

NO. 39788-9-II

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

STATE OF WASHINGTON, Respondent

v.

KENNETH EDWARD PAWSKI, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROGER A. BENNETT
CLARK COUNTY SUPERIOR COURT CAUSE NO.09-1-00168-5

BRIEF OF RESPONDENT

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I. STATEMENT OF FACTS

The defendant was charged by Information filed January 30, 2009 (CP 1) with Vehicular Homicide and the allegation that it was done while operating a vehicle in a reckless manner and/or with disregard for the safety of others.

The defendant waived jury (CP 5) and the matter proceeded to a bench trial.

At the conclusion of the bench trial, the Judge found the defendant guilty. The Judge entered Findings of Fact and Conclusions of Law dated September 10, 2009 (CP 7). A copy of those Findings of Fact and Conclusions of Law is attached hereto and by this reference incorporated herein.

Where additional and more detailed information is needed, it will be supplied in the argument section of this brief.

II. RESPONSE TO ASSIGNMENTS OF ERROR

The main assignment of error raised by the defendant in this case is a claim of insufficient evidence to establish the elements of the crime; specifically recklessness and driving with disregard for the safety of others.

Evidence is sufficient to ‘support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. State v. Luther, 157 Wn.2d 63, 77, 134 P.3d 205 (*quoting State v. Townsend*, 147 Wn.2d 666, 679, 57 P.3d 255 (2002)), *cert. denied*, 127 S. Ct. 440 (2006). A defendant claiming insufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. Luther, 157 Wn.2d at 77-78 (*citing State v. Alvarez*, 105 Wn. App. 215, 223, 19 P.3d 485 (2001)).

In considering the sufficiency of evidence, the Appellate Court gives equal weight to circumstantial and direct evidence. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). It defers to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (*citing State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)). The Court does not substitute its judgment for that of the jury on factual issues. State v. Israel, 113 Wn. App. 243, 269, 54 P.3d 1218 (2002) (*citing State v. Farmer*, 116 Wn.2d 414, 425, 805 P.2d 200, 812 P.2d 858 (1991)), *review denied*, 149 Wn.2d 1013 (2003). “In determining whether the requisite quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only

that substantial evidence supports the State's case.” State v. Jones, 93 Wn. App. 166, 176, 968 P.2d 888 (1998), *review denied*, 138 Wn.2d 1003 (1999).

One of the witnesses the State called in its case in chief was Sterling Hersey. (RP 32). Mr. Hersey described the scene of this accident on Rawson Road. He estimated that the speed limit along the road was 35 miles per hour. (RP 33). Mr. Hersey also testified that he had an opportunity to talk to the defendant there at the scene of the collision.

QUESTION (Deputy Prosecutor): Did you talk to him about what happened?

ANSWER (Mr. Hersey): I did. I asked him – I go, “You must be one that had been in the accident” and he said he was. And he – I had said, “You must have been going pretty quick, you know, driving pretty quick” and he said, “Yeah. It looked like I must have been going pretty fast.”

MR. SCHILE (Defense attorney): Objection on hearsay grounds, Your Honor.

THE COURT: Counsel, how could this be hearsay? He’s talking about what your client said, correct? Isn’t that what you’re saying, what the young man was saying?

THE WITNESS (Mr. Hersey): Mm-hmm.

THE COURT: How is that hearsay? Statement of a defendant. Objection is overruled. Just go ahead and ask a question.

QUESTION (Deputy Prosecutor): What did you – I’m not sure the whole thing was clear. What did you tell him – what did you say to him and what was his response?

ANSWER: I had said, "You must be – had been going pretty fast, you know, seeing what had happened", and he said, "Yeah. I must have been going" – you know, he pretty much acknowledged me that he was going pretty quick.

-(RP 38, L24 – 39, L23)

The witness also described watching the defendant, prior to help arriving at the scene, going to his vehicle, taking out of his vehicle what he thought looked like a beer can and throwing it off to the side of the road. (RP 40-41). He also testified that there at the scene he could smell the alcohol. (RP 41).

The State called in its case in chief Deputy Joe Swenson, from the Clark County Sheriff's Office. Deputy Swenson described the scene when he came upon it and described for the trier of fact where various vehicles were. He also had an opportunity to talk to the defendant and he read into the record part of what the defendant had told him. That portion is as follows:

QUESTION (Deputy Prosecutor): I'm sorry. Let's refresh your recollection. Could you refer to the – to your report page 3 of 4. You've got a box on there that's marked – a section marked "Kenneth Pawski, Kenneth E. Pawski" paragraph –

ANSWER: Oh, here we go, yes. Kenny had –

QUESTION: Read that. Go ahead and read that paragraph and see if that refreshes your recollection whether or not he had a conversation about whether or not he –

ANSWER: “Kenny stated he probably should not have been driving and he knew he should have stayed at the camp site. He told me this was the stupidest thing he had ever done. While speaking with him, he asked me, ‘What am I looking at?’ I asked what he meant by that statement. He was referring to possible jail time he might serve in relation to the collision. I told him it was” –

QUESTION: That’s when you told him that he needed to worry about getting better.

ANSWER: That’s correct.

-(RP 61, L19 – 62, L12)

He again reiterated, at the hospital, that he should not have been driving, that he knew he should have stayed at the campsite. (RP 65, L2-4).

The State also called in its case in chief an accident reconstructionist, Deputy Doug Harada from the Clark County Sheriff’s Office. Deputy Harada went into great detail about the scene of the collision and what steps they took to determine how it happened. He described in detail the types of equipment that they used and the different types of formulas. Further, he spent a great deal of time discussing with the court the physical marks there on the road, which led him to his conclusions.

Deputy Harada discussed with the court the speed at the time of impact. He estimated the low speed at the time of impact as approximately 53 miles per hour. (RP 118). This is based on the length of skid mark from the defendant's vehicle (there does not appear to be any skid marks or other types of defensive maneuvers taken by the deceased in his car coming the other direction). This is also after applying breaks quite heavily, which would obviously indicate that the speed going into the curve was in excess of 53 miles per hour. The officer also discussed in more detail the fact that the deceased, Mr. Skelton, did not have time to apply breaks and only appears to have made a little bit of movement to the right to avoid the collision. There simply was no time provided to him because of the defendant's conduct. (RP 123).

Deputy Harada further went into detail concerning the use of breaks by the defendant :

QUESTION (Deputy Prosecutor): Well, let's talk about – actually, I was really focusing in on something else at the moment. Maybe I wasn't too clear.

Realistically, you know that he slammed on his brakes –

ANSWER (Deputy Harada): Yes.

QUESTION: - short of the crash.

ANSWER: Yes.

QUESTION: Did you do anything to try to determine why he may have slammed on his brakes?

ANSWER: Well, in reconstructing the scene through the photographs and analyzing everything and then realizing the speed he was at, my opinion is that he came around – he came down over the hill as he started around the corner, he got into the corner, he was way too high. And it's common knowledge, anybody that rides a bicycle, anybody that rides a motorcycle, and people that drive a car, the last thing you want to do is look at something because you become focused on it, you're going to hit it.

And based on the line of sight with where the tire marks were and backing it up, I realized what he was looking at was he was looking at the telephone pole and he locked up.

His braking should have probably been before the apex of curve. That's what normal driving procedure calls for. You brake before you go into the curve. And once you reach the apex, you start to let up. Your momentum carries you around the curve. That's what the super elevations are for.

His brake marks show that it's at or beyond the apex of the curve beyond the center. So his braking is way too late. With the understanding that his BAC is a .02 many hours later, and knowing that he's only had four hours sleep, as a drug recognition expert, my opinion is he was impaired.

QUESTION: Let me ask you this question, did you – did you do anything to determine whether or not he could have possibly seen Mr. Skelton coming around the other way?

ANSWER: No. He – it's possible, not probable, that Mr. Skelton's vehicle may or may not have been visible. But either way, his focus from where his vehicle was going as to where Mr. Skelton's vehicle could have been seen is so minimal, his braking probably would not have happened.

There's a couple of timing issues that may be involved here. The question of how much reaction time. Because

when somebody starts braking and comes to a full stop, whether he hits anything or not, part of the issue backs up – is how much reaction time is there?

The industry standard normally says 1.5 seconds. If you're traveling, say, for 60 miles an hour, you're traveling approximately 88 feet per second. So a second and a half ends up being quite a distance.

Having been through the human factors class and participated in testing, your reaction time can get probably down as low as a second. And if you are actually prepared for something, like your foot's on the brake already, it could be as short as half-second. But under those circumstances, if Mr. Pawski had his foot on the brake, there's a probability, a high probability that he was threshold braking, which means he wouldn't leave any marks.

It means he was threshold braking, he was coming around the curve and then realized he's still going too fast and he – and he hammered the brake. And that's what locks the brake up –

QUESTION: So if he –

ANSWER: - and sends him into a skid.

QUESTION: So if he were coming around the corner with his foot on the brakes like that, he would have already been slowing?

ANSWER: It's possible, which means his speed – initial speed probably would have been even higher, because you have to figure out how fast was he going coming into this whole area.

QUESTION: Okay. Now, then the next question is, did you do a – I guess you called it a time-distance analysis to determine whether or not the two parties likely saw each other and recognized each other?

ANSWER: Yes.

QUESTION: Could you explain what you did?

ANSWER: Well, based on – I did a very conservative speed for Mr. Pawski's approach. I gave him 60 miles an hour. That's seven miles below what the minimum speed I believe he was traveling at. But just for illustrative purposes, I placed his speed at 60 miles an hour back up – the time and distance and reaction times over a series of distance, 0.5 seconds, 1 second, 1.5 seconds, how far back would he be. And all these times are based on the sixty miles an hour.

Where would he have been to react before the action actually takes place? And we start backing up, you're backing up around a curve, so it limits your sight. Because this is just in the curve, yet there's a drop. And as one of the photographs depicted, when you look backwards, there's actually a significant drop where you plain can't see anybody. It's almost like a dip. So it doesn't just go like this, it goes (indicating), flattens out a little bit, then climbs again.

-(RP 145, L6 – 149, L7)

Deputy Harada concluded his comments about the defendant "So when he locked his brakes up, his ability to steer or mitigate any movement on the vehicle is totally lost." (RP 150, L18-20).

Finally, Deputy Harada's basic conclusion was as follows:

QUESTION: Any other observations you made regarding the collision, the cause of the collision, sir?

ANSWER: Well, it's highly unlikely that the victim, Mr. Skelton, would have seen the oncoming vehicle. The

investigation shows me that Mr. Pawski came around the curve too fast, way too fast. And he panicked, brakes, locks up his brakes, he slides in a path and he's headed towards a telephone pole. Mr. Skelton is an innocent victim. Comes up over the rise and gets in his way and the result ends up in his demise. He's in the wrong place at the wrong time.

QUESTION: Because of the defendant's driving; is that correct?

ANSWER: Yes.

-(RP 157, L21 – 158, L9)

Deputy Harada also discussed with the court the numerous warning signs that had been posted on Rawson Road, showing that there were curves ahead and speed needed to be reduced. (RP 160-161). He indicated that the recommended speed in the curve where this occurred was posted as 25 miles an hour. (RP 161, L2-8).

The defendant testified on his own behalf. He told the court he was familiar with this road and when asked if he was somewhat familiar with it he said, "Definitely". (RP 262, L5). He testified that he had been drinking the previous evening until approximately 2:30 a.m. and that he woke up at about 7:30 a.m. on the day of the collision. He told the Judge he had a vague recollection of going into the curve, that he wasn't looking at his speedometer and he was just kind of paying attention out the front of his truck, seeing what was around him at the moment. (RP 264). He applied

his brakes hard because he saw what appeared to him to be a red vehicle in his lane. (RP 265). It's to be remembered that during the testimony of Deputy Harada, the only physical marks were visible in Mr. Skelton's lane of travel, not in the defendant's.

The two alternative premises on which the defendant was charged with vehicular homicide—operating a motor vehicle (1) in a reckless manner or (2) with disregard for the safety of others—are related but distinct acts. (CP – 1; Information filed January 30, 2009) State v. Roggenkamp, 153 Wn.2d 614, 626-27, 106 P.3d 196 (2005); State v. Eike, 72 Wn.2d 760, 764-65, 435 P.2d 680 (1967) (*citing* State v. Partridge, 47 Wn.2d 640, 645, 289 P.2d 702 (1955)). The vehicular homicide statute, RCW 46.61.520, does not define driving “in a reckless manner.” Our Supreme Court, however, has consistently held that this premise means “driving in a rash or heedless manner, indifferent to the consequences.” Roggenkamp, 153 Wn.2d at 622 (*quoting* State v. Bowman, 57 Wn.2d 266, 271, 356 P.2d 999 (1960)); *see also* Partridge, 47 Wn.2d at 645-46. The court in Partridge also observed that “a person operating a vehicle in a reckless manner could also be guilty of negligence.” Partridge, 47 Wn.2d at 645. With respect to the premise of operating a motor vehicle “with disregard for the safety of others,” this behavior “implies an aggravated kind of negligence or carelessness, falling short of recklessness but

constituting a more serious dereliction than the hundreds of minor oversights and inadvertences encompassed within the term 'negligence.'... To drive with disregard for the safety of others, consequently, is a greater and more marked dereliction." Eike, 72 Wn.2d at 765-66. Proof of ordinary negligence, by itself, is insufficient to sustain a conviction of vehicular homicide. Eike, 72 Wn.2d at 765 (*citing Partridge*, 47 Wn.2d at 645). "Some evidence of a defendant's conscious disregard of the danger to others is necessary to support a charge of vehicular homicide." State v. Vreen, 99 Wn. App. 662, 672, 994 P.2d 905 (2000) (*citing State v. Lopez*, 93 Wn. App. 619, 623, 970 P.2d 765 (1999)), *aff'd*, 143 Wn.2d 923, 26 P.3d 236 (2001).

As the Findings of Fact and Conclusions of Law entered by Judge Bennett indicate, the defendant makes claim that he was driving at a normal speed. The court, utilizing all of the information and evidence produced by the experts in the case, indicates that the location of the collision raises an inference that the defendant was "cutting the curve". (Finding No. 7) and that that caused the momentum of his vehicle to smash into the victim's vehicle. This becomes particularly troublesome when we realize that Rawson Road was an extremely curvy and hilly two lane road with narrow shoulders and that the defendant had driven past at least one indication of 25 miles per hour. This was a warning sign, alerting

him of the fact that he was going into an extremely narrow, confining area. The defendant acknowledged that he was definitely familiar with this stretch of road and he was operating his vehicle as he normally would. If that is true, then he would normally approach the posted 25 mile an hour zone at 60-67 miles per hour. This is not a situation where the defendant was unfamiliar with the terrain or the road itself. Nor, was there anything that would prevent him from seeing what was there. This occurred at approximately 8:00 in the morning and there was nothing in the weather to indicate problems with the road itself. The defendant acknowledged that he'd been drinking that night and was possibly a little tired when he decided to operate his motor vehicle and drive it into this dangerous area at his "normal speed". As the court concluded its findings, it noted that the defendant's speed was grossly excessive for the conditions, that this excessive speed most likely caused him the inability to remain in his own lane of travel, necessitating him to forcefully apply his brakes, and the excessive speed caused him to lock up his wheels by the braking mechanism and caused his vehicle to enter the victim's lane of travel and strike the victim's car. The defense cites case law, in particular State v. Roggenkamp, 153 Wn.2d 614, 106 P.3d 196 (2005), for the proposition that speed alone does not equate with reckless driving or disregard for the safety of others. However, the State would submit that there are additional

factors as laid out by the court in its findings and having previously been discussed in the testimony that would leave one to conclude that the defendant's conduct in this regard was grossly reckless and clearly in disregard for the safety of others.

The State also takes exception to the concept that the defense tries to claim that speed can never be the sole factor. Clearly, the State submits that we have much more here than merely speed, given the familiarity with the road by the defendant and his inability to operate his motor vehicle in a proper fashion, plus the inference that he was cutting the curve because of his excessive speed, case law has indicated that there are instances when speed alone may permit a jury to infer that a driver was driving recklessly. State v. Randhawa, 133 Wn.2d 67, 78, 941 P.2d 661 (1997); State v. Hanna, 123 Wn.2d 704, 871 P.2d 135, *cert denied*, 513 US 919, 130 L. Ed.2d 212, 115 S. Ct. 299 (1994); State v. Kenyon, 123 Wn.2d 720, 871 P.2d 144 (1994).

For example, in the Kenyon case the defendant was driving his vehicle in wet conditions. The speed of his vehicle cresting a hill was somewhere around 50-60 miles per hour in an area that was marked 30 miles per hour. The other experts had talked about it possibly being as low as 38 miles per hour. Nonetheless, the defendant's vehicle slid out of control and individuals there at the scene were injured and killed. The jury

found him guilty of Vehicular Assault and Homicide in reference to reckless manner of driving and disregard for the safety of others. This was affirmed in the Supreme Court.

The State submits that in our case the defendant was clearly operating his vehicle in a reckless manner. As previously indicated, driving in a rash or heedless manner, indifferent to the consequences is exactly what the State had alleged this defendant to be doing. As indicated in State v. Roggenkamp, 153 Wn.2d at 631:

For more than four decades we have defined the term "reckless manner," as used in the vehicular assault and vehicular homicides statutes, as meaning to operate a vehicle in a "rash or heedless manner, indifferent to the consequences." The express language of the aforementioned statutes as well as legislative history and recent case law does not provide any basis for departing from this traditional definition. Therefore, we reaffirm that "rash or heedless manner, indifferent to the consequences" definition is the proper definition of the term "reckless manner" as it appears in RCW 46.61.520(1)(b) and RCW 46.61.522(1)(a).

This is consistent with the oral pronouncements of the Judge at the time that he gave his opinion:

There is no doubt, no doubt whatsoever, that the defendant was exceeding the lawful and prudent speed limit.

He was driving down the hill, the very best scenario for him is 56 miles per hour. Deputy Harada thinks he was up in the 67 mile-an-hour range. And actually, Mr. Fries, the defendant's own expert, puts him as high as 65. My

conclusion is that there is no doubt that the defendant was driving between 60 and 67 miles per hour.

Again, the speed limit here is 25. You can have a 25 mile-an-hour speed limit zone where you can easily drive 60 and not lose control if you have a flat, open space. And let's say the 25 mile speed limit is because there's a school zone. That's not the case we have here. The reason for the 25 mile-an-hour speed limit is because this is a dangerous, windy, hilly road. It has hills. It has valleys. It has impeded sight distances. It has narrow shoulders.

If you go off the road, you're in danger of hitting trees. There's – of course, it's a wooded area. That's why there's a 25 mile-an-hour speed limit. That's why there are signs. These squiggly signs that show you what the road is like up ahead, like the one that Mr. Pawski drove by. Mr. Pawski's speed was extreme, given those circumstances.

He testified – I even marked it in my notes here. His lawyer asked him, "How fast were you going?" He said, "I didn't look at my speedometer, but I was going the usual speed, nothing harsh or unreal" was his exact quote.

I don't – that's a subjective evaluation. I don't know what he means by "the usual speed." I don't know what he means by "nothing harsh or unreal," but I do know the speed was extremely excessive.

Did his speed cause the accident, is the next – well, I said, "accident," – the collision. Did the speed cause the collision which caused the death in this case?

The State's theory is that it did, that he came around the corner and was going so fast that he felt the need to stomp on his brakes, and once he did that, the collision was inevitable.

The defense theory is that the defendant came around the curve, saw a vehicle which he thought was in his lane and panicked and stomped on his brakes, thereby causing the

collision: In other words, the defense theory is that the defendant made a bad decision of judgment rather than driving in a reckless fashion.

The proof establishes to my satisfaction beyond a reasonable doubt that the defendant was going too fast. I want you both, if you get a chance, to look at Exhibits 9 and 11. Exhibits 9 and 11 show where the defendant was coming from. He wasn't in his lane in the middle of his lane just driving down the road. He was way over on the right when the skidding started. That tells me he's probably cutting the corners, cutting through the curves, which would cause his centrifugal force to take him out to the left. And he just wasn't able to get back to the right. He realized it and he stomped on his brakes because he knew he was going too fast and he was losing control and couldn't make the curve.

Once he stomped on his brakes, that lost all control of the vehicle. That was the direct and proximate cause of his – or result of his excessive speed, and that's why he crossed into the other lane.

-(RP 319, L22 – 322, L13)

The State submits that there is sufficient evidence produced in this record to support the Findings of Fact and ultimate Conclusions of Law entered by the Judge and further support the elements of the crime charged.

III. CONCLUSION

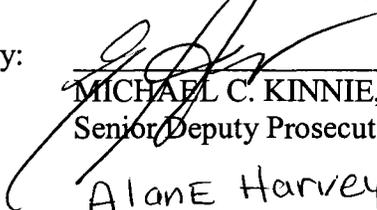
The trial court should be affirmed in all respects.

DATED this 20 day of April, 2010.

Respectfully submitted:

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON
Plaintiff,

vs.

KENNETH EDWARD PAWSKI,
Defendant.

Cause No. 09-1-00168-5

FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND JUDGMENT OF GUILTY

II. FINDINGS OF FACT

1. On August 2, 2008, a few minutes before 8:00 a.m., Jason John Skelton was driving his Jeep Cherokee, transporting a rear bumper mounted motorcycle, Eastbound and uphill near the 25000 block of Rawson Road, in Brush Prairie, Washington.

2. At the same time, Defendant, Kenneth Edward Pawski, was driving a 2002 Dodge Dakota pickup truck Westbound on Rawson Road, toward the Skelton vehicle.

3. Defendant had been camping and drinking beer the previous evening, into the morning of August 2, 2008 at "The Rock Pit," located about 1 mile East of the end of Rawson Road.

4. Defendant approached a curve to the right at a speed between 60 and 67 m.p.h.

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JTM

1 5. The speed limit, well posted with a warning sign, which Defendant drove past, was 25
2 m.p.h. This low speed was required because at the location in issue, Rawson Road is a curvy and
3 hilly two lane road with narrow shoulders..

4 6. The Defendant crested a hill and entered into the curve to his right. At that time, Mr.
5 Skelton's vehicle was approximately 290 feet to the West. For him, the road curved to the left,
6 and he was heading up an incline.

7 7. Defendant, as he entered the curve, was driving on the outside portion of his lane.
8 This location raises an inference that he was "cutting the curve" to his right, which caused his
9 momentum to carry his vehicle toward the Eastbound, uphill lane occupied by Mr. Skelton. See
10 Exhibits 9 and 11.

11 8. The Defendant activated his brakes, locking them, and proceeded to slide 107 feet in a
12 straight line, crossing the lane dividing line as he entered the curve, into the Eastbound lane.

13 9. This movement caused the Defendant's vehicle to collide with the Skelton vehicle, in
14 the Eastbound lane.. The collision was not head on, but rather the vehicles hit at an angle of
15 approximately 12 degrees from a straight line. The front of Defendant's vehicle smashed into
16 the driver's area of the Skelton vehicle, causing injuries to Mr. Skelton, from which he died at
17 the scene.
18

19 10. The Defendant testified that he was driving a "normal speed."

20 11. Defendant testified that he applied his brakes because he thought he saw a vehicle
21 approaching in his lane of travel.
22

23 12. The court finds that there is no credible evidence in the record that the Skelton
24 vehicle was driving Eastbound in the Westbound lane. If Defendant so perceived, he was
25 mistaken.

1 13. The Defendant's speed was grossly excessive for the conditions.

2 14. The Defendant's excessive speed most likely caused an inability to remain in his own
3 lane, necessitating that he forcefully apply his brakes.

4 15. The excessive speed, which caused the Defendant to lock up his wheels by braking,
5 caused the Defendant's vehicle to enter the Eastbound lane and strike the Jeep Cherokee.

6 II. CONCLUSIONS OF LAW

7 1. The court has jurisdiction over the parties and the subject matter.

8 2. Excessive speed is prima facie evidence of reckless driving. RCW 46.61.465.

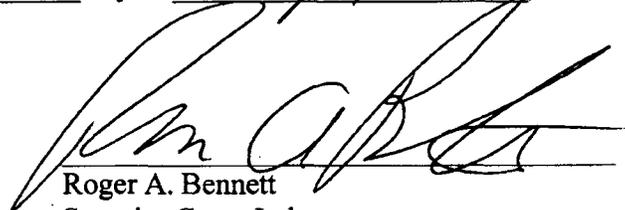
9 3. Grossly excessive speed on a curvy, hilly two lane road is strong evidence of disregard
10 for the safety of others, and of recklessness.

11 4. Defendant's conduct in driving his vehicle, prior to losing control, and due to the
12 excessive speed, was the proximate cause of the death of John Jason Skelton.

13 III. JUDGMENT

14 Defendant is guilty of the crime of vehicular homicide, as charged.

15 DATED this 10 day of September 2009.

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20 
21 Roger A. Bennett
Superior Court Judge

22
23  SDPA 13754
24 approved as to Form, no consent to Entry

25 
Attorney For Defendant 15087

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DIVISION II

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STATE OF WASHINGTON

BY

DEPUTY

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

STATE OF WASHINGTON,
Respondent,

v.

KENNETH EDWARD PAWSKI,
Appellant.

No. 39788-9-II

Clark Co. No. 09-1-00168-5

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On April 28, 2010, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO: David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Catherine E Glinski
Attorney at Law
PO BOX 761
Manchester WA 98353

KENNETH EDWARD PAWSKI
c/o Appellate Attorney

DOCUMENTS: Brief of Respondent

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date: April 28, 2010.

Place: Vancouver, Washington.