

original

No. 33848-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DIANNA LYNN, AS PERSONAL REPRESENTATIVE FOR THE
ESTATE OF DORI CORDOVA AND AS GUARDIAN AD LITEM FOR
TROY PHILLIPS,

Appellants

v.

LABOR READY, INC., a for-profit Washington corporation,

Respondents.

BRIEF OF APPELLANTS

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I. INTRODUCTION

This appeal arises out of the tragic death of a young mother, Dori Cordova. The death was caused by Lawrence Owens, a repeat violent sex offender and his employer, respondent Labor Ready, who placed this sex offender at the YWCA where he used the tasks, premises, or instrumentalities entrusted to him to endanger and kill Dori Cordova, who was a current YWCA client seeking its services at the time. Labor Ready had been placed on direct notice that Owens was a dangerous sex offender that should not have had any access to women, let alone vulnerable women, but the trial court granted summary judgment to Labor Ready.

The unsettled (and unsettling) question in this case is how the trial court could find a clear legal duty and then not find legal causation, when under Washington law (*Taggart*), the finding of legal duty is directly corollary to a finding of legal causation. In this case especially, legal causation should have been found because the Respondent corporation, a professional and sophisticated employer, affirmatively and knowingly chose to place a dangerous sex offender in a position at a YWCA women's shelter where he had ready access to vulnerable women after that corporation was on direct notice that he was wholly unqualified to be anywhere near women. Labor Ready chose to ignore direct knowledge of this danger, which allowed a violent sex offender to befriend, stalk and kill

an unsuspecting and vulnerable mother and YWCA client trying to obtain YWCA services. Appellants ask the Court to reverse and remand for trial.

II. ASSIGNMENTS OF ERROR

The trial court erred in granting summary judgment to Labor Ready, and in entering its Order Granting Respondent's Motion for Summary Judgment on September 9, 2005.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Under Washington law, after the trial judge has determined that there is a legal duty, does legal causation exist under Washington law in a wrongful death claim where Labor Ready, a professional employer, knowingly places a dangerous sex offender at a women's shelter where he uses the instrumentalities of his job to endear himself to a vulnerable woman attempting to use the services of that shelter and later kills her? **Yes.**

2. Under Washington law, after the trial judge has determined there is a legal duty, should proximate causation be left to a jury to decide in a wrongful death claim where Labor Ready, a professional employer, knowingly places a dangerous sex offender at a women's shelter where he uses the instrumentalities of his job to endear himself to a vulnerable woman attempting to use the services of that shelter and later kills her? **Yes.**

IV. STATEMENT OF THE CASE

The trial court in this case agreed that there was a legal duty owed by Respondents and that there were significant issues of material fact, but dismissed the case on legal and proximate causation, in direct opposition to all Washington Supreme Court law on causation. (RP 3, 26). The trial judge stated directly "I do think there is a duty." (RP 26) According to

the Washington State Supreme Court in *Taggart* and every Washington Supreme Court case discussion causation: “The question of legal causation is so intertwined with the question of duty that the former [legal causation] can be answered by addressing the latter [duty]. *Taggart* 118 Wn.2d at 226. Consistent with the Washington Supreme Court’s precedent on legal causation, with the trial court’s clear finding of a legal duty, the trial court should have also found legal causation. This Court must take “all facts submitted and all reasonable inferences from them in the light most favorable to the” nonmovants, Appellants. *First Class Cartage, Ltd. v. Fife Service & Towing, Inc.*, 121 Wn. App. 257, 261, 89 P.3d 226 (2004).

A. THE PLAINTIFF WAS AN INNOCENT VICTIM TO A VIOLENT, FORESEEABLE EVENT.

On March 17, 2004, YWCA client Dori Cordova, a homeless and desperate young mother, was assaulted and then shot and murdered at close range with a 12 gauge shot gun by Lawrence Owens, a Level 3 sex offender and Labor Ready employee placed at the YWCA shelter where he met Dori when she was looking for transitional housing. CP 459-468. 474-498, 616-619. Dori was displaced by a series of fires at the Jensonia Hotel and was staying at the Red Cross shelter at the Miller Community

Center¹; she was on her way to move into a YWCA facility when she was murdered by Labor Ready employee and YWCA worker Lawrence Owens. CP 485-489. Dori's murder was gruesome. CP 498 and 666-673.

B. LAWRENCE OWENS WAS A VIOLENT SEX OFFENDER WITH A HISTORY OF ASSAULTIVE, BRUTAL AND MANIPULATIVE BEHAVIOR

Lawrence Owens was a level III sex offender (highest likelihood to reoffend). CP 1211. On November 21, 1997, Owens was sentenced to 75 months for his fourth, fifth, sixth and seventh felonies, which included Assault-Second Degree, Unlawful Imprisonment, Unlawful Possession of a Firearm-First Degree and Assault-Second Degree with Sexual Motivation. CP 1211-1212. Owens' dangerous propensities and criminal history included a propensity to stalk and threaten women with shotguns, exactly what Owens did in this case, as testified to by an expert in violent offenders William Stough. Id. Owens' criminal history included horrendous and grossly violent assaults on women, threats to kill women, violent rapes of women, violent and sexual kidnappings of women, illegal purchases of handguns and shot guns. (CP 975-984, 1140-1191, 1033-1138, 975-984, 986-990, 1086-1101, 1062-1064, 1052-1053, 1055-1060, 1066-1084, 1042-1050, 1020-1029, 1038-1040, 934-936.)

¹ Dori was not in a dating relationship with Owens at the time of her murder, nor did she ever live with Owens. CP 502. See also CP 661 demonstrating Dori's homelessness.

As testified by expert Stough:

I have personally supervised on parole and probation over 50 sex offenders. Owens would be on the high end of violence and likelihood to re-offend based on my own experience.

CP 936-937.

C. DORI CORDOVA WAS A PRESENT AND PAST CLIENT OF THE YWCA AT THE TIME SHE ENLISTED THE SERVICES OF LAWRENCE OWENS AT THE YWCA.

Dori began working with Gerry Ketchum, a Work First Specialist with the Department of Social and Health Services on December 15, 2003. Dec. of Ketchum, CP 1236-1237, CP 636-642. DSHS Specialist Ketchum worked with Dori and saw her in person on many occasions from December 15, 2003 through the time of her death on March 17, 2004. CP 1236. Dori was a client of the YWCA at all times relevant to this case, as Gerry Ketchum of DSHS testified:

Dori was reliant on several different agencies for help. At the time that I worked with Dori Cordova, she had an advocate at the YWCA and was a current client of the YWCA.²

CP 1236.³

² Dori's YWCA advocate was Traci Underwood, as confirmed in the Red Cross records at CP 510-513.

³ See also CP 664, showing materials found in Dori's pockets upon her murder, which included the e-mail address of her YWCA worker

DSHS caseworker Gerry Ketchum further testified:

Dori Cordova was always on the verge of homelessness at the Jensonia and was consistently looking for a better housing situation, including transitional housing at the YWCA.

[I] do know that Dori was looking for transitional housing in January of 2004 and that she was using the YWCA facility called Opportunity Place which is located on 3rd and Lenore where she applied for her housing and used other resources at that location.

CP 1238.

Dori's best friend, Rebecca Rojas, testified:

I also had conversations with Dori in December of 2003 and learned that she was actively involved with the YWCA and had an advocate or was getting an advocate with the YWCA.

CP 1246-1247.

Besides being a present client of the YWCA, Dori was a past client of the YWCA. She had received YWCA vouchers for housing and transportation; Dori was also a member of the YWCA's Project Self Sufficiency Program from 2000 to 2001, where the YWCA helped Dori with employment, training workshops, childcare, education, parenting,

eapostol@ywcaworks.org and also the number of her social worker Othello Howell. CP 745.

homelessness and rent assistance. CP 693-734. Dori was also in the process of moving into the 5th Avenue YWCA when she was murdered by Lawrence Owens, as testified by Seattle School's Family Support Worker Nicole Wagner:

On the day that Dori Cordova was murdered, she had an appointment at the Fifth Avenue YWCA to obtain temporary emergency shelter for herself and Troy.

CP 1260.

Two residents of the Jensonia, who were at the Red Cross shelter, heard Dori tell Troy that they would be moving to a YWCA shelter:

I specifically recall Dori Cordova talking to her son about the fact that they would be moving to the YWCA shelter.

CP 1274-1276.

As stated in the Red Cross records of March 16, 2004:

Dori contacted YWCA downtown who agreed to accept her there for 45 days. She will have her son with her there. Client states emergency needs met.

CP 512.

D. YWCA CLIENT DORI CORDOVA MET LAWRENCE OWENS IN JANUARY OF 2004, AT THE YWCA WHERE HE WORKED AND OWENS USED THE INSTRUMENTALITIES OF HIS EMPLOYMENT TO WIN DORI'S TRUST.

Owens started at the YWCA in early January, 2004. Dori Cordova first met Lawrence Owens at the YWCA Opportunity Place in January 2004, where Owens promised to use YWCA instrumentalities, his "connections", to help Dori obtain YWCA housing. Rebecca Rojas, Dori's best friend, testified:

It was around this time, mid January, that Dori told me that she had met Lawrence Owens while looking for housing at the new YWCA apartments. Dori told me that she did not know that Lawrence Owens lived at the Jensonia until she met him at the YWCA apartments where he worked. I personally heard Owens continuously promise Dori to help her with her housing by getting her on a waiting list at the YWCA Opportunity Place Apartments where he worked. I also witnessed Mr. Owens help Dori apply at the Lexington Apartments in mid-January 2004, which was owned by the YWCA and also located in Belltown near the newer Opportunity Place Apartments. It was my understanding based on the conversations with Larry Owens that the waiting list at the Opportunity Place Apartments was long because it was a newer facility and that he could use his YWCA connections to get Dori into the YWCA Lexington Apartments until there was an apartment ready for her at the YWCA Opportunity Place.

CP 1245-1246.

Michael Phillips, Dori's long-term love interest⁴ and father of Dori's son Troy, met Lawrence Owens in late January, prior to Dori's February birthday, outside the Jensonia hotel when Dori introduced Owens to Michael as someone who worked at the YWCA Opportunity Place helping her to obtain YWCA services. CP 451.

The closest person to Lawrence Owens, his long-time girlfriend, Pamela Van Sittert, confirmed when Owens met Dori:

From the time that he was released from prison in September of 2003 until the time of our break up in early February 2004, Lawrence and I talked on a daily basis. Lawrence spent the holidays with me here in Tacoma in 2003 and 2004.

Based on my conversations with Lawrence, my conversations with his mother and the dynamics of our relationship, as described above, Lawrence met and started a friendship with Dori Cordova sometime after January of 2004.

⁴ The fact that Michael Phillips was Dori's love interest is confirmed with documentation. CP 539. Michael Phillips visited Dori at the Red Cross Shelter on March 12, 2004 and also arrived at Miller Community Center to see her on the day she was murdered 30 minutes after she was gunned down. See CP 520 at 3:01 p.m. Most importantly, Dori's hand-written letter in her possession that she wrote to Michael dated March 13, 2004, states:

Dear Mikey Fresh:

This is your girlfriend and son. We are writing this letter because we miss you. We are getting ready for church tomorrow. We are glad that we are going to be a family again. Mike I just want to let you know how happy I am that we are going to be together.

CP 539.

Also, the records reflect that neither Dori nor Troy ever arrived or left with Owens, Dori was not seen at the shelter with Owens and moved to another cot to get away from Owens at the shelter. CP 515-527.

CP1256-1257.

Gerry Ketchum, Dori's DSHS case worker, specifically talked to Dori and testified that she met Lawrence Owens in January of 2004, after he started working at the YWCA and specifically recalled the first conversation related to Owens as being January 15, 2004.⁵ CP 1237-1238.

Roland Akers, Community Liaison with Reclaiming Futures, testified that Dori was on the verge of homelessness when he talked to her in late January 2004, but that she had met an employee of the YWCA (Owens) who was helping her find shelter at the YWCA. CP 1268. Dori was vulnerable and trusted Owens due to his YWCA link. CP 1268.

Seattle School District Family Support Worker Nicole Wagner, knew Dori Cordova because her son Troy Phillips was a student at Gatzert Elementary School where Ms Wagner worked to help families in need. Ms. Wagner testified about a conversation she had with Dori on March 10, 2004, wherein Dori declared that she did not know Owens well or for long and that Owens was helping her with her housing needs. CP 1258-1259.

As Dori's social worker and counselor, therapist Othello Howell also learned information regarding the nature and timing of Dori's

⁵ The fact that Dori lived on a different floor than Owens at the Jensonia is confirmed by many records, including the Red Cross records at CP 510-513, showing that Dori lived on the second floor (Owens lived in the 3rd floor. Also, because Dori moved apartments so much at the Jensonia, she used a Post Office Box or her apartment 204 (a different floor than Owens) as her permanent addresses from December 2003 through March 2004, as confirmed by CP 529-536. This is

relationship with Owens, based on meetings with Dori at the Jensonia on December 5, 8, 11, 15, 19 and 27, 2003; January 9, 22 and 29, 2004; and February 12, 19 and 25, 2004. The first time that Mr. Howell learned of Owens, which he documented, was on February 25, 2004. CP 1214, 1216-1217, 1233-1235.

Senior Pastor Richard Thompson of the International Christian Fellowship also testified that a man who worked at the Seattle YWCA (Owens), who also knew of Dori's drastic housing need, was "making plans" for getting her into a YWCA facility. CP 1241-1242.

Margaret Baldarama, Troy's social worker at Gatzert Elementary, also recalled, based on a record she made on February 27, 2004, that this date was the first time that Dori had mentioned Owens, also testifying:

It was at this meeting that I recall Dori telling me, upon my probing, that she had only known Mr. Owens for a few weeks before this time. I also recall Dori telling me that Lawrence Owens was attempting to help her out with her situation as far as finding employment and a permanent place to live.

CP 53-54.

Donald White, owner of White's Drywall and long-time friend of Dori, talked to her in mid-January 2004 regarding her impending eviction:

especially confirmed in the Statement of Landlord to DSHS, wherein Dori states her address as Apt. 204. CP 630-634. See also CP 675-676, Dori's Washington Identification Card.

I learned that Dori was actively seeking employment and Dori told me that she had met a janitor by the name of Lawrence at the YWCA Opportunity Place Apartments and this gentleman worked at the YWCA and had connections to help her get a place to stay there at the new YWCA apartments.

Dori's housing situation for herself and Troy was desperate and based on my conversation with her, she trusted in this man named Lawrence because he worked at the YWCA, which helps women and children.

CP 1272.

Vernon Torrey, a merchandiser at Gais Bakery, knew Dori for 13 years and knew of desperate situation when he spoke to her in January of 2004, as he testifies:

I specifically recall Dori telling me that she had just met a man within the last two weeks named Larry at the YWCA that was helping her to get housing at the YWCA.

I specifically recall Dori saying that this guy that she met named Larry told her that he had connections at the YWCA and that he could get her into a stable YWCA apartment in Belltown. Dori was very vulnerable during this time and desperate for help with regard to her housing.

Dori told me that she trusted Larry because he worked at the YWCA and had connections at the YWCA to get her into stable housing.

CP 1262.

Rene Bonds, a YWCA employee who kept Dori's son during the time of the Jensonia fires also testified:

I knew Dori Cordova before her son Troy was born. Troy is now 11 years old. Troy lived with me immediately after Dori's murder. In February and March of 2004, I had frequent contact with Dori. This is the first time that Dori mentioned to me the name Larry.

CP 1269.

One of Dori's closest friends and relatives, Michelle Phillips also clarified that Owens was using his YWCA instrumentalities on Dori:

The first time Dori Cordova ever mentioned Lawrence Owens was when she called on her birthday which was February 12, 2004. She told me that she was having dinner with a friend named Larry that she had recently met at the YWCA. She informed me that Larry worked at the YWCA and that she met him there when she went to look for temporary housing. Dori had been repeatedly locked out of the Jensonia Apartments for failure to pay rent and she was very desperate for housing. She informed me that her new friend Larry had connections at the YWCA and that he was actively helping her to find housing through the YWCA through his connections at work.

CP 1265-1266.

Appellants satisfied the trial court that there was a material issue of fact showing that Owens did not know Dori until she met him in his capacity as a YWCA employee in 2004, shortly before the murder. This

evidence also satisfied the trial court that there was a legal duty, based upon the facts of this case. A finding of legal causation should have followed.

E. LAWRENCE OWENS, USING THE INSTRUMENTALITIES OF HIS EMPLOYMENT, HELPED DORI APPLY FOR HOUSING AT THE YWCA IN LATE JANUARY, 2004.

Appellants provided competent factual and expert testimony that Labor Ready's employee Owens used the instrumentalities of his employment to meet and obtain access to a vulnerable woman and YWCA client. As testified to by sex offender expert, William Stough, who has supervised over 50 violent sexual offenders and supervised an entire work release unit for many years in downtown Seattle:

Based on my expertise in supervising sex offenders like Mr. Owens, it is my experience that sex offenders will use any and every affiliation and angle to earn the trust of potential victims. A sex offender will definitely use positive affiliations to obtain new victims, such as affiliation with organizations that service a population of potential victims. This is what occurred in this case; Owens used his affiliation with the YWCA, including the name and reputation of this public service organization, to access a vulnerable woman and child that the YWCA served. Labor Ready's placement of Lawrence Owens at any YWCA establishment is literally the equivalent of "sending a child molester to work at a day care facility." It was highly foreseeable that Owens would use his affiliation with the

YWCA and the YWCA's reputation and brand to obtain access to new victims, such as Dori Cordova, who used YWCA services.

CP 932, 937-938.

As testified by University of Washington School of Business

Professor Chad Higgins:

In my professional opinion, Owens was very savvy and manipulative and used the tasks of the YWCA, premises of the YWCA and the instrumentalities entrusted to him by the YWCA to endanger Dori Cordova. Specifically, Labor Ready entrusted the tasks of the YWCA to Owens by knowingly permitting a dangerous sex offender to have access to an organization that serviced vulnerable and needy women. It is also my understanding based on the evidence that Owens met with Dori at the premises of the YWCA and promised to help Dori obtain housing at the location where he worked and at other YWCA locations, using the premises of the YWCA to obtain Dori's trust.

It is also my understanding that the instrumentalities of a job can include the reputation of the employing agency, the known mission and goal of the employing agency and one's affiliation with that agency. It is apparent that Mr. Owens used every aspect of the instrumentalities of his employment in these regards to endanger Dori Cordova. Dori was very familiar with the YWCA and was an active client of the YWCA, which has a mission of helping women in her predicament, which included needs for shelter and employment, and Owens specifically used the reputation and

mission of the YWCA to exploit this vulnerable woman, which was very predictable. Specifically, Labor Ready knew that because of the vicious temperament and propensities of their employee, Lawrence Owens, he was likely to assault another female after using the instrumentalities of his employment.

CP 760-761.

Lawrence Owens, Labor Ready's employee and known sexual predator sent to work at the YWCA, used his instrumentalities and connections at the YWCA to help Dori apply for YWCA housing. CP 1216, 1225-1231. With Owens' help and counseling, Dori applied for YWCA housing at the YWCA owned Lexington-Concord Apartments, a fact documented in Mr. Howell's counseling records of January 21, 2004:

On January 21, 2004 this therapist is visiting Dori Cordova and Troy in their home. She stated that she has another job interview coming up and that she has also identified another house where she can live and it is much netter than the hotel where she is living now. It is the Lexington House that is owned and run by the YWCA and she has submitted her application for that.

CP 1227.

Dianna Lynn witnessed Owens use of the instrumentalities of the YWCA to harm Dori when she went into the YWCA Opportunity Place with Dori to meet Lawrence Owens. CP 436-440. Ms. Lynn also went to

the YWCA Lexington Concord Apartments with Dori on January 25, 2004, where Dori had applied for housing. CP 438-439

The fact that Owens used the instrumentalities of the YWCA is also confirmed by Michael Phillips, who had a conversation with Lawrence Owens in January of 2004, testifying:

Q. And did you actually have a conversation with Owens?

A. Well, actually he stepped in and just told me he was strictly there to help her (Dori) to get housing, he worked down at the Y(WCA).

CP 451-452.

According to Michael Phillips, Lawrence Owens made representations that he was:

Trying to help her get housing, like I said, at the Opportunity Place Downtown, or he said that he had connections at the Lexington House through the YWCA.

CP 454.

F. LABOR READY HAD AFFIRMATIVE KNOWLEDGE AND WAS PUT ON DIRECT NOTICE BY OWENS PAROLE OFFICER THAT OWENS WAS A LEVEL 3 SEX OFFENDER AND A DANGER TO WOMEN PRIOR TO HIS PLACEMENT AT THE YWCA.

Eileen Fermanis, the Department of Corrections Community Corrections Officer (“CCO”) for Lawrence Owens worked in the Special

Assault Unit. CP 407-408. Owens was on CCO Fermanis caseload because he was a violent Level 3 sex offender, the highest level to reoffend. CP 410. Lawrence Owens was released from incarceration September 24, 2003, and on that date, the Department of Corrections and his Community Corrections Officer (“CCO”), Eileen Fermanis, began actively supervising Owens on community custody status (essentially supervised as an inmate in the community). CP 1211.

CCO Fermanis had contact with Lawrence Owens at least once a week. CP 1211. One of the primary supervision topics for CCO Fermanis with Owens was making sure that Owens was employed. CP 1211. In that regard, CCO Fermanis talked to Owens over 20 times about job prospects from the time of his release through December of 2003. CP1211. On December 4, 2003, Owens informed CCO Fermanis that he was looking into of a job at Labor Ready. CP 1211. Owens informed CCO Fermanis that he was working for Labor Ready as of December 10, 2003, as reported in her records. CP 409-410. CCO Fermanis informed Owens that she would tell his employers that he was a Level 3 sex offender. CP 412-413. CCO Fermanis, concerned about Owens’ criminal history and wanting to make sure that he was not placed in a position where he could harm another woman, specifically contacted Labor Ready on three occasions to warn them of his danger, as she testifies:

Because of Owens' criminal history and background, I specifically contacted Labor Ready on several different occasions while supervising Mr. Owens, since Labor Ready was his main source of employment while he was under my supervision. My practice is to contact all individuals who are involved with offenders that I am supervising to advise them of the offender's risk level and of other pertinent information that may provide safety and structure.

I specifically contacted Labor Ready and spoke to several individuals about Lawrence Owens' criminal risk, including Labor Ready branch manager Shauna Rossio, a customer service representative named Michael.

I specifically informed and advised Labor Ready that Lawrence Owens was a Level 3 sex offender on at least 3 or more occasions after December 10, 2003.

CP 1211-1212; See also CP 1201-1203, a documented e-mails on this issue.

As CCO Fermanis testified, regarding her communication with Labor Ready regarding Lawrence Owens:

What I recall is that I spoke with several of the employees there[.] And we had contact before [with Labor Ready] because a lot of people in the department use the temporary agencies because it's really a good way to get people back in the workforce, particularly people that have a big stretch in their work history. So I had been pretty familiar with them. And what I told them . . is that Mr. Owens is a Level 3 sex offender;

he's being supervised in our unit; he's recently released from prison[.]

CP 412-413. As CCO Fermanis further testified:

Q. And just to make sure on the record now, am I correct that you made contact with a person named Shauna at Labor ready with respect to Lawrence Owens prior to the point that he killed Dori Cordova?

A. I believe so.

Q. And how would you rate your level of certainty about that?

A. Oh, I'm very certain[.]

CP 413.

CCO Fermanis testified that she specifically contacted Labor Ready Manager Shauna Rossio regarding Owens to make sure that his status as a level 3 sex offender was known to them because there are "certain safety issues" to be concerned about, including "community safety." CP 414. Labor Ready blatantly ignored Fermanis' serious warnings:

Q. Did anyone at any point from Labor Ready consult with you about placing Lawrence Owens in an environment where there was a shelter situation, with single women who were trying to get their lives back together?

A. No.

Q. Based on your experience, would it have been an appropriate job placement to place Lawrence Owens, with his level 3 sex offender status, into a position where he had contact with women who were in a shelter situation at the YWCA?

A. It would not have been appropriate, no.

CP 415-416. As testified by CCO Fermanis:

Usually women that are involved in those kinds of situations (needing shelter) are considered, by myself and the Department (of Corrections) as vulnerable adults. And you don't want to be exposing women that are experiencing difficulties in their own life to be exposing to individuals who may manipulate them or harm them.

CP 416.

Labor Ready ignored these warnings and all reason when it placed Owens at the YWCA, a woman's shelter. Lawrence Owens girlfriend, Pamela Van Sittert, confirms that Labor Ready knew that Owens was a felon when it sent him to the YWCA:

I was familiar with Eileen Fermanis, his parole officer. I knew that Ms. Fermanis was aware that Lawrence was working for Labor Ready and for the YWCA. It was also my impression based on my conversations with Lawrence that the YWCA was aware that he was a convicted felon and had a criminal history.

CP 1257.

G. LABOR READY TESTIFIED THAT LAWRENCE OWENS WAS A VICIOUS PERSON, UNFIT AND INCOMPETENT TO WORK AT THE YWCA.

Labor Ready manager Shauna Rossio testified that she hired, employed and placed a vicious person, Lawrence Owens, at the YWCA women's shelter:

Q. Based on . . . Lawrence Owens criminal history . . . would you agree that Lawrence Owens was a vicious person?

A. Yes.

CP 389-391.

Q. In your opinion, was Lawrence Owens' actions in murdering Dori Cordova, was that consistent with his criminal history of assaulting women?

A. Consistent as far as that he was violent.

Q. Violent against women in particular?

A. Yes.

CP 399.

Shauna Rossio agreed that based on Lawrence Owens criminal history, he was incompetent and unfit to work in a facility where he would have contact with women and children. CP 395-396. She testified:

Q. In your opinion, based on the information in Exhibit 2 (Owens' criminal history) would Lawrence Owens be incompetent or unfit to work in a facility

where he would have contact with women or children?

A. In my opinion, I wouldn't agree it would be a good for him to work with women and children.

Q. Are you saying that he should not, in your opinion work with women and children based on the information in Exhibit 2 (Owens criminal history)?

A. Yes, I'm saying he should not work with women and children, based off this information, in my opinion.

CP 395-396.

H. LABOR READY KNEW THAT THE YWCA WAS A SAFE HAVEN FOR WOMEN AND THAT OWENS WOULD HAVE OPEN ACCESS TO THESE WOMEN.

Labor Ready, the Seattle Branch No. 1104 and manager Shauna Rossio were familiar with the YWCA, what the YWCA was and what the YWCA organization represented for the community: a safe haven for some of our community's most vulnerable people. CP 375. Ms. Rossio also knew that the Opportunity Place was in high demand for vulnerable women in need. CP 393, 647-659. Ms. Rossio understood that the YWCA was a safe place for vulnerable women and children.

Directly on point, Ms. Rossio testified:

Q. Prior to Lawrence Owens coming to Labor Ready, did you understand that the YWCA primarily serviced women and children?

A. Yes.

CP 376.

Q. Did you understand the YWCA to be in the business of helping women and children in need, or vulnerable women and children?

A. Yes.

CP 383.

Q. Did you understand Opportunity Place at that time, January of 2004, to essentially be a safe place or safe haven or women and children in need?

A. Yes.

CP 392.

Q. Did you understand that women and children would be coming in and out of the entrance of the Opportunity Place building?

A. Yes.

CP 393.

Q. Did you understand the YWCA to be a place where women and children in need would and could go for services?

A. Yes.

Q. By “services,” do you understand those to mean housing needs, food needs, job needs, and that sort of thing?

A. Yes.

CP 394.

As testified by plaintiffs' expert, UW Business School Professor

Chad Higgins:

In the materials that Labor Ready provides to new hires, there are two aspects that are very important: Safety is priority #1, and Best Match Dispatch. (See Ex. No. 10) Labor Ready asserts that it is very concerned about safety and that it will "match the job to the best-qualified worker first." From a placement perspective, Labor Ready failed horribly in both respects by placing a known violent sex offender and predator where he would have access to vulnerable victims.

In my opinion, from a management "best fit" and safety perspective, it is highly probable and foreseeable that a sex offender, like Mr. Owens, would have access to women in need and would use his affiliation with the YWCA to groom/meet new victims. It was highly foreseeable that Owens would use his affiliation with the YWCA to obtain access to new victims, such as Dori Cordova, who used YWCA services.

CP 753-754.

I. NO ONE FROM THE YWCA MADE ANY REPRESENTATION THAT OWENS WOULD BE WORKING IN AN ABANDONED OR UNOCCUPIED BUILDING, TO THE CONTRARY, EVERYONE KNEW THAT THE YWCA WAS IN THE "PEOPLE BUSINESS."

No person from the YWCA told or represented to Labor Ready or Shauna Rossio that Owens would not have contact with people in their facility; in fact, Ms. Rossio understood that the YWCA was in the

business of helping women and children. CP 383. Ms. Rossio also knew that YWCA often shifted its workers, like Owens, to other YWCA facilities in Seattle. CP 388. Shauna Rossio testified:

Q. Did anyone at the YWCA make a representation to you that Lawrence Owens would not have contact with people?

A. That he would not?

Q. Yes, did anyone say that to you from the YWCA?

A. No.

CP 383.

As declared by employment expert Professor Higgins:

The YWCA's mission is to serve people, in particular vulnerable people, and Labor Ready knew this.

Ms. Rossio and Labor Ready knew that the YWCA serviced vulnerable women and children. With this knowledge, along with the knowledge that Lawrence Owens was a Level 3 sex offender, Ms. Rossio and Labor Ready knew that it was likely that Owens was likely to subject vulnerable women that he contacted at the YWCA to serious risk of great harm.

CP 755-757.

J. THE YWCA TESTIFIED THAT IT WOULD HAVE NEVER HAD ALLOWED OWENS NEAR ANY OF ITS FACILITIES OR NEAR ANY OF ITS CLIENTS HAD LABOR READY DISCLOSED ITS KNOWLEDGE OF OWENS' HISTORY.

Sherry Dawley, the Director of development and community affairs at the YWCA, is the person in charge of public relations at the YWCA and answers only to the CEO. CP 422. As confirmed by Director Dawley, the YWCA is in the business of serving vulnerable women with needs related to shelter, food, employment and safety concerns. CP 423, 647-659. The YWCA is open for women to come into the YWCA facilities to seek these services. CP 423. Ms. Dawley testified that the lobbies or entrances of the YWCA facilities are open to the public so that any woman can come in to inquire about services. CP 424. Regarding the mission of the YWCA, director Dawley testified:

Q. What is the purpose of the YWCA?
What is the mission?

A. The mission is to help women and children gain greater self sufficiency with housing, employment, child care, different kinds of support services.

CP 423, 647-659.

Q. Is the YWCA open for potential clients to come to the YWCA to ask for services?

A. Yes.

CP 423.

As testified to by Sherry Dawley, the second in command at the

YWCA of Seattle:

The YWCA would never allow a Level 3 sex offender on its staff or in its facilities if we knew of that status.

CP 424.

Q. Would the YWCA let any type of sex offender in any of its facilities?

A. No.

CP424.

Q. If Labor Ready had affirmative knowledge that Lawrence Owens was a Level 3 sex offender, would the YWCA have an expectation that Labor Ready would inform the YWCA of that status?

A. Yes.

CP 425.

Q. Was anyone at the YWCA ever informed by Labor Ready that Lawrence Owens was a level 3 sex offender?

A. No.

CP 424.

K. LABOR READY TESTIFIED THAT IT SHOULD HAVE INFORMED YWCA THAT OWENS WAS A SEX OFFENDER BECAUSE THAT IS WHAT A REASONABLE EMPLOYER WOULD HAVE DONE.

Labor Ready, through its manager Shauna Rossio, testified that it breached the standard of care. Ms. Rossio testified:

Q. You understand a Level 3 sex offender to be categorized as the highest risk to reoffend in a violent sex crime?

A. Yes.

CP 397.

Q. Do you believe a reasonable person in your position would have informed the YWCA that Owens was a registered sex offender?

A. Yes, definitely.

CP 398. See also Labor Ready's response to Request for Admission No. 14, at CP 624.

Plaintiffs' expert, Professor Chad Higgins opined:

Based on my expertise, research and study, it is my conclusion that Labor Ready had an obligation to inform the YWCA of the fact that it placed a dangerous sex offender at a YWCA facility. Labor Ready had direct notice and knowledge that Lawrence Owens was a violent sex offender, who was likely to make new victims.

CP 752-753.

L. DORI CORDOVA WAS A VULNERABLE WOMAN ON THE BRINK OF HOMELESSNESS WHEN LAWRENCE OWENS PROMISED TO USE THE INSTRUMENTALITIES OF HIS EMPLOYMENT TO HELP HER.

Dori was homeless and/or on the verge of homelessness and was in every sense a vulnerable and susceptible woman dependant on human services when Labor Ready's employee used the instrumentalities of his

employment to harm Dori. This is confirmed by Dori's DSHS worker Gerry Ketchum (CP 1237), Dori's bank records (CP 644-645), her Seattle School District Family Support Worker Nicole Wagner (CP 1258-1259), her DSHS contracted counselor Othello Howell (CP 1213-1216), her pastor Richard Thompson (CP 1213-CP 1241-1242, 463-464), her son's social worker at Gatzert Elementary Margaret Baldarama (CP 1250), her friend Vernon Torrey (CP 1262), her friend and YWCA worker Rene Bonds (CP 1269), Community Liaison worker Roland Akers (CP 1262, 1268), family member Michelle Phillips (CP 1266) and other documents, including applications for subsidized housing (CP 541-545, 1126-1138).

M. WHEN OWENS USED YWCA INSTRUMENTALITIES ON YWCA CLIENT DORI CORDOVA, SHE WAS WHOLLY RELIANT ON AGENCIES SUCH AS THE YWCA.

Dori was open and honest with her life and always optimistic despite her depressing surroundings; she was looking for a more stable housing environment in January of 2004. CP 1262. Dori was very reliant on several different agencies for help. CP 1236-1237. Dori was looking for transitional housing in January of 2004 and that she was using the YWCA facility called Opportunity Place which is located on 3rd and Lenore where she applied for her housing and used other resources at that location. CP 1238.

Rene Bonds, YWCA employee who kept Troy when Dori was displaced by fire, testified:

She also was very reliant on individuals that were connected with social service agencies such as the YWCA.

CP 1270, See also CP 1242, testimony of Pastor Richard Thompson of the International Christian Fellowship.

N. LABOR READY IS A PROFESSIONAL EMPLOYER AND ITS MANAGER ROSSIO DIRECTLY AND KNOWINGLY IGNORED OWENS CRIMINAL HISTORY AND RISKS.

Labor Ready is in the business of making safe and appropriate hiring and placement decisions. Plaintiffs' expert Professor Higgins:

Labor Ready is a sophisticated employer. In fact, Labor Ready's business or product that it sells to its customers is the "product of hiring qualified people." Labor Ready sells this product (competent and fit employees that are the 'best match') to customers (other employers) all over America and in various locations around the world. Labor Ready boasts being the "market leader" with respect to employing and placing temporary employees, with over 700 locations. Even in the work tickets used by Labor Ready in its employment of workers, including Lawrence Owens, it knew the importance of sending fit and competent workers that were the "best match" for the job, specifically citing on each work ticket "When in Doubt? Safety wins out!" Labor Ready also tells its customers "We are committed to providing the highest quality service possible to foster their success." I bring these issues up to express my opinion that Labor Ready is a highly developed employer that knew the

importance of safety in placing employees at various worksites. Labor Ready knew of the importance of making sure that the employees placed for particular jobs were the best fit or the “best match”. (CP 774-783).

CP 752.

Shauna Rossio, Seattle branch manager for Labor Ready branch No. 1104, was responsible for job site evaluations and for the placement of “temporary workers to the customers’ job sites.” CP 369-370. Manager Rossio had a close relationship with employee Owens and saw him 20 times in person and often talked to him on the telephone. CP 370. Manager Rossio actually met Owens when he applied for employment and personally interviewed and hired him for Labor Ready. CP 371. Ms. Rossio took the initial job application from Owens personally and spent 45 minutes interviewing him. CP 371. Shauna Rossio was on a “friendly basis” with Owens; she referred to him as “Larry.” CP 372.

Lawrence Owens remained an employee of Labor Ready in good standing when he murdered Dori Cordova. CP 384-385. Owens was never terminated, disciplined, counseled or coached while he worked at Labor Ready; he was in good standing there. CP 386, 389.

V. SUMMARY OF ARGUMENT

The answer to the unsettling questions raised by this appeal must be that a professional employer like Labor Ready is liable for its knowing

placement of a highest level sex offender at a women's shelter and the resulting and predictable wrongful death as a result of the access that this employment gave the sex offender. The Court in this case found a legal duty and it is self evident under Washington law that where there is a legal duty, legal causation is also established. As the *Taggart* Court and every Washington Supreme Court decision on legal causation has concluded: "The question of legal causation is so intertwined with the question of duty that the former [legal causation] can be answered by addressing the latter [duty]. Legal causation must be found since legal duty was found by the trial court in this case and the court erred in dismissing this case finding legal and proximate causation lacking. RP 26.

Labor Ready was granted summary judgment of Plaintiffs' negligence claims despite the fact that this corporation, highly-paid for its employee-placement "expertise", knowingly placed a convicted felon with a long history of brutal, sexually-motivated violence with the YWCA, a haven for desperately struggling women. Even the trial court agreed that the facts here established a legal duty as Labor Ready had a duty to avoid placing violent sex offenders at the YWCA which services vulnerable women. From a causation perspective, YWCA testified it would never have allowed this dangerous individual to have access any of its facilities, clients or potential clients had Labor Ready advised them of the danger.

An officer of the Washington State Department of Corrections has sworn that she repeatedly told Respondent Labor Ready that the man, Lawrence Owens, that Labor Ready hired was the most dangerous classification of sex offender in the State of Washington; the significance being that Respondent Labor Ready knowingly placed a most dangerous, convicted sex offender at YWCA and never told the YWCA. Labor Ready's duty to avoid placing Owens at the YWCA ran to "foreseeable victims," such as Dori Cordova who was accessing YWCA services at the YWCA when she met Lawrence Owens, an employee who promised to use his YWCA connections (instrumentalities) to secure housing for Dori and her son. The tragically foreseeable result was that the convicted felon brutally murdered a desperately struggling woman.

Our Supreme Court has already repeatedly ruled that proximate causation is a jury determination. The judge in this case should not have dismissed this case based on proximate causation. Labor Ready never focused on proximate cause at the summary judgment hearing, instead focusing its argument on legal duty and legal causation.

Appellants produced abundant evidence to prove that legal causation should have been decided in favor of the plaintiff. Labor Ready, a corporation that makes millions of dollars every fiscal quarter for its "expertise and reliability" in placing safe and appropriate employees with

organizations in need, placed a violent sexual attacker as an employee with the YWCA. With regard to legal causation, it cannot be the law or policy in Washington that a professional employer can escape liability after knowingly place a dangerous sex offender at a women's shelter allowing him to use the instrumentalities of that job to access to new victims. If it had not been for Labor Ready's actions, Dori would be alive.

Granting summary judgment to Labor Ready was improper. This Court should reverse and remand for trial.

A. BASED UPON THE SPECIFIC FACTS OF THIS CASE, APPELLANTS MADE A SUFFICIENT SHOWING THAT FAVORED A FINDING OF LEGAL CAUSATION

Labor Ready, who was paid by the YWCA to provide them a safe and appropriate employee and which sold its services to the YWCA claiming "every worker is backed by our President's 100% Satisfaction Guarantee," knowingly placed a violent sex offender in the employer of a sanctuary for vulnerable women. Appellants submitted 19 declarations and hundreds of documents proving that Dori Cordova first met Lawrence Owens in his capacity as a YWCA employee, an employee who promised to use YWCA connections to secure shelter for Dori and her son, YWCA clients who were desperate and on the verge of homelessness. See Declarations of Professor Chad Higgins; Expert William Stough; Community Corrections Officer Eileen Fermanis; Social Worker Othello

Howell; DSHS Caseworker Gerald Ketchum; Pastor Richard Thompson; Dori's best friend Rebecca Rojas; Troy's social worker Margaret Baldarama; Owens' girlfriend Pamela Van Sittert; Seattle School District social worker Nicole Wagner; friend Vernon Torrey; relative Michelle Phillips; friend Roland Akers; YWCA worker Renee Bonds; friend Donald L. White; Jensonia resident Karla Marifjeren; Jensonia resident Patrick Phelps and Jensonia manager Scott Tysseland.

Based on this evidence and the facts surrounding this case, Appellants made more than a sufficient offering, showing that society, Washington and the law in general would be better served with a finding of legal causation.

B. THE COURT FOUND THAT RESPONDENT OWED A LEGAL DUTY TO CORDOVA AND IN THE CONFINES OF THIS DUTY, LEGAL CAUSATION IS AXIOMATIC.

The duty issue in this case is really very simple: if you are a corporation that guarantees its customers that every worker is “backed by our President’s 100% Satisfaction Guarantee” and gets paid to place safe and appropriate employees into work positions for charitable organizations like the YWCA, do not knowingly place violent convicted sex offenders who have shown a thirst for threatening to kill vulnerable women with shotguns in a position that will give them easy access to vulnerable women whom he could manipulate and then kill with a shotgun. This is a

principle well-recognized by Washington law. See, e.g. *Niece v. Elmview Group Home*, 131 Wn.2d 39, 929 P.2d 420 (1997). Where an employer knows that its employee presents an unreasonable risk of danger to others, it is liable to those foreseeable victims when it fails to exercise reasonable care. Id., at 48-49. Washington has long recognized the legal principle that negligent employment or retention of an incompetent employee makes the employer liable for injuries inflicted upon a third party by the employee. *La Lone v. Smith*, 39 Wn.2d 167, 171, 234 P.2d 893 (1951) (adopting Restatement (First) of Agency § 213).

The *Niece* Court held:

Even where an employee is acting outside the scope of employment, the relationship between the employer and employee gives rise to a limited duty, owed by an employer to foreseeable victims, to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others. This duty gives rise to causes of action for negligent hiring, retention and supervision.

Niece, supra at 48. (Emphasis added).

In the *Niece* quote above, the emphasis has been added on “or”- it is not an “and.” The *Niece* Court makes it clear that any one of the three can trigger liability: tasks or premises or instrumentalities. Here, Lawrence Owens manipulated his tasks and the instrumentalities of his job to access Dori Cordova. The *Niece* opinion is built from the rule of law in

Washington that an employer is liable to a third person for injuries inflicted upon her by an employee who has been retained in employment after the employer knows, or ought to know, that because of his vicious temperament or propensities he is likely to injure such persons. *La Lone v. Smith*, supra at 173. In *La Lone*, the Court found that Respondents (the owners of the apartment buildings and the property manager who hired an offender as a janitor) breached their duty to investigate the janitor's background. *Id.* at 172. As it turned out, the employers had received actual notice that the janitor had a violent nature, was addicted to the use of intoxicants, and would likely recommit assault upon a tenant which he did. *Id.* at 170. The Court adopted Restatement (First) of Agency § 213 in stating the above rule and as its reasoning for finding the employers liable for the victim's injuries after failing to investigate the janitor's background and allowing him to continue to work as a janitor. *Id.* at 171. Specifically, and of significance here, the Court expressly adopted comment d to § 213 that describes an employer's liability for employing a dangerous agent. *Id.* Relevant portions include:

The principal may be negligent because he has reason to know that the servant or other agent, because of his qualities, is likely to harm others in view of the work or instrumentalities entrusted to him. If the dangerous quality of the agent causes harm, the principal may be liable under the rule

that one initiating conduct having an undue tendency to cause harm is liable therefore.⁶

The dangerous quality in the agent may consist of his incompetence or unskillfulness due to his youth or his lack of experience considered with reference to the act to be performed. **An agent, though competent otherwise, may be incompetent because of his reckless or vicious disposition, and if a principal, without exercising due care in selection, employs a vicious person to do an act which necessarily brings him in contact with others while in the performance of a duty, he is subject to liability for harm caused by the vicious propensity.**

The negligence may be in entrusting an agent with instrumentalities which, in connection with his known propensities and the qualities of the instrumentalities, constitute an undue risk to third persons. These propensities may be viciousness, thoughtlessness, or playfulness.

One who employs another to act for him is not liable under the rule stated in this Section merely because the one employed is incompetent,

⁶ Restatement (Second) of Agency § 213 cmt. d is identical to Restatement (First) of Agency, except for a cross-reference "See the Restatement of Torts, § 308." Section 308 states, "**It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.**" Restatement (Second) of Torts (emphasis added). Applying the Section in the instant case, Respondent Labor Ready knew or should have known that Lawrence Owens was a convicted Level-III sex offender with the highest likelihood to reoffend, placed him at the YWCA in the midst of an entire population of vulnerable women, and allowed him to use its instrumentalities of his employment to prey on and take advantage of vulnerable women and YWCA clients like Dori Cordova.

vicious, or careless. If liability results it is because, under the circumstances, **the employer has not taken the care which a prudent man would take in selecting the person for the business in hand.**

Liability results under the rule stated in this Section, not because of the relationship of the parties, but because **the employer antecedently had reason to believe that an undue risk of harm would exist because of the employment.** The employer is subject to liability only for such harm as is within the risk. If, therefore, the risk exists because of the quality of the employee, there is liability only to the extent that the harm is caused by the quality of the employee which the employer had reason to suppose would be likely to cause harm. *Id.* at 172-73 (quoting Restatement (First) of Agency § 213 cmt. d) (emphasis added).⁷

Respondent Labor Ready's known placement of a violent sex offender at a YWCA places it squarely within the legal principle recognized in both *Niece* and *La Lone*. In *La Lone*, the employers had received actual notice that the employee had a violent nature, was addicted to the use of intoxicants, and would likely recommit assault upon a tenant. Similarly in the instant case, Labor Ready received actual notice that Owens was a Level-III sex offender, that Owens was a criminal risk, that

⁷ Interestingly, the plaintiff in the case *Betty Y. v. Al Hellou*, 98 Wn. App 146, 988 P.2d 1031 (1999), failed to bring this rule of law to the trial court's attention, so it was not considered on appeal.

Owens was a danger to women, and that Owens would likely reoffend if placed in a target-rich environment such as the YWCA. Dec. of Fermanis, ¶ 5. Moreover, applying comment d of § 213, Labor Ready had actual knowledge of Owens' vicious disposition and propensities, had reason to believe that an undue risk of harm would exist by placing a convicted level-III sex offender at the Young Women's Christian Association's Opportunity Place for employment, but did it anyway, failing to even alert the YWCA to the readily foreseeable and preventable danger. With respect to Dori Cordova, whom the evidence establishes was a YWCA client and also accessing YWCA services when she met YWCA employee Lawrence Owens, Labor Ready's duty extends to her because she was a foreseeable victim as a desperate, vulnerable woman utilizing the YWCA, and because Owens was using the "tasks" and/or "premises" and/or "instrumentalities" of his job to access her. When Dori approached Owens in his capacity as a YWCA employee, he promised to use his "YWCA connections" to help her get the emergency housing she came to the YWCA seeking for herself and her son.

The Respondent relied almost exclusively on *Betty Y. v. Al-Hellou*, 98 Wn. App. 146, 988 P.2d 1031 (1999), but its application to the facts of this case is completely misguided. The Court of Appeals in *Betty Y.* followed the Supreme Court rule in *Niece*, holding that the employer's

duty is (1) limited to foreseeable victims, and then (2) only to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others. *Id.* at 149. The Court of Appeals held that the construction company did not have a duty to a teenage boy who had approached one of the construction company employees, established an ongoing friendship with him and was later raped because the construction worker's job was "rehabilitating *vacant* apartments" and his job neither facilitated nor enabled him to commit the rape. *Id.* at 152, 150. The court thus focused on the "fortuitous" contact between the employee and the victim. *Id.* at 150.

This case here, however, does not involve a hapless construction company with no experience in hiring or concern for the needs of vulnerable people in fulfilling construction contracts. Respondent Labor Ready was paid by the YWCA to place a safe and appropriate employee in its available position. This company boasts of "100%" customer satisfaction, backed by the President's guarantee. This company receives payment to make safe hires, it is paid to do background investigations, paid to make appropriate placements. This company is paid by businesses and organizations that do not have the expertise or ability to do checks necessary to hire a safe employee. Labor Ready cannot hide behind a rule intended to protect unsophisticated construction companies. Labor Ready

was paid by the YWCA to protect foreseeable victims accessing YWCA services. Labor Ready is liable for foreseeable harm.

Moreover, Plaintiffs in this case easily satisfy the law of *Niece* and *Betty Y.* Labor Ready placed Owens as a janitor at the YWCA Opportunity Place where he would have access to vulnerable women and in that capacity. Promising to use his YWCA connections to assist Dori Cordova to obtain the shelter she so desperately sought there, Labor Ready's employee gained access to Dori Cordova. His entire criminal history showed the same pattern of manipulating women into relationships and then violently assaulting them. And that is exactly what he did from the position Labor Ready put him in at the YWCA. Labor Ready is liable. Interestingly, Owens' position as a janitor is very similar to that in *La Lone* where the Court found the employer owed a duty. And, because the abuser in *Betty Y.* was hired to work in vacant apartments, his job could not have facilitated or enabled him to commit the rape. But, Labor Ready hired and placed Owens as a janitor at the YWCA Opportunity Place which is home to many vulnerable women and the provider of supportive services to countless other women in desperate need. Owens could have preyed on any woman there, but Owens was able to exploit his position and manipulate Cordova by telling her that he would use his connections at the YWCA to get her employment and shelter for both her and her son.

This is not a situation of fortuitous contact: placing Owens at YWCA Opportunity Place in the midst of desperate women is like placing a wolf in a chicken coop or a child molester in a daycare.

Respondent spent much of its time focused on the fact that the murder did not occur on YWCA premises, attempting to show attenuated “geographic and temporal connections.” But the *Niece* and the *Betty Y.* standard is clear: “tasks, premises or instrumentalities”: again, any one of the three triggers liability. Here, Owens manipulated the “tasks, premises and instrumentalities” of his position to injure. Labor Ready foisted a dangerous sex offender onto the YWCA without telling the organization and then YWCA unwittingly placed him in a position of where he could manipulate vulnerable women: Labor Ready had actual notice and knowingly placed a Level-III sex offender at the YWCA, a safe-haven for women down on their luck. Labor Ready knew of Owens’ vicious disposition and propensities, knew of his danger to women in general, and knew that he would exploit his position at the YWCA to manipulate needy and vulnerable women like Cordova by telling her that he had connections at the YWCA to help her get employment and shelter for her and her son.

As the trial court found, Labor Ready had a legal duty to avoid such a senseless, reckless placement. The trial court inexplicably fell short of finding legal causation, so as to trigger liability.

C. LABOR READY'S BREACH OF ITS DUTY TO DORI WAS THE PROXIMATE AND LEGAL CAUSE OF HER DEATH.

With the duty having been established, the breach has to be admitted. Labor Ready's supervisor, Shauna Rossio, admitted in her deposition that Labor Ready should not have placed a violent, convicted sex offender in a position where he would be allowed to manipulate and harm the vulnerable women relying on the YWCA to survive. Respondent Labor Ready claimed that its duty and breach should have been excused by the trial court in its misunderstanding of the law of proximate cause in Washington, and the trial court erred in supporting such a finding. Washington law recognizes two elements to proximate cause: cause in fact and legal causation. *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 951 P.2d 749 (1998); *Taggart v. State*, 118 Wn.2d 195, 822 P.2d 243 (1992).

1. Labor Ready's Breach of Duty Was the Legal Cause of Cordova's Death.

Legal causation rests on policy considerations as to how far the consequences of Respondent's knowing placement of a Level-III sex

offender at the YWCA should extend. *See Taggart*, 118 Wn.2d at 226; *Caulfield v. Kitsap County*, 108 Wn. App. 242, 248, 29 P.3d 738 (2001). As *Taggart* Court and every other Washington Supreme Court case has concluded on this issue: Legal causation rests on considerations of policy and common sense as to how far the defendant's responsibility for the consequences of its actions should extend. “The question of legal causation is so intertwined with the question of duty that the former [legal causation] can be answered by addressing the latter [duty].” *Taggart* 118 Wn.2d at 226.

Policy considerations and common sense dictate whether the connection of Labor Ready with the murder of Dori Cordova are adequate enough to impose liability. *Id.* at 781. An employer is liable if the employee’s job enabled and is closely connected to the victim. *Carlson v. Wackenhut Corp.*, 73 Wn. App. 247, 868 P.2d 882 (1994). The trial court erred because under the specific facts of this case, Labor Ready did not show that reasonable minds could come to but one conclusion concerning whether its breach of duty legally caused Dori Cordova’s death.

Policy considerations and common sense mandate that the connection between Labor Ready and the murder of Dori Cordova are adequate enough to impose liability. The Court in *Niece* recognized the

duty extends outside the scope of employment. *Niece*, 131 Wn.2d at 48. It is not so implausible as to find that legal cause can be extended to hold employers who commit the originating breach of duty liable for their incompetent employee's misconduct. Good public policy dictates that we hold multi-million dollar corporations holding themselves out as hiring experts liable when they hire violent sex offenders to place at charitable organizations that cater to vulnerable women and children, like the YWCA, without telling the charitable organization "we have placed a potential murderer in your midst." Similarly, common sense tells us, for example, that a daycare center should not place a convicted child molester in any position within that center no matter how minimal the contact with children may be. In the case of Owens, he was a repeat sex offender with the highest likelihood of reoffending – placing him at the YWCA was not a matter of "if" he would reoffend, but "when" he would reoffend. Unfortunately for Dori Cordova, Owens' vicious disposition and propensities escalated from sex offender to murderer.

Under *Crisman v. Pierce County Fire Prot. Dist. No. 21*, 115 Wn. App. 16, 20, 60 P.3d 652 (2002), a connection must be established between Owens' employment with Labor Ready and Cordova's death. Policy, common sense, and Respondent's responsibility to the community as an expert in employment placing dictates that inserting a Level-III sex

offender within the YWCA walls that provides safety to numerous desperate women would result in something terrible. Within the summary judgment hearing and briefing, the Respondent took “closely connected” too literal with the geographic and temporal arguments and, again, misconstrued the law – these should be reserved for cause in fact.⁸ It was improper for Respondent to evade its duty through geographical and temporal non-considerations and the trial court erred when it granted Respondents summary judgment on this issue of legal causation after finding a legal duty.

2. Labor Ready’s Breach of Duty Was the Cause in Fact of Cordova’s Death.

Cause in fact is a question for the jury. *Schooley*, 134 Wn.2d at 478. Therefore, the trial court erred dramatically in granting Respondent’s motion for summary judgment on the issue of proximate cause. The trial court should have denied Respondent’s motion in this regard given the established presumption disfavoring it. As in all other cases in this State, the issue of foreseeability is normally an issue for the jury. *Id.*, at 477;

⁸ “It is quite possible, and often helpful, to state every question which arises in connection with ‘proximate cause’ [legal causation] in the form of a single question: was the Respondent under a duty to protect the plaintiff against the event which did in fact occur? Such a form of statement does not, of course, provide any answer to the question, or solve anything whatever; but it does serve to direct attention to the policy issues which determine the extent of the original obligation and of its continuance, rather than to the mechanical sequence of events which goes to make up

Taggart, 118 Wn.2d at 224. Only in extremely rare cases can the foreseeability determination be taken away from the jury and decided as a matter of law:

Ordinarily, foreseeability is a question of fact for the jury unless the circumstances of the injury are “so highly extraordinary or improbable as to be wholly beyond the range of expectability.”

See *Barger v. Burlington Northern R. R. Co.*, 138 Wn.2d 815, 823, 982, P.2d 1149 (1999)(citation omitted).

Appellants’ evidence demonstrated that Labor Ready set the tragedy in motion when it placed its violent sex offender at YWCA in the midst of all the vulnerable women there. With regard to proximate cause, the sequence of events is a simple, straightforward, and unbroken chain of events beginning with Labor Ready knowingly hiring a convicted Level-III sex offender who had demonstrated increasingly violent behavior towards women and ending with the murder of a vulnerable woman who looked to Labor Ready’s employee for help because of his connections. Despite the Respondent attempting to dismiss any connection between it and Dori Cordova’s murder, the factual sequence of events clearly shows that Labor Ready had actual knowledge of Owens’ vicious disposition and propensities, Labor Ready hired and retained him anyway, Labor Ready

causation in fact.” *Hartley*, 103 Wn.2d at 779-80 (quoting W. Prosser, *Torts* 244-45 (4th ed.

placed him at the YWCA, Owens and Cordova met at the YWCA, Owens told Cordova that he would help her because of his connections to the YWCA, Cordova gave her trust to Owens and Owens murdered Cordova. The question of proximate causation should be decided by a jury and not by the trial judge.

The trial court erred in dismissing this case based on legal causation after finding a legal duty in direct contradiction to Washington Supreme Court law and further erred in dismissing this case based on proximate cause. At the very least, proximate cause is a jury question and summary judgment on this issue was improper.

VI. CONCLUSION

For the reasons stated above, this Court should reverse and remand for trial.

Dated this 3th day of April, 2006.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I AM NOT A PARTY TO THIS ACTION
AND THAT I PLACED FOR SERVICE ON COUNSEL OF RECORD THE
FOREGOING DOCUMENT VIA FACSIMILE / U.S. MAILS / HAND-
DELIVERY AND/OR LEGAL MESSENGER ON THE 3RD DAY OF APRIL,
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CORIE HANSON, PARALEGAL