

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 38936-3-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

JOHN NICHOLAS WOODS,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 08-1-00717-2
The Honorable John McCarthy, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The State failed to present sufficient evidence to establish that Appellant's driving was the proximate cause of the collision.
2. The State failed to present sufficient evidence to disprove that the victim's act of improperly turning left in front of Appellant was a superseding intervening event.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where the evidence established that Appellant's vehicle was visible at the time that the victim began a left turn in front of Appellant's oncoming vehicle, and where the law requires left-turning vehicles to yield the right-of-way to oncoming vehicles, did the State fail to present sufficient evidence to establish that Appellant's driving was the proximate cause of the collision? (Assignment of Error 1)
2. Where the evidence established that Appellant's vehicle was visible at the time that the victim began a left turn in front of Appellant's oncoming vehicle, and where the law requires left-turning vehicles to yield the right-of-way to oncoming vehicles, did the State fail to present sufficient evidence to disprove that the victim's act of improperly turning left in front

of Appellant was a superseding intervening event?
(Assignment of Error 2)

III. STATEMENT OF THE CASE

A. Procedural History

The State charged John Nicholas Woods by Amended Information with one count of vehicular assault (RCW 46.61.520), one count of failing to remain at an accident (RCW 46.52.020), and one count of driving with a suspended license (RCW 46.20.342). (CP 5-7) A jury convicted Woods as charged, and entered a special verdict finding that, at the time of the collision, he was under the influence of intoxicating liquor or drugs, and that he was operating his vehicle recklessly and with a disregard for the safety of others. (CP 81, 83, 84, 85) The trial court sentenced Woods within his standard range to 133 months of confinement. (CP 142, 151; SRP 4, 20-21)¹ This appeal timely follows. (CP 163)

B. Substantive Facts

Around 11:00 on the night of February 3, 2008, a BMW driven by John Woods, and a Mazda driven by Radion Plyut, collided at an intersection on Brookdale Road, in a rural residential

¹ The trial transcripts, numbered volumes 1 thru 7, will be referred to as "RP#", and the February 27, 2009 sentencing transcript will be referred to as "SRP".

area of Pierce County. (RP3 60, 62, 85 89, 91, 128) The collision occurred when Woods's BMW, traveling in the eastbound lane of Brookdale Road, struck Plyut's Mazda, which was in the process of making a left turn from the westbound bound lane of Brookdale Road onto a side street. (RP3 102; RP4 240, 243)

Brookdale Road is a two-lane paved road, with a posted speed limit of 35 miles per hour. (RP3 61, 62) On the night of the collision, the roadway was slick and icy. (RP3 88)

Residents living near the crash site described hearing and seeing a speeding BMW traveling on Brookdale Road, just moments before hearing the sound of the crash. (RP3 61, 86, 87, 101) Chris Partridge was one of the first to arrive on the scene, and saw a man he later identified as Woods walking away from the BMW. (RP3 64, 75-76)

Pierce County Sheriff's Deputies found Woods walking on the side of the road near the scene. (RP 130, 132, 139) Woods had blood on his hands and mouth, and matched the description of the man witnesses saw leaving the accident scene. (RP3 129-30, 132, 133) A key found in Woods' pocket fit the BMW's ignition. (RP3 149)

Woods was taken into custody, and later transported to the

hospital for treatment. (RP3 138, 155, 168) A test of blood taken from Woods at the hospital showed a blood alcohol content of .15 percent, and traces of THC, an active ingredient found in marijuana. (RP3 175, 178; RP5 276-77, 297, 315, 319, 322) Plyut died that same night from injuries sustained in the collision. (RP3 152; CP 47-48)

The State's collision reconstruction expert, Scott Powers, testified that the BMW's front end struck the Mazda's passenger side as the Mazda made a left turn. (RP4 241) He estimated the pre-collision speed of the BMW at 72 miles per hour, the pre-collision speed of the Mazda at 14 miles per hour. (RP4 249, 257)

The defense collision reconstruction expert, Tim Moebes, disagreed with the calculations and formulas used by the State in determining the BMW's pre-collision speed. (RP6 359-60, 363) He estimated the speed at closer to 60 miles per hour. (RP6 364)

Moebes also testified that there is a slight curve in Brookdale Road near the collision site. (RP6 365) Visibility is impacted at about 600 feet from the intersection where the collision occurred. (RP6 366) However, Moebes testified that, based on his own calculations, the BMW would have been visible to Plyut at the moment he started to make the left turn. (RP6 368) Moebes also

testified that there would not have been enough time to bring the BMW to a stop, and that the collision was unavoidable once Plyut began his left turn. (RP6 376, 385) He concluded that, even if the BMW was traveling at 35 miles per hour, the two cars still likely would have made contact. (RP6 380-81, 386)

IV. ARGUMENT & AUTHORITIES

“Due process requires that the State provide sufficient evidence to prove each element of its criminal case beyond a reasonable doubt.” City of Tacoma v. Luvane, 118 Wn.2d 826, 849, 827 P.2d 1374 (1992) (citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)). Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d at 201.

The State charged and convicted Woods for vehicular homicide under RCW 46.61.520. (CP 5, 81, 146) That statute provides, in relevant part:

- (1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:
- (a) While under the influence of intoxicating liquor or any drug[;]or
 - (b) In a reckless manner; or
 - (c) With disregard for the safety of others.

RCW 46.61.520. To convict Woods under this statute, the State must prove that Woods' driving was the proximate cause of Plyut's death. RCW 46.61.520.

The law establishes that "contributory negligence is not a defense" to negligent or vehicular homicide. State v. Judge, 100 Wn.2d 706, 718, 675 P.2d 219 (1984); State v. Souther, 100 Wn. App. 701, 708, 998 P.2d 350 (2000). But a defendant may avoid responsibility for a death resulting from the defendant's driving if the death was caused by a superseding intervening event. Souther, 100 Wn. App. at 708-09 (citing State v. Rivas, 126 Wn.2d 443, 453, 896 P.2d 57 (1995)). To be a superseding cause sufficient to relieve a defendant from liability, an intervening act must be one that is not reasonably foreseeable. State v. Roggenkamp, 115 Wn. App. 927, 945, 64 P.3d 92 (2003).

In accordance with this general rule, the trial court gave the following instruction, based on WPIC 90.08:

If you are satisfied beyond a reasonable doubt that the driving of the defendant was a proximate cause of the death, it is not a defense that the driving of the deceased may also have been a proximate cause of the death.

However, if a proximate cause of the death was a new independent intervening act of the deceased which the defendant, in the exercise of ordinary care, should not reasonably have anticipated as likely to happen, the defendant's act is superseded by the intervening cause and is not a proximate cause of the death. An intervening cause is an action that actively operates to produce harm to another after the defendant's act has been committed.

However, if in the exercise of ordinary care, the defendant should reasonably have anticipated the intervening cause, that cause does not supersede the defendant's original act and the defendant's act is a proximate cause. It is not necessary that the sequence of events or the particular injury be foreseeable. It is only necessary that the death fall within the general field of danger which the defendant should have reasonably anticipated.

(CP 64)

The trial court also gave the following instruction proposed by Woods, based on WPI 70.02.01 and RCW 46.61.185, concerning the duty of a driver making a left turn:

A statute provides that a driver intending to turn to the left within an intersection, shall yield the right of way to any vehicle approaching from the opposite direction that is within the intersection or so close thereto as to constitute an immediate hazard. 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 turning to the left,

which duty must be performed with reasonable regard to the maintenance of a fair margin of safety at all times.

(CP 65)

“A [left-turning] driver must yield to an oncoming vehicle even if it can be shown that the oncoming vehicle was proceeding unlawfully.” Doherty v. Municipality of Metro. Seattle, 83 Wn. App. 464, 470, 921 P.2d 1098 (1996); see also State v. Carty, 27 Wn. App. 715, 620 P.2d 137 (1980) (defendant who turned left into path of oncoming car was guilty of failure to yield, even though oncoming car was speeding).

In this case, it is undisputed that Plyut’s Mazda was struck when it turned left and into the path of Woods’ oncoming BMW. (RP3 102; RP4 240, 243) But Plyut had a statutory duty to yield the right of way to Woods, regardless of whether Woods was driving the speed limit or not. Doherty, 83 Wn. App. at 470; WPI 70.02.01; RCW 46.61.185.

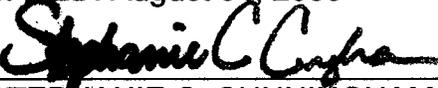
Plyut’s improper left turn “was a new independent intervening act” that superseded Woods’ act. WPIC 90.08; Souther, 100 Wn. App. at 708-09. And Woods could not have reasonably foreseen that another driver would operate their vehicle in a negligent manner by improperly turning left in front of Woods’

oncoming car. The State therefore failed to prove that the collision and Plyut's resulting death were proximately caused by Woods' driving.

V. CONCLUSION

Plyut's failure to yield to Woods' oncoming vehicle, despite the statutory duty to do so, was an unforeseeable and unanticipated intervening cause of the collision. Woods act is therefore not the proximate cause of the collision, and his conviction for vehicular homicide should be reversed.

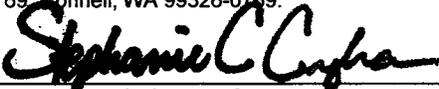
DATED: August 31, 2009


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BY  DEPUTY
COUNTY OF PUGET
SHERIFF

CERTIFICATE OF MAILING

I certify that on 08/31/2009, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: (1) Kathleen Proctor, DPA, Prosecuting Attorney's Office, 930 Tacoma Ave. S., Rm. 946, Tacoma, WA 98402; and (2) John N. Woods, DOC# 806437, Coyote Ridge Corrections Center, P.O. Box 769, Connell, WA 99326-0769.


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