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STATE OF WASHINGTON
COUNTY

No. 34549-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

ALEKSANDR BOGDANOV,

Appellant,

v.

STEVEN KING and JANE DOE KING,

Respondents.

BRIEF OF RESPONDENT

Submitted By:

GLENN E. BARGER
WSBA #27891
Attorney for Respondent

Smith Freed & Eberhard, P.C.
1001 S.W. Fifth Avenue, Suite 1700
Portland, Oregon 97204
(503) 227-2424

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A. RESPONSE TO ASSIGNMENTS OF ERROR

1. Response to Assignment of Error No. 1.

The trial court properly denied Plaintiff's motion for directed verdict as to the issue of Plaintiff's lack of contributory negligence.

Issues Pertaining to Assignment of Error No. 1

a. Plaintiff, driving on an arterial road, stopped his vehicle before entering an intersection, although he did not have a stop sign. Defendant stopped at a stop sign on the other road at that intersection. Plaintiff saw Defendant's vehicle stopped or stopping. Under applicable Washington law, before driving across the intersection, did Plaintiff have a duty to exercise ordinary care to avoid a collision under the circumstances, or did Plaintiff have a duty to look only straight ahead, and only if he saw Defendant enter his field of vision while he looked straight ahead would he have a duty to exercise ordinary care to avoid a collision?

b. Defendant and his son testified that Plaintiff waved him through the intersection. After that, he drove into the intersection while Plaintiff remained stationary. Without taking even any minimal precaution to determine where Defendant was or what he was doing at that time, Plaintiff drove forward. Defendant's son testified that Plaintiff "punched it" when he drove into the intersection. Under the proper

standard of care, taking the testimony of Defendant as true, searching the record to find all evidence supporting a verdict of contributory negligence, and interpreting all evidence most strongly in Defendant's favor and against Plaintiff, whether there was any competent evidence or reasonable inference from which reasonable minds could determine that Plaintiff did not exercise due care and that failure was the sole or superseding proximate cause of his injuries?

2. Response to Assignment of Error No. 2.

The trial court properly denied Plaintiff's motion for directed verdict as to the issue of Defendant's negligence.

Issues Pertaining to Assignment of Error No. 2

- a.** Defendant and Plaintiff were both stopped before the intersection. Defendant testified that he drove into the intersection while Plaintiff remained stopped. The first issue is whether the jury could find that, when viewing the evidence in a light most favorable to Defendant, whether there was any competent evidence or reasonable inference from which reasonable minds could determine that Defendant did not violate the right of way rule in RCW 46.61.190(2), as described in Jury Instruction No. 17.
- b.** If a juror could find only that Defendant violated RCW 46.61.190(2), the issue becomes whether: (1) Defendant was negligent as a matter of law because the trial court did not give a "deception "

instruction; or (2) whether the is that a juror may consider all of the facts and circumstances in determining whether a Defendant exercised due care, and find that Defendant exercised ordinary care under the circumstances even if he violated the statutory right of way rule.

c. The final issue is whether, under the proper standard of care, taking the testimony of Defendant and his son as true, searching the record to find all evidence supporting a verdict of no negligence, and interpreting all evidence most strongly in Defendant's favor and against Plaintiff, there was any competent evidence from which a reasonable mind could determine that Defendant exercised due care under the circumstances.

3. Response to Assignment of Error No. 3.

The trial court properly denied Plaintiff's motion for judgment notwithstanding the verdict ("JNOV") and/or new trial.

Issues Pertaining to Assignment of Error No. 3 Regarding Motion for JNOV.

In reviewing the denial of Plaintiff's motion for JNOV, the first issue is whether this Court should review the jury verdict to determine whether the jury verdict was consistent with jury instructions, or whether the Court reviews such denials under the applicable law, and not the jury instructions? If the latter is the case, there are no issues with regard to

Plaintiff's motion for JNOV different from those presented with regard to his motions for directed verdict.

**Issues Pertaining to Assignment of Error No. 3
Regarding Motion for New Trial**

The first issue is whether Plaintiff preserved the argument that the jury did not follow Jury Instruction 23, when he did not assert that argument as grounds for his motion for a new trial? Next, regardless of whether such error was preserved, the issue is whether this Court will review the jury verdict for consistency with the jury instructions in determining the propriety of the denial of a motion for a new trial? If so, the issue is whether the trial court abused its discretion by denying Plaintiff's motion for a new trial because the jury verdict was not inconsistent with the jury instructions when they are considered as a whole?

B. RESPONDENT'S ALTERNATIVE ASSIGNMENT OF ERROR

If this Court remands this case to the trial court, pursuant to RAP 2.4(a), Defendant Steven King assigns error to the trial court's giving of Jury Instruction No. 23.

Issue Pertaining to Respondent's Assignment of Error

The issue here is whether the holding of *Merrick v. Stansbury*, 12 Wn. App. 900, 906, 533 P.2d 136 (Div. III, 1975), states the applicable

law as to the standard of care with regard to Plaintiff's contributory negligence in this case?

C. STATEMENT OF THE CASE

This case arises from a collision between a vehicle driven by Plaintiff Aleksandr Bogdanov ("Mr. Bogdanov") and a vehicle driven by Defendant Steven King ("Mr. King") on the morning of December 11, 2001, at the intersection of 172nd Avenue and NE 20th Street ("the intersection") in Vancouver, Washington. Mr. King's son, Joshua, was a passenger in his vehicle. RP, Vol. VI, p. 381. Mr. King, who had been driving east on NE 20th Street, stopped at the intersection, as required by a stop sign. RP, Vol. VI, p. 402. After stopping, he inched up to the curb line, where he looked around for traffic. RP, Vol. VI, p. 403.

Mr. Bogdanov had been driving north on 172nd Avenue, and he stopped his vehicle before the intersection and a crosswalk at the edge of the intersection, because he saw children and a woman with flags near the crosswalk, none of whom had used their flags or entered the intersection. RP, Vol. III, p. 159-161, 187. Mr. Bogdanov was unsure of what to do, and he waited for someone to give him some direction. RP, Vol. III, p. 189. He saw Mr. King's truck to his left at the intersection, but he could not remember if Mr. King's vehicle had already stopped, or was coming slowly to a stop. RP, Vol. III, p. 186.

Mr. King testified that he saw that Mr. Bogdanov had stopped, and Mr. King waited at the intersection for 15 or 20 seconds, wondering what Mr. Bogdanov would do. RP, Vol. VI, p. 408. A teacher who was supervising student-crossing guards that morning, Donna Molenaar, testified that she had become concerned that Mr. Bogdanov's vehicle "was there too long." RP, Vol. III, p. 226.

Joshua King testified that he saw Mr. Bogdanov "wave us on," and told his father of this. RP, Vol. VI, p. 384, 408. Mr. King looked over to confirm this, and he saw Mr. Bogdanov "motioning" him. RP, Vol. VI, p. 406. Mr. King testified that he then put his hands up in a questioning gesture to Mr. Bogdanov, and Mr. Bogdanov responded by nodding and moving his hand. RP, Vol. VI, p. 406, 424. According to Mr. King, this exchange took "probably five, six seconds at the most." RP, Vol. VI, p. 415.

Mr. King testified that he then proceeded into the intersection. RP, Vol. VI, p. 408. Joshua King testified that he estimated his father's speed was about five miles per hour. RP, Vol. VI, p. 389. As he drove into the intersection, Mr. King continued to look over in Mr. Bogdanov's direction to make sure that Mr. Bogdanov was not moving, and when he saw that he was not moving, Mr. King looked forward to make sure there were no children in the area. RP, Vol. VI, p. 406, 416.

Mr. King testified that after he had entered the intersection and driven through the southbound lane of 172nd Avenue and was into its northbound lane, Mr. Bogdanov's vehicle collided with his vehicle. RP, Vol. VI, p. 423. At the point of the collision, Mr. King testified that Mr. Bogdanov had traveled about "ten to fifteen feet" from where the he had been stopped at the crosswalk. RP, Vol. VI, p. 430.

Joshua King testified that Mr. Bogdanov had "punched it," which he explained to mean that Mr. Bogdanov was "coming at us, like, faster - - well, punched it like he slammed on the gas and then came at us." RP, Vol. VI, p. 385, 394. Mr. King also testified that he heard a "heavy rev just before the collision." RP Vol. VI, p. 418.

Mr. Bogdanov testified that a woman on the right side of the intersection motioned had "waved with her flag" for him to go. RP Vol. III., p. 162. Mrs. Molenaar testified that she may have motioned for Mr. Bogdanov to move, but she could not say. RP Vol. IV, p. 226. Mr. Bogdanov testified that he saw Mr. King's vehicle by the stop sign and was sure that "he was standing there because there was a stop sign. RP, Vol. III, p. 192. Mr. Bogdanov testified that he did not make any kind of hand communication with Mr. King. RP, Vol. III, p. 164. He testified that he made sure that no children were in his way when he drove. RP, Vol. III, p. 191-92.

Mr. Bogdanov testified that he might have started moving forward before he looked forward, but he could not remember. RP, Vol. III, p. 193. He did not look back to see if Mr. King's vehicle had moved. RP, Vol. III, p. 192. He testified that he next saw Mr. King's vehicle less than a second before the collision. RP, Vol. II, p. 165.

Mrs. Molenaar said that she did not observe any acceleration of either vehicle, and could not say anything about the acceleration of either vehicle. RP, Vol. IV. p. 247. Mr. Bogdanov testified that he did not know how fast he was going, but he thought "maybe I moved a little bit faster than usually because I kind of wanted to clear that area up as soon as possible." RP, Vol. III, p. 166.

Mr. King is satisfied with Mr. Bogdanov's Statement of the Case to the extent that it: (1) describes the striking of Wayne Slagle's testimony; and (2) describes the testimony of Dr. Eric Strehlow and Dr. Paul Tesar. Mr. King is generally satisfied with Mr. King's description of events at trial and procedural matters in pages 11 to 14 of his Brief, except that his counsel did not state that Mr. King had "failed to yield" or that he was "confused by Mr. Bogdanov's actions." (Brief of Appellant at 13.) Instead, Defendant's counsel argued that "Mr. King moved because he thought he was being waved on." RP, Vol. VI, p. 539.

Mr. King also supplements pages 11 to 14 of Appellant's Statement of Facts as follows. Mr. King objected to the giving of Jury Instruction No. 23. RP, Vol. VI, p. 452, 455. The court provided several jury instructions relevant to the determination of issues of negligence and contributory negligence, including: (1) the duty of all drivers to exercise ordinary care to avoid placing himself or others in danger as well as to exercise such care to avoid a collisions; and (2) that every driver has the right to proceed on the assumption that other drivers will follow the law until in the exercise of ordinary care he or she should know to the contrary. CP 48; RP, Vol. VI, p. 468-69. Moreover, the jury was instructed that the right of way "is not absolute but relative, and the duty to exercise ordinary care to avoid collisions at intersections rests upon both drivers." CP 48, RP, Vol. VI, p. 470.

D. SUMMARY OF ARGUMENT

Every driver has a duty to exercise ordinary care to avoid collisions. Even if a defendant violates a right of way statute, a jury nevertheless may find that person was not negligent. A court will not interfere with that finding, unless the court determines that, viewing the evidence most strongly in favor of the defendant, no reasonable juror could decide that the defendant acted with due care.

In this case, the jury's verdict was that there was no negligence by Mr. King that was a proximate cause of injury or damage to the plaintiff. There is ample evidence in the record to support a jury finding that Mr. King was not negligent, including evidence from which a jury could conclude that he did not violate the statutory right of way. The trial court's denial of Mr. Bogdanov's motions for judgment as a matter of law on the issue of Mr. King' should be affirmed, and consequently, the verdict should stand

In addition, even a plaintiff that has the right of way must still act with ordinary care under the circumstances to avoid collisions, and if he does not, he is contributorily negligent. In this case, there is ample evidence to support a jury finding that Plaintiff did not act with ordinary care under the circumstances, and his failure to do so was the sole proximate cause of his injuries. This Court should affirm the trial court's denial of Mr. Bogdanov's motions for judgment as a matter of law on the issue of his contributory negligence, and consequently, the jury's verdict should stand.

Mr. Bogdanov's arguments to the contrary are fatally flawed because he fails to recognize the foregoing negligence standards as the applicable law. Instead, he urges this Court to apply narrower rules based upon outdated, distinguishable cases.

E. ARGUMENT

1. Standard of Review

A ruling on a motion for judgment as a matter of law¹ is reviewed de novo. *Stiley v. Block*, 130 Wn.2d 486, 504, 925 P.2d 194 (1996). The reviewing court must accept as true the nonmoving party's evidence and all favorable inferences from it. *Id.* The nonmoving party “is entitled to the benefit of all testimony in his favor.” *Halder v. Dep't of Labor & Indus.*, 44 Wn.2d 537, 542, 268 P.2d 1020 (1954). The evidence must be interpreted “most strongly against the moving party and in the light most favorable to the party against whom the motion is made.” *Holland v. Columbia Irrigation Dist.*, 75 Wn.2d 302, 304, 450 P.2d 488 (1969). The court will not weigh the evidence but will search the entire record to find evidence that tends to support the verdict. *Halder*, 44 Wn.2d at 545-46.

The motion must be denied “if there is *any* competent evidence or reasonable inference from which reasonable minds might reach conclusions that could sustain a verdict.” *State v. Longshore*, 97 Wn. App. 144, 982 P.2d 1191 (Div. II, 1999)(citation omitted). If there is more than

¹Plaintiff appeals the denial of his motions for directed verdict and for judgment notwithstanding the verdict. Because such motions were renamed “motions for judgment as a matter of law” in 1993, Mr. King uses that term here. *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 32 P.3d 250 (2001).

a mere scintilla of evidence supporting the jury's verdict, the court must deny the motion. *Omeitt v. Dep't of Labor & Indus.*, 21 Wn.2d 684, 686, 152 P.2d 973 (1944). Review of a motion for new trial is under the same standard. *Hizey v. Carpenter*, 119 Wn.2d 251, 272, 830 P.2d 646 (1992).

2. The Trial Court Properly Denied Mr. Bogdanov's Motions On The Issue Of Mr. King's Lack of Negligence.

a. Whether Mr. King Failed to Yield the Right-Of-Way Was A Question of Fact for the Jury.

Mr. Bogdanov correctly states that the jury's verdict may have been based upon a determination that Mr. King was not negligent. Mr. Bogdanov's fundamental premise is that Mr. King failed to yield the right of way provided under RCW 46.61.190(2), the pertinent part of which the trial court quoted in the following instruction to the jury:

A statute provides that a driver approaching a stop sign shall stop at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway and after having stopped, shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

This right of way, however, is not absolute but relative, and the duty to exercise ordinary care to avoid collisions at intersections rests upon both drivers. The primary duty, however, rests upon the driver who faces a stop sign, which duty must be performed with reasonable regard to the maintenance of a fair margin of safety at all times.

CP 48, Jury Instruction No. 17 (emphasis added).

The question of whether Mr. King failed to yield the right of way was a jury question. *Morse v. Antonellis*, 149 Wn.2d 572, 574-75, 70 P.3d 125 (2003).² For the following reasons, the evidence at trial was sufficient to support a jury finding that he did not fail to yield the right of way.

The literal requirement of the instruction/statute is that after the driver stops at the stop sign, before he proceeds he must yield the right of way to another vehicle only if that other vehicle is either: (1) “in the intersection”; or (2) “approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.”

If the driver properly stops at the stop sign, and the other vehicle is not “in the intersection” or “approaching” the intersection, when the driver proceeds to drive into the intersection, he does not violate the literal requirement of the instruction/statute. Indeed, the instruction/statute simply does not speak to question of what a driver who has properly stopped at a stop sign must do when he encounters a stationary vehicle in the other roadway, much less what that driver must do when the other

² Plaintiff pays short shrift to this issue in his brief. Instead, he asserts that Defendant “testified” and “admitted” or his counsel “emphasized” that he “failed to yield.” (Appellant’s Brief at 13, 16, 19.) The record contains no such testimony or admission.

vehicle remains stationary for 15 to 20 seconds, and that vehicle further remains stationary while the driver proceeds into the intersection.

Mr. King's evidence in this case is amply sufficient to support a jury finding that Mr. Bogdanov was not "in the intersection" when the Mr. King stopped at the stop sign, and first entered the intersection. RP, Vol. III, p. 187-88.

The evidence also is sufficient to support a finding that Mr. Bogdanov was not "approaching" the intersection at any time while Mr. King was stopped, or when Mr. King proceeded and first entered the intersection. The first definition given for the word "approach" in Webster's Third New Int'l Dictionary (2002) is: "To come or go near or nearer to in place or time: draw nearer to." *Id.* at 106. The use of the suffix "ing" means that the duty to yield applies where the other car is "coming" or "drawing" nearer to the intersection--in other words, moving.

Instead, Mr. Bogdanov had stopped outside the intersection, and had remained stopped for at 15 to 20 seconds while Mr. King also remained stopped. The evidence supports an inference that Mr. King had proceeded almost entirely through the intersection while Mr. Bogdanov

remained stopped,³ further supporting a finding that Mr. Bogdanov was not “approaching” the intersection at any material time.

Furthermore, it is also a jury question whether Mr. Bogdanov’s vehicle presented an “immediate hazard” to Mr. King. A reasonable juror could decide that a vehicle that is stationary for as long as Mr. Bogdanov’s did not present an “immediate hazard” to Mr. King, and thus, Mr. King did not violate the instruction/statute by proceeding.

In sum, the evidence is sufficient to support a jury finding that Mr. Bogdanov was not “in” the intersection nor was he “approaching . . . so closely as to constitute an immediate hazard” at any material time, and he thereby did not fail to yield the right of way at the intersection under RCW 46.61.190(2) and Jury Instruction No. 17.

Because Mr. Bogdanov’s arguments with respect to judgment as a matter of law are all based on the premise that Mr. King failed to yield the right of way, this weakens those arguments perforce.

b. Regardless of Whether The Jury Found That Mr. King Failed to Yield, The Evidence Supports a Finding That Mr. King Was Not Negligent.

³Such evidence is the following eyewitness testimony. The vehicles were “thirty or forty feet” apart while stopped. RP, Vol. VI, p. 415. The collision did not occur until after Mr. King had entered the intersection and driven through the southbound lane of 172nd Avenue. RP, Vol. VI, p. 423. Mr. Bogdanov “punched it” and while moving directly forward, struck Mr. King’s vehicle, about ten to fifteen feet from where Mr. Bogdanov had been stopped.” RP, Vol. VI, p. 385, 394, 430.

i. A Driver Who Fails To Yield The Right Of Way Is Not Negligent As A Matter Of Law Simply Because “Deception” Does Not Exist.

Regardless of whether Mr. King failed any statutory duty to yield, this Court must examine the record to determine whether there was more than a mere scintilla of evidence to support a finding that Mr. King was not negligent. *See Pudmaroff v. Allen*, 138 Wn.2d 55, 68-69, 977 P.2d 574 (1999). Contrary to this, Mr. Bogdanov asserts that the rule in Washington is that “where no deception exists, the disfavored driver is negligent as a matter of law for failing to yield to the favored driver who was benefitted by a stop sign right of way.” *Id.* at 19.

Mr. Bogdanov derives the rule of law he urges on this Court from *Gray v. Pistoressi*, 64 Wn.2d 106, 390 P.2d 697 (1964) and *Zorich v. Billingsley*, 52 Wn.2d 138, 142-143, 324 P.2d 255 (1958). Mr. Bogdanov misplaces his reliance on those cases, which predate the enactment of RCW 5.40.050 in the Tort Reform Act of 1986. In addition, those cases were decided in the milieu where contributory negligence was a bar to a plaintiff’s recovery. Moreover, even assuming that *Gray* and *Zorich* retain any viability with regard to plaintiff’s proposition, those cases are distinguishable from the present case because they discuss duty in the context of defendants who encountered favored drivers that were in

motion; they do not translate to the unique situation of a defendant who encounters a stationary vehicle in the other roadway.

The deception doctrine continues to enjoy limited application, but not as the sole defense to a finding of negligence as a matter of law as Mr. Bogdanov urges; instead, it serves to excuse any statutory duty to yield the right-of-way. *See* WPI 70.02.06 (providing in pertinent part that “the right of way statute in Instruction (fill in number) does not apply if:”

ii. The Applicable Law

RCW 5.40.050 provides that failure to comply with a statute or ordinance “may be considered by the trier of fact as evidence of negligence,” the meaning of which this Court has cogently explained:

By stating that the breach of a statutory duty is not negligence, but only *evidence* of negligence, [the legislature] provided, essentially, that *a plaintiff must always show the existence and breach of the common law duty of reasonable care, even though the plaintiff can show the existence and breach of an applicable statutory duty* as evidence of--i.e ., as a factor indicating--a breach of the common law duty.

* * * In short, it made the breach of an applicable statutory duty admissible but not sufficient to prove negligence, and in that way abolished the doctrine of “negligence per se.”

Estate of Bruce Templeton ex rel. Templeton v. Daffern, 98 Wash.App. 677, 990 P.2d 968 (Div. II, 2000), *review denied*, 141 Wn.2d 1008 (2000)(second emphasized portion added).

The Washington Supreme Court has explained the methodology that a court must follow to determine whether a defendant is negligent as a matter of law in a case involving a breach of a statutory duty:

[W]e start with the proposition that a breach of a statutory duty is no longer considered negligence per se, but may be considered as evidence of negligence. Even so, a court can find negligence as a matter of law if no reasonable person could decide that the defendant exercised due care.

Morse v. Antonellis, 149 Wn.2d 572, 70 P.3d 125 (2003)(citations and quotations omitted).

The Court has further articulated:

If all reasonable minds would conclude that the defendant failed to exercise ordinary care, the judge can find negligence as a matter of law. If no reasonable mind could find that the defendant failed to exercise ordinary care, the judge can find the absence of negligence as a matter of law. *In any other case, negligence is an issue for the trier of fact, even when the defendant breached a duty imposed by statute.*

Pudmaroff v. Allen, 138 Wash.2d 55, 68-69, 977 P.2d 574 (1999)(quoting *Mathis v. Ammons*, 84 Wn. App. 411, 418-19, 928 P.2d 431 (1996), *review denied*, 132 Wn.2d 1008 (1997)(emphasis added).

The applicable law is that if a juror finds that a driver violates his statutory duty to yield, that juror is not bound to consider only whether “deception” exists. Instead, the juror may consider *all* of the facts and circumstances in determining whether a defendant exercised due care, and that juror can find that the defendant exercised due care despite failing to

yield the right of way. The juror can give as much or as little weight to a failure to yield as he or she wishes.

The case of *Mathis v. Ammons, supra*, is instructive. In *Mathis*, the jury returned a defense verdict in an accident case despite evidence that revealed that the defendant failed to satisfy his statutory duty of displaying flashing amber hazard lights. This Court rejected the plaintiff's argument that she was entitled to a finding of negligence as a matter of law because she proved that the tractor did not display the required lights.

Instead, the question was whether a rational trier of fact could have found that the defendant was exercising ordinary care despite his breach of a statutory duty. If the answer was yes, negligence was for the jury to decide. *Id.* at 419. The Court reviewed the following facts in a light most favorable to the defendant: defendant testified that he was driving the tractor at about 8:30 on a sunny morning, and although the road was narrow, there was room for oncoming vehicles to pass; the defendant also testified that he was entirely on his side of the road, and the plaintiff was being inattentive and infringing on his side of the road, and plaintiff testified that she did not observe the defendant until a moment before impact. *Id.* at 419-20. The *Mathis* court found that a rational trier of fact could have found that the defendant was "exercising ordinary care under

the circumstances then existing, even though he failed to display flashing amber hazard lights.” *Id.* at 420.

iii. The Sufficient Evidence

In the present case, considering Mr. King’s evidence as true and viewing the evidence and reasonable inferences therefrom most strongly in Mr. King’s favor, there is ample evidence for a reasonable juror to determine that Mr. King exercised ordinary care under the circumstances. Mr. King stopped at the stop sign. He observed Mr. Bogdanov who had stopped before the intersection. He waited fifteen or twenty seconds to see what Mr. Bogdanov would do. He then saw Mr. Bogdanov wave him on. However, Mr. King still did not proceed into the intersection--instead, he gestured to Mr. Bogdanov in a questioning manner, and Mr. Bogdanov responded by nodding and motioning further to him. He then began to proceed slowly through the intersection, while continuing to watch Mr. Bogdanov to make sure that Mr. Bogdanov was not moving.

This is far more than a “mere scintilla” of evidence that Mr. King exercised due care under the circumstances. Reasonable minds could conclude that Mr. King’s exercise of care was proper under the circumstances; therefore, judgment as a matter of law that Mr. King was negligent is inappropriate.

In sum, the trial court properly denied Mr. Bogdanov's motions for judgment as a matter of law and/or new trial because the evidence and reasonable inferences therefrom are sufficient to show that Mr. King was not negligent. Because a jury could have found that Mr. King was not negligent, this Court need not even consider Mr. Bogdanov's contributory negligence.

3. There Was Sufficient Evidence to Support a Finding That Mr. Bogdanov's Contributory Negligence Was The Sole or Superseding Proximate Cause of the Collision.

The trial court denied Mr. Bogdanov's motion for judgment as a matter of law in which he sought a determination that he was not contributorily negligent, and in the alternative for a new trial on that issue. The court properly held that there was an issue for the jury as to the Mr. Bogdanov's "exercise of ordinary care to avoid collisions at all intersections." RP, Vol. VI, p. 444. There is ample evidence that Mr. Bogdanov did not exercise ordinary care, and his negligence was the sole or superseding proximate cause of the collision and his injuries.

a. The Merrick "Rule" Does Not Apply Here.

Mr. Bogdanov argues that, in the case of stop signs at arterial roads, there is a "duty of observation" that is different from the duty to exercise ordinary care. (Appellant's Brief at 21.) If the driver with the

right of way sees a vehicle stopped or stopping at a stop sign, he asserts that driver can proceed at will, and under no circumstances--including those here ---does the driver with the right of way have any duty to exercise care to avoid a collision other than to look straight ahead, and if he actually sees the other vehicle while looking straight ahead, then--and only then---does he have a duty to exercise care to avoid a collision. (Appellant's Brief at 25-26.)

Mr. Bogdanov derives this proposed rule from *Merrick v. Stansbury*, 12 Wn. App. 900, 533 P.2d 136 (Div. III, 1975), as well as *Wilson v. Stone*, 71 Wn.2d 799, 431 P.2d 209 (1967). Like the other cases that Mr. Bogdanov relies on, these cases predate RCW 5.40.050 and their analyses of duty are inapposite to the current context in which contributory negligence is an issue that the jury may decide by examining all of the facts and circumstances.

Even assuming arguendo that *Merrick* and *Wilson* have any relevance to determining the duty of Mr. Bogdanov as a matter of law in the present case, they do not support the narrow, absolute duty that Mr. Bogdanov urges under the facts of the present case. First, Mr. Bogdanov incorrectly states that the Washington Supreme Court held in *Wilson* that "the 'rule of relative rights of way' originally adopted in *Martin v. Hadenfeldt*, 157 Wash. 563, 289 P. 533(1930) does not apply to arterial

roads and would defeat the legislative purpose if it were applied to arterial roads.” (Appellant’s Brief at 21.) The *Wilson* court instead observed that the legislative purpose would be defeated if those relative rights were “strictly” applied. *Wilson*, 71 Wn.2d at 805. The “relative rights of way” remained viable after *Wilson*. Soon after its decision in *Wilson*, the court explained that:

A favored driver on an arterial protected by a stop sign has one of the strongest rights-of-way that the law allows. Such a driver is entitled to rely heavily upon his right-of-way, although he is still required to exercise ordinary care.

Poston v. Mathers, 77 Wn.2d 329, 333, 462 P.2d 222 (1969)(emphasis added).

In addition, *Merrick* is distinguishable from the present case. The *Merrick* court’s holding regarding the favored driver’s duty to lookout was strictly tailored to the context of a favored driver who is in motion, as is every case the court relied upon. First, the *Merrick* court held that the moving favored driver could rely on the assumption that a stopped disfavored driver would continue to stop, explaining that to hold otherwise “would make a mockery out of our right-of-way rule.” *Id.* (quoting *Zahn v. Arbelo*, 72 Wn.2d 799, 434 P.2d 570 (1967)).

Furthermore, subsequent authority is contradictory to *Merrick*’s holding. *Merrick* held that the favored driver had the right to rely on his right of way “until such time as he actually sees (not ‘should have seen’)

that the disfavored driver is not going to yield the right of way,” and from that instant, the favored driver “was allotted a reasonable reaction time.” *Merrick v. Stansbury*, 12 Wn. App. at 906. Contrary to this, in *Sanchez v. Haddix*, 95 Wn.2d 593, 597, 627 P.2d 1312 (1981), the Washington Supreme Court held that a favored driver in an arterial stop sign situation was entitled to “a reasonable reaction time after it becomes apparent in the exercise of due care that the disfavored driver will not yield the right of way.” *Sanchez v. Hendrix*, 95 Wn.2d 593, 597, 627 P.2d 1312 (1981). In other words, the issue of whether the favored driver “should have seen” that the disfavored driver would not yield remained viable.⁴

Moreover, the present case is distinguishable from *Merrick*. Here, the favored driver and the disfavored driver both stopped immediately before the intersection. The *Merrick* court’s rationale does not fit the context of the duty of care that arises when two stationary vehicles encounter each other at an intersection, much less where both drivers were stationary for at least fifteen seconds, and the favored driver also waved the disfavored driver on. As Mr. Justice Cardozo observed:

“Extraordinary situations may not wisely or fairly be subjected to tests or

⁴*Sanchez* was also a pre-Tort Reform Act case, and it is offered here to show that, even in that context, the *Merrick* court’s holding was not correct. *Sanchez* does not provide the current applicable standard for contributory negligence in arterial stop sign cases.

regulations that are fitting for the commonplace or normal.” *Pokra v. Wabash Ry. Co.*, 292 U.S. 98, 105, 54 S.Ct. 580, 78 L.Ed. 1149 (1934).

The reality is that Mr. Bogdanov proposes that this court adopt and apply an absolute rule that would allow a favored driver to launch himself into the intersection as if he were wearing blinders, without no possible need to consider the other driver unless the other driver fortuitously appears before his eyes with enough time for the favored driver to stop. Instead of making a “mockery of the right of way rule,” this would make a mockery out of the requirement that the favored driver exercise ordinary care under the circumstances to avoid collisions.

Here, in determining whether Mr. Bogdanov was negligent, the jury may consider all of the facts and circumstances--including *but not limited to* whether Mr. Bogdanov failed to look again toward Mr. King--before Mr. Bogdanov drove into the intersection

b. There Is Sufficient Evidence to Support a Jury Finding that Mr. Bogdanov Was Contributorily Negligent.

Mr. Bogdanov correctly concedes that the jury’s verdict could have been based on a finding that his own negligence was the sole or superseding proximate cause of the collision and his injuries. The record is replete with evidence supporting such a finding.

Mr. Bogdanov was stopped at the intersection for 15 or 20 seconds, and then made repeated motions for Mr. Bogdanov to continue through the intersection. Mr. King began to proceed through the intersection. Mr. Bogdanov did not consider ensuring that Mr. King remained stopped, nor did he even look in the general direction from which Mr. King would approach if he did proceed, and Mr. Bogdanov cannot remember whether he even looked forward before he started driving. Instead, he “punched it,” hitting Mr. King’s vehicle after traveling about 10 to 15 feet.

A reasonable juror could find that Mr. Bogdanov did not act with ordinary care when, after he stopped for a considerable period of time even though he was not required to, he saw Mr. King’s vehicle and waved him through the intersection, and then launched his vehicle rapidly into the intersection, without attempting to determine whether he could do so safely. And, that juror could find that any or all of this conduct was the sole or superseding proximate cause of the collision.

- 4. Mr. Bogdanov’s Motions For Judgment as a Matter Of Law and For A New Trial Were Properly Denied.**
 - a. Plaintiff Did Not Preserve Any Issue of Error Regarding The Jury’s Consideration of Jury Instruction No. 23.**

Mr. Bogdanov argues that his motion for a new trial should be granted because the jury disregarded Jury Instruction No. 23. (Appellant’s Brief at 29-31.) Mr. Bogdanov did not raise this argument before the trial court, and thus, that argument is not preserved for appeal. RAP 2.5(a).

b. This Court Does Not Review Jury Verdicts to Determine Whether They Are Consistent with Jury Instructions.

Mr. Bogdanov argues that the trial court erred in failing to recognize that the jury disregarded its instructions and in failing to grant his related motion for JNOV and/or new trial. This argument is without merit. First, the rule governing the granting of new trials, CR 59(a), does not expressly authorize the granting of a new trial where the trial court decides that the jury did not follow the jury instructions as to the law. Moreover, as this Court has explained, “any evidence that a juror misunderstood or failed to follow the court's instructions inheres in the verdict and may not be considered.” *State v. Rooth*, 129 Wn. App. 761, 121 P.3d 755 (Div. II 2005); *accord Ralton v. Sherwood Logging Co.*, 54 Wn. 254, 103 P. 28 (1909) (refusing to grant new trial where jury failed even to consider court's instructions).

c. The Jury Instructions Are Irrelevant to the Motions for Judgment as a Matter of Law.

To the extent that Mr. Bogdanov appeals the court's denial of his motion for JNOV, the jury instructions are irrelevant. Instead, "[w]hether a verdict should have been directed is a question of law, and its resolution is not controlled by the pronouncements of the instructions, but by the applicable law." *Cherberg v. People's Nat'l Bank of Wash.*, 15 Wn. App. 336, 347 n. 2, 549 P.2d 46 (1976), *rev'd on other grounds*, 88 Wn.2d 595, 564 P.2d 1137 (1977)(quoting *Rhoades v. DeRosier*, 14 Wn. App. 946, 546 P.2d 930 (1976)(original emphasis).

Mr. Bogdanov here takes another run at applying *Merrick* and *Wilson* with regard to his contributory negligence, and another run at applying *Gray* and *Zorich* with regard to Mr. King's negligence. As shown in the preceding sections, those approaches are not the applicable law, and judgment as a matter of law was appropriately denied with regard to Mr. King's negligence and Mr. Bogdanov's contributory negligence.

d. The Jury's Verdict Was Not Inconsistent with the Jury Instructions

Even assuming *arguendo* that this Court reviews jury verdicts for consistency with the jury instructions, for the following reasons, there was no inconsistency, and the trial court did not abuse its discretion in denying the motion for a new trial.

The jury was instructed in Jury Instruction No. 17 that the right of way “is not absolute but relative, and the duty to exercise ordinary care to avoid collisions at intersections rests upon both drivers.” CP 48, RP, Vol. VI, p. 470. The jury was also instructed:

Every person has a duty to see what would be seen by a person using ordinary care. It is the duty of every person using a public street or highway to exercise ordinary care to avoid placing himself or others in danger and to exercise ordinary care to avoid a collision.

CP 48; RP, Vol. VI, p. 468-69. In addition, the jury was instructed that:

Every person using a public street or highway has the right to assume that other persons thereon will use ordinary care and will obey the rules of the road, and has a right to proceed on such assumption until he or she knows or in the exercise of ordinary care should know to the contrary.

CP 48; RP, Vol. VI, p. 469.

Mr. Bogdanov argues that the jury failed to follow the instruction that Mr. Bogdanov “had the right to rely upon the assumption that Mr. Bogdanov would continue to yield the right of way.” (Appellant’s Brief at 29.) He further argues that this means that “he could only be negligent for failing to see and respond to Mr. King’s vehicle when looking North through the intersection, in the direction of his intended travel.” *Id.*

Contrary to Mr. Bogdanov’s assertions, the jury instructions, taken as a whole, state consistently with the applicable law that any reliance or assumption regarding Mr. King conduct in yielding the right of way is

tempered by: (1) the ordinary duty of care under the circumstances to avoid collisions; and (2) and the instruction that Mr. Bogdanov could not assume that Mr. King would yield the right of way if in the exercise of ordinary care he should have known that Mr. King would not yield. The jury could have found that, under the circumstances, Mr. Bogdanov should have looked a little more carefully to ensure that he could proceed safely, and Mr. King's counsel was justified in arguing this to the jury. Furthermore, these instructions do not mean that Mr. Bogdanov "could only be negligent for failing to see and respond to Mr. King's vehicle when looking North through the intersection." Moreover, the jury could also have determined that he was negligent in motioning to Mr. King and/or "punch[ing] it" into the intersection, without weighing his failure to look more carefully.

F. ARGUMENT IN SUPPORT OF RESPONDENT'S ASSIGNMENT OF ERROR.

Pursuant to RAP 2.4(a), and as another ground for affirmance, Mr. King requests that this Court to find that the trial court erred as a matter of law in giving Jury Instruction No. 23. That instruction provides:

If you find that before the motor vehicle plaintiff saw the defendant's vehicle either stopped or coming to a stop at a stop sign, you are instructed plaintiff had the right to rely upon the assumption that the defendant would continue to yield the right-of-way.

Additionally, as the driver having the right-of-way, the plaintiff is entitled to a reasonable reaction time after it became apparent to plaintiff that defendant had proceeded into the intersection.

CP 48; RP, Vol. VI, p. 474.

This instruction states the holding of *Merrick v. Stansbury*, 12 Wn. App. 900, 906, 533 P.2d 136 (Div. III, 1975) as a standard of care. For the reasons discussed in Section E.4.a, *supra*, it contradicts the current state of the law which is that the favored driver has a duty to exercise under care under the circumstances, and in particular, it is inappropriate in the situation where the favored vehicle has stopped before the intersection, as well as the other circumstances that distinguish the present case from *Merrick*.

If this Court were to find that the trial court should have granted the motion for a new trial, then on remand this jury instruction would prejudice Mr. King because it does not provide the correct standard of care for the issue of Mr. Bogdanov's contributory negligence.

G. CONCLUSION

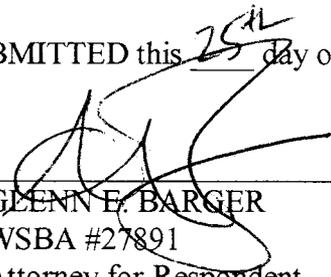
This Court should affirm the trial court's denial of Plaintiff's motions for judgment as a matter of law because there was sufficient evidence to support a jury finding that Defendant was not negligent. Consequently, this Court should affirm the jury's verdict that there was no

negligence by Defendant that was a proximate cause of Mr. Bogdanov's injuries..

This Court should affirm the trial court's denial of Plaintiff's motions for judgment as a matter of law because there was sufficient evidence to support a jury finding that Plaintiff's negligence was the sole or superseding proximate cause of the collision and his injuries. Consequently, this Court should affirm the jury's verdict.

This Court should affirm the trial court's denial of Plaintiff's motion for a new trial. In the alternative, if this Court should deem it proper to reverse the trial court and remand for a new trial, this Court should find the trial court erred in providing Jury Instruction No. 23.

RESPECTFULLY SUBMITTED this 25th day of August, 2006.



GLENN E. BARGER
WSBA #27891
Attorney for Respondent

APPENDIX

other person in such particular case as authorized. [1995 c 292 § 1; 1987 c 202 § 124; 2 H. C. §1693; 1869 p 378 § 1; RRS § 1264.]

Intent—1987 c 202: See note following RCW 2.04.190.

Oath of witness in superior court to be administered by judge: Rules of court: Cf. CR 43(d).

Powers of courts, judicial officers to administer oaths: RCW 2.28.010, 2.28.060.

5.28.020 How administered. An oath may be administered as follows: The person who swears holds up his hand, while the person administering the oath thus addresses him: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between and shall be the truth, the whole truth, and nothing but the truth, so help you God." If the oath be administered to any other than a witness giving testimony, the form may be changed to: "You do solemnly swear you will true answers make to such questions as you may be asked," etc. [2 H. C. §1694; 1869 p 378 § 2; RRS § 1265.]

5.28.030 Form may be varied. Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing connected with or in addition to the usual form of administration, which, in witness' opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode. [2 H. C. §1695; 1869 p 379 § 3; RRS § 1266.]

5.28.040 Form may be adapted to religious belief. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such. [2 H. C. §1696; 1869 p 379 § 4; RRS § 1267.]

5.28.050 Form of affirmation. Any person who has conscientious scruples against taking an oath, may make his solemn affirmation, by assenting, when addressed, in the following manner: "You do solemnly affirm that," etc., as in RCW 5.28.020. [2 H. C. §1697; 1869 p 379 § 5; RRS § 1268.]

5.28.060 Affirmation equivalent to oath. Whenever an oath is required, an affirmation, as prescribed in RCW 5.28.050 is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury, equally with a false oath. [2 H. C. §1698; 1869 p 379 § 6; RRS § 1269.]

Perjury: Chapter 9A.72 RCW.

**Chapter 5.40 RCW
PROOF—GENERAL PROVISIONS**

Sections

- 5.40.010 Pleadings do not constitute proof.
- 5.40.020 Written finding of presumed death as prima facie evidence.
- 5.40.030 Proof of missing in action, capture by enemy, etc.
- 5.40.040 Proof of authenticity of signature to report or of certification.
- 5.40.050 Breach of duty—Evidence of negligence—Negligence per se.
- 5.40.060 Defense to personal injury or wrongful death action—Intoxicating liquor or any drug.

Public documents, records and publications: Title 40 RCW.

Stolen property as evidence: RCW 9.54.130.

Tampering with physical evidence: RCW 9A.72.150.

5.40.010 Pleadings do not constitute proof. Pleadings sworn to by either party in any case shall not, on the trial, be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party. [Code 1881 § 741; 1877 p 151 § 746; 1854 p 219 § 484; RRS § 283.]

5.40.020 Written finding of presumed death as prima facie evidence. A written finding of presumed death, made by the Secretary of War, the Secretary of the Navy, or other officer or employee of the United States authorized to make such finding, pursuant to the federal missing persons act (56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office or other place in this state as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances and place of his disappearance. [1945 c 101 § 1; Rem. Supp. 1945 § 1257-1.]

Severability—1945 c 101: "If any provision of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1945 c 101 § 4.] This applies to RCW 5.40.020 through 5.40.040.

5.40.030 Proof of missing in action, capture by enemy, etc. An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in RCW 5.40.020 or by any other law of the United States to make same, shall be received in any court, office or other place in this state as prima facie evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, as the case may be. [1945 c 101 § 2; Rem. Supp. 1945 § 1257-2.]

5.40.040 Proof of authenticity of signature to report or of certification. For the purposes of RCW 5.40.020 and 5.40.030 any finding, report or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify. [1945 c 101 § 3; Rem. Supp. 1945 § 1257-3.]

5.40.050 Breach of duty—Evidence of negligence—Negligence per se. A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence; however, any breach of duty as pro-

vided by statute, ordinance, or administrative rule relating to electrical fire safety, the use of smoke alarms, sterilization of needles and instruments used in tattooing or electrology as required under RCW 70.54.350, or driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se. [2001 c 194 § 5; 1986 c 305 § 901.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

5.40.060 Defense to personal injury or wrongful death action—Intoxicating liquor or any drug. (1) Except as provided in subsection (2) of this section, it is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault. The standard for determining whether a person was under the influence of intoxicating liquor or drugs shall be the same standard established for criminal convictions under RCW 46.61.502, and evidence that a person was under the influence of intoxicating liquor or drugs under the standard established by RCW 46.61.502 shall be conclusive proof that such person was under the influence of intoxicating liquor or drugs.

(2) In an action for damages for personal injury or wrongful death that is brought against the driver of a motor vehicle who was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and whose condition was a proximate cause of the injury or death, subsection (1) of this section does not create a defense against the action notwithstanding that the person injured or killed was also under the influence so long as such person's condition was not a proximate cause of the occurrence causing the injury or death. [1994 c 275 § 30; 1987 c 212 § 1001; 1986 c 305 § 902.]

Retroactive application—1994 c 275 § 30: "Section 30 of this act is remedial in nature and shall apply retroactively." [1994 c 275 § 31.]

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Chapter 5.44 RCW

PROOF—PUBLIC DOCUMENTS

Sections

- 5.44.010 Court records and proceedings—When admissible.
- 5.44.020 Foreign judgments for debt—Faith to be accorded.
- 5.44.030 Defenses available in suit on foreign judgment.
- 5.44.040 Certified copies of public records as evidence.
- 5.44.050 Foreign statutes as evidence.
- 5.44.060 Certified copies of recorded instruments as evidence.
- 5.44.070 Certified copies of instruments, or transcripts of county commissioners' proceedings.
- 5.44.080 City or town ordinances as evidence.
- 5.44.090 Copy of instrument restoring civil rights as evidence.
- 5.44.130 Seal, how affixed.
- 5.44.140 Proceedings for determination of family relationships—Presumption.

Rules of court: Cf. ER 803; ER 901; ER 902; ER 1005; CR 44.

(2004 Ed.)

5.44.010 Court records and proceedings—When admissible. The records and proceedings of any court of the United States, or any state or territory, shall be admissible in evidence in all cases in this state when duly certified by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed. [1997 c 358 § 7; Code 1881 § 430; 1877 p 94 § 432; 1869 p 115 § 426; 1854 p 195 § 334; RRS § 1254.]

Rules of court: Cf. CR 44(a)(1).

5.44.020 Foreign judgments for debt—Faith to be accorded. Judgment for debt rendered in any other state or any territory against any person or persons residents of this state at the time of the rendition of such judgment, shall not be of any higher character as evidence of indebtedness than the original claim or demand upon which such judgment is rendered, unless such judgment shall be rendered upon personal service of summons, notice or other due process against the defendant therein. [1891 c 31 § 1; Code 1881 § 739; 1877 p 150 § 744; 1869 p 171 § 681; 1866 p 88 § 1; RRS § 1255.]

Rules of court: Cf. CR 44(a)(2).

Uniform enforcement of foreign judgments act: Chapter 6.36 RCW.

5.44.030 Defenses available in suit on foreign judgment. The same defense to suits on judgments rendered without such personal service may be made by the judgment debtor, which might have been set up in the original proceeding. [Code 1881 § 740; 1877 p 150 § 745; 1869 p 171 § 682; 1866 p 88 § 2; RRS § 1256.]

5.44.040 Certified copies of public records as evidence. Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state or any other state or territory of the United States, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence in the courts of this state. [1991 c 59 § 1; 1891 c 19 § 16; Code 1881 § 432; 1854 p 195 § 336; RRS § 1257.]

Rules of court: Cf. ER 803; CR 44(a)(1).

5.44.050 Foreign statutes as evidence. Printed copies of the statute laws of any state, territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this state, and on all other occasions as presumptive evidence of such laws. [Code 1881 § 435; 1877 p 95 § 437; 1869 p 116 § 431; 1854 p 196 § 339; RRS § 1259.]

Uniform judicial notice of foreign laws act: Chapter 5.24 RCW.

5.44.060 Certified copies of recorded instruments as evidence. Whenever any deed, conveyance, bond, mortgage or other writing, shall have been recorded or filed in pursuance of law, copies of record of such deed, conveyance, bond or other writing, duly certified by the officer having the lawful custody thereof, with the seal of the office annexed, if there be such seal, if there be no such seal, then with the official certificate of such officer, shall be received in evidence

different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(2) The right of way rule declared in subsection (1) of this section is modified at arterial highways and otherwise as stated in this chapter. [1975 c 62 § 26; 1965 ex.s. c 155 § 28.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.183 Nonfunctioning signal lights. Except when directed to proceed by a flagger, police officer, or fire fighter, the driver of a vehicle approaching an intersection controlled by a traffic control signal that is temporarily without power on all approaches or is not displaying any green, red, or yellow indication to the approach the vehicle is on, shall consider the intersection to be an all-way stop. After stopping, the driver shall yield the right of way in accordance with RCW 46.61.180(1) and 46.61.185. [1999 c 200 § 1.]

46.61.185 Vehicle turning left. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. [1965 ex.s. c 155 § 29.]

46.61.190 Vehicle entering stop or yield intersection.

(1) Preferential right of way may be indicated by stop signs or yield signs as authorized in RCW 47.36.110.

(2) Except when directed to proceed by a duly authorized flagger, or a police officer, or a fire fighter vested by law with authority to direct, control, or regulate traffic, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and after having stopped shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

(3) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and then after slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways: **PROVIDED**, That if such a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, such collision shall be deemed prima

facie evidence of the driver's failure to yield right of way. [2000 c 239 § 5; 1975 c 62 § 27; 1965 ex.s. c 155 § 30.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Captions not law—2000 c 239: See note following RCW 49.17.350.

Severability—1975 c 62: See note following RCW 36.75.010.

Stop signs, "Yield" signs—Duties of persons using highway: RCW 47.36.110.

46.61.195 Arterial highways designated—Stopping on entering. All state highways are hereby declared to be arterial highways as respects all other public highways or private ways, except that the state department of transportation has the authority to designate any county road or city street as an arterial having preference over the traffic on the state highway if traffic conditions will be improved by such action.

Those city streets designated by the state department of transportation as forming a part of the routes of state highways through incorporated cities and towns are declared to be arterial highways as respects all other city streets or private ways.

The governing authorities of incorporated cities and towns may designate any street as an arterial having preference over the traffic on a state highway if the change is first approved in writing by the state department of transportation. The local authorities making such a change in arterial designation shall do so by proper ordinance or resolution and shall erect or cause to be erected and maintained standard stop signs, or "Yield" signs, to accomplish this change in arterial designation.

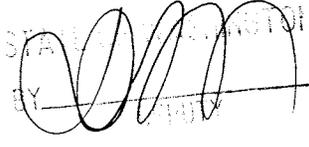
The operator of any vehicle entering upon any arterial highway from any other public highway or private way shall come to a complete stop before entering the arterial highway when stop signs are erected as provided by law. [1984 c 7 § 66; 1963 ex.s. c 3 § 48; 1961 c 12 § 46.60.330. Prior: 1955 c 146 § 5; 1947 c 200 § 14; 1937 c 189 § 105; Rem. Supp. 1947 § 6360-105. Formerly RCW 46.60.330.]

Severability—1984 c 7: See note following RCW 47.01.141.

City streets subject to increased speed, designation as arterials: RCW 46.61.435.

Stop signs, "Yield" signs—Duties of persons using highway: RCW 47.36.110.

46.61.200 Stop intersections other than arterial may be designated. In addition to the points of intersection of any public highway with any arterial public highway that is constituted by law or by any proper authorities of this state or any city or town of this state, the state department of transportation with respect to state highways, and the proper authorities with respect to any other public highways, have the power to determine and designate any particular intersection, or any particular highways, roads, or streets or portions thereof, at any intersection with which vehicles shall be required to stop before entering such intersection. Upon the determination and designation of such points at which vehicles will be required to come to a stop before entering the intersection, the proper authorities so determining and designating shall cause to be posted and maintained proper signs of the standard design adopted by the state department of transportation indicating that the intersection has been so determined and designated and that vehicles entering it are required to stop. It is unlawful for any person operating any vehicle when enter-

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STATE OF WASHINGTON
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No. 34549-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

ALEKSANDR BOGDANOV,

Appellant,

v.

STEVEN KING and JANE DOE KING,

Respondents.

AFFIDAVIT OF SERVICE

Submitted By:

GLENN E. BARGER
WSBA #27891
Attorney for Respondents

Smith Freed & Eberhard, P.C.
1001 S.W. Fifth Avenue, Suite 1700
Portland, Oregon 97204
(503) 227-2424

