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Court of Appeals
Division II
State of Washington
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No. 53189-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW STEVEN JOHNSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. The State failed to establish the *corpus delicti* of the crime, in violation of due process and the *corpus delicti* rule, and the court erred in denying Mr. Johnson's motion to dismiss on that basis.

2. To the extent it is not supported by sufficient evidence in the record, the court erred in finding,

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

CP 23 (FOF 4).¹

3. To the extent it is a finding of fact that is not supported by sufficient evidence in the record, the court erred in entering the following "conclusion of law":

The Defendant operated his motor vehicle with disregard for the safety of others. Bringing a motor vehicle to a complete stop on a busy highway and obstructing traffic, either wholly or partially, let alone operating a motor vehicle in reverse on the shoulder and turning in a manner where part of the vehicle enters the flow of traffic, are maneuvers that, especially in busy

¹ A copy of the trial court's written findings of fact and conclusions of law is attached as an appendix.

traffic conditions, are highly dangerous. Such maneuvers put not only the driver in danger, but also every other motorist on the highway. Motorists do not expect, when driving at highway speeds, to see a vehicle at a stop in their lane of travel. Such a maneuver is flatly dangerous. Therefore, intentionally performing such a maneuver is done with disregard for the safety of others.

CP 24-25 (COL 3).

4. To the extent it is a finding of fact that is not supported by sufficient evidence in the record, the court erred in entering the following “conclusion of law”:

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

CP 25 (COL 4).

5. The State failed to prove beyond a reasonable doubt that Mr. Johnson's wrongful conduct was a proximate cause of Ms. Barnes's injuries, in violation of due process.

6. The court erred in entering a guilty verdict and convicting Mr. Johnson of the crime.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The *corpus delicti* rule requires the State to present sufficient evidence, independent of the accused's admissions, to establish a *prima facie* case that the charged crime occurred. Here, other than Mr. Johnson's admissions, the only evidence the State presented to establish that he drove or operated his car with disregard for the safety of others, was the witness testimony to the effect that Mr. Johnson was sitting in the driver's seat of his car, with the nose of his car about halfway into the lane of oncoming traffic on a rural highway, and the other half of the car in the driveway of his residence. Was this evidence insufficient to establish the *corpus delicti* of the crime?

2. A defendant's wrongful conduct is a "proximate cause" of harm to another if, in direct sequence, unbroken by any new independent cause, it produces the harm, and without it the harm would not have happened. If the alleged victim's conduct was an independent

superseding cause without which the defendant's conduct would not have caused the accident, the defendant's conduct is not a proximate cause of the victim's injuries. Here, the victim was driving close enough to the car in front of her that she could not brake in time to avoid colliding with that car when the driver of that car braked in order to avoid colliding with Mr. Johnson's car. Was the victim's conduct in driving too close to the car in front of her and failing to brake in time an independent cause that broke the chain of causation such that Mr. Johnson's conduct was not a proximate cause of her injuries?

C. STATEMENT OF THE CASE

On October 6, 2017, at around 7 p.m., Tyler Newport was driving his pickup truck, a Ford F-350, westbound on Highway 12 from Montesano to Aberdeen. 1/25/19RP 13. His girlfriend, Hanna Himley, was in the passenger seat. 1/25/19RP 14. It was getting dark and "sprinkling off and on." 1/25/19RP 13, 22, 26. The traffic "wasn't rush hour heavy, but there were other vehicles on the road." 1/25/19RP 21-22.

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

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

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

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

Mr. Newport "slam[med] on the brakes" and "laid on the horn." 1/25/19RP 14, 17-18. He came to a stop a few feet from Mr. Johnson's car. 1/25/19RP 14, 18-19. A couple of seconds later Mr. Newport's truck was hit from behind by a 2003 Ford Ranger driven by Marilyn Barnes. 1/25/19RP 14, 19, 24.

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

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

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

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

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

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

down. 1/25/19RP 71. The independent evidence did not establish the *corpus delicti* of anything other than a car accident. 1/25/19RP 62.

The trial court denied the *corpus delicti* motion. 1/25/19RP 71.

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

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

D. ARGUMENT

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

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

“[C]orpus delicti is a corroboration rule that ‘prevent[s] defendants from being unjustly convicted based on confessions alone.’”

State v. Cardenas-Flores, 189 Wn.2d 243, 252, 401 P.3d 19 (2017)

(quoting State v. Dow, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010)).

“The corpus delicti ‘must be proved by evidence sufficient to support the inference that’ a crime took place, and the defendant’s confession ‘alone is not sufficient to establish that a crime took place.’” Cardenas-Flores, 189 Wn.2d at 252 (quoting State v. Brockob, 159 Wn.2d 311, 327-28, 150 P.3d 59 (2006)).

Although *corpus delicti* concerns admissibility, it “is, at heart, a rule of sufficiency.” Cardenas-Flores, 189 Wn.2d at 263. Independent evidence is necessary because a defendant’s incriminating statement alone is deemed insufficient as a matter of core policy of the criminal law to establish that a crime took place. Brockob, 159 Wn.2d at 328. “[T]he evidence must independently *corroborate*, or confirm, a defendant’s confession.” Id. at 328-29. If the *corpus delicti* is not corroborated by independent evidence, the defendant’s admissions cannot be considered. State v. Hummel, 165 Wn. App. 749, 758-59, 266 P.3d 269 (2012).

“The independent evidence need not be sufficient to support a conviction, but it must provide prima facie corroboration *of the crime described in a defendant’s incriminating statement.*” Brockob, 159 Wn.2d at 328. That is, the independent evidence must corroborate “not

just *a crime* but *the specific crime* with which the defendant has been charged.” Id. at 329.

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

To survive a *corpus delicti* challenge, “the independent evidence ‘must be consistent with guilt and inconsistent with a[] hypothesis of innocence.’” Brockob, 159 Wn.2d at 329 (quoting Aten, 130 Wn.2d at 660) (alteration in original). “[T]he *corpus delicti* is *not* established when independent evidence supports reasonable and logical inferences of both criminal agency and noncriminal cause.” Aten, 130 Wn.2d at 660.

This Court reviews *de novo* whether sufficient corroborating evidence exists to satisfy the *corpus delicti* rule. State v. Hotchkiss, 1 Wn. App.2d 275, 279, 404 P.3d 629 (2017), review denied, 190 Wn.2d 1005, 413 P.3d 9 (2018). In determining whether the independent

evidence is sufficient, the Court assumes the truth of the State's evidence and all reasonable inferences from it in a light most favorable to the State. Cardenas-Flores, 189 Wn.2d at 264.

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

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

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

In Brockob, the State presented evidence that Brockob stole 15 to 30 packages of Sudafed from a Fred Meyer store. Id. at 331. The court held that evidence was sufficient to support only the logical and reasonable inference that Brockob intended to steal Sudafed, not that he

intended to manufacture methamphetamine. Id. Although a police officer testified he knew that Sudafed is used in the manufacture of methamphetamine, the mere assertion that Sudafed is known to be used to manufacture methamphetamine did not necessarily lead to the logical inference that Brockob intended to do so, without more. Id. at 331-32. Brockob told a police officer that he was stealing the Sudafed for someone else who was going to make methamphetamine, but the State presented no independent evidence to support this statement other than the officer's bare assertion that Sudafed is used to manufacture methamphetamine. Id. at 332. Thus, "the independent evidence was insufficient to corroborate Brockob's incriminating statement" and was insufficient to establish the *corpus delicti* of the charged crime of possession of pseudoephedrine and/or ephedrine with intent to manufacture methamphetamine. Id. at 333.

Likewise, in Aten, a woman confessed to smothering an infant. Aten, 130 Wn.2d at 649-50. At trial, a pathologist testified the infant's death could have been caused by suffocation or by Sudden Infant Death Syndrome, but he also testified he could not conclude the infant died as a result of human action. Id. at 646-47. The court held the evidence was insufficient to establish the *corpus delicti* of second degree

manslaughter because the totality of the independent evidence did not lead to a reasonable and logical inference that the infant died as a result of criminal action. Id. at 660. The court emphasized, “[t]he final test [of the corpus delicti rule] is whether the facts found and the reasonable inferences from them have proved the nonexistence of any reasonable hypothesis of innocence.” Id. (quoting State v. Lung, 70 Wn.2d 365, 371, 423 P.2d 72 (1967)) (alteration in Aten). “In other words, if the facts suggest there is an innocent hypothesis for the events, the State’s evidence is insufficient to corroborate a defendant’s confession.”

Brockob, 159 Wn.2d at 335.

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

Independent of Mr. Johnson's admissions to Trooper Rabe, the State's evidence established that Marilyn Barnes was driving her vehicle behind Mr. Newport's truck on Highway 12 at dusk on an intermittently rainy October evening. 1/25/19RP 13-14, 19-26. The traffic was moving at about 50 miles per hour. 1/25/19RP 14-16. Mr. Newport slammed on his brakes when the truck in front of him abruptly changed lanes and provided Mr. Newport with a sudden view of the front of Mr. Johnson's white car extending half-way into the roadway. 1/25/19RP 18. Ms. Barnes was following closely enough behind Mr. Newport's truck that she did not have time to stop her vehicle before hitting his truck. 1/25/19RP 28-29. Ms. Barnes said she could see Mr. Johnson's white car extending into the roadway out of the corner of her eye, but she could not tell if the car was moving forward or backward or simply standing still. 1/25/19RP 27-28.

This evidence is insufficient to establish a *prima facie* case of vehicular assault. It is insufficient to establish that Mr. Johnson committed a criminal act. Instead, it is consistent with a reasonable hypothesis of innocence. Mr. Johnson's car was facing forward half-way in the driveway of his residence, where the driveway entered the roadway. 1/25/19RP 40, 45, 57. That in itself is not a crime. The

evidence did not establish whether the car was moving forward or backward or simply standing still. 1/25/19RP 27-28. Mr. Johnson could have been pulling out of his driveway onto the roadway. His car could have stalled or he could have suffered some other innocent mishap preventing him from moving out of the way of oncoming traffic.

The independent evidence did not establish that Mr. Johnson acted “[w]ith disregard for the safety of others.” RCW 46.61.522(1)(c). In finding that the State had proved this element, the trial court relied upon Mr. Johnson’s statement to Trooper Rabe. See CP 24-25. Mr. Johnson told Trooper Rabe that he had pulled onto the shoulder of the road and was backing his car into his driveway so that “when he got in it the next time, [it] would be ready to pull out on the road.” 1/25/19RP 48. But aside from this statement, the State presented no evidence that Mr. Johnson was actually backing up his car into his driveway at the time of the collision.

In sum, the totality of the independent evidence did not lead to a reasonable and logical inference that Ms. Barnes was injured as a result of Mr. Johnson’s criminal act. See Aten, 130 Wn.2d at 646-47. The independent evidence did not prove the nonexistence of any reasonable

hypothesis of innocence. Id. at 660. Therefore, the State did not establish the *corpus delicti* of vehicular assault. Id.

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

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

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

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

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

To prove the crime, the State must prove the defendant’s criminal conduct was a proximate cause of the victim’s injuries. State v. Lovelace, 77 Wn. App. 916, 919, 895 P.2d 10 (1995). “Proximate

cause is defined as a cause which in direct sequence, unbroken by any new, independent cause, produces the event explained of and without which the injury would not have happened.” Id. (internal quotation marks and citation omitted).

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

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

negligent act or omission has been committed.” Meekins, 125 Wn.

App. at 398 (quoting Restatement (Second) of Torts § 441(1) (1965)).

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

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

The State bears the burden to prove proximate cause beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Const. art. I, § 3. The question on review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the element of proximate cause beyond a reasonable doubt.

Jackson v. Virginia, 443 U.S. 307, 316-19, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

Here, the State did not prove beyond a reasonable doubt that Mr. Johnson’s conduct was a proximate cause of Ms. Barnes’s injuries because her conduct in failing to brake in time constituted a superseding intervening cause that broke the chain of causation. When

the truck in front of Mr. Newport abruptly changed lanes, Mr. Newport saw Mr. Johnson's car partially in the roadway and immediately "slam[med] on the brakes." 1/25/19RP 14, 17-18. He was able to stop his truck a few feet away from Mr. Johnson's car. 1/25/19RP 14, 18-19.

But Ms. Barnes, on the other hand, was following too closely to Mr. Newport's truck and did not apply the brakes of her car sufficiently quickly to avoid a collision. 1/25/19RP 27-29. She said she saw Mr. Johnson's car "out of the corner of [her] eye," and saw that it was close enough to the highway to cause her concern. 1/25/19RP 27-28. Yet she did not immediately apply her brakes. Instead, she explained, "[a]s I approached it, I was getting closer, and it was out there, still out there, still, and, you know, my eyes went over there just a little bit, and I tapped the brakes and I looked back on the freeway, on the highway, I hit Mr. Tyler's car, truck." 1/25/19RP 28. She tapped her brakes, glanced back, and then hit Mr. Newport's truck. 1/25/19RP 29.

Ms. Barnes should not have been following so closely to Mr. Newport's truck that she could not stop her own car in time to avoid colliding with Mr. Newport's truck. She should have applied her brakes immediately and taken defensive maneuvers when she saw Mr. Johnson's car in the roadway so that she could avoid a collision. After

all, Mr. Newport was able to stop his truck in time to avoid colliding with Mr. Johnson's car. 1/25/19RP 14, 18-19.

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

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

E. CONCLUSION

The State did not establish the *corpus delicti* of the crime. Also, the State did not prove an essential element of the crime beyond a reasonable doubt. The conviction must be reversed and the charge dismissed.

Respectfully submitted this 8th day of November, 2019.

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APPENDIX

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GRAYS HARBOR CO.
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Findings of Fact and Conclusions of Law
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SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff,

No.: 18-1-330-14

v.

MATTHEW STEVEN JOHNSON,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
VERDICT**

THIS MATTER having come on before the Honorable Judge David Edwards, of the above-entitled court, for a Bench Trial on January 25, 2019, the State having been represented by Randy J. Trick, Deputy Prosecuting Attorney, the Defendant appearing in person with his attorney, David P. Arcuri, and the Court having considered the stipulation of the parties, and the testimony of State's witnesses Hanna Himley, Marilyn Barnes, Washington State Patrol Troopers Matt Rabe and Charlie Stewart, hereby finds the following facts have been proved beyond a reasonable doubt, makes the following conclusions of law, and renders a verdict.

FINDINGS OF FACT

1.

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
VERDICT

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2.

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

3.

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

4.

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

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5.

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

6.

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

Based upon the foregoing findings of fact, and testimony of the witness at trial, the Court enters the following conclusions of law:

CONCLUSIONS OF LAW

1.

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

2.

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

3.

The Defendant operated his motor vehicle with disregard for the safety of others. Bringing a motor vehicle to a complete stop on a busy highway and obstructing traffic, either wholly or partially, let alone operating a motor vehicle in reverse on the shoulder and turning in a manner where part of

1 the vehicle enters the flow of traffic, are maneuvers that, especially in busy traffic conditions, are
2 highly dangerous. Such maneuvers put not only the driver in danger, but also every other motorist on
3 the highway. Motorists do not expect, when driving at highway speeds, to see a vehicle at a stop in
4 their lane of travel. Such a maneuver is flatly dangerous. Therefore, intentionally performing such a
5 maneuver is done with disregard for the safety of others.
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8 4.

9 The manner in which the Defendant operated his motor vehicle was the proximate cause of
10 the substantial bodily harm suffered by Ms. Barnes. Mr. Newport, driving the F-350, faced with the
11 sudden sight of the Defendant's vehicle in his lane of travel, applied his brakes and was fortunately
12 able to stop short. Ms. Barnes saw the white vehicle on the side of the road, appropriately had her
13 foot on her brake, and applied her brakes without any delay or hesitation as soon as she saw Mr.
14 Newport's F-350 apply its brakes. There is no basis to find that Ms. Barnes was following too closely
15 or otherwise driving negligently. When confronted with an emergency that is no fault of one's own,
16 and when a person so confronted with an emergency acts reasonably, such as applying brakes as soon
17 as possible, that person's response is not a subsequence intervening cause. Mr. Newport acted
18 reasonably in driving. Ms. Barnes acted reasonably in driving. There being no evidence of any other
19 intervening causes, the Defendant's driving is therefore the proximate cause of this collision.
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21 5.

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

Based on the testimony elicited at trial, and the facts found by this court beyond a reasonable doubt, the Defendant is guilty of the crime of Vehicular Assault as charged.

DATED: this day of February, 2019 *25 day of March, 2019*



JUDGE David L. Edwards

Presented by:

Approved (for entry)(as to form)

RANDY J. TRICK
Deputy Prosecuting Attorney
WSBA #45190

DAVID P. ARCURI
Attorney for Defendant
WSBA #15557

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 53189-5-II
)	
MATTHEW STEVEN JOHNSON,)	
)	
APPELLANT.)	

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[appeals@co.grays-harbor.wa.us]
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| <input checked="" type="checkbox"/> MATTHEW STEVEN JOHNSON
1401 W MARKET ST
ABERDEEN, WA 98520 | (X)
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() | U.S. MAIL
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SIGNED IN SEATTLE, WASHINGTON THIS 8TH DAY OF NOVEMBER, 2019.

x 

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WASHINGTON APPELLATE PROJECT

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Appellate Court Case Title: State of Washington, Respondent v. Matthew Steven Johnson, Appellant
Superior Court Case Number: 18-1-00330-2

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