Supreme Court No. 99475-7
Court of Appeals No. 53189-5-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW STEVEN JOHNSON,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/DECISION BELOW

Matthew Steven Johnson requests this Court grant review pursuant to RAP 13.4 of the unpublished decision of the Court of Appeals in State v. Johnson, No. 53189-5-II, filed on January 5, 2021. A copy of the Court of Appeals' opinion is attached as an appendix.

B. ISSUES PRESENTED FOR REVIEW

1. The *corpus delicti* rule requires the State to present sufficient evidence, independent of the accused's admissions, to establish a *prima facie* case that the charged crime occurred. Here, witnesses testified that Mr. Johnson was sitting in the driver's seat of his car, with the nose of the car about halfway into the lane of oncoming traffic on a rural highway, and the other half of the car in the driveway of his residence. This is the only evidence the State presented, other than Mr. Johnson's admissions, to prove he drove or operated his car with disregard for the safety of others. Should this Court grant review and hold that this evidence was insufficient to establish the *corpus delicti* of vehicular assault? RAP 13.4(b)(1), (2), (4).

2. A defendant's wrongful conduct is a "proximate cause" of harm to another if, in direct sequence, unbroken by any new independent cause, it produces the harm, and without it the harm would

not have happened. If the alleged victim's conduct was an independent superseding cause without which the defendant's conduct would not have caused the accident, the defendant's conduct is not a proximate cause of the victim's injuries. Here, the victim was driving close enough to the car in front of her that she could not brake in time to avoid colliding with that car when the driver of that car braked in order to avoid colliding with Mr. Johnson's car. Should this Court grant review and hold the victim's conduct in driving too close to the car in front of her and failing to brake in time was an independent cause that broke the chain of causation such that Mr. Johnson's conduct was not a proximate cause of her injuries? RAP 13.4(b)(1), (2), (4).

C. STATEMENT OF THE CASE

One October evening at around 7 p.m., Tyler Newport was driving his pickup truck westbound on Highway 12 from Montesano to Aberdeen. 1/25/19RP 13. His girlfriend, Hanna Himley, was in the passenger seat. 1/25/19RP 14. It was getting dark and "sprinkling off and on." 1/25/19RP 13, 22, 26. The traffic "wasn't rush hour heavy, but there were other vehicles on the road." 1/25/19RP 21-22.

The highway at that point had two lanes in each direction. 1/25/19RP 14, 26. Mr. Newport was traveling in the right hand lane, at

around the speed limit of 50 miles per hour. 1/25/19RP 14-16. Another truck was directly in front of him in the same lane. 1/25/19RP 14.

Suddenly, the truck in front of Mr. Newport's truck braked and moved abruptly, without signaling, into the left hand lane. 1/25/19RP 14-17. Ms. Himley then saw "a white car that was pulled half way into the lane that we were in." 1/25/19RP 14. She said "the nose of the car was in the lane almost perpendicular to the white shoulder stripe. And the white shoulder stripe was about mid-way between the front and the back of the car. So, the car was half way of the car length into the lane." 1/25/19RP 18.

The petitioner, Matthew Johnson, was sitting in the driver's seat of the white car. 1/25/19RP 18. The car was "facing forward" partially in the driveway of his residence. 1/25/19RP 45, 57. The driveways of several residences and businesses enter the highway along that stretch of road. 1/25/19RP 40.

Mr. Newport "slam[med] on the brakes" and "laid on the horn." 1/25/19RP 14, 17-18. He came to a stop a few feet from Mr. Johnson's car. 1/25/19RP 14, 18-19. A couple of seconds later Mr. Newport's truck was hit from behind by a Ford Ranger driven by Marilyn Barnes. 1/25/19RP 14, 19, 24.

Ms. Barnes said that as she approached Mr. Johnson's driveway, prior to colliding with Mr. Newport's truck, she could see Mr. Johnson's car "out of the corner of [her] eye." 1/25/19RP 27. She "couldn't tell if it was moving or if it was backing up or what, but it was out there so close to the highway that it was a concern." 1/25/19RP 27-28. She could not tell "if it was moving forward or backward." 1/25/19RP 28. She explained, "[a]s I approached it, I was getting closer, and it was out there, still out there, still, and, you know, my eyes went over there just a little bit, and I tapped the brakes and I looked back on the freeway, on the highway, I hit Mr. Tyler's car, truck." 1/25/19RP 28. She tapped her brakes, glanced back, and then hit Mr. Newport's truck. 1/25/19RP 29. She said it all happened "very fast." 1/25/19RP 29.

Ms. Barnes suffered a laceration above her eye and a fractured knee cap in the collision. 1/25/19RP 29, 33.

Washington State Patrol Trooper Matt Rabe responded to the scene. 1/25/19RP 34, 45. He spoke to Mr. Johnson, who "stated that he had pulled on to the shoulder of State Route 12, was backing into his driveway, and he heard brakes screeching." 1/25/19RP 47. He said he was backing his car into his driveway so that "when he got in it the next

time, [it] would be ready to pull out on to the road." 1/25/19RP 48. Mr. Johnson told Trooper Rabe he believed the collision was Ms. Barnes's fault. 1/25/19RP 50.

The State charged Mr. Johnson with one count of vehicular assault, alleging he "did drive or operate a vehicle with disregard for the safety of others and caused substantial bodily harm to Marilyn J. Barnes." CP 33; see RCW 46.61.522(1)(c). Mr. Johnson waived his right to a jury trial and a bench trial followed. CP 29.

At trial, defense counsel moved to dismiss the charge, arguing the State had not established the *corpus delicti* of the crime. 1/25/19RP 60-62, 69-71. Without Mr. Johnson's statement to Trooper Rabe, the evidence was insufficient to establish vehicular assault. 1/25/19RP 61. Aside from Mr. Johnson's statement, the evidence showed only that his car was partially in the roadway and that two other vehicles were forced to come to a stop. 1/25/19RP 62. None of the witnesses testified that Mr. Johnson's vehicle was actually moving. 1/25/19RP 69-70. Stopping one's vehicle partially in the roadway is not necessarily a crime. 1/25/19RP 70. Mr. Johnson's car could have stopped partially in the roadway for any number of innocent reasons, such as because it had just been in an accident, or had broken down. 1/25/19RP 71.The

independent evidence did not establish the *corpus delicti* of anything other than a car accident. 1/25/19RP 62.

The trial court denied the *corpus delicti* motion. 1/25/19RP 71. The court reasoned that the corroborating evidence, when viewed in the light most favorable to the State, "would support a finding that this white vehicle was stopped, at least partially in the traveled portion of the westbound lane of SR 12 in such a way as to obstruct other vehicles. And that's a crime." 1/25/19RP 71.

The court then found Mr. Johnson guilty of the crime. CP 22-26; 1/25/19RP 83-85.

Mr. Johnson appealed, arguing the State had failed to establish the *corpus delicti* of vehicular assault, and the State had failed to prove beyond a reasonable doubt that Mr. Johnson's actions were the proximate cause of Ms. Barnes's injuries. The Court of Appeals affirmed. Appendix.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. The State failed to establish the *corpus delicti* of vehicular assault in the absence of independent proof that Mr. Johnson drove or operated his vehicle with disregard for the safety of others.

a. The *corpus delicti* rule required the State to establish, with proof independent of Mr. Johnson's statements, that he committed a *criminal act* which caused Ms. Barnes's injuries.

"[C]orpus delicti is a corroboration rule that 'prevent[s] defendants from being unjustly convicted based on confessions alone.'" State v. Cardenas-Flores, 189 Wn.2d 243, 252, 401 P.3d 19 (2017) (quoting State v. Dow, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010)). "The corpus delicti 'must be proved by evidence sufficient to support the inference that' a crime took place, and the defendant's confession 'alone is not sufficient to establish that a crime took place.'" Cardenas-Flores, 189 Wn.2d at 252 (quoting State v. Brockob, 159 Wn.2d 311, 327-28, 150 P.3d 59 (2006)).

Although *corpus delicti* concerns admissibility, it "is, at heart, a rule of sufficiency." Cardenas-Flores, 189 Wn.2d at 263. Independent evidence is necessary because a defendant's incriminating statement alone is deemed insufficient as a matter of core policy of the criminal law to establish that a crime took place. Brockob, 159 Wn.2d at 328.

"[T]he evidence must independently *corroborate*, or confirm, a defendant's confession." Id. at 328-29. If the *corpus delicti* is not corroborated by independent evidence, the defendant's admissions cannot be considered. State v. Hummel, 165 Wn. App. 749, 758-59, 266 P.3d 269 (2012).

"The independent evidence need not be sufficient to support a conviction, but it must provide prima facie corroboration *of the crime described in a defendant's incriminating statement.*" Brockob, 159 Wn.2d at 328. That is, the independent evidence must corroborate "not just *a crime* but *the specific crime* with which the defendant has been charged." Id. at 329.

Corpus delicti generally involves two elements: (1) an injury or loss and (2) someone's criminal act as the cause thereof. City of Bremerton v. Corbett, 106 Wn.2d 569, 573-74, 723 P.2d 1135 (1986). "Prima facie corroboration of a defendant's incriminating statement exists if the independent evidence supports a 'logical and reasonable inference' of the facts sought to be proved." Brockob, 159 Wn.2d at 328 (quoting State v. Aten, 130 Wn.2d 640, 656, 927 P.2d 210 (1996)).

To survive a *corpus delicti* challenge, "the independent evidence 'must be consistent with guilt and inconsistent with a[] hypothesis of

innocence.'" Brockob, 159 Wn.2d at 329 (quoting Aten, 130 Wn.2d at 660) (alteration in original). "[T]he *corpus delicti* is *not* established when independent evidence supports reasonable and logical inferences of both criminal agency and noncriminal cause." Aten, 130 Wn.2d at 660.

The Court reviews *de novo* whether sufficient corroborating evidence exists to satisfy the *corpus delicti* rule. State v. Hotchkiss, 1 Wn. App.2d 275, 279, 404 P.3d 629 (2017), review denied, 190 Wn.2d 1005, 413 P.3d 9 (2018). In determining whether the independent evidence is sufficient, the Court assumes the truth of the State's evidence and all reasonable inferences from it in a light most favorable to the State. Cardenas-Flores, 189 Wn.2d at 264.

b. The State did not establish the *corpus delicti* of vehicular assault because the evidence, independent of Mr. Johnson's admissions, is consistent with a hypothesis of innocence.

When the crime is vehicular assault, the *corpus delicti* rule requires the State to present independent corroborating evidence to show, on a *prima facie* level, (1) the victim's injury, and (2) the defendant's criminal act as a cause. See Corbett, 106 Wn.2d at 573-74; RCW 46.61.522(1)(c).

As stated, the independent evidence must be consistent with guilt and inconsistent with a hypothesis of innocence. Brockob, 159 Wn.2d at 329. "In other words, if the State's evidence supports the reasonable inference of a criminal explanation of what caused the event and one that does not involve criminal agency, the evidence is not sufficient to corroborate the defendant's statement." Id. at 330.

In Brockob, the State presented evidence that Brockob stole 15 to 30 packages of Sudafed from a Fred Meyer store. Id. at 331. The Court held that evidence was sufficient to support only the logical and reasonable inference that Brockob intended to steal Sudafed, not that he intended to manufacture methamphetamine. Id. Although a police officer testified Sudafed is used in the manufacture of methamphetamine, the mere assertion that Sudafed is known to be used to manufacture methamphetamine did not necessarily lead to the logical inference that Brockob intended to do so, without more. Id. at 331-32. Brockob told a police officer he was stealing the Sudafed for someone else who was going to make methamphetamine, but the State presented no independent evidence to support this statement other than the officer's bare assertion that Sudafed is used to manufacture methamphetamine. Id. at 332. Thus, "the independent evidence was

insufficient to corroborate Brockob's incriminating statement" and was insufficient to establish the *corpus delicti* of the charged crime of possession of pseudoephedrine and/or ephedrine with intent to manufacture methamphetamine. Id. at 333.

Likewise, in Aten, a woman confessed to smothering an infant. Aten, 130 Wn.2d at 649-50. At trial, a pathologist testified the infant's death could have been caused by suffocation or by Sudden Infant Death Syndrome, but he also testified he could not conclude the infant died as a result of human action. Id. at 646-47. The Court held the evidence was insufficient to establish the *corpus delicti* of second degree manslaughter because the totality of the independent evidence did not lead to a reasonable and logical inference that the infant died as a result of criminal action. Id. at 660. The Court emphasized, "'[t]he final test [of the corpus delicti rule] is whether the facts found and the reasonable inferences from them have proved the nonexistence of any reasonable hypothesis of innocence.'" Id. (quoting State v. Lung, 70 Wn.2d 365, 371, 423 P.2d 72 (1967)) (alteration in Aten). "In other words, if the facts suggest there is an innocent hypothesis for the events, the State's evidence is insufficient to corroborate a defendant's confession." Brockob, 159 Wn.2d at 335.

Here, as in Brockob and Aten, the State's independent corroborating evidence was insufficient to establish the *corpus delicti* of vehicular assault. Although the independent evidence amply established that Ms. Barnes suffered substantial bodily harm, it did not establish that Mr. Johnson's *criminal act* was the cause of that harm. The facts and the reasonable inferences from them did not prove the nonexistence of any reasonable hypothesis of innocence. See Aten, 130 Wn.2d at 660. To the contrary, the facts suggested an innocent hypothesis for the events and therefore were insufficient to establish the *corpus delicti* of vehicular assault. See id.

Independent of Mr. Johnson's admissions to Trooper Rabe, the State's evidence established that Marilyn Barnes was driving her vehicle behind Mr. Newport's truck on Highway 12 at dusk on an intermittently rainy October evening. 1/25/19RP 13-14, 19-26. The traffic was moving at about 50 miles per hour. 1/25/19RP 14-16. Mr. Newport slammed on his brakes when the truck in front of him abruptly changed lanes and provided Mr. Newport with a sudden view of the front of Mr. Johnson's white car extending half-way into the roadway. 1/25/19RP 18. Ms. Barnes was following closely enough behind Mr. Newport's truck that she did not have time to stop her vehicle before

hitting his truck. 1/25/19RP 28-29. Ms. Barnes said she could see Mr. Johnson's white car extending into the roadway out of the corner of her eye, but she could not tell if the car was moving forward or backward or simply standing still. 1/25/19RP 27-28.

This evidence is insufficient to establish a *prima facie* case of vehicular assault. It is insufficient to establish that Mr. Johnson committed a criminal act. Instead, it is consistent with a reasonable hypothesis of innocence. Mr. Johnson's car was facing forward half-way in the driveway of his residence, where the driveway entered the roadway. 1/25/19RP 40, 45, 57. That in itself is not a crime. The evidence did not establish whether the car was moving forward or backward or simply standing still. 1/25/19RP 27-28. Mr. Johnson could have been pulling out of his driveway onto the roadway. His car could have stalled or he could have suffered some other innocent mishap preventing him from moving out of the way of oncoming traffic.

The independent evidence did not establish that Mr. Johnson acted "[w]ith disregard for the safety of others." RCW 46.61.522(1)(c). In finding that the State had proved this element, the trial court relied upon Mr. Johnson's statement to Trooper Rabe. See CP 24-25. Mr. Johnson told Trooper Rabe he had pulled onto the shoulder of the road

and was backing his car into his driveway so that "when he got in it the next time, [it] would be ready to pull out on the road." 1/25/19RP 48. But aside from this statement, the State presented no evidence that Mr. Johnson was actually backing up his car into his driveway at the time of the collision.

In sum, the totality of the independent evidence did not lead to a reasonable and logical inference that Ms. Barnes was injured as a result of Mr. Johnson's criminal act. See Aten, 130 Wn.2d at 646-47. The independent evidence did not prove the nonexistence of any reasonable hypothesis of innocence. Id. at 660. Therefore, the State did not establish the *corpus delicti* of vehicular assault. Id.

c. The conviction must be reversed and the charge dismissed.

A defendant is entitled to an acquittal if the State fails to satisfy the *corpus delicti* and offer independent corroborating proof of the crime. Cardenas-Flores, 189 Wn.2d at 260. The appellate court must reverse and dismiss a conviction that rests solely on an uncorroborated confession, even if the confession would be sufficient to establish all of the elements of the crime. Id.

Here, the State failed to establish the *corpus delicti* of vehicular assault. The conviction must be reversed and the charge dismissed. Id.

2. The State did not prove beyond a reasonable doubt that Mr. Johnson's actions were the proximate cause of Ms. Barnes's injuries.

The vehicular assault statute provides: "A person is guilty of vehicular assault if he or she operates or drives any vehicle: . . . [w]ith disregard for the safety of others and causes substantial bodily harm to another." RCW 46.61.522(1)(c); CP 33.

To prove the crime, the State must prove the defendant's criminal conduct was a proximate cause of the victim's injuries. State v. Lovelace, 77 Wn. App. 916, 919, 895 P.2d 10 (1995). "Proximate cause is defined as a cause which in direct sequence, unbroken by any new, independent cause, produces the event explained of and without which the injury would not have happened." Id. (internal quotation marks and citation omitted).

In deciding whether a defendant's conduct was a proximate cause beyond a reasonable doubt, the trier of fact assesses all of the material facts and circumstances. State v. Meekins, 125 Wn. App. 390, 396-97, 105 P.3d 420 (2005). "The alleged victim's conduct is one such circumstance, and thus the [trier of fact] may consider it when deciding whether the defendant's conduct was a proximate cause,

regardless of whether the alleged victim's conduct constituted contributory negligence." Id.

A defendant's conduct is not a proximate cause if, although it otherwise might have been a proximate cause, a superseding cause intervenes. Id. at 397-98. "'[A] superseding cause is an act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about.'" Id. at 398 (quoting Restatement (Second) of Torts § 440 (1965)). "'[A]n intervening force is one which actively operates in producing harm to another after the actor's negligent act or omission has been committed.'" Meekins, 125 Wn. App. at 398 (quoting Restatement (Second) of Torts § 441(1) (1965)).

> "A superseding cause relieves the actor from liability, *irrespective of whether his antecedent negligence was or was not a substantial factor* [i.e., a proximate cause] *in bringing about the harm.* Therefore, if . . . a superseding cause has operated, there is no need of determining whether the actor's antecedent conduct was or was not a substantial factor [i.e., a proximate cause] in bringing about the harm."

Meekins, 125 Wn. App. at 398 (quoting Restatement (Second) of Torts § 440 cmt. b (1965)) (emphasis and alterations in Meekins).

The State bears the burden to prove proximate cause beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25

L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Const. art. I, § 3. The question on review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the element of proximate cause beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 316-19, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

Here, the State did not prove beyond a reasonable doubt that Mr. Johnson's conduct was a proximate cause of Ms. Barnes's injuries because her conduct in failing to brake in time constituted a superseding intervening cause that broke the chain of causation. When the truck in front of Mr. Newport abruptly changed lanes, Mr. Newport saw Mr. Johnson's car partially in the roadway and immediately "slam[med] on the brakes." 1/25/19RP 14, 17-18. He was able to stop his truck a few feet away from Mr. Johnson's car. 1/25/19RP 14, 18-19.

But Ms. Barnes, on the other hand, was following too closely to Mr. Newport's truck and did not apply the brakes of her car sufficiently quickly to avoid a collision. 1/25/19RP 27-29. She said she saw Mr. Johnson's car "out of the corner of [her] eye," and saw that it was close enough to the highway to cause her concern. 1/25/19RP 27-28. Yet she did not immediately apply her brakes. Instead, she explained, "[a]s I

approached it, I was getting closer, and it was out there, still out there, still, and, you know, my eyes went over there just a little bit, and I tapped the brakes and I looked back on the freeway, on the highway, I hit Mr. Tyler's car, truck." 1/25/19RP 28. She tapped her brakes, glanced back, and then hit Mr. Newport's truck. 1/25/19RP 29.

Ms. Barnes should not have been following so closely behind Mr. Newport's truck that she could not stop her own car in time to avoid colliding with Mr. Newport's truck. She should have applied her brakes immediately and taken defensive maneuvers when she saw Mr. Johnson's car in the roadway so that she could avoid a collision. After all, Mr. Newport was able to stop his truck in time to avoid colliding with Mr. Johnson's car. 1/25/19RP 14, 18-19.

Ms. Barnes's own conduct in following too closely to Mr. Newport's truck and failing to brake in time was a superseding intervening cause of the collision. See Meekins, 125 Wn. App. at 396-98. Her conduct interrupted the chain of causation between Mr. Johnson's conduct and her injuries. See Lovelace, 77 Wn. App. at 919. Therefore, the State did not prove beyond a reasonable doubt that Mr. Johnson's conduct was a proximate cause of Ms. Barnes's injuries. See id.

Reversal for insufficient evidence is equivalent to an acquittal and bars retrial for the same offense. Hummel, 196 Wn. App. at 359. "The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding." Id. (quoting Burks v. United States, 437 U.S. 1, 11, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978)). The State's failure to prove the crime beyond a reasonable doubt requires the conviction be reversed and the charge dismissed.

E. CONCLUSION

For the reasons provided, this Court should grant review and reverse the Court of Appeals.

Respectfully submitted this 3rd day of February, 2021.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MATTHEW STEVEN JOHNSON, Appellant.	No. 53189-5-II UNPUBLISHED OPINION

SUTTON, J. — Matthew Steven Johnson appeals from his bench trial conviction for vehicular assault. He argues that the trial court erred when it denied his motion to dismiss the case for failure to establish the corpus delicti of the vehicular assault charge and that the evidence was insufficient to prove that his actions were the proximate cause of the victim's injuries. Johnson also raises several issues in a statement of additional grounds for review (SAG).[1] We hold that (1) the evidence was sufficient to establish corpus delicti, so the trial court did not err when it denied Johnson's motion to dismiss, (2) the evidence was sufficient to establish that Johnson's actions were a proximate cause of the victim's injuries, and (3) Johnson's SAG issues fail. Accordingly, we affirm.

[1] RAP 10.10.

FACTS

I. BACKGROUND

On the evening of October 6, 2017, as the sun was going down, Tyler Newport and his girlfriend Hanna Himley were driving west in the right lane on Highway 12. Suddenly, the red pickup truck immediately in front of them "flashed its brake lights and abruptly changed lanes to the left." Clerk's Papers (CP) at 23. When the red pickup truck changed lanes, Himley and Newport saw a white passenger car "partially blocking the right lane of travel." CP at 23. The front end of the white vehicle "was about halfway into the [right] lane." CP at 23. Newport "slammed on [his] brakes," "laid on the horn," and was able to "stop approximately a foot or a foot and a half away from the white [car]." CP at 23.

Within seconds, a white pickup truck driven by Marilyn Barnes collided with the back of Newport's pickup truck. Barnes was injured in the accident.

When the State Patrol arrived, one of the troopers talked to Johnson. CP at 24 (FF 6). Johnson admitted that he had been driving the white vehicle and stated that he had been backing into his driveway when Newport's truck "came to a stop in front of him" and then the collision occurred. CP at 24.

II. PROCEDURE

The State charged Johnson with the vehicular assault. Johnson waived his right to a jury trial and the case proceeded to a bench trial.

A. TRIAL TESTIMONY AND CORPUS DELICTI OBJECTIONS

The State presented testimony from Himley, Barnes, Washington State Patrol Trooper Matthew Rabe, and Washington State Patrol Sergeant Charles Stewart. Johnson did not present any evidence. Johnson stipulated that Barnes suffered a broken patella in the incident.

1. HIMLEY'S TESTIMONY

Himley testified that she and Newport had been travelling west in the right lane of the highway when the vehicle in front of them braked briefly and then abruptly pulled into the left lane. When the vehicle pulled into the next lane, Himley "saw . . . a white car that was pulled half way into" their lane of travel. Report of Proceedings (RP) (Jan. 25, 2019) at 14. Himley testified that Newport "had to [immediately] slam on the brakes, and [they] missed hitting [the] car by a few feet." RP (Jan. 25, 2019) at 14, 17. "[A] few seconds later, [they] were hit from behind." RP (Jan. 25, 2019) at 14.

Himley further testified that when she and Newport initially saw the white vehicle, the vehicle's front end "was in the lane almost perpendicular to the white shoulder stripe[,] [a]nd the white shoulder stipe was about mid-way between the front and the back of the car." RP (Jan. 25, 2019) at 18. She estimated that "the car was half way of the car length into the lane." RP (Jan. 25, 2019) at 18.

2. BARNES'S TESTIMONY AND FIRST CORPUS DELICTI OBJECTION

Barnes testified that she was driving behind Newport's vehicle in "fairly heavy" traffic when Newport's vehicle suddenly stopped. RP (Jan. 25, 2019) at 27. Before Newport stopped, Barnes had noticed "out of the corner of [her] eye," that there was a vehicle very close to the highway near Johnson's driveway, but she could not "tell if [that vehicle] was moving or if it was

backing up or what." RP (Jan. 25, 2019) at 27. She commented that the vehicle "was out there so close to the highway that it was a concern." RP (Jan. 25, 2019) at 27. As she approached the vehicle, she tapped her brakes, quickly glanced in her mirrors, and then hit Tyler's truck.

Barnes did not recall if she had time "to really apply [her] brakes," but she testified that "[i]t was very fast" and that she did not think she could have acted any faster. RP (Jan. 25, 2019) at 29. She stayed in her vehicle until the ambulance crew took her away.

While in her vehicle, Barnes saw a trooper talking to Johnson, who was standing near a gate or fence. Barnes did not hear the entire conversation, but she heard Johnson responding to the officer.

When the State asked Barnes what she heard Johnson say, defense counsel objected. Defense counsel argued that Johnson's statements were inadmissible due to lack of corpus delicti. Specifically, defense counsel argued, "I don't believe any statements of my client's are admissible until they have put on evidence that he has committed a crime, and they haven't done that yet." RP (Jan. 25, 2019) at 32. Noting that this was a bench trial, the trial court responded, "I will hear [Barnes's answer]. If the State fails to establish corpus delicti, the trial is going to be over." RP (Jan. 25, 2019) at 32. Barnes then testified, "I heard him say, well, that's not my fault, that's hers." RP (Jan. 25, 2019) at 32.

3. RABE'S TESTIMONY AND ADDITIONAL CORPUS DELICTI OBJECTIONS

Rabe testified that when he arrived at the scene, Johnson "was standing on the shoulder of the road in front of the driveway" and the white vehicle was "facing forward" in the driveway.[2]

[2] Rabe also testified that Johnson's father and some other people were present, but Rabe did not remember who these other people were.

RP (Jan. 25, 2019) at 44-45. Rabe knew Johnson and knew that this was Johnson's driveway because of prior contact with Johnson at this location. Rabe also testified that Johnson was the white vehicle's registered owner.

When the State asked Rabe what Johnson had said, defense counsel objected on corpus delicti grounds. The trial court told defense counsel that he could move "later to dismiss asserting that the State ha[d] failed to establish the necessary elements of the corpus delicti of this crime," and that the court would not consider Johnson's statements if that motion had merit. RP (Jan. 25, 2019) at 47. The court assured defense counsel that it would consider the corpus delicti objection as a "continuing objection." RP (Jan. 25, 2019) at 47.

Rabe then testified:

> [Johnson] stated that he had pulled on to the shoulder of State Route 12, was backing into his driveway, and he heard brakes screeching, and once he got out of his car, he saw the vehicle in the middle of the road and the truck that was parked on the shoulder.

RP (Jan. 25, 2019) at 47. Rabe testified that the location of Johnson's vehicle was consistent with his description of having backed the vehicle into the driveway.

Rabe further testified that he spoke to Johnson a second time after talking to Newport. This time, Rabe stated that he had talked to Johnson about "the stop that [Rabe] made in 2015." RP (Jan. 25, 2019) at 49. The State then asked Rabe if Johnson had "acknowledge[d] any kind of fault for the collision." RP (Jan. 25, 2019) at 49. Rabe responded that "[Johnson] stated [that] it was [Barnes's] fault." RP (Jan. 25, 2019) at 50.

The State next asked Rabe if he had told Johnson that he was not allowed to back into his driveway the way he did. Rabe responded, "Yes, I did. It had been discussed." RP (Jan. 25, 2019)

at 51. When the State asked Rabe what Johnson's response was, Rabe responded, "He stated how else was he supposed to be able to get into his driveway." RP (Jan. 25, 2019) at 52. Rabe further testified that he believed Johnson had violated RCW 46.61.650(1), which prohibited unsafe backing.[3]

4. STEWART'S TESTIMONY

Stewart testified the he investigated the accident and spoke to both Barnes and Newport. Stewart also testified that when he arrived there was a white passenger vehicle "parked right next to the collision scene" in a driveway on Johnson's property. RP (Jan. 25, 2019) at 56. Stewart also identified Johnson as the defendant. Stewart stated that he knew both Johnson and his father and that Johnson was the white vehicle's registered owner.

B. DEFENSE MOTION TO DISMISS FOR LACK OF CORPUS DELICTI

After the State rested, defense counsel moved to dismiss the case for lack of corpus delicti. Defense counsel argued that there was no evidence that Johnson had been driving the white vehicle other than Johnson's statement to Rabe. Defense counsel also argued that there was no proof any crime was committed, only that a vehicle was partially on the roadway and that this caused "two other vehicles to stop." RP (Jan. 25, 2019) at 62.

The trial court denied the motion to dismiss and admitted Rabe's testimony that Johnson had stated that he was backing up when he heard the sound of the collision.

[3] RCW 46.61.605 addresses "Limitations on Backing," and provides: "(1) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic. (2) The driver of a vehicle shall not back the same upon any shoulder or roadway of any limited access highway."

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The trial court issued the following findings of fact and conclusions of law:

FINDINGS OF FACT

1.

On the evening of October 6, 2017, on westbound Highway 12 near milepost 3, near the intersection with Aberdeen Lake Road, a collision occurred between a black Ford F-350 pickup driven by Tyler Newport, and a white Ford Ranger driven by Marilyn Barnes. The collision occurred in Grays Harbor County, State of Washington.

2.

Just prior to the collision, the black Ford F-350 was in the right lane of the highway traveling west at about the speed limit. Mr. Newport, driving his vehicle, was paying attention as he drove. Seated with him in the passenger seat was his girlfriend, Hanna Himley. *The sun was going down* and it was sprinkling. The roadway was wet.

3.

In front of the Ford F-350 was a red pickup truck. That truck flashed its brake lights and abruptly changed lanes to the left. As soon as the red pickup moved over, Ms. Himley and Mr. Newport noticed a white Chevy Cavalier partially blocking the right lane of travel. The nose of the car was about halfway into the lane. Mr. Newport slammed on the brakes of his pickup truck and laid on the horn, coming to a stop approximately a foot or a foot and a half away from the white Cavalier. A couple seconds later, the Ford F-350 was struck from behind by the white Ford Ranger. This collision came without any warning.

4.

Ms. Barnes, driving the Ford Ranger, could see a white vehicle near the side of the road as she approached the site of the collision. She was traveling at or about the speed limit. She could not tell if the white vehicle was stopped on the side of the road or was in motion. Her attention was heightened by the vehicle on the side of the road and she briefly tapped her brakes. When the Ford F-350 applied its brakes she applied her brakes as quickly as she could, but was unable to come to a stop without striking the F-350 from behind.

5.

Due to the collision, Ms. Barnes suffered a laceration above her eye and a broken patella, or kneecap. She was treated by paramedics at the scene, taken to Grays Harbor Community Hospital, and then taken to Harborview Medical Center where doctors diagnosed her fractured patella.

6.

Washington State Patrol Troopers responded, spoke with the parties involved in the collision, and spoke with the Defendant. *He admitted to driving the Cavalier. He was backing his vehicle into his driveway, which accesses the westbound side of Highway 12, immediately before the collision*. The Defendant had placed his vehicle in reverse and was backing into his driveway when the F-350 came to a stop in front of him. His vehicle was not struck.

Based upon the foregoing findings of fact, and testimony of the witness at trial, the [c]ourt enters the following conclusions of law:

CONCLUSIONS OF LAW

1.

The court has jurisdiction over the parties and subject matter herein.

2.

The Defendant drove a motor vehicle in Grays Harbor County on October 6, 2017, in the State of Washington.

3

The Defendant operated his motor vehicle with disregard for the safety of others. Bringing a motor vehicle to a complete stop on a busy highway and obstructing traffic, either wholly or partially, let alone operating a motor vehicle in reverse on the shoulder and turning in a manner where part of the vehicle enters the flow of traffic, are maneuvers that, especially in busy traffic conditions, are highly dangerous. Such maneuvers put not only the driver in danger, but also every other motorist on the highway. Motorists do not expect, when driving at highway speeds, to see a vehicle at a stop in their lane of travel. Such a maneuver is flatly dangerous. Therefore, intentionally performing such a maneuver is done with disregard for the safety of others.

4.

> The manner in which the Defendant operated his motor vehicle was the proximate cause of the substantial bodily harm suffered by Ms. Barnes. Mr. Newport, driving the F-350, faced with the sudden sight of the Defendant's vehicle in his lane of travel, applied his brakes and was fortunately able to stop short. Ms. Barnes saw the white vehicle on the side of the road, appropriately had her foot on her brake, and applied her brakes without any delay or hesitation as soon as she saw Mr. Newport's F-350 apply its brakes. There is no basis to find that Ms. Barnes was following too closely or otherwise driving negligently. When confronted with an emergency that is no fault of one's own, and when a person so confronted with an emergency acts reasonably, such as applying brakes as soon as possible, that person's response is not a subsequen[t] intervening cause. Mr. Newport acted reasonably in driving. Ms. Barnes acted reasonably in driving. There being no evidence of any other intervening causes, the Defendant's driving is therefore the proximate cause of this collision.

5.

> The fractured patella suffered by Ms. Barnes, stipulated to by the Defendant, is an injury of substantial bodily harm.

CP at 22-25 (emphasis added). Based on these findings of facts and conclusions of law, the trial court found Johnson guilty of vehicular assault.

Johnson appeals his conviction.

ANALYSIS

Johnson argues that (1) the trial court erred when it found that the State had established corpus delicti and denied Johnson's motion to dismiss, and (2) the evidence was insufficient to establish that his actions were the proximate cause of Barnes's injuries. He raises several additional issues in his SAG. All of these arguments fail.

I. CORPUS DELICTI

Johnson first argues that the trial court erred in denying his motion to dismiss the case for lack of corpus delicti because there was no independent proof that he drove or operated his vehicle

with disregard for the safety of others and, therefore, no independent proof that he committed a criminal act that caused Barnes's injuries. We disagree.

A. LEGAL PRINCIPLES

Under the corpus delicti rule, a defendant's self-incriminating statements cannot be the sole supporting evidence of the conviction. *State v. Dow*, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010). The State must produce independent evidence other than the defendant's self-incriminating statement to provide prima facie corroboration that the crime described in the defendant's statement actually occurred, but this evidence need not be sufficient to support the conviction on a sufficiency of the evidence basis. *State v. Brockob*, 159 Wn.2d 311, 328, 150 P.3d 59 (2006).

The independent evidence need only "provide prima facie corroboration of the crime described in a defendant's incriminating statement." *Brockob*, 159 Wn.2d at 328 (emphasis omitted). "Prima facie corroboration of a defendant's incriminating statement exists if the independent evidence supports a 'logical and reasonable inference of the facts sought to be provided.'" *Brockob*, 159 Wn.2d at 328 (internal quotation marks omitted) (quoting *State v. Aten*, 130 Wn.2d 640, 656, 927 P.2d 210 (1996)). Additionally, "the independent evidence 'must be consistent with guilt and inconsistent with a[ ] hypothesis of innocence.'" *Brockob*, 159 Wn.2d at 329 (alteration in original) (internal quotation marks omitted) (quoting *Aten*, 130 Wn.2d at 660).

We review de novo whether sufficient corroborating evidence exists to satisfy the corpus delicti rule. *State v. Hotchkiss*, 1 Wn. App. 2d 275, 279, 404 P.3d 629 (2017), *review denied*, 190 Wn.2d 1005 (2018). We review the evidence under the corpus delicti rule in the light most favorable to the State. *Brockob*, 159 Wn.2d at 328.

B. EVIDENCE OF A CRIME

Johnson was charged and convicted under RCW 46.61.522(1)(c). Under that statute, "[a] person is guilty of vehicular assault if he or she operates or drives any vehicle . . . [w]ith disregard for the safety of others and causes substantial bodily harm to another." RCW 46.61.522(1)(c). Johnson argues that the only evidence that he drove or operated his vehicle with disregard for the safety of others is the testimony that he was in his vehicle while "the nose of his car [was] about halfway into the lane of oncoming traffic on a rural highway." Appellant's Opening Br. at 3. He contends that these facts do not establish a crime because he could have been pulling out of his driveway into the road, his car could have stalled, or there could have been some other "innocent mishap preventing him from moving out of the way of oncoming traffic."[4] Appellant's Opening Br. at 15.

But Johnson ignores Barnes's testimony that when she saw the white vehicle before Newport suddenly stopped, the white vehicle was near to, but not in the roadway. Between the time Barnes noticed the white vehicle and the time Newport and Himley saw the vehicle and stopped, it had pulled significantly into the right lane of travel. Regardless of whether Johnson was going forward or backward, pulling into the lane of travel of a freeway while other vehicles are present is sufficient evidence to establish that Johnson had driven with disregard for the safety of others for purposes of the corpus delicti rule. And the facts of the short amount of time between Barnes seeing the vehicle near to but not in the roadway and Newport and Himley finding the vehicle halfway into the roadway, are inconsistent with an innocent explanation such as Johnson's

[4] Although Johnson also challenges the sufficiency of the evidence of causation and identity, he does not raise corpus delicti issues with regard to those elements.

vehicle stalling or experiencing some "mishap" that kept him from pulling out of the way. Appellant's Opening Br. at 15.

Barnes's and Himley's testimonies, considered together, establish that Johnson pulled his vehicle into the right lane of travel and provide independent corroborating evidence demonstrating that he drove his vehicle with disregard for the safety of others that was inconsistent with innocence. Therefore, there was independent proof that he committed a criminal act that caused Barnes's injuries. Because there was sufficient evidence to establish corpus delicti, we hold that the trial court did not err when it denied Johnson's motion to dismiss based on lack of corpus delicti.

II. EVIDENCE OF PROXIMATE CAUSE

Johnson next argues that the evidence was insufficient to establish that his actions were *the* proximate cause of Barnes's injuries because the evidence proved that Barnes's own conduct of following too closely and failing to brake in time after observing the white vehicle was close to the highway were a superseding intervening cause of the accident. We disagree.

The test for determining sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). Following a bench trial, we review a trial court's ruling to determine whether substantial evidence supports the trial court's contested findings of fact and whether the findings of fact support the conclusions of law. *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). We treat findings of fact supported by substantial evidence and unchallenged findings of fact as verities on appeal. *Homan*,

181 Wn.2d at 106. We review de novo challenges to the trial court's conclusions of law. *Homan*, 181 Wn.2d at 106.

Johnson's arguments are not legally supported. First, the State was not required to prove that Johnson's actions were *the* sole proximate cause of Barnes's injuries. The State was only required to prove that Johnson's actions were *a* proximate cause of Barnes's injuries. *State v. Neher*, 112 Wn.2d 347, 348, 350-352, 771 P.2d 330 (1989). Second, only intervening acts that are not reasonably foreseeable qualify as superseding events. *State v. Roggenkamp*, 115 Wn. App. 927, 945, 64 P.3d 92 (2003), *aff'd*, 153 Wn.2d 614, 106 P.3d 196 (2005); *see also* WPIC 90.08[5]. And the possibility that a vehicle on a highway may be following another vehicle too closely to brake in time under these circumstances is reasonably foreseeable, so Barnes's actions could not be considered a superseding cause.

Johnson does not establish that the evidence was insufficient to establish the required proximate cause.

III. SAG

In his SAG, Johnson appears to assert that he never spoke to Rabe about the accident and that Rabe's testimony was insufficient to establish that Rabe spoke to him (Johnson) because Rabe only referred to "Mr. Johnson;" there were four "Mr. Johnsons" present that evening; and he, Johnson, was inside the house avoiding Rabe. SAG at 2-3. But the evidence presented at trial established that Rabe, who knew Johnson because of prior contacts, spoke to Johnson and this evidence supports the trial court's finding.

[5] 11A WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: criminal 90.08 at 278 (4th 2d. 2016) (WPIC).

Johnson also appears to challenge Barnes's testimony that she saw him standing by a fence or a gate, her testimony about where the speed limit changed, and her testimony about the nature of the surrounding area. The trial court made no findings related to these facts, so they are not relevant to the court's verdict and these claims do not establish that Johnson is entitled to relief.

Johnson appears to assert that his father arrived at the scene immediately after the accident, placed his car behind Barnes's car, and activated his flashers to warn approaching traffic. But there was no testimony about these facts, nor would they be relevant to the trial court's verdict. Accordingly, this claim does not establish that Johnson is entitled to relief.

Johnson further appears to challenge the trial court's finding that "[t]he sun was going down"[6] at the time of the accident because, according to the internet, the sunset occurred at 6:44 pm, under RCW 46.37.020[7] it is dark a half-hour after sunset, and the accident occurred at 7:19 pm. But Himley's testimony that it was dusk but not yet dark when the accident occurred supports this finding of fact.

[6] CP at 23.

[7] RCW 46.37.020 provides:

> Every vehicle upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand feet ahead shall display lighted headlights, other lights, and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, and such stop lights, turn signals, and other signaling devices shall be lighted as prescribed for the use of such devices.

Johnson appears to assert that Rabe had announced that it was the white vehicle's fault before any investigation occurred. But Rabe's conclusion is not relevant to the trial court's decision.

We hold that (1) the evidence was sufficient to establish corpus delicti, so the trial court did not err when it denied Johnson's motion to dismiss, (2) the evidence was sufficient to establish that Johnson's actions were a proximate cause of the victim's injuries, and (3) Johnson's SAG issues fail. Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.

SUTTON, J.

We concur:

, C.J.

LEE, C.J.

Glasgow, J

GLASGOW, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 53189-5-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: February 3, 2021
Washington Appellate Project

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