. 76340-7-I (filed 8/1/2018) at 1.

He presented this issue in his Petition for Review to this Court.

6. In this vehicular homicide case in which the trial court instructed on superseding cause, did due process require the court unambiguously to instruct the jury that the State bore the burden to prove the absence of a superseding cause? U.S. Const., amend. 14; Const., art. I, § 3.

Petition for Review (filed 2/14/2019) at 2, 24-25.

B. APPLICABILITY OF STATE v. IMOKAWA

This Court issued its opinion in *State v. Imokawa*, 194 Wn.2d 391 (2019), reversing the Court

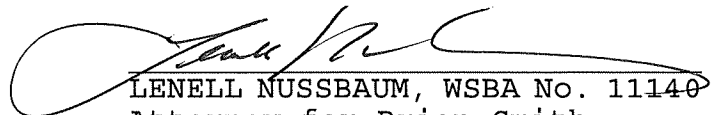
of Appeals opinion in that case, 4 Wn. App. 2d 545, 422 P.3d 502 (2018).

Petitioner's counsel has reviewed the *Imokawa* opinion, and the jury instructions in this case. Counsel believes Justice Madsen's dissenting opinion, 194 Wn.2d at 404-12, is the correct statement of constitutional law on this issue. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *Patterson v. New York*, 432 U.S. 197, 210, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977); *Mullaney v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d 508 (1975); U.S. Constitution, Amend. 14.

Nonetheless, it appears under the majority opinion's holding, the instructions given in this case regarding proximate cause and superseding intervening cause would be deemed "constitutionally adequate." *Imokawa*, 194 Wn.2d at 402-03.

DATED this 8th day of January, 2020.

Respectfully submitted,


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Attorney for Brian Smith

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Transmittal Information

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