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NO. 369871

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

Court of Appeals No. 369871
Spokane County Superior Court No. 16-2-00708-7

JAMES WALKER and BARBARA WALKER, husband and wife and the
marital community composed thereof,
Plaintiffs/Appellants,

v.

THE WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION, DIVISION OF HIGHWAYS, a State agency,
STEVENS COUNTY, DEPARTMENT OF PUBLIC WORKS,
Defendants/Respondents.

BRIEF OF RESPONDENT STEVENS COUNTY

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I. INTRODUCTION

On July 26, 2013, James Walker was riding his motorcycle eastbound on Ford-Wellpinit Road. Mr. Walker failed to stop at a stop sign located at the intersection of Ford-Wellpinit Road and State Route 231 (SR 231).¹ After driving through the stop sign and into the intersection, Mr. Walker was hit by a vehicle proceeding southbound on SR 231. Mr. Walker was injured in the accident.

The Walkers brought suit against Stevens County (the County) and the State of Washington (the State) alleging that the stop sign at the intersection of Ford-Wellpinit Road and SR 231 was at least partially obstructed by vegetation, which Mr. Walker alleges was the cause of his failure to stop before entering the intersection.

The undisputed facts in this case are that the allegedly obstructing vegetation was on private property and not “along a county roadway.” In fact, it is undisputed that the allegedly obstructing vegetation was within a 20 foot radius around a State-owned sign that the State agrees is its sole duty to maintain. In arguing that the County owed a duty in this case, both the State and the Walkers improperly attempt to import the County’s recognized duty to maintain vegetation in its right-of-way “along a county

¹ Ford-Wellpinit Road is a county road maintained by Stevens County. SR 231 is a state highway maintained by the State of Washington.

roadway” to vegetation outside the County’s right-of-way and not “along a county roadway.”

The stop sign that Mr. Walker alleges was obstructed by vegetation was owned, place, and maintained by the State. The State maintained the stop sign as part of its self-admitted duty to control access to its highway. According to Mr. Walker’s allegations, the stop sign was obscured by vegetation on the day of the accident. It is undisputed that the allegedly-obscuring vegetation was on private property and within 20 feet of the stop sign. The law does not impose a duty on the County to assure that the State’s stop sign is serving its purpose of controlling access to a state highway. To the contrary, and consistent with its admitted practice, the State was solely responsible for maintaining vegetation within a 20 foot radius of its stop sign in order to control access to its highway.

The Walkers also contend that the County’s and the State’s alleged failure to exercise ordinary care in the maintenance of the stop sign was the proximate cause of Mr. Walker’s injuries. The Walkers lack sufficient, competent evidence to meet their causation burden as a matter of law. No genuine dispute exist that Mr. Walker had 980 feet to observe and react to environmental cues that signaled the coming intersection. Further, no genuine dispute exists that Mr. Walker had at least 325 feet to observe and react to the stop sign itself. Even further, Mr. Walker had an additional 26

feet from the stop sign until the beginning of the intersection to observe and react to the stop bar painted across the entry to SR 231. Had Mr. Walker observed and reacted to these prompts, he could have brought his motorcycle to a controlled stop before entering the intersection, as did his riding partner, Ulrich Schildt. Instead, Mr. Walker drove straight into the intersection and into the path of another vehicle without braking or taking any evasive maneuvers. Thus, the Walkers cannot establish that (1) the lack of an additional 25 feet of sight distance to the stop sign is why Mr. Walker drove directly into the intersection without braking or (2) that had another 25 feet of sight distance existed, Mr. Walker would have stopped before entering the intersection.

It is pure speculation to argue that additional warnings or additional sight distance to the stop sign would have made a difference. That argument suggests only what *might* have been and, as a result, the Walkers failed to meet their burden of establishing proximate cause. The recently determined *Behla* case by this Court does not affect this analysis when the facts of the instant case are so significantly different than those that appear in *Behla*.

The Walkers appeal the trial court's ruling on the parties' various summary judgment motions, assigning error to the following decisions: (1) granting summary judgment to both the County and the State based upon the Walkers' failure to establish proximate cause; (2) granting summary

judgment to the County for the Walkers' failure to establish duty on the part of the County; and (3) failing to grant the Walkers' motion for reconsideration regarding the summary judgment rulings.

II. RESTATEMENT OF ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue No. 1: Given the fact that the stop sign in question was owned, placed and maintained by the State (through WSDOT), and given the fact that the stop sign cannot serve its purpose of controlling access to the state highway if it is obscured by vegetation, and given the fact that the allegedly offending vegetation was within the radius of the area the State admits it was responsible for maintaining vegetation growth, was the trial court correct in determining that only the State owed a duty to Mr. Walker to ensure visibility of the stop sign located at the intersection of Ford-Wellpinit Road and SR 231?

Issue No. 2: Given the Walkers' inability to rationally rule out potential causes of the accident other than an allegedly obstructed stop sign, was the trial court correct in finding the absence of proximate cause?

Issue No. 3: Given the Walkers' inability to produce competent evidence that Mr. Walker drove into the intersection because the stop sign was obscured, was the trial court correct in finding that the Walkers' causation theory was based solely upon speculation?

III. RESTATEMENT OF THE CASE

A. The Subject Roadway

SR 231 is a State of Washington highway nearly 75 miles in length serving communities in both Stevens and Lincoln Counties. CP 340. SR 231 was established in 1964, although sections of the current route have been in the state highway system as early as 1909. *Id.* The portion of county roadway under review, known as Ford-Wellpinit Road, runs generally in a west to east direction while SR 231 runs generally in a north-south direction. *Id.* At the time of the July 26, 2013 motorcycle crash, the speed limit for the two-lane, two-way rural county road was posted at 50 miles per hour. *Id.* The road pavement on Ford-Wellpinit Road approaching the intersection was marked with a painted double yellow no-passing stripe to separate the directions of travel, together with a white lane edge strip on either side of the roadway indicating the edge of the travel lanes. *Id.* The wide-mouth intersection approach to SR 231 was controlled by a 30'' x 30'' state stop sign (R1-1) and a stop bar painted laterally across the road approach. *Id.*

B. The Subject Accident

Mr. Walker and his friend, Mr. Schildt, departed Monroe, WA on July 25, 2013 to go motorcycle riding in eastern Washington. CP 274-275. The pair met up with a larger group around 11:30 a.m. before proceeding

north towards Highway 20. CP 275-276. At that point, the group gassed up and headed towards Republic, WA on Highway 20. CP 276-277. Between 4:00 p.m. and 5:00 p.m., the group arrived in Republic and checked into a motel. CP 277. After getting checked in, the group went to a local tavern for pizza and beer. CP 278. After spending three or four hours at the tavern, Mr. Walker walked back to the motel to retire for the evening. CP 278-279.

The next day, July 26, 2013, the group planned to split up, with Mr. Walker and Mr. Schildt riding a separate route from that of the others. CP 280. After waking up between 8:00 a.m. and 9:00 a.m., Mr. Walker and Mr. Schildt stopped for breakfast and to gas up their motorcycles. CP 281-282. The pair intended to take a “southerly and easterly, kind of loop,” with the intention of returning to Republic around dinnertime. CP 283. Mr. Walker had never ridden this route before. *Id.* Mr. Walker and Mr. Schildt proceeded in a generally southeasterly direction until they arrived in Fruitland. CP 284. They again refueled and took a short rest for approximately 45 minutes before setting out again. *Id.* The next town in which they arrived was Wellpinit. CP 285. They left Wellpinit on Ford-Wellpinit Road heading eastbound towards Ford. *Id.*

According to the Police Traffic Collision Report Number E260060, the accident occurred when Mr. Walker, who was traveling in an eastbound direction along Ford-Wellpinit Road on his 2012 Kawasaki motorcycle,

drove into SR 231 without first stopping at the stop sign at the intersection of Ford-Wellpinit Road and SR 231. CP 4-5; CP 339-342, 348-352. As Mr. Walker entered the intersection, his motorcycle was struck by a 2002 Toyota Camry operated by Ms. Jacqueline Alvarez who was travelling in the southbound direction of SR 231.² *Id.*; CP 351. The recorded weather conditions were clear and/or partly cloudy while the surface condition of the roadway was dry. *Id.* The lighting conditions at the intersection were considered daylight. *Id.* The police report indicated that neither Mr. Walker nor Ms. Alvarez had been drinking, and Mr. Walker was wearing a motorcycle helmet. *Id.* The police report also indicated Mr. Walker “failed to stop for a clearly erected stop sign” before traveling into the southbound lane of SR 231. CP 351.

The last thing Mr. Walker remembers prior to the accident is leaving Wellpinit and getting back up to highway speed. CP 286. He does not recall the collision itself, and does not recall approaching the intersection where the accident occurred. CP 286-287.

Mr. Schildt testified that he was traveling between 50 and 100 feet behind Mr. Walker at the point where the accident occurred. CP 290. Mr. Schildt was able to bring his motorcycle to a controlled stop prior to entering

² Ms. Alvarez is not a party to this lawsuit.

the intersection. CP 291. Mr. Schildt did not leave skid marks and he did not remember it being a particularly hard stop. CP 296. Mr. Schildt testified that immediately before the accident, he and Mr. Walker were traveling at less than 50 miles per hour because it was clear the roadway was changing and “there was something coming up.” CP 292.

Mr. Schildt did not see Mr. Walker take any evasive action to avoid the accident, nor does he recall seeing Mr. Walker applying his brakes prior to the impact. CP 297-298. Mr. Schildt heard a very brief tire squeal from the vehicle driven by Ms. Alvarez immediately before the impact. CP 295.

Mr. Schildt spoke with Mr. Walker at the scene after the accident occurred. CP 293. Mr. Walker “didn’t know at all what happened. He had no recollection at all.” *Id.* As far as Mr. Schildt is aware, Mr. Walker “does not recall when the collision occurred.” CP 294.

C. The Intersection

In 2004, WSDOT relocated an existing stop sign at the intersection of Ford-Wellpinit Road and SR 231 to a new location. CP 305. The relocated stop sign remained in the same place through the date of the July 26, 2013 collision. *Id.* In discovery, the Walkers provided photographs taken a year after the accident (2014) that they believe are a fair and accurate depiction of the scene on the day of the accident. CP 442-446. The photographs illustrate a progressively improved view of the stop sign at the

intersection of SR 231 and Ford-Wellpinit Road as drivers approach the intersection.

Jim Flott, the Walkers' forensic expert regarding vegetation, opined that the views seen in the 2014 photographs are not a fair and accurate depiction of the approach to the intersection in 2013. CP 397; CP 1203; CP 1205; CP 1209. Instead, Mr. Flott testified that the vegetation that partially obstructed the stop sign in 2014 would be anywhere from 20-30 inches shorter in 2013, thereby improving the visibility of the stop sign at the time of the accident in 2013. CP 397-398; CP 1210-1211.

Mr. Schildt agreed that the approach to the intersection made it obvious to a motorcycle rider that the roadway was changing. CP 292. Mr. Schildt also acknowledged the presence of a stop bar in advance of the intersection. CP 297.

D. Accident History at Intersection

Since the relocation of the stop sign in 2004, four accidents have been documented at the intersection of Ford-Wellpinit Road and SR 231, not including Mr. Walker's accident. CP 357-358. Of those four accidents, one involved a police vehicle that struck a moose that had stepped into the SR 231. CP 358; CP 362-363; CP 1087-1088.

Another accident involved a vehicle failing to stop at the Ford-Wellpinit Road and SR 231 intersection and striking another vehicle hauling

a trailer on northbound SR 231. CP 358; CP 365-366; CP 1089-1090. The driver of the vehicle that struck the vehicle traveling northbound on SR 231 left the scene of the accident before he was eventually booked into Wellpinit Jail for driving under the influence. *Id.*

Another accident occurred when the driver of a vehicle traveling eastbound on Ford-Wellpinit Road lost control of his vehicle as he attempted to make turn left onto SR 231. CP 358; CP 368-369; CP 1091-1092. The vehicle rolled and ended up in a ditch off the side of SR 231. *Id.* The driver was attempting to elude police when the accident occurred. *Id.* The fourth and final accident at the intersection involved a driver traveling southbound on SR 231 attempting to turn right onto Ford-Wellpinit Road. CP 358; CP 371-374; CP 1097-1100. The driver lost control of the vehicle, ultimately coming to rest off the side of SR 231. *Id.*

E. Duty to Maintain the Stop Sign

Mr. Walker alleges that the stop sign could not be seen from the 350 foot sight distance required by the Manual on Uniform Traffic Control Devices (MUTCD). Brief of Appellant at 11, 13, 27. He alleges that as a result, one of two corrective actions should have been taken: (1) maintain (i.e., cut or prune) the vegetation to restore the proper sight distance to the stop sign; or (2) erect a “stop ahead” sign in advance of the intersection to notify users of the upcoming stop sign. The issue before the trial court on

the issue of duty was fairly simple: which entity – the County or the State– had the duty to take the foregoing corrective actions? The trial court correctly determined that duty rested solely with the State.

The following is undisputed: (1) the State placed the stop sign in question, (2) the State³ owned the stop sign, and (3) the State had a legal duty to “maintain” the stop sign. CP 302-306. It is axiomatic that a duty to maintain a stop sign includes assuring that the sign maintains functionality, i.e. the visibility and legibility of the sign. In other words, implicit in the duty to maintain the sign is assuring the sign is visible and in compliance with applicable MUTCD standards.⁴ Simply stated, the duty to maintain a stop sign carries with it a duty to assure the sign maintains its functionality, which in this case means removing vegetation around the stop sign that allegedly reduced its visibility.

The State’s duty to maintain vegetation around the stop sign in question was confirmed by WSDOT’s CR 30(b)(6) deponent, who testified unequivocally that it is WSDOT’s duty to maintain the vegetation surrounding the stop sign. CP 307-311; CP 317; CP 319-320; CP 323. Since the County had no legal duty to “maintain” the stop sign in question, it

³ Maintenance of state roads and state signs is performed by the Washington State Department of Transportation (WSDOT).

⁴ The MUTCD has been codified in WAC 468-95. RCW 47.36 requires traffic control signs to conform to the MUTCD.

therefore had no corresponding duty to “maintain” the vegetation around the stop sign to assure its functionality.

The Walkers have alleged that the other potential corrective action to address the claimed decreased sight distance to the stop sign was to install a “stop ahead” sign. However, the alleged sign obstruction in this case was of a temporary nature (vegetation) that could be remedied through normal vegetation maintenance activities without the expense of a “stop ahead” sign. In such cases, typical practice is to maintain the vegetation as opposed to installing a “stop ahead” sign. CP 343. Regardless, to the extent a “stop ahead” sign should have been installed, it was the State’s duty to do so. The analysis is the same as vegetation control – since the State placed, owned, and maintained stop sign, the State must take the necessary corrective measures to assure MUTCD compliance. Stated differently, when the State places a stop sign to control access from a county road onto a state highway, the County does not work with the State to determine if a “stop ahead” sign is necessary. CP 48. As a matter of law, the State cannot be said to fulfill its admitted duty to “maintain” a stop sign if conditions are such that the stop sign loses its functionality because it is not visible. Indeed, the State’s CR 30(b)(6) deponent testified that it is the State of Washington’s duty to maintain that stop sign’s visibility. CP 322.

The County owed no legal duty to maintain the stop sign. Since the County did not have the legal duty to maintain the stop sign, it did not have the corresponding legal duty to assure that the stop sign maintained its functionality by maintaining proper sight distances. As the County did not owe Mr. Walker a legal duty to assure the stop sign maintained its functionality, summary dismissal of the Walkers' negligence claims against the County was proper.

F. The Alleged Cause of the Accident

The Walkers argue the failure to maintain vegetation before the stop sign and the lack of advisory and warnings signs in advance of the intersection were the proximate cause of the accident. The Walkers rely heavily on the recent decision rendered by this Court in *Behla v. R.J. Jung, LLC*, 11 Wn. App.2d 329, 453 P.3d 729 (2019) to support their contention that the jury should decide proximate cause when a plaintiff can show that their offered cause *could have* caused the injury. However, this Court in *Behla* also provided that if a plaintiff can rationally rule out other potential causes, the jury should decide if a plaintiff's proffered cause constitutes true cause of harm or rests in speculation. The Walkers' proffered cause, that the stop sign was not visible due to overgrown vegetation, rests in speculation and causation cannot be established on the basis of speculation.

The proffered cause rests in speculation because of the numerous other visual cues and signs that were present that should have put any roadway user on notice that the roadway was changing and an intersection was approaching. These visual cues and signs included: (1) buildings in the immediate foreground off the side of Ford-Wellpinit Road as it approaches the intersection with SR 231, (2) a change in surface conditions where the roadway transitions from asphalt to concrete and back to asphalt as Ford-Wellpinit Road crosses a bridge, (3) the stop sign in question at the intersection that becomes progressively more visible as Ford-Wellpinit Road approaches the intersection, (4) a well painted, white stop bar at the intersection with SR 231, and (5) the glaringly obvious termination of the roadway that transitions into a grassy field and eventually a large forest just beyond the intersection with SR 231. CP 598-600.⁵ No genuine dispute exists that Mr. Walker had 980 feet to observe and react to the environmental cues that signaled the coming intersection. CP 627; CP 635.⁶ Furthermore, no genuine dispute exists that Mr. Walker had at least 325 feet to observe and react to the stop sign itself. CP 595-596. Even further, Mr. Walker had an additional 26 feet from the stop sign until the start of the intersection to

⁵ A color copy of Mr. Hunter's declaration and report can be found in attached Appendix A at Stevens County A068-A076.

⁶ Color copies of Dr. Berkowitz's declaration and reports can be found in attached Appendix A at Stevens County A001-A058.

observe and react to stop bar painted across the entry to SR 231. CP 594; CP 771; CP 1004. These various changes to the roadway and environment should have been detected by an experienced motorcyclist like Mr. Walker long before he arrived at the intersection. Notably, Mr. Schildt, who was riding his motorcycle with Mr. Walker on Ford-Wellpinit Road preceding the accident, testified that the roadway was obviously changing as it approached the intersection and he did not have a difficult time bringing his motorcycle to a controlled stop at the intersection. CP 291-292.

To assert that the presence of another traffic signal or device would have caused Mr. Walker to stop his motorcycle before entering the intersection is pure speculation and does not comport with Mr. Walker's actions immediately preceding the accident. Mr. Walker cannot reasonably contend that (1) the lack of an additional 25 feet of sight distance to the stop sign caused him to drive into the intersection without braking or that (2) had another 25 feet of sight distance existed, Mr. Walker would have stopped before entering the intersection. Mr. Walker did not slow his motorcycle at all before entering the intersection and striking the vehicle traveling on SR 231, and it is an entirely reasonable conclusion that the accident would still have occurred even if additional warnings or increased sight distance of the stop sign had been present. This has been the County's and the State's

theory of what happened to cause the accident since jointly moving for summary judgment on proximate cause.

The Walkers have failed to present any sufficient, competent, admissible evidence that some additional sight distance to the stop sign or other advance warnings would have prevented the accident. In the absence of such evidence, the Walkers' proffered cause of the accident rests in speculation and summary judgment dismissal of both the County and the State on the issue of proximate cause was proper by the trial court.

IV. ARGUMENT

A. Standard of Review

On appeal of summary judgment, the standard of review is de novo with the appellate court performing the same inquiry as the trial court. *Lybbert v. Grant County*, 140 Wn.2d 29, 34, 1 P.3d 1124 (2000); *Nivens v. 7-11 Hoagies Corner*, 133 Wn.2d 192, 197-98, 943 P.2d 286 (1997). When ruling on a summary judgment motion, the court is to view all facts and reasonable inferences therefrom, most favorably toward the non-moving party. *Weyerhaeuser Company v. AETNA Casualty and Surety Company*, 123 Wn.2d 891, 897, 874 P.2d 142 (1992). In reviewing a ruling on a motion for summary judgment, the appellate court will not consider materials that were not considered by the trial court. *Alexander v. Gonser*, 42 Wn. App. 234, 711 P.2d 347 (1985).

Rule of Appellate Procedure (RAP) 9.12 provides the following:

On review of an order granting or denying a motion for summary judgment, *the appellate court will consider only evidence and issues called to the attention of the trial court.* The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered. Documents or other evidence called to the attention of the trial court, but not designated in the order shall be made a part of the record by supplemental order of the trial court or by stipulation of counsel (emphasis added).

An argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal. *Silverhawk, LLC v. KeyBank Nat. Ass'n*, 165 Wn. App. 258, 268 P.3d 958 (2011). It is the appellate court's task to review a ruling on a motion for summary judgment solely on the record before the trial court. *Green v. Normandy Park*, 137 Wn. App. 665, 151 P.3d 1038 (2007).

B. The Duty to Maintain Vegetation Around the Stop Sign Lay Solely with the State of Washington

To establish negligence, a plaintiff must show “(1) the existence of a duty to the plaintiff, (2) a breach of that duty, (3) a resulting injury, and (4) the breach as the proximate cause of the injury.” *Crowe v. Gaston*, 134 Wn.2d 509, 514, 951 P.2d 1118 (1998).

In general, the owner of a roadway “has a duty to maintain its roadways in a reasonably safe condition for ordinary travel by persons using

them in a proper manner." *Laguna v. Washington State Dept. of Transp.*, 146 Wn. App. 260, 192 P.3d 374 (2008). This means that they have a duty to exercise reasonable care. *Keller v. City of Spokane*, 146 Wn.2d 237, 243, 44 P.3d 845, 848 (2002). In fulfilling this duty, the state or county may be obliged to post warning signs when required by law or when the state or county has actual or constructive knowledge that the highway is inherently dangerous or of such a character as to mislead a traveler exercising reasonable care. *Owen v. Burlington N. Santa Fe R.R., Inc.*, 114 Wn. App. 227, 239, 56 P.3d 1006, 1013 (2002) *aff'd sub nom. Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 108 P.3d 1220 (2005)(citing *Provins v. Bevis*, 70 Wn.2d 131, 138, 422 P.2d 505 (1967); *Bradshaw v. Seattle*, 43 Wn.2d 766, 775, 264 P.2d 265 (1953)). At the same time, the state or county does not guarantee the safety of those who use its roadways, nor is it obliged to guard the public from normal hazards. *O'Neill v. City of Port Orchard*, 194 Wn. App. 759, 375 P.3d 709 (2016).

RCW 47.36.100 provides, in pertinent part:

Stop signs shall be placed, erected, and **maintained** by the department as follows: Upon all county roads at the point of intersection with any arterial primary or secondary state highway.” (emphasis added)

The “department” means the “department of transportation.” See RCW 47.01.021, RCW 47.01.031. This statutory language makes it clear and undisputable that WSDOT is the sole agency responsible for placement

and maintenance of the stop sign controlling the intersection of SR 231 and Ford-Wellpinit Road in Stevens County. This is further confirmed by the MUTCD itself.

Washington has adopted the MUTCD that is published by the Federal Highway Administration (FHWA). CP 341. The MUTCD contains the basic principles that govern the design and use of traffic control devices on all roads open to the public. *Id.* The 2009 edition of the MUTCD is codified in WAC 468-95. *Id.* Various sections of the MUTCD establish that the State owed the duty to maintain the stop sign at the intersection of Ford-Wellpinit Road and SR 231. *Id.*

First, Section 1A.04 (Placement and Operation of Traffic Control Devices) indicates:

Placement of a traffic control device should be within the road user's view so that adequate visibility is provided. To aid in conveying the proper meaning, the traffic control device should be appropriately positioned with respect to the location, object or situation to which it applies. The location and legibility of the traffic control device should be such that a road user has adequate time to make the proper response in both day and night conditions.

CP 342.

Next, Section 1A.05 (Maintenance of Traffic Control Devices) of the 2009 MUTCD provides there are two categories of traffic control device maintenance:

Functional maintenance of traffic control devices should be used to determine if certain devices need to be changed to meet current traffic conditions.

Physical maintenance of traffic control devices should be performed to retain the legibility and visibility of the device, and to retain the proper functioning of the device. CP 343-344.

Most importantly, Section 1A.07 (Responsibility for Traffic Control Devices) states, in pertinent part:

The responsibility for the design, placement, operation, maintenance, and uniformity of traffic control devices shall rest with the public agency or the official having jurisdiction... CP 341.

Section 1A.07 makes it clear that the public agency or official having jurisdiction for placement, erection, and maintenance of the stop sign controlling the Ford-Wellpinit Road approach to SR-231 is solely the State/WSDOT. *Id.*

It is undisputed that WSDOT originally placed the stop sign at the intersection of Ford-Wellpinit Road and SR-231, although it is unclear when it was originally placed. CP 302-303. It is also undisputed that WSDOT maintenance people are left to their own discretion when determining how much vegetation is to be maintained around a particular traffic control sign, from five feet, to 10 feet, to 20 feet depending on the location of the sign and the conditions on the ground. CP 310-311. In 2004, WSDOT replaced the stop sign at the intersection to the position where it

was located during the accident involving Mr. Walker. CP 304-305. Stevens County has the ability to control vegetation “alongside” county roads because Stevens County has a right-of-way that extends 30 feet in either direction of the center of county roads. CP 1246. Steve Dell, the South Area Supervisor with the Stevens County Public Works Department, determined the vegetation at issue is 42 feet from the center of Ford-Wellpinit Road. *Id.*; CP 1251.⁷ That is significant because the allegedly obstructing vegetation was not within Stevens County’s right-of-way, and was thus not vegetation “alongside” a county road that Stevens County maintains. *Id.* Because the stop sign was not located in Stevens County’s right-of-way, it was on private, deeded land when the accident involving Mr. Walker occurred in July 2013. *Id.*; CP 1253. In sum, the vegetation at issue was not “alongside” a county road, was located on private property, and was within the 20 foot radius the State has conceded it maintains around its stop signs.

Despite the stop sign being physically located on property that did not belong to the State, WSDOT still had authority to place the stop sign where it chose without approval from the County. CP 306. WSDOT had the authority to place the stop sign where it did at the intersection because

⁷ A color copy of Mr. Dell’s declaration can be found in attached Appendix A at Stevens County A059-A067. See also Appendix B at CP 1245-1253 for Mr. Dell’s declaration and the relevant order of the trial court admitting the declaration into the appellate record at CP 1259-1262.

WSDOT controlled access to the intersection. *Id.* Not only did WSDOT have the authority to place the stop sign where it did because it controlled access to the intersection, it also had the duty to maintain the stop sign. *Id.*

It cannot be argued that any entity other than the State has the duty to maintain the stop sign at issue. The question thus turns to what is required by the State to “maintain” that stop sign. The WSDOT, MUTCD, and the testimony of the State make it clear that “maintaining” that stop sign requires taking whatever action is necessary to assure its functionality. In this case, the functionality of the stop sign was allegedly diminished because it was allegedly partially obstructed by vegetation. Thus, in order to maintain the functionality of the stop sign, the State was required to take the necessary corrective action to restore functionality.

1. The WSDOT Traffic Manual

The WSDOT Traffic Manual specifically addresses “controlling vegetation around signs.” It states: “**The department’s maintenance crews are responsible for maintaining visibility to signs by clearing vegetation that obscures the full view of a sign face.**” CP 336 (emphasis added). Harold White, an Assistant Regional Administrator for Operations with WSDOT, confirmed the State’s responsibility to control vegetation around a sign that may grow to the point of obstructing visibility in order to

insure the functioning of the sign. CP 1185. The Traffic Manual goes on to provide “guidance” to WSDOT on providing “sign visibility,” recommending vegetation maintenance that assures 500 feet of visibility for signs placed on rural roads. CP 336. Glenn Wagemann, the State’s CR 30(b)(6) deponent, testified that this section of the WSDOT Traffic Manual provides the criteria for the WSDOT in vegetation clearing around signs. CP 321-322⁸.

2. WSDOT’s 30(b)(6) Deponent Testimony

During the 30(b)(6) deposition of Mr. Wagemann, a maintenance and traffic engineer with the Eastern Washington DOT, he testified that it is the State’s duty to perform maintenance of vegetation “around” the stop sign. CP 307-308. Mr. Wagemann also testified that WSDOT maintenance people are essentially left to their own discretion in determining how much vegetation is to be maintained around a stop sign that’s not located on state-owned property. CP 310-311; CP 319-320.

Mr. Wagemann further testified that the State has the sole duty to place the stop sign where it’s visible and provides adequate stopping time,

⁸ In his correction sheet for Volume I of his deposition, Mr. Wagemann confirmed that: “The State does maintain vegetation around the stop sign, but does not maintain vegetation down County roads.” CP 324-325.

as well as the duty to maintain that visibility by controlling vegetation that would obscure the stop sign. CP 323.

According to the State's own testimony, it was the State's duty to maintain the vegetation "around" the stop sign because the State controlled access from Ford-Wellpinit Road to SR 231. Although it had the duty to maintain the vegetation surrounding the stop sign, there were no WSDOT criteria that provided specific guidelines on what distance away from a stop sign vegetation needed to be maintained. CP 309. Instead, that decision is left to individual WSDOT maintenance employees, who are required to determine whether the sign is being blocked by vegetation, and then remove any obscuring vegetation. CP 309-310.

The only limitation conceded by the State regarding its duty to maintain vegetation is that it does not "maintain vegetation down County roads." Whether or not the State is correct in that regard is immaterial, as the vegetation that allegedly blocked the visibility of the stop sign herein was not "down [a] County road[]." Rather, the trunk of the tree/shrub in question was about 15 feet away from the stop sign, with its branches hanging closer to the stop sign. CP 328. Indeed, the branches of the tree hung within three feet of the face of the stop sign.⁹ CP 329-330.

⁹ Mr. Skelton inspected the tree one year after the accident.

It is undisputed that the State has a duty to maintain vegetation such that its stop signs are visible to roadway users. CP 317. The State has no written criteria identifying any limitation on how close the vegetation must be to a stop sign in order for it to perform vegetation control. The County submits that there are no limitations. The State stop sign must be visible from the MUTCD-required sight distance. If that sight distance is not maintained, the sign is not functional. As it is the State's duty to keep the sign functional, it must do whatever vegetation control is necessary to keep the sign functional. A stop sign that is not visible cannot control access to an intersection and cannot delineate where a driver should stop. A stop sign thus loses its functionality when it is not visible. As such, "maintaining" a stop sign requires the ongoing obligation to assure that it is visible, a duty the State admits is its own. CP 315.

Further, the State has *conceded* that it has a duty to maintain vegetation "around" its signs, although it has no written criteria defining the term "around." Consistent with the State's duty to maintain vegetation around its signs, WSDOT has a Maintenance Department whose employees are tasked with the duty of driving roads to look at what vegetation might be blocking state-owned signs. CP 312-314. Those employees have the discretion to determine how much area around a sign needs to be maintained. *Id.* Since there are no standards dictating what defines the area

“around” a sign, their duty ultimately falls back to assuring that the state-owned signs are visible. CP 315-317.

The State – and the Walkers – cannot now make up some arbitrary criteria (i.e., a 14 foot radius) for what constitutes “around” the stop sign. Here, the trunk of the tree in question was a mere 15 feet from the State’s stop sign, with branches that grew closer to, and allegedly obstructed, the face of the stop sign. The State cannot concede a duty to maintain the visibility of one of its signs, concede the duty to maintain vegetation “around” its sign, but argue that this tree fell outside some magical and never-before-disclosed definition of “around.” The State’s own testimony establishes its duty to maintain the vegetation at issue and the trial court’s ruling that the County did not owe a duty to Mr. Walker was appropriate. CP 317. Further, and importantly, Mr. Wagemann, speaking on behalf of the State, has already defined “around” to include up to 20 feet from a State stop sign. CP 311.

Mr. Wagemann’s testimony is corroborated by the expert report and opinions of Tom Ballard. More specifically, Mr. Ballard concluded the following, in pertinent part:

- 1) The state of Washington is solely responsible for traffic control device maintenance at the intersection of SR-231 and Ford-Wellpinit Road from both a functional and physical aspect in order to monitor

and verify that the traffic control devices being used at the intersection are operating properly.

2) The state of Washington has the authority to pursue and obtain legal rights to operate temporarily or permanently on property outside state highway rights of way thus providing the state the ability to implement corrective actions which may require the state to conduct activities outside the state rights of way. In the event the state determines the need to take actions outside the state rights of way, the state is obligated to contact the jurisdiction or owner having authority or control over the desired area outside the state rights of way and acquire such rights deemed necessary for the purpose of coordinating or implementing the contemplated action.

CP 345.

The State had the duty to maintain vegetation around the stop sign at the Ford-Wellpinit Road and SR 231 intersection per its own CR 30(b)(6) designee. The County had no such duty and the trial court's dismissal of the County on the duty issue was appropriate.

3. *Wuthrich* Supports Stevens County.

The Walkers argue the existence of a duty by the County based upon *Wuthrich v. King County*, 185 Wn.2d 19, 366 P.3d 926 (2016). However, a careful reading of *Wuthrich* supports the County's argument that it owed no duty to Mr. Walker. In *Wuthrich*, the vegetation that obstructed drivers' views of oncoming traffic was alongside an intersection that was owned and maintained by King County. King County thus had a duty to control access

to the intersection. Because King County owned, maintained and controlled access to its intersection, the court found that it had a corresponding duty to assure drivers entering the intersection could see other drivers entering the intersection. In other words, *Wuthrich* did not involve a state stop sign that controls access to a state highway being obscured by vegetation. Instead, *Wuthrich* involved an intersection of two-county owned and maintained roads. That is far different from the instant matter in which the State not only placed, owned and maintained the stop sign, but also controlled access to its highway from Ford-Wellpinit Road.

Here, the State has conceded that it had the duty to control access to its highway, which it did through placement and maintenance of its stop sign. CP 306. Pursuant to *Wuthrich*, because the State controlled access to its highway, the State – not the County – had the duty to assure that its method of controlling that access (the stop sign) was functional (visible). “If a wall of roadside vegetation makes the roadway unsafe by blocking a driver's view of oncoming traffic at an intersection, the municipality has a duty to take reasonable steps to address it.” *Wuthrich*, 185 Wn.2d at 23.

The trial court directly addressed the Walkers’ reliance on *Wuthrich* in its opinion on the Walkers’ Motion for Reconsideration. CP 1212-1214. In pertinent part, the trial court provided:

“[t]hey offer numerous cases where the intersecting roadways are both county or municipalities intersecting. These two roads are different jurisdictionally. There are no facts in dispute that WSDOT controls the access and not Stevens County. The Plaintiff did not [sic] provide any case law to demonstrate that a county has a duty to supervise or oversee WSDOT duty of controlling access.

CP 1213-1214.

The State has a self-admitted duty to control access to the State’s highway.¹⁰ The State controls that access with a stop sign. If that stop sign is not visible to motorists, the State is failing in its duty to control access to its highway. The State (and the Walkers) cannot shift the State’s burden to effectively control access to the State’s highway by arguing that the County had some duty to assure that the State’s access control was functioning.

4. The Walkers Inaccurately Represent the County’s CR 30(b)(6) Testimony.

The Walkers argued at summary judgment that the County had a duty to maintain vegetation around the State-owned stop sign because the State-owned stop sign was outside of the State’s right-of-way. The Walkers point to the testimony of Jason Hart, the County’s CR 30(b)(6) deponent, that the County has a duty to maintain vegetation “along Ford-Wellpinit

¹⁰ Mr. Wagemann testified that the State controls access to the intersection of SR 231 and Ford-Wellpinit Road. CP 306, CP 315. That duty carries with it the duty to assure the placement of signs “necessary to carry out the provisions of this title to regulate, warn, or guide traffic.” RCW 47.36.053.

Road outside” of the State’s right-of-way. The Walkers’ citations to Mr. Hart’s testimony is misleading in that it is incomplete and misconstrued.

During Mr. Hart’s deposition, he was asked about vegetation maintenance around a State-owned stop sign. He responded that vegetation maintenance “at state highways” is performed by the State. CP 471. He was then asked who maintains vegetation “along Ford-Wellpinit Road outside of the ‘Stop’ sign easement area.” He responded “Stevens County.” That answer is accurate as the County maintains vegetation growing “alongside” county roads. CP 1256.¹¹ However, Mr. Hart never testified that the County maintains vegetation located around the State-owned, State-placed and State-maintained stop sign at the intersection of Ford-Wellpinit Road and SR 231. *Id.*; CP 1257. In fact, Mr. Hart testified specifically that it has always been the State’s duty to maintain vegetation “at the intersection of a State highway.” CP 474.

Mr. Hart also testified that it has been the practice in Stevens County that when the State installs a stop sign, the State maintains the vegetation around the stop sign. CP 1257. As Mr. Hart testified to, during his tenure working for Stevens County, Stevens County has never had any role in maintaining vegetation around a stop sign installed by the State. *Id.*

¹¹ See Appendix B at CP 1245-1253 for Mr. Hart’s declaration and the relevant order of the trial court admitting the declaration into the appellate record at CP 1259-1262.

The Walkers' reliance upon Mr. Hart's testimony that the County also had a duty to maintain the stop sign at Ford-Wellpinit Road and SR 231 is misplaced. The Walkers rely solely on Mr. Hart's testimony that the County maintains vegetation "alongside" county roads in support of their position that the County had a duty to maintain vegetation around the State-owned stop sign, but the vegetation at issue is not "alongside" a county road. Instead, the vegetation is located on private property outside of Stevens County's right-of-way and within the 20 foot radius the State conceded it maintains around its stop signs. CP 1246; CP 1250-1253; CP 310-311. The County has never maintained vegetation around a stop sign installed by the State, especially when the stop sign is located at an intersection where the State controls access. CP 1256-1257; CP 475. Mr. Hart did not make the concessions the Walkers attribute to him. The State had the sole duty to maintain vegetation around the stop sign because it installed the stop sign and controlled access at the intersection.

C. Any Duty to Install a Stop Ahead Sign Lay Solely with WSDOT.

There is no evidence in this case that when the stop sign was placed in 2004 by WSDOT that it could not be seen from the MUTCD-required 350 feet distance. When the State moved the stop sign in 2004, the State did not notify the County that it was moving the stop sign and did not ask the

County to evaluate any sight distances to the sign. CP 1256. Rather, the allegation by the Walkers is that the elm tree whose trunk is approximately 15 feet from the stop sign grew to the point that it partially obstructed the sign. As set forth by Mr. Ballard, when a temporary condition such as vegetation obstructs the sight distance to a stop sign, the common and typical corrective action is to remove the temporary obstruction. CP 343. As set forth above, the duty to remove the allegedly-obstructing vegetation lays with the State. However, if for whatever reason the State did not want to remove the vegetation, it would be the State's duty to place a "stop ahead" sign to warn of the upcoming and obstructed stop sign. Doing so falls within the definition of "maintaining" the functionality of the stop sign.

Imposing any duty on the County to place a "stop ahead" sign in advance of a State-owned stop sign would require the County to assume the duties of the WSDOT Maintenance Department and travel the roads to inspect state-owned and state-maintained stop signs to assure adequate sight distances. In other words, the County would effectively be required to take over the duty of "maintaining" state-owned stop signs to assure that they remain functional. There is no basis for imposing such a duty on the County, especially in light of the fact that the State has conceded that it is its duty to assure the visibility of its signs and to control vegetation to assure visibility.

It has never been the County's practice to check the work of the State with respect to the State's maintenance of its signs. CP 1256.

If the Court imposes a duty on the County to place a stop ahead sign in cases where vegetation has grown to the point of obstructing a State-owned stop sign, it would essentially relieve the State from any obligation to perform vegetation control. Rather, the State could sit back, allow vegetation to completely obstruct its stop signs and simply claim that it was another agency's obligation to install a "stop ahead" sign. That, of course, is an absurd proposition.

Further, even if the State of is allowed to shirk its duty to perform vegetation maintenance around its signs, and instead rely upon the placement of a stop ahead sign to compensate for the obstructed sight distance, the State would need to initiate the process by contacting the County and reporting the need for a "stop ahead" sign:

Regarding the subject crash, had the state of Washington determined, for whatever reason, that it was desirable or necessary to install a STOP AHEAD sign in advance of the STOP sign controlling the approach of Ford-Wellpinit Road to SR-231, the state would be obligated to contact Stevens County and coordinate the installation and long term maintenance of the STOP AHEAD sign from both a functional and physical aspect as well as a fiscal responsibility.

CP 347.

It is inherent in WSDOT's duty to maintain the stop sign and surrounding vegetation to contact the County about adding a stop ahead sign on Ford-Wellpinit Road should the State determine for whatever reason that it was not going to remove the vegetation around the stop sign. To hold otherwise would shift the State's admitted duty to maintain its stop signs to the County. There is no basis in the law for shifting that admitted duty of the State to the County.

D. The Walkers' Proffered Cause Of The Accident Is Based Solely Upon Impermissible Speculation.

Washington law precludes recovery by a plaintiff who is unable to establish that a defendant's conduct proximately caused his or her injury. *Garcia v. Washington, Dept. of Trans.*, 161 Wn. App. 1, 270 P.3d 599 (2011). The two pillars of proximate cause are legal cause and cause in fact. *Channel v. Mills*, 77 Wn. App. 268, 272, 890 P.2d 535 (1995). While legal cause "involves a determination of whether liability should attach as a matter of law given the existence of cause in fact," "[c]ause in fact refers to the "but for" consequences of an act—the physical connection between an act and an injury." *Harley v. State*, 103 Wn.2d 768, 778-79, 698 P.2d 77 (1985). Said another way, a plaintiff must be able to prove that the defendant's negligence is "a cause which in a direct sequence [unbroken by any new independent cause,] produces the [injury] complained of and

without which such [injury] would not have happened.” 6 Washington Practice: Washington Pattern Jury Instructions: Civil 15.01.

Importantly, the mere fact that an accident and an injury have occurred does not necessarily lead to an inference of negligence. *Marshall v. Bally's Pacwest, Inc.*, 94 Wn. App. 372, 972 P.2d 475 (1999). Moreover, no legitimate inference can be drawn that an accident happened in a certain way by simply showing that it might have happened that way, and without further showing that it could not reasonably have happened in any other way. *Gardner v. Seymour*, 27 Wn.2d 802, 180 P.2d 564 (1947). The Walkers agree this is the proper legal standard:

Only if it is as likely that an event happened from one cause as another, is the proof speculative. *Rasmussen v. Bendotti*, 107 Wn. App. 947, 959, 29 P.3d 56 (2001). So, if the Plaintiff's theory of causation is no more plausible or likely than the Defense theory, the Defense wins.

Brief of Appellants at 46-47.

The Walkers assert the granting of summary judgment on the issue of proximate cause was erroneous because they presented sufficient evidence to create an issue of fact that the accident would not have occurred if there was increased sight distance to the stop sign.

a) ***Behla* Is Distinguishable From and Inapplicable to the Instant Matter.**

In support of their contention that the accident would not have occurred if there was increased sight distance to the stop sign, the Walkers heavily rely on this Court's recent decision in *Behla*. However, the facts in *Behla* are readily distinguishable from the facts in the instant matter, especially as they relate to the proffered causes of the accidents in each respective case. This Court stated the following in its *Behla* opinion:

We reject application of *Gardner v. Seymour's* stated rule under the circumstances of James Behla's fall. We instead rely on at least two other rules of causation. First, if the plaintiff can rationally rule out other potential causes, the jury should decide if plaintiff's proffered cause constitutes the true cause of harm or rests in speculation. Second, if the plaintiff can show that his offered cause could have caused his injury, the jury should decide whether the plaintiff's proffered cause is based on speculation or if defendant's list of possible causes relies on speculation.

11 Wn. App.2d, 329, 343.

In relying on the two rules of causation pronounced *supra*, this Court relied on Mr. Behla rationally ruling out other potential causes of the trip and fall such as snowfall, rocks, sticks, other objects or the concrete slab in the shed because he had navigated the terrain around the shed for more than a decade without falling. *Id.* Due to his extensive knowledge of the area in

which the trip and fall occurred, Mr. Behla presented sufficient evidence to support his causation theory and to discount the many theories proffered by the defense as to what caused the fall. *Id.* at 343-44. Furthermore, Mr. Behla scanned the environment to determine the cause of his fall after regaining awareness and saw a cord lying in the pathway where he walked.

The facts of the instant matter differ starkly from those in *Behla*. Notably, Mr. Walker had never previously been to the intersection where the accident occurred nor ridden the route him and Mr. Schildt took the day of the accident. CP 283. Accordingly, and unlike Mr. Behla, Mr. Walker is not able to rely on his previous knowledge of the scene to rationally rule out the cause proffered by the County and the State – Mr. Walker failed to exercise reasonable care in the operation of his motorcycle by not observing or reacting to the numerous visual cues and changes in the roadway that made it readily apparent to anyone driving toward SR 231 on Ford-Wellpinit Road that the roadway was changing and an intersection was approaching. Consequently, Mr. Walker has not produced competent evidence to show that the presence of additional sight distance to the stop sign would have prevented the accident.

Also of note, *Behla* did not overturn traditional causation rules and does not represent a significant departure from long standing proximate cause precedent in Washington. Instead, this Court simply relied on “two

other rules of causation” wherein a plaintiff can survive summary judgment if his or her theory on causation does not rely on speculation. *Behla* may not have relied on the traditional causation rule as pronounced in *Gardner v. Seymour*, but the burden still lies with a plaintiff to proffer a non-speculative theory about the cause of an accident. The Walkers have failed to meet their burden because their theory of causation still rests in speculation because they are not able to rationally rule out other potential causes of the accident.

b) Mr. Walker Had 325 Feet of Sight Distance.

Attempting to create an issue of fact as to the actual sight distance to the stop sign in 2013, the Walkers rely upon the testimony of Mr. Walker, Mr. Schildt and William Skelton¹² for the proposition that in 2013, vegetation reduced the sight distance of the stop sign to 100-to-125 feet.¹³ Brief of Appellants at 6-9. The Walkers’ argument in that regard is the same

¹² Walker claims that Skelton “. . . carefully determined the stop sign was visible only 125’.” Brief of Appellants at 9. This claim is inconsistent with Skelton’s deposition testimony. Skelton expressly admitted in his deposition that he did not take any measurements to specifically determine where the stop sign could first be seen, CP at 1198. Skelton expressly admitted his estimate of the sight distance of the stop sign was based upon his “personal observation.” CP at 1197. Most importantly, Skelton did not attempt any analysis to determine what the sight distance of the stop sign would have actually been in 2013. CP at 1198. Skelton’s testimony relates to the condition of the stop sign in 2014 only.

¹³ Walker also cites to the deposition testimony of WSDOT maintenance supervisor Samuel Jennings who visited the site. Brief of Appellants at 9. Inexplicably, Walker fails to mention that Jennings testimony about the conditions came from his 2015 observations. CP at 1016-17. According to Flott’s testimony, the vegetation in question would have grown 40 additional inches between 2013 and 2015. CP at 542.

type of visual fiction the United States Supreme Court rejected in *Scott v. Harris*, 550 U.S. 372, 380 (2007). In *Scott*, the United States Supreme Court considered whether a genuine issue of fact was created by the plaintiff's testimony in a police pursuit case in which the plaintiff described the pursuit in a way that was inconsistent with the visual evidence presented by the officer's dash camera video. *Id.* at 378-80. The Court determined that because the video "so utterly discredited" the plaintiff's version of events, the Circuit Court of Appeals erred by finding that a genuine issue of material fact existed. *Id.* at 380. Specifically, the Supreme Court wrote, "The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape." *Id.* at 380-81.

Here, the testimony relied upon by the Walkers is the same type of "visible fiction" offered by the plaintiff in *Scott*. Mr. Walker took photographs of the approach to the intersection in 2014. CP at 438-449. Mr. Walker admits the 2014 photos are at least fair and accurate depictions of the conspicuousness of the stop sign as it existed in 2013. CP at 438-449. Like the video in *Scott*, the 2014 photographs provide a visual baseline for determining the actual conspicuousness of the stop sign and a basis for rejecting testimony that is blatantly inconsistent with the 2014 photographs. Undisputed evidence by Mr. Walker's forensic arborist, Mr. Flott, establishes that the vegetation seen in the 2014 photographs would have

been 20 inches shorter in 2013 when Walker approached the intersection. CP at 542, 546, 556, 559-560. Using the 2014 photographs and Mr. Flott's testimony that the vegetation would have been 20 inches shorter in 2013, John Hunter, an expert in the field of accident reconstruction, performed an analysis of the sight distance that existed in 2013. CP at 593-601.¹⁴ Through that analysis, Mr. Hunter determined the actual sight distance of the stop sign in 2013 would have been at least 325 feet or more. CP at 596-597. None of Walker's expert witnesses attempted to determine what the sight distance of the stop sign would have been in 2013. CP at 71-72, 133, 802, 986, 996, 1001-03, 1007, 1198. Thus, it is undisputed that in 2013 the stop sign was conspicuous from at least 325 feet away. CP 595-596.

Furthermore, Mr. Walker had 980 feet to observe and react to environmental cues that signaled the coming intersection. CP 627, 635. Also, and in addition to the 325 feet of sight distance to the stop sign, Mr. Walker had an additional 26 feet between the location of the stop sign and the beginning of the intersection to observe and react to the stop bar painted across the roadway. CP at 594, 771, 1004. Mr. Walker failed to heed any of these warnings and bring his motorcycle to a controlled stop before entering the intersection like his riding partner did. CP at 408, 424, 429. Thus, Mr.

¹⁴ See Appendix A at Stevens County A068-A076 for color copy of Mr. Hunter's declaration and report.

Walker cannot now establish (1) that the lack of an additional 25 feet of sight distance of the stop sign is why he drove directly into the intersection without braking or (2) that had another 25 feet of sight distance existed, he would have stopped before entering the intersection.

(i) Schildt Testimony

Mr. Schildt corroborated the obviously changing roadway and environment during his deposition. Mr. Schildt was riding with Mr. Walker at the time of the accident and observed the collision on SR 231. Mr. Schildt testified that he was traveling between 50 and 100 feet behind Mr. Walker at the point where the accident occurred. CP 290. Mr. Schildt was able to bring his motorcycle to a controlled stop prior to entering the intersection. CP 291. Mr. Schildt did not leave skid marks and he did not remember it being a particularly hard stop. CP 296. Immediately before the accident, Mr. Schildt testified that he and Mr. Walker were traveling at less than 50 miles per hour because it was clear the roadway was changing and “there was something coming up.” CP 292.

Mr. Schildt did not see Mr. Walker take any evasive action to avoid the accident, nor does he recall seeing Mr. Walker applying his brakes prior to the impact. CP 297-298. Mr. Schildt heard a very brief tire squeal from the vehicle driven by Ms. Alvarez immediately before impact. CP 295.

Mr. Schildt spoke with Mr. Walker at the scene after the accident occurred. CP 293. Mr. Walker “didn’t know at all what happened. He had no recollection at all.” *Id.* As far as Mr. Schildt is aware, Mr. Walker “does not recall when the collision occurred.” CP 294.

(ii) Intersection Accident History

Evidence that no prior accident of the nature claimed by a plaintiff can be used to show (1) the nonexistence of the defect or condition alleged, (2) that injury was not caused by the defect or condition charged, (3) the situation was not dangerous, or (4) want of knowledge of, or ground to realize, the danger. *Stark v. Allis-Chambers & Northwest Roads, Inc.*, 2 Wn. App. 399, 406, 467 P.2d 854 (1970).

The accident history at the intersection of Ford-Wellpinit Road and SR 231, as discussed *supra*, further establishes that the sight distance to the stop sign while traveling on Ford-Wellpinit Road has never been a cause or contributing factor to an accident at the intersection. None of the four accidents documented at the intersection (excluding the accident at issue in this matter) were attributed to an issue with the stop sign itself or the sight distance to the stop sign. CP 357-374.

c) The Record Does Not Support The Factual Assumptions Made By The Walkers' Expert Witnesses.

The Walkers summarize their reliance on their expert witnesses testimony to prove causation as follows:

Our theory of causation rests on our experts' opinions that 'absence of a visible stop sign presented as safety hazard and was a contributing factor' in the crash.

Brief of Appellants at 42.

Specifically, the Walkers rely on Edward Stevens (roadway design) to establish that 350 feet of sight distance to the stop sign was the appropriate standard. Brief of Appellants at 11, 13, 27. The Walkers also rely on Joellen Gill (human factors) and Steve Harbinson (accident reconstruction) to establish that the assumed 100-to-125 feet of stopping sight distance to the stop sign in 2013 provided insufficient perception-reaction time for Mr. Walker to come to a complete stop before entering the intersection. Brief of Appellants at 11-13, 33-34, 39-42.

But, these arguments fail because the factual record does not support the assumption that the sight distance of the stop sign was limited to 100-to-125 feet in 2013. As discussed, *supra*, Mr. Walker's 2014 photographs, along with his admission that they were a fair and accurate depiction of the minimum conspicuousness of the stop sign in 2013, conclusively prove Mr.

Schildt's estimate of a 100 feet of sight distance to be a visible fiction. Stated differently, Mr. Schildt's testimony is incompetent to create a genuine issue that the sight distance in 2013 was anything less than 325 feet.

Also, as discussed, *supra*, Mr. Skelton's 2014 estimate of 125 feet of sight distance was not an actual measurement of the sight distance that existed in 2014 but was his "personal observation," and did not take into account the 20 inches of vegetative growth that occurred in the year following Mr. Walker's accident. The failure of the Walkers to present sufficient, competent evidence of the actual sight distance that existed in 2013 nullifies their experts' theories related to causation.

d) *Miller and Moore Provide The Applicable Rule Regarding Speculation By Experts.*

Miller v. Likins, 109 Wn. App. 140, 34 P.3d 835 (2001) and *Moore v. Hagge*, 158 Wn. App. 137, 241 P.3d 787 (2010) illustrate when expert testimony is too speculative to submit to a jury.

In *Miller*, a pedestrian walking along the shoulder of a city road was struck by an inattentive motorist. Recognizing that the accident might have been avoided if the city had installed warning devices or taken other precautions prescribed by the plaintiff's expert, the Court nevertheless held that evidence that the accident "might not have happened had the City

installed additional safeguards” was impermissible speculation, insufficient to establish the element of proximate cause. *Id.* at 147.

A similar result was reached in *Moore*. In *Moore*, the Court upheld the dismissal of a pedestrian’s claim that the city’s failure to provide a sidewalk along a busy street caused him to be hit by a car and seriously injured. Even though the plaintiff’s expert in *Moore* opined that the roadway at the location of the accident was “inherently dangerous” due to traffic volumes and narrow lanes and shoulders and that the accident would “more probably than not” have been avoided if safeguards had been provided by the city, the Court found these conclusions to be inadmissible speculation based on assumptions about how the accident happened. *Id.* at 156. With no evidence that the condition of the roadway was the cause in fact of the accident, the Court upheld summary judgment, finding:

As in *Miller*, the most that Moore can show is that the accident might not have happened if the City had installed additional safeguards.

Moore, 158 Wn. App. at 152.

Similar to the experts in *Miller* and *Moore*, the most the Walkers’ forensic experts can say is what might have happened if an additional 25 feet of sight distance had existed. To avoid the result reached in *Miller* and *Moore*, the Walkers rely on *Behla v. R.J. Jung, LLC, supra*, and *Mehlert v.*

Baseball of Seattle, Inc., 1 Wn. App.2d 115, 4040 P.3d 97 (2017).¹⁵ See Brief of Appellants at 29, 38.

Behla, as previously discussed, provides the Walkers no relief. Mr. Behla successfully presented sufficient, competent evidence to support his theory of causation and sufficient, competent evidence to call into question the alternative defense theories. See *Behla*, 11 Wn. App.2d at 343-44.

Mr. Behla presented evidence that the Walkers cannot in two distinct ways. First, Mr. Behla presented sufficient, competent evidence of the dangerous condition, a cord laying in his pathway. Here, the Walkers lack sufficient, competent evidence that the sight distance in 2013 was restricted to 100-to-125 feet. In fact, the only competent evidence of what sight distance existed in 2013 is Mr. Hunter's testimony that the sight distance was at least 325 feet. CP 596-597. That sight distance allowed Mr. Walker 1 ½ times the stopping distance necessary to come to a controlled stop. CP 134. Second, Mr. Behla was able to present sufficient, competent evidence that called into question alternative defense theories of causation. Here, it remains undisputed that Mr. Walker failed to brake or take any

¹⁵ The Walkers also rely on two unpublished cases. See Brief of Appellants at 42-46. In short, those cases the court concluded that evidence of a driver adhering to the rules of the road was sufficient evidence to create a question of fact about whether additional warnings would have prevented the injuries suffered. See Brief of Appellants at 42-46. Neither case helps the Walkers because the undisputed evidence establishes Mr. Walker's inattentiveness in the moments proceeding the collision.

evasive maneuvers prior to the collision despite 980 feet of environmental cues, 325 feet of sight distance to the stop sign, and the additional 26 feet between the stop sign and stop bar painted across the roadway – all while Mr. Walker’s riding partner, Mr. Schildt, came to a controlled stop before entering the intersection. These undisputed facts preclude the Walkers from reasonably challenging the defense theory of inattentive driving.

Similar to *Behla*, *Mehlert* does not provide the Walkers relief. In *Mehlert*, the plaintiff presented sufficient, competent evidence that (1) a handrail was required but missing, (2) the plaintiff would have reached for a handrail, but none was present and (3) a handrail would have lessened or prevented the injury. *Mehlert*, 1 Wn. App.2d at 119-20. Here, the Walkers lack evidence of the same nature. Specifically, the Walkers lack sufficient, competent evidence of: (1) what sight distance to the stop sign actually existed in 2013; (2) that additional sight distance would have caused Mr. Walker to see the stop sign; and (3) that additional sight distance would have changed Mr. Walker’s driving.

This Court should thus affirm the trial court’s dismissal of the case against the County, as the Walkers cannot establish proximate cause.

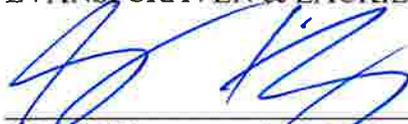
V. CONCLUSION

Based on the foregoing, Respondent Stevens County respectfully requests the Court affirm the trial court’s summary judgment ruling that

dismissed all claims and causes of action against Stevens County arising out of the motorcycle accident on July 26, 2013.

RESPECTFULLY SUBMITTED this 27th day of May, 2020.

EVANS, CRAVEN & LACKIE, P.S.



MICHAEL E. MCFARLAND, JR., #23000

SEAN M. KING, #52104

Attorneys for Respondent Stevens County

818 W. Riverside Ave., Suite 250

Spokane, WA 99201

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 27th day of May, 2020, the foregoing was delivered to the following persons in the manner indicated:

GEOFFREY D. SWINDLER	VIA E-MAIL	<input checked="" type="checkbox"/>
103 E. Indiana Ave., Suite A	VIA US MAIL	<input checked="" type="checkbox"/>
Spokane, WA 99207	VIA FACSIMILE	<input type="checkbox"/>
	HAND DELIVERED	<input type="checkbox"/>

ADAM SYMINGTON	VIA E-MAIL	<input checked="" type="checkbox"/>
DUSTIN DEISSNER	VIA US MAIL	<input checked="" type="checkbox"/>
1707 W. Broadway Ave.	VIA FACSIMILE	<input type="checkbox"/>
Spokane, WA 99201	HAND DELIVERED	<input type="checkbox"/>

PETER J. JOHNSON	VIA E-MAIL	<input checked="" type="checkbox"/>
Johnson Law Group	VIA US MAIL	<input checked="" type="checkbox"/>
103 E Indiana, Suite A	VIA FACSIMILE	<input type="checkbox"/>
Spokane, WA 99207	HAND DELIVERED	<input type="checkbox"/>

CARL P. WARRING	VIA E-MAIL	<input checked="" type="checkbox"/>
Assistant Attorney General	VIA US MAIL	<input checked="" type="checkbox"/>
Attorney General of Washington	VIA FACSIMILE	<input type="checkbox"/>
Torts Division	HAND DELIVERED	<input type="checkbox"/>
1116 W. Riverside, Suite 100		
Spokane, WA 99201		

DATED this 27th day of May, 2020, at Spokane, Washington.


Kathryn M. Schulman

COA III NO. 369871

APPENDIX A

Index of Documents from Stevens County's Summary Judgment Containing
Color Photos

Appendix/Brief Reference Nos.	Description
STEVENS COUNTY A001- STEVENS COUNTY A049	Carl Berkowitz report dated August 27, 2018
STEVENS COUNTY A050- STEVENS COUNTY A058	Carl Berkowitz Supplement dated September 18, 2018
STEVENS COUNTY A059- STEVENS COUNTY A067	Declaration of Steve Dell – with Exhibits
STEVENS COUNTY A068- STEVENS COUNTY A076	John Hunter Report dated August 11, 2018
STEVENS COUNTY A077	Photograph of road

**Safety Report
Walker v. Washington State Department of
Transportation**



Figure 1: Location of incident

**Prepared by: Carl Berkowitz, Ph.D., PE
August 27, 2018**

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I. Accident Overview¹

On July 26, 2013 at 1:07pm, Mr. James Walker was driving his Kawasaki motorcycle eastbound on Ford-Wellpinit Road in Ford, Washington. According to the accident report, Mr. Walker failed to stop at the intersection with State Road 231 and collided with a Toyota Camry driven by Ms. Jaqueline Alvarez in the Southbound lane of State Road 231. Ford-Wellpinit Road had a stop sign at the intersection with State Road 231. State Road 231 had no traffic control. The posted speed limit for both roadways was 50 mph. In the accident Mr. Walker was ejected from the motorcycle and sustained severe injuries.

Figure 2: Diagram of accident²

Report Number: E260060



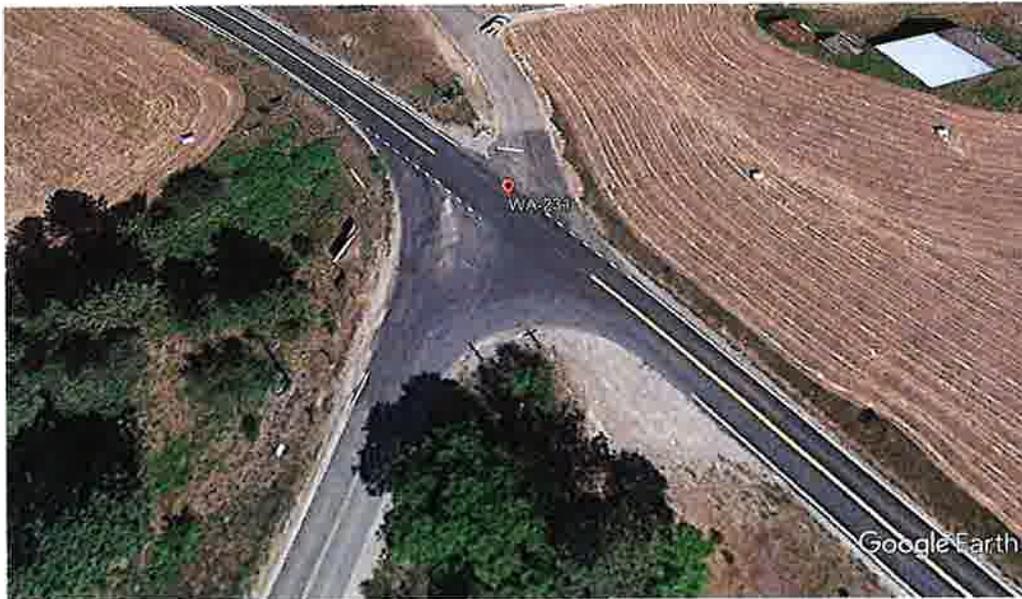
¹ Police report

² Police report

Carl Berkowitz, Ph.D., PE

Figure 3: Photos from location of the accident

Google Maps Google Maps



Google Maps Ford-Wellpinit Rd



Image capture Oct 2008 © 2015 Google





2. Personal Information and Qualifications

As fully laid out in my attached CV, an accurate copy of which is attached and fully incorporated herein, I have extensive experience working in the transportation industry, including the government, private and academic sectors. I have comprehensive multi-modal experience in transportation planning, design, engineering, safety, security, construction, maintenance, operations and management. In addition to my work experience, I have conducted research, consulted, and given presentations on transportation safety, including specifically rail passenger safety. I have worked as a transportation engineer for over fifty-five years, including four years as the highest ranking civil-service engineer in the New York City Transportation Department. I have multiple degrees, including a Ph.D. in Transportation Planning and Engineering from the Polytechnic Institute of New York (NYU-Polytechnic), have held numerous teaching positions, have published academic and news articles, and I am a member of various industry and professional associations.

3. Specific Findings

The findings and opinions in this report are based on information provided by the Attorney for the Defendant and Plaintiff, depositions and technical references listed here and in the Appendices.

Mr. Walker, the driver of the motorcycle, failed to comply with the motor vehicle right of way standards for vehicles entering an intersection. There are two scenarios of the events that transpired on the date of the accident.

Scenario I: Mr. Walker saw the stop sign on Ford-Wellpinit Road at the intersection with State Road 231 but failed to stop as required by law. According to the analysis by the expert witness John Hunter,³ the sight distance to the stop sign for a motorcyclist with the foliage present was between 325 to 350 feet. (figure 4) The plaintiff's expert arborist, Jim Flott, concludes that a "Siberian elm tree impacted the visibility of the stop sign negatively." The analysis of John Hunter takes this tree and other foliage into account in his calculation of a sight distance between 325 to 350 feet to the stop sign. Furthermore, according to Mr. Hunter, a motorcycle with an experienced rider can stop from 50 mph in under 200 feet without leaving a tire mark. This assumes a one second perception-reaction time period and a controlled brake application with both brakes. This stopping distance is consistent with data from Ride Smart Florida, which is based on a study by the NHTSA.⁴ (figure 5) According to Ride Smart Florida, a

³ John Hunter preliminary report dated January 23, 2018

⁴ www.RideSmartFlorida.com, A study of Motorcycle Rider Braking Control Behavior

Carl Berkowitz, Ph.D., PE

motorcycle traveling at 50 mph needs approximately 143 feet and 3.19 seconds to stop. According to the report this distance includes 55 feet reaction distance and 89.43 feet braking distance. This is consistent with a study by bikesafer.com (with Montreal Promocycle Foundation),⁵ which calculates the braking distance with ABS brakes and reaction time is 141.64 feet and 3.24 seconds to stop. It is possible that Mr. Walker's lack of experience with his high-performance motorcycle contributed to the accident. The operators of this type of motorcycle tend to lean forward over the handle bars for a more aerodynamic profile, which can reduce the sight distance. (see photographs of similar motorcycles in figure 9) However, in each of these scenarios, it is clear that Mr. Walker had sufficient sight distance to stop before entering the intersection. In this case, given the other vehicle was obeying the required traffic laws, Mr. Walker would be at fault for the accident for not complying with the applicable traffic laws.

Figure 4: sight distance of 325 feet from stop sign



Note: position of 325 feet from stop sign

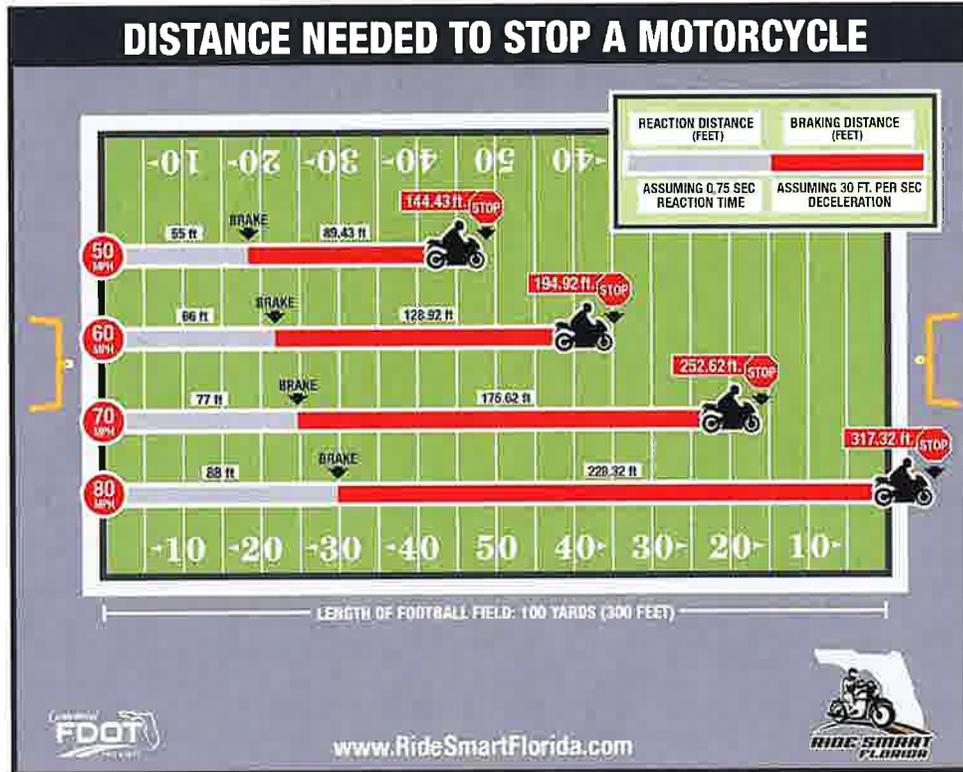
⁵ <http://bikesafer.com/detail/braketime.html>, Safer Motorcycling in Today's Kill Zone, Stopping Distance Revisited

Carl Berkowitz, Ph.D., PE



Note: View 325 feet from stop sign

Figure 5: Motorcycle stopping distance



For more information, please see "A Study of Motorcycle Rider Braking Control Behavior (2011)" by the NHTSA

Note: At 50 mph: reaction brake time is 0.75 seconds, braking stop time is 2.44 seconds. Total time is 3.19 seconds.

Scenario 2: Mr. Walker did not see the stop sign on Ford-Wellpinit Road at the intersection with State Road 231. Mr. Walker may have not seen the stop sign because he was not paying attention to the road signage or alternatively due to his eyesight issue. It was noted in the deposition of Joellen Gill that Mr. Walker has amblyopia⁶ and chose not to wear glasses to correct the deficiency (see figure 6). In addition to the stop sign, Mr. Walker ignored a number of other visual cues that indicated that the road conditions were changing, such as the freshly painted stop bar⁷, stop sign on other side of the road, the white line that divides State Road 231 from Ford-Wellpinit Road, the road seemingly ending in a field and tree line. (see figure 7) Mr. Schildt, Mr. Walker's

⁶ Also called lazy eye, is a disorder of sight due to the eye and brain not working well together. It results in decreased vision in an eye that otherwise typically appears normal.

⁷ Figure 7 shows a very worn stop bar on July 13, 2013, indicating it was freshly painted before the accident on July 26, 2013.

motorcycle driving companion, states that he was aware of the change in road conditions and consequently was able to stop the motorcycle before entering the intersection. (figure 8)

It is not clear whether Mr. Walker planned to go straight, left or right at the intersection of Ford-Wellpinit Road and State Road 231. However, in each of these scenarios Mr. Walker was required to treat the intersection as an uncontrolled intersection. Per the established standards of care regarding rights-of-way of motor vehicles at an uncontrolled intersection, Mr. Walker was required to yield to oncoming cars already in the intersection. As Mr. Walker did not yield to the oncoming car, he would be at fault for the accident for not complying with the established standards of care. See relevant standards of care below in next section.

Figure 6: Deposition of Joellen Gill

Examination of Joellen Gill (Human Factors Engineer, Applied Cognitive Sciences), 5/11/18	
Are you aware of what MR. Walker's eyesight was?	---and he described to me that he had something called amblyopia; that's uncorrectable. And he has his eyes checked every two years. He got some glasses to correct the deficiency, but he struggled driving with them. He thought it was dangerous to ride with them, and so he stopped wearing them. But I can't really comment upon what his visual capabilities were.

Figure 7: Visual cues of intersection



Note: White line that divides State Road 231 from Ford-Wellpinit Road



Note: Freshly painted stop bar⁸

⁸ Deposition of Ulrich Schildt

Carl Berkowitz, Ph.D., PE



Note: Freshly painted stop bar



Note: Historic view dated July 13, 2013 (before accident) which shows a very worn stop bar, indicated that the stop bar was freshly painted prior to date of accident on July 26, 2013.



Note: Stop sign and stop bar on opposite side of the intersection⁹

⁹ Google Earth



Note: Aerial view showing position approximately 980 feet from stop sign



Note: Mr. Walker view approximately 980 feet from stop sign

Figure 8: Deposition of Ulrich Schildt

Examination of Ulrich Schildt (Witness), 12/20/16	
Am I supposed to understand that you were going about 50 miles an hour at the point the collision occurred?	It would have been less at that point because the intersection, if I recall, the road we were on was on a slight incline. And so, you could see there was something coming up, so we would have slowed down, prior to that. At that point we were not going 50 miles per hour.
So, I understand the sequence of events, Jim is ahead of you, you're behind him as you approach the intersection. The collision occurs. You're able to stop your motorcycle before entering the intersection, but then you travel through the intersection to park on the other side closer to where Jim is at?	Correct.

Standards of care

Standard of care 1: Washington Drivers Guide¹⁰

A. Right of Way

There will be many times when you will need to slow down or stop your vehicle to allow another vehicle, pedestrian, or bicyclist to continue safely. Even if there are no signs or signals to regulate traffic, there are laws governing who must yield the right-of-way.

The law says who must yield the right-of-way, it does not give anyone the right-of-way. Failure to yield right of way is the number one citation in city collisions. You must do everything you can to prevent striking a pedestrian, on foot or in a wheelchair, or another vehicle, regardless of the circumstances.

- Drivers turning left must yield to oncoming vehicles and pedestrians and bicyclists.
- At an intersection where there is no stop sign, yield sign, or traffic signal, drivers must yield to vehicles in the intersection and to those coming from the right.
- Drivers must not enter an intersection unless they can get through it without having to stop.
- You should wait until traffic ahead clears so you are not blocking the intersection

B. Stop line

Vehicles must come to a full stop at a marked stop line, such as at the stop line at the intersection of Ford-Wellpinit Road and State Road 231.

- Stop sign – An eight-sided sign that is red with white letters. You must come to a full stop at a marked stop line, but if none, before entering a marked crosswalk or, if none, at the point nearest the intersecting roadway where the driver has a view of approaching traffic. You must wait until crossing vehicles and pedestrians have cleared and pull forward only when it is safe.

Standard of care 2: Unsignalized Intersection Improvement Guide (UIIG)¹¹

The UIIG is hosted by the Institute of Transportation Engineers (ITE) under the sponsorship of the Federal Highway Administration (FHWA).

The UIIG contents are based on information obtained from national guides and manuals, most notably the following:

- Manual on Uniform Traffic Control Devices (MUTCD);
- Various design publications of the American Association of State Highway and Transportation Officials (AASHTO);

¹⁰ dol.wa.gov

¹¹ <http://www.ite.org/uiig/uiig-information.asp>

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- Publications from the National Cooperative Highway Research Program (NCHRP), FHWA, ITE, universities, and others; and
- Best practices observed across the U.S.

Uncontrolled Intersection

An uncontrolled intersection is one in which the entrance into the intersection from any of the approaches is not controlled by a regulatory (i.e., STOP or YIELD) sign or a traffic signal. Per §11-401 of the Uniform Vehicle Code¹²: "when two vehicles approach or enter an intersection from 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." The driver must also yield to any vehicle that is already lawfully in the intersection and any pedestrian in a marked or unmarked crosswalk. Uncontrolled intersections are usually limited to very low-volume roads in rural or residential areas, as illustrated below.

Standard of care 3: American Association of State Highway and Transportation Officials (AASHTO)¹³

A. Sight distance

According to AASHTO, A Policy on Geometric Design of Highway and Streets, the required stopping sight distance on level roadways at 50 mph is 425 feet (see figure 9). Note that the elevation of Ford-Wellpinit Road approaching the intersection with State Road 231 is negligible, thus a grade = 0% is assumed for this calculation. (see figure 10). According to the analysis by the expert witness Mr. John Hunter, the sight distance to the stop sign for a motorcyclist with the foliage present was between 325 to 350 feet. Therefore, the placement of the sign was in violation of the AASHTO minimum sight distance requirement.

However, note that the required stopping sight distance of 425 feet is based on a stopping sight distance model (figure 11) which calculates the worst-case scenario and thus includes a considerable safety margin. This is discussed further in NCHRP Report 400, Determination of Stopping Sight Distances. (figure 12) The model is based on conservative assumptions with regard to reaction time, pavement friction values, driver visual capabilities, driver skills, and vehicle weight and size. Thus, the minimum sight distance of 425 feet required at a speed of 50 mph is very conservative and the actual required site distance is significantly less for an average reaction time, pavement friction values, driving capabilities as well as lower weight and smaller size of a motorcycle. As discussed earlier in scenario 1, the motorcycle involved in the accident required less

¹² <http://iamtraffic.org/wp-content/uploads/2013/01/UVC2000.pdf>

¹³ AASHTO, A policy on Geometric Design of Highways and Streets, 6th edition 2011, section 3-2

than 150 feet to stop at a speed of 50 mph and thus required a sight distance well below the 425 feet required by the AASHTO or the 325 to 350 feet sight distance calculated by the expert Mr. Hunter.

Figure 9: Stopping Sight Distance on Level Roadways¹⁴

Design Speed (km/h)	Metric				U.S. Customary				
	Brake Reaction Distance (m)	Braking Distance on Level (m)	Stopping Sight Distance		Design Speed (mph)	Brake Reaction Distance (ft)	Braking Distance on Level (ft)	Stopping Sight Distance	
			Calculated (m)	Design (m)				Calculated (ft)	Design (ft)
20	13.9	4.6	18.5	20	15	55.1	21.6	76.7	80
30	20.9	10.3	31.2	35	20	73.5	38.4	111.9	115
40	27.8	18.4	46.2	50	25	91.9	60.0	151.9	155
50	34.8	28.7	63.5	65	30	110.3	86.4	196.7	200
60	41.7	41.3	83.0	85	35	128.6	117.6	246.2	250
70	48.7	56.2	104.9	105	40	147.0	153.6	300.6	305
80	55.6	73.4	129.0	130	45	165.4	194.4	359.8	360
90	62.6	92.9	155.5	160	50	183.8	240.0	423.8	425
100	69.5	114.7	184.2	185	55	202.1	290.3	492.4	495
110	76.5	138.8	215.3	220	60	220.5	345.5	566.0	570
120	83.4	165.2	248.6	250	65	238.9	405.5	644.4	645
130	90.4	193.8	284.2	285	70	257.3	470.3	727.6	730
					75	275.6	539.9	815.5	820
					80	294.0	614.3	908.3	910

Note: Brake reaction distance predicated on a time of 2.5 s; deceleration rate of 3.4 m/s² [11.2 ft/s²] used to determine calculated sight distance.

Figure 10: Google Earth elevation calculations



Note: elevation = 1768 ft

¹⁴ AASHTO A policy on Geometric Design of Highways and Streets, 6th edition 2011, section 3-2



Note: elevation = 1776 ft

Figure 11: Stopping Sight Distance model¹⁵

The stopping sight distance is the sum of the distance traversed during the brake reaction time and the distance to brake the vehicle to a stop. The computed distances for various speeds at the assumed conditions on level roadways are shown in Table 3-1 and were developed from the following equation:

Metric	U.S. Customary
$SSD = 0.278Vt + 0.039 \frac{V^2}{a}$	$SSD = 1.47Vt + 1.075 \frac{V^2}{a} \tag{3-2}$
where: SSD = stopping sight distance, m V = design speed, km/h t = brake reaction time, 2.5 s a = deceleration rate, m/s ²	where: SSD = stopping sight distance, ft V = design speed, mph t = brake reaction time, 2.5 s a = deceleration rate, ft/s ²

Recommended parameters for the model. Note parameters represent common percentile vales from the underlying distributions. Specifically, 90th percentile values:

- One design speed and stopping distance
- Perception-brake reaction time – 2.5 sec
- Driver deceleration – 3.4 m/sec²
- Driver eye height – 1,080 mm
- Object height – 600 mm

¹⁵ AASHTO, A policy on Geometric Design of Highways and Streets, 6th edition 2011, section 3-2

Figure 12: NCHRP Report 400

Determination of Stopping Sight Distances

The current AASHTO stopping sight distance model has two components: (1) perception-reaction time, which is equated to the distance a vehicle travels at a fixed speed while these actions occur, and (2) braking distance, the distance the vehicle travels during the braking maneuver. This model has been altered only slightly since its inception in the 1940s, and it continues to result in well-designed roads. However, the hypothesis that the worst-case scenario- with its conservative assumptions of reaction time and pavement friction values and unproven driver visual capabilities-combined with an assumed below average driver, results in a model that provides a considerable margin of safety but is difficult to justify or defend as representative of either a real-life environment or a safe driving behavior.

Standard of care 4: Manual on Uniform Traffic Control Devices (MUTCD)¹⁶

A. Stop line

Stop Line is a solid white pavement marking line extending across approach lanes to indicate the point at which a stop is intended or required to be made.

According to Section 3B.16 Stop and Yield Lines, Stop lines should be used to indicate the point behind which vehicles are required to stop in compliance with a traffic control signal. See Appendix C for more details on the required specification of stop lines.

Conclusion

Based on the information presented in this safety report and with a reasonable degree of engineering certainty, it is my professional opinion that Mr. Walker, the driver of the motorcycle, failed to comply with the motor vehicle right of way standards for vehicles entering an intersection. This failure occurred whether Mr. Walker saw the stop sign or not. Furthermore, Mr. Walker's motorcycle required less than 150 feet to stop at his speed of 50 mph and thus required a sight distance well below the 425 feet required by the AASHTO or the 325 to 350 feet sight distance calculated by the expert Mr. Hunter.

¹⁶ Manual on Uniform Traffic Control Devices for street and highways 2009 edition, revisions May 2012

4. Motorcycle background

A. Specifications of Mr. Walker's motorcycle

- Kawasaki 2012
- VIN Number: JKAZXCHI9CA003294
- Make: KMCU
- Model: ZX1000
- Style: MC
- Front Brakes: Dual 300 mm petal-type rotors with radial-mount four piston Calipers
- Rear Brakes: Single 250 mm petal-type rotor with single-piston caliper
- A high-performance motorcycle often driven at excessive speeds by their owners. The bike looks like the batman bike, and the operators tend to lean forward over the handle bars for a more aerodynamic profile.

Figure 13: Pictures of similar motorcycles



B. Definitions

- Disc brake: a type of brake that uses calipers to squeeze pairs of pads against a disc or "rotor" to create friction. This action retards the rotation of a shaft, such as a vehicle axle, either to reduce its rotational speed or to hold it stationary.
- Rotor: disc which brake pads clamp down on to stop the wheels from spinning.
- Petal-type: it does not have a circular shape but has petals on the circumference. It increases the total surface area of the disc brakes. It also better dissipates the heat generated by the braking.
- Calipers: squeeze the brake pads against the surface of the rotor to slow or stop the vehicle by creating friction onto the rotor.

C. Background on the Kawasaki motorcycle¹⁷ (this an example of a similar motorcycle to the one in the accident)

The Kawasaki Ninja 1000 (sold in some markets as the Z1000S or Z1000SX) is a motorcycle in the Ninja series from the Japanese manufacturer Kawasaki sold since 2011. Other than its name, it is unrelated to the Ninja 1000R produced from 1986–89, or to other Ninja motorcycles.

It is generally characterized as a fully faired sibling of the Z1000 streetfighter, sharing the same 1,043cc liquid-cooled, electronic fuel-injected, 16-valve four-stroke inline-four engine and aluminum twin-tube backbone frame, but with ergonomics, storage, larger fuel tank and other design elements more oriented to the sport touring market. The Ninja 1000 is also strangely fitted with an electronic speed limiter, not because it is capable of exceeding the 300 km/h (186 mph) agreed to in the gentlemen's agreement but apparently to keep its top speed the same as the unlimited Z1000.

Kawasaki has positioned the bike as a "sport bike for the real world." As the model will not be homologated for racing purposes, the designers were free to make compromises for street performance. The Ninja 1000 thus has an upright seating position, large fuel tank, and adjustable windscreen among its features, as well a transmission geared for street-riding as opposed to racing. Nevertheless, it retains the large engine and aggressive styling of a sport bike, and its performance characteristics remain on the sport end of the spectrum, placing its sports-

¹⁷ https://en.wikipedia.org/wiki/Kawasaki_Ninja_1000

touring type more in competition with bikes like the Honda VFR1200F or Triumph Sprint GT as opposed to the Kawasaki's Concours or Yamaha FJR1300.

Kawasaki Ninja 1000



Manufacturer	Kawasaki Motorcycle & Engine Company
Also called	Kawasaki Z1000S/Z1000SX
Parent company	Kawasaki Heavy Industries
Production	2011–present
Class	Sport touring
Engine	1,043 cc (63.6 cu in) liquid-cooled 4-stroke 16-valve DOHC inline-four
Bore / stroke	77.0 mm × 56.0 mm (3.03 in × 2.20 in)
Top speed	152.8 mph (245.9 km/h)
Power	103 kW (138 bhp) @ 9,600 rpm (claimed) 93.3 kW (125.1 hp) @ 9,000 rpm(rear wheel)
Torque	98.54 N·m (72.68 lb·ft)(rear wheel) @ 8,800 rpm
Transmission	6-speed constant mesh
Suspension	Front: Inverted 41 mm (1.6 in) telescopic fork with stepless compression and rebound damping, adjustable spring preload Rear: Swingarm with horizontal monoshock with stepless rebound damping, remotely adjustable spring preload
Brakes	Front: Four-piston caliper with dual 300 mm (11.8 in) discs Rear: Single-piston caliper with single 250 mm (9.8 in) disc
Tires	Front: 120/70-17 Rear: 190/50-17

Rake, trail	24.5°, 100 mm (4.0 in)
Wheelbase	1,450 mm (56.9 in)
Dimensions	L: 2,110 mm (82.9 in) W: 790 mm (31.1 in) H: 1,230 mm (48.4 in)
Seat height	820 mm (32.3 in)
Weight	228.0 kg (502.7 lb) (2011–2016) (wet) 235 kg (518 lb) (2017–) (wet)
Fuel capacity	19 l; 4.2 imp gal (5.0 US gal)
Related	Kawasaki Z1000

D. Background on motorcycle disc brakes

Unlike car disc brakes that are buried within the wheel, bike disc brakes are in the airstream and have optimum cooling. Although cast iron discs have a porous surface which give superior braking performance, such discs rust in the rain and become unsightly. Accordingly, motorcycle discs are usually stainless steel, drilled, slotted or wavy to disperse rain water. Modern motorcycle discs tend to have a floating design whereby the disc "floats" on bobbins and can move slightly, allowing better disc centering with a fixed caliper. A floating disc also avoids disc warping and reduces heat transfer to the wheel hub. Calipers have evolved from simple single-piston units to two-, four- and even six-piston items. Compared to cars, motorcycles have a higher center of mass: wheelbase ratio, so they experience more weight transfer when braking. Front brakes absorb most of the braking forces, while the rear brake serves mainly to balance the motorcycle during braking. Modern sport bikes typically have twin large front discs, with a much smaller single rear disc. Bikes that are particularly fast or heavy may have vented discs.

Early disc brakes (such as on the early Honda fours and the Norton Commando) sited the calipers on top of the disc, ahead of the fork slider. Although this gave the brake pads better cooling, it is now almost universal practice to site the caliper behind the slider (to reduce the angular momentum of the fork assembly). Rear disc calipers may be mounted above (e.g. BMW R1100S) or below (e.g. Yamaha TRX850) the swinging arm: a low mount is marginally better for CG purposes, while an upper siting keeps the caliper cleaner and better-protected from road obstacles. A modern development, particularly on inverted ("upside down", or "USD") forks is the radially mounted caliper. Although these are fashionable, there is no evidence that they improve braking performance, nor do they add to the stiffness of the fork.

(Lacking the option of a fork brace, USD forks may be best stiffened by an oversize front axle).

5. Review of Mr. Steve Harbinson's Report

According to Mr. Steve Harbinson, accident reconstruction report dated August 22, 2018, "the stop sign (at SR 231) was only visible from about 125 feet away." Another expert, Mr. Hunter indicated that the sight distance to the stop sign along Ford-Wellpinit Road at SR 231 is approximately 325 to 350 feet away. This distance is measured along Ford-Wellpinit Road to the stop sign at the corner of SR 231.

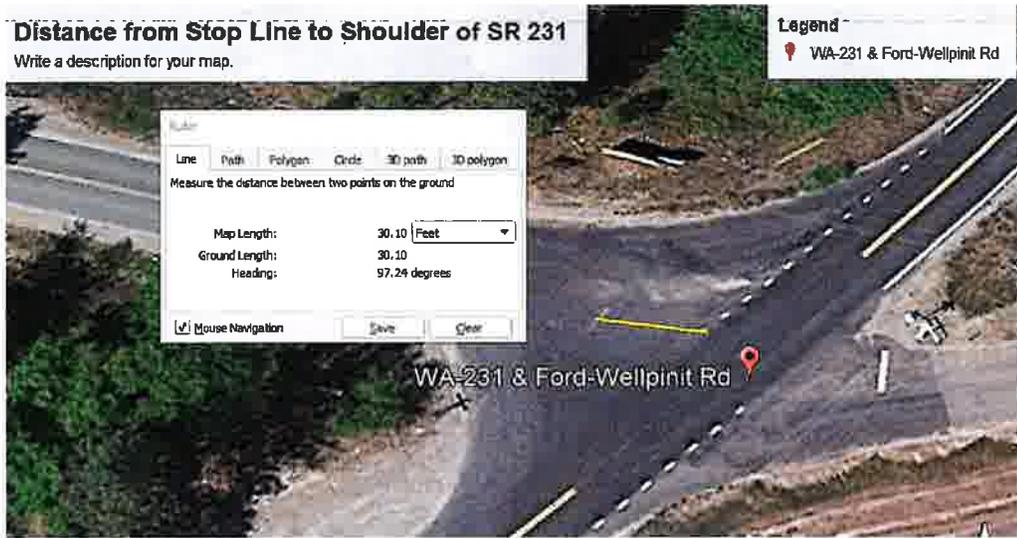
Figure 14 shows that the distance from this stop line to the edge of the shoulder line for SR 231. The distance from the Ford-Wellpinit Road stop line to the edge of SR 231 shoulder is 30 feet, plus the stop sign is set back several feet before the stop line.

According to the various stopping distance studies presented in this report, the stopping distance for a motorcycle is approximately 145 feet. Using Mr. Harbinson's 125 feet sight distance and adding the distance from the stop line to the shoulder line and the stop sign setback, there is a distance greater than 155 feet available to Mr. Walker to stop. If Mr. Walker was driving at the speed limit of 50 miles per hour, Mr. Walker had more than an enough stopping distance not to enter the space occupied by the vehicle driven by Ms. Alvarez who was traveling along SR 231. In addition, Mr. Walker would have been traveling at a slow-speed as he approached the stop line and additionally would have been able to turn his vehicle right or to turn his vehicle left to remain out of the pathway of Ms. Alvarez's vehicle.

Furthermore, if Mr. Walker had slowed his vehicle to stop at the stop line or at the shoulder line, Ms. Alvarez who was traveling at 50 mph would have past the point where Mr. Walker would have intersected with SR 231.

Figure 14. Stop Line in relation to SR 231 extended shoulder line





6. Appendices

A. Depositions

Depositions Reviewed

1. Deposition of James J. Walker, November 15, 2016
2. Deposition of Ulrich Schildt, December 20, 2016
3. Deposition Summary of William Skelton, Ph.D., P.E., May 4, 2018
4. Deposition Summary of Edward Stevens, May 8, 2018
5. Deposition of Joellen Gill, May 11, 2018

Summary of Testimony Related to the Incident

Question	Answer
Examination of James J. Walker (Plaintiff), 11/15/16	
What kind of motorcycle was it?	It was a Kawasaki.
And do you remember the model?	The model was a Ninja 1000.
How long did you have that bike before the ride in July of 2103?	I'm just going have an estimate, around a year.
And back in 2013, how frequently were you riding?	I was riding fairly frequently. I would say twice a week.
And prior to the accident, do you have an idea how many miles you had put on the Ninja?	Pretty close to 12,000 miles, or 15,000 miles.
And, then, tell me about the trip after that last stop you just described.	Well, I remember going through Wellpinit; small, little town, very slow. Speed limit there of 20 or 24. I remember obeying the speed limit. I didn't want to get in trouble. And I remember it was kind of a windy, maybe lines or corners or things, getting – it was slow, little slog-through little town. And then, I remember continuing on that road. I believe it was the Ford-Wellpinit Road, continuing on that road towards that intersection.
Do you recall how fast you were going on that section of road immediately before the intersection?	Well, I don't recall looking at the speedometer, so I can't give you a number. But I would have going the speed limit, which was 50 or 55 miles an hour.
After you leave that stop, do you recall what the weather conditions were?	It was a sunny day.
Do you recall the sun interfering in any way with your ability to ride?	No.

Question	Answer
Was there anything about the surface of the roadway that interfered with your ability to operate your motorcycle?	I would say no. The road was in good condition, the surface.
...are you aware of any other photographs of the intersection where the collision occurred?	Yes. I was sent a picture of the intersection after the stop sign was relocated.
Do you remember the collision itself?	No
What is your last independent memory before the collision, or the impact, occurs?	My independent memory would have been leaving Wellpinit and getting back up to highway speed. And I don't recall anything after that.
What's your first independent after the collision?	My first independent memory was I was face up and looking at people around me. Sunny day. Looking at people around me.
During the course of this trip from the point you leave Issaquah until the time of the collision, do you remember, any mechanical issues with your motorcycle, how it was operating?	It was operating very well. It was a fairly new motorcycle.
Did you buy it new or used?	New.
And why you would it have been 15/100 on the day of collision?	I wasn't wearing glasses. I didn't have a prescription for glasses at that time.
Do you drive close to the skip line, center of the lane or close to the shoulder?	Generally, I ride to the left of center. Left of the center in my lane. So, I'm between the center of the lane and the center of the road.
..." Upon seeing the stop sign at the intersection, I braked, but could not stop." Do you see that?	Yes, I do.
Tell me why you answered that interrogatory in that regard or in that way.	I have no knowledge of s stop sign. I don't remember braking. But I do not recall braking. I do not recall seeing the intersection. I don't recall seeing the stop sign. That's my memory right now.
When the first time you got prescription lenses after the accident?	I'm going to say it a year ago. Maybe about a year ago, I got prescription lenses.
Examination of Ulrich Schildt (Witness), 12/20/16	
And where were you positioned when the collision occurred?	I was riding behind Jim, and so it happened right in front of me.
How far away from Jim would you say you were when the collision actually occurred?	I would say probably about 50 to 75 feet, maybe 100 feet. I don't recall exactly.
Do you recall in terms the roadway whether it was before the intersection, where the	Right in the intersection.

Question	Answer
collision between Jim's motorcycle and the other vehicle occurred?	
Do you know whether or not you were going the speed limit that was posted on the road?	I mean, we followed the speed limits. I would imagine about 50 miles per hour.
Am I supposed to understand that you were going about 50 miles an hour at the point the collision occurred?	It would have been less at that point because the intersection, if I recall, the road we were on was on a slight incline. And so, you could see there was something coming up, so we would have slowed down, prior to that. At that point we were not going 50 miles per hour.
Was Jim conscious at all after the accident while he was still at the scene?	Yes.
So, this was your first time then riding in the area where the collision occurred?	That is correct.
Well, my next question was going to be, can you tell me about how much Jim had to drink that night at this restaurant?	I don't recall. But as I say, we may have had two beers or so. Nobody was drinking to excess.
About what time of day was the accident? Do you remember?	About 1:00, around there approximately.
So, as you're approaching the intersection at 231, do you recall what the positioning of your two vehicles where in your lane of travel? Sounds like you've told us Jim was in the lead.	Correct.
Were you staggered, side by side?	I was behind. You always stagger yourself a little bit because that gives you another margin of safety. You don't follow exactly the same line as the person in front of you.
As best you can, as Jim is approaching the intersection, describe for me what it is you remember seeing.	The only thing that I vividly recall is the impact.
Tell me what you see.	I heard a little bit of a brake from the car like a little bit of a tire squeal very, very brief, and then, it was just the impact. And I see Jim flying through the air. And he was laying face down in a ditch. The ditch was obviously sloping down, but it wasn't a very steep ditch; it was kind of a slight incline. He was headfirst. He wasn't moving.

Question	Answer
<p>So, I understand the sequence of events, Jim is ahead of you, you're behind him as you approach the intersection. The collision occurs. You're able to stop your motorcycle before entering the intersection, but then you travel through the intersection to park on the other side closer to where Jim is at?</p>	<p>Correct.</p>
<p>And did you anyone else who came to the scene that day, indicate to you that they had seen what happened?</p>	<p>I don't think anybody seen it because, again, the houses were at least several hundred feet away from the accident site. They heard the collision, but I don't think anybody had seen it. I pretty sure nobody saw it because I was the only one right there basically.</p>
<p>Do you remember telling him anything different then what you've shared with us today?</p>	<p>Well, the one thing I told him is that I though at the intersection, the way it was laid out, was not well laid out. The intersection is in a curve. And also, the stop sign on the Wellpinit Road, the one that we were coming up on, was off to the side.</p>
<p>Do you recall at the intersection there being a stop bar painted before you entered the intersection?</p>	<p>I don't think there's one there or there was one there at the time.</p>
<p>And were you ever aware that there was a vehicle coming down on 231 prior to the point of impact?</p>	<p>No. Where I was, you would not be able to see that. ...the Ford-Wellpinit Road, as it enters the intersection is on an incline. And if I recall, there's a fairly large tree on the right side. And the main highway, 231, is in a bit of a curve. So when I go up the incline entering towards the intersection, you really can't see any left and right. Or even if you're like 100 feet back from the intersection, you can't really see anything.</p>
<p>And do you recognize that now to be a stop bar?</p>	<p>Yes.</p>
<p>Do you remember seeing as Mr. Walker entered the intersection and you're behind him, do you remember seeing him take any action that you would describe as some kind of evasive maneuver?</p>	<p>No.</p>

Question	Answer
I mean, anything to indicate that he recognizes that there's a car approaching him from the right?	The car from the left. No.
Did you see any brake lights on Jim Walker's motorcycle before the collision?	I don't recall. I think he may have just put his motorcycle down, but I don't recall actually seeing brake lights on.
Could you determine if, in fact, he was slowing down the motorcycle or not?	He definitely would have slowed down because, when you approach the intersection, you see something is coming up, so he was not going probably the 50 miles an hour that we were going before, but I could not tell you how fast he was going at that point.
And do you recall seeing any warning sign, a STOP AHEAD sign or INTERSECTION AHEAD sign before the intersection?	I don't recall there being one.
Examination of William Skelton (Expert Witness), 5/4/18	
So, for example, you didn't do anything to try to determine speeds of vehicles?	No, I did not.
Or point of impact?	No, I did not. Didn't do that either.
Can you point to one of the of the photographs in Exhibits 1 through 4 that best show those two trees that you have drawn?	I call it a shrub, and it's actually a small tree that was blocking the view of the stop sign from approaching eastbound traffic.
And if I'm interpreting Exhibit 7 correctly, your suggested location for the stop sign is 12 feet to the northwest of the existing stop sign?	Yes. That's correct.
And I do understand your testimony to be that the sight distance to the stop sign on the days that you were at the scene was 125 feet?	That's correct.
And so, 125 feet is the furthest away where you could visibly see the stop sign?	Where it was immediately obvious, yes. If you knew the stop sign was there, you could see it beforehand. But until you got to 125 feet from the stop sign, it really was obscured by the vegetation of this shrub, little tree, whatever you want to call it.
And the 125-foot sight distance that you determined back in September and October 2014, was that based upon there being obstruction from the shrub/tree, or from the larger tree, or both?	No. The larger tree did not play into the vision obstruction. It was simply the shrub or little tree.

Question	Answer
Did you measure the distance between that shrub and the stop sign?	It was around 15 feet, as I remember. Plus or minus a little bit. I did not measure specifically, no, because the vegetation had hung down and obscured the stop sign was not just at the trunk of the tree.
So, when you determined sight distance at 125 feet, was that just based upon you standing at that location and determining whether you could see the stop sign?	That's correct. In the lane, too, in the eastbound lane.
What did he tell you?	He (Mr. Symington) said he went to the scene, and because of the widening of the Ford-Wellpinit Road at basically the intersection of State Road 231, the stop sign was placed well away from the center line of Ford-Wellpinit Road. He could not see the stop sign until 50 to 75 feet from the intersection. At 55 miles an hour, not enough time to perceive, react to the stop sign. Also, no warning signs for the stop sign.
And then going down, what's the next thing you have?	The officer said it was curved and level roadway.
Meaning on 231, there was no traffic control?	Number 10, there is no traffic control. That's for State Road 231.
What do you have written?	The officer said that Mr. Walker disregarded the stop sign on number 27, and there were no violations on 28 for Ms. Alvarez. 30 is "slowing." That must be for Ms. Alvarez, was slowing prior to impact. Than 31 and 31 are no defects in either of the vehicles. 33 is Mr. Walker he was coming from the west to go towards the north. I guess that's why he was saying he made a left turn, up on 29. And on 34, Ms. Alvarez was coming from the north, headed southbound.
Down at the bottom where it says vehicle 2, why do you have a question mark there?	It indicated that the front end and the left side of the Alvarez vehicle was damaged. I've never seen photographs of that vehicle. But it appeared to me unless the motorcycle which was vehicle 1 wrapped around on impact and hit the left side of the car, that's the only way that could happen.

Question	Answer
And what are those measurements?	Two foot 11 inches on the fog line. 13 foot nine inches on the centerline. 24-foot one inch on the fog line. And 27 feet three inches on the northbound pavement edge.
Under the stop sign, or to the south of the stop sign, you wrote "tree," yes?	Apparently, I did measure a little bit of the foliage edge. The edge is three feet north of the north edge of the stop sign. In other words, the overhang of the tree was three feet north of the north edge of the stop sign.
Looking at the bottom of your report on Exhibit 8, I think that this was talked about before, but I just want to be clear, it indicates the "The brush that was taller and higher than the stop sign and grew to within fifteen (15) feet of the stop sign totally obscured the view of the stop sign." So, when it says the brush that grew within 15 feet of the stop sign, is that referring to the shrub/tree that you have marked on Exhibit 12?	I believe that's correct, yes.
Examination of Edward Stevens (Expert Witness), 5/8/18	
And the report says that it's a preliminary engineering report." Why is it preliminary?	Well, because I haven't got the opportunity to go and listen to, for instance, the experts from the other side or any other deponents, something I come up with some sort of facts that I was not aware of.
What was that change?	That change was that I discovered, after I had written the first draft which is in there, that the speed limit on Ford-Wellpinit Road was actually 50, not 55, as indicated in the accident report.
Have you formulated any opinions in this case as to whether or not the placement of the stop sign in 2004 was at a proper location?	Well, if you assumed that the stop sign was in the proper location; that is to say, it was within the confines of the MUTCD in terms of distance from the road, the size of the sign, the height of the sign, that kind of thing, I would say it was. Does it provide adequate visibility in terms of its placement? The answer to that would be, no.
And it does not meet the MUTCD, in your opinion, as it relates to visibility because of where it's located? Because of vegetation or both?	Because of where it's located, vegetation and lack of appropriate approach sign.

Question	Answer
And then WSDOT has a different site distance requirement?	Well, WSDOT has two site distance requirements. One, if you're working on an existing roadway that they have a stopping site distance at 50 miles an hour at 350 feet. If you designing a new roadway, it would be 425 feet.
Do you understand that the MUTCD requires stop signs to be placed within 50 feet from the edge of the road?	Correct.
What is a "site visibility study"?	Well, site visibility study is the fact that as you put the stop sign placement initially in the roadway, you are required under the MUTCD mandatory provision to do a site visibility study to make sure that the site is not restricted from oncoming traffic. If it is, and if it is to the point where you can't see it from a certain distance that's indicated in the MUTCD under "Warning Sign Placement" at 50 miles per hour, then you must put in that sign. It's a mandatory provision.
You referred earlier to there being, "requirements" that roadside vegetation studies be performed?	Yes. Those are generally accomplished annually.
What were you referring to when you talked about the "established practice"?	If I just went to the 2003 MUTCD, I went to section 28.06, Stop Sign Placement. It says, "The stop sign shall be installed on the right side tot the approach to which it applies. When the stop sign is installed at this required location, and the sign visibility is restricted, a Stop Ahead sign shall be installed in advance of the stop sign."
In your report on page 9, second to last bullet point under "opinions," you wrote "Using the same offset form the pavement edge, the stop sign should have been moved further westerly around Ford-Wellpinit Road to greatly improve its visibility." I'm assuming that opinion is dependent upon the existence of vegetation, which limits the site distance to that stop sign?	Correct.
And so, as it relates to that opinion about moving the stop sign; if I understand	That would be one of them.

Question	Answer
correctly, the other remedy is to clear the vegetation?	
And how many different respects did it not comply?	Basically, in terms of doing the study to make a determination is if there was any site visibility or restrictive visibility from the stop sign to oncoming traffic.
Is it the lack of the lack of a study that you are critical of?	Yeah, absolutely.
Examination of Joellen Gill (Human Factors Engineer, Applied Cognitive Sciences), 5/11/18	
And what is your understanding as to what you've been asked to testify about today?	Human factors issues associated with this crash.
And also, but the state design manual reflects that it's lowered to 350 feet; is that also correct?	For existing stopping sight distance, yes.
So, it's your opinion today, I don't mean to overly summarize it. But at least in terms of PRT, you've calculated that Mr. Walker had 110.25 feet of distance for his PRT; is that correct?	No, that's incorrect. What I did was calculate how much distance he would travel if he was going 50 miles an hour if his PRT was 1.5 seconds. So, we don't know what his PRT was. And, in fact AASHTO and MUTCD base all of their requirements for sign placement and that sort of thing on 2 -1/2 second PRT.
Can you describe for me what types of measurements you took?	The only measurement I took was as you are driving in the direction that Mr. Walker was on Ford-Wellpinit Road approaching State Route 231. I took some visibility distances on the approach on State Route 231 from both directions, how far an approaching driver could see in each direction as they're approaching. And it was 42 yards in one direction and 72 yards in the other direction.
In that measurement taken at the intersection itself looking each direction, or is there an approach distance?	It would have been 125 feet back from the stop sign.
And Mr. Skelton's report describes vegetation as one of the primary obstructions for the stop sign; is that correct?	Yes. Vegetation and signage is what I recall.
What 's "PRT"?	Perception reaction time. It's the interval of time that starts when something can be

Question	Answer
	detected in the roadway and ends when a response is initiated.
And what is a “simple PRT” event?	PRT includes four steps. The first thing is detection. The next one is identification. The third one is decision-making. And then, the last step is initiating that response. A simple perception time is something where the first three happen essentially simultaneously. Detection, identification and decision-making.
And is this case, is it unexpected.	Well, we don't know if PRT was ever initiated because we don't know if Mr. Walker ever saw the stop sign.
...would have traveled 110.25 feet before responding?	At 125 feet and he's traveling 50 miles an hour, this is how far he would travel in a second and a half.
We agree that PRT differs from person to person; is that correct?	Yes, there are a lot of factors that affect PRT; Age is one; expectancy is one; cognitive load is another one: environmental conditions. Lots of things affect PRT.
Can you tell me that there's an intersection there?	A stop sign is a very strong visual cue that we recognize immediately. We know exactly what it means. We know exactly what to do.
And so, you described the fact that there could be other factors, though, that may indicate to a motorist that there is an intersection that's approaching, correct?	Yeah. There could be a sign that says, Approaching State Route 231. There was nothing like that in this case. There could be cross traffic that would indicate to a driver. No discussion of cross traffic, other than the vehicle that actually hit him. No other visual cues that he was approaching an intersection other than the white line across the road.
And so just to be clear, a stop strip is something that could indicate to a motorist that they're approaching an intersection, correct?	It could, yes.
...what is your profession utilizes for an adequate response time; is that correct?	No, no. That's not accurate at all. PRT is a range that can go from less to a second to over five seconds. It's really dependent on the specific conditions of the roadway. ...that Mr. Walker wouldn't have had adequate time to detect and react to the stop sign and to stop in time.

Question	Answer
And so, you also assumed that he was traveling at 50 miles an hour; is that correct?	Yes.
Are you aware of what MR. Walker's eyesight was?	---and he described to me that he had something called amblyopia; that's uncorrectable. And he has his eyes checked every two years. He got some glasses to correct the deficiency, but he struggled driving with them. He thought it was dangerous to ride with them, and so he stopped wearing them. But I can't really comment upon what his visual capabilities were.
If Mr. Schildt testified that he estimates he was between 50 to 100 feet behind Mr. Walker when the accident occurred, does that change your analysis at all in any way?	No. Eyewitness testimony about those kinds of thing is notoriously unreliable.
Are you aware that Mr. Schildt was able to make a controlled stop?	Yes.
Based upon your review of the information you've been provided, have you reached any conclusions about whether or not Mr. Walker took any evasive maneuvers to avoid the collision?	I've not seen any indication. I think that question was asked specifically of Mr. Schildt, and he didn't describe any evasive maneuvers that he observed.
At what point were you when you made the measurement going 76 yards to the right?	At some point where you could perceive the stop sign as determined by Mr. Skelton, so 125 back from the stop sign. The number to the left was 42 yards.
And what was it that restricted the sight distance?	Vegetation. Trees.
It stays "My opinion a more likely basis is that the lack of a stop ahead sign and/or the inadequate 125' sight stopping distance constituted safety hazards that contributed to this accident." Did I read that correctly?	You did.
What does that mean, not that you identified?	Well, he doesn't recall specifically the accident; doesn't recall specifically his speed at the time of the accident, where he was looking, was he detracted by anything, that sort of thing. So, he was operating his motorcycle in compliance with the applicable laws. No evidence that he was under the influence of drugs or alcohol or exceeding the speed

Carl Berkowitz, Ph.D., PE

Question	Answer
	limits or anything of that nature. So, I didn't identify anything.

B. Supporting Documentation

7-26-13 1 pm

Police report:

Ford-Wellpinit road in Ford, Washington.

Report Number: E260060

Narrative

Unit #1, a motorcycle with one occupant, was traveling eastbound on Ford-Wellpinit Road; Unit #2 was traveling SR 231 southbound.

Unit #1 fails to stop for a clearly erected stop sign and travels into the S/B lane of SR 231.

Unit #2 attempts to slow down but is unable to avoid unit #1; as a result, unit #2 slams into the left side of unit #1.

The lone occupant on unit #1 is thrown/ejected from the motorcycle and comes to rest in a roadside ditch on the east side of SR 231. Both units required tow trucks to be removed.

Carl Berkowitz, Ph.D., PE

WILLIAM H. SKELTON, JR., Ph.D., P.E.

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METALLURGICAL/CERAMIC ENGINEER
ACCIDENT RECONSTRUCTION
PRODUCT LIABILITY
FAILURE ANALYSIS
SEAT BELT INVESTIGATIONS

February 7, 2018

TO WHOM IT MAY CONCERN:

RE: Claimant: James J. Walker
Defendant: Washington State Department of Transportation, Highways Division
Date of Accident: July 26, 2013
SE File Number: 409191

INTRODUCTION:

At the request of Mr. Adam Symington of Spokane, Washington, an investigation was conducted to reconstruct a motorcycle/automobile accident that occurred on State Highway 231 at the intersection with Ford-Wellpinit Road in Ford, Washington, on July 26, 2013. It was reported that Mr. James J. Walker of Issaquah, Washington, received disabling injuries as the result of this accident.

BACKGROUND:

It was reported in the State of Washington Police Traffic Vehicle Collision Report number E260060, that at 1:07 PM on July 26, 2013, Mr. James J. Walker of Issaquah, Washington, was driving his 2012 Kawasaki ZX1000 motorcycle eastbound on Ford-Wellpinit Road in Ford, Washington. It was also reported that Mr. Walker had never been to this intersection and therefore was unfamiliar with any traffic control there. According to the accident report, Mr. Walker failed to stop for a "clearly erected stop sign" at the intersection with State Road 231 and was impacted in the southbound lane by a 2002 Toyota Camry driven by Ms. Jacqueline K. Alvarez of Valley, Washington. The accident report stated that the dry asphalt lanes of the roadway were curved and level with no traffic control present for State Road 231 and a stop sign on Ford-Wellpinit Road. The posted speed limit for both roadways was 55 miles per hour. The accident report also stated that Mr. Walker was ejected from his motorcycle, received disabling injuries, and came to rest in the roadside ditch on the east side of SR 231.

INVESTIGATION:

I examined the accident site and took measurements and photographs on September 26 and on October 27, 2014, and February 7, 2018. Some of the photographs taken during these examinations are presented at the end of this report. Using measurements of the accident site on State Highway 231 and Ford-Wellpinit Road, a scaled drawing was constructed of that intersection and is presented as Figure Number 1 at the end of this report.

RESULTS OF THE INVESTIGATION:

State Highway 231 at its intersection with Ford-Wellpinit Road is a straight asphalt roadway that runs essentially north-east to south-west whereas Ford-Wellpinit Road approaches SR 231 essentially from due west so that the intersection occurs at an angle of some 135 degrees - considerably greater than a right angle. The southwest corner of the intersection consisted of a rather large radius corner, as shown in the scaled drawing of the intersection in Figure Number 1 at the end of this report. A stop sign had been inserted into the ground of the corner at forty-three (43) feet from the road surface of Ford-Wellpinit Road and twenty-six (26) feet from SR 231. As shown in the photographs following Figure Number 1, a large tree and several smaller ones prevented the viewing of the stop sign by the driver of an eastbound vehicle until the vehicle was approximately 125 feet from the stop sign. The most serious visibility blockage was presented by a shrub that was determined to be growing approximately fifteen feet (15') west of the stop sign and exceeded the total height of the stop sign.

Ford-Wellpinit Road was driven more than one mile west of the intersection and photographs taken of the roadway while driving eastbound back towards the intersection showed that there was no STOP AHEAD sign erected anywhere along that route before the intersection.

DISCUSSION OF RESULTS:

Trees and vegetation blocked the view of the Stop Sign for approaching traffic until the traffic was only approximately 125 feet from the stop sign. The brush that was taller and higher than the stop sign and grew to within fifteen feet (15') of the stop sign totally obscured the view of the stop sign until approaching traffic was approximately 125 feet from the sign.



FIGURE NUMBER 1

SKELTON ENGINEERING
Walker Accident
Date of Accident: July 26, 2013
Scale 0 20 40 feet

Walker - Washington State Department of Transportation, Highways Division

Page 6



C. Manual on Uniform Traffic Control Devices (MUTCD)

Stop Line

Stop Line—a solid white pavement marking line extending across approach lanes to indicate the point at which a stop is intended or required to be made.

Section 2B.10 STOP Sign or YIELD Sign Placement

12 *Stop lines that are used to supplement a STOP sign should be located as described in Section 3B.16. Yield lines that are used to supplement a YIELD sign should be located as described in Section 3B.16.*

Section 3B.16 Stop and Yield Lines

Guidance:

01 *Stop lines should be used to indicate the point behind which vehicles are required to stop in compliance with a traffic control signal.*

Option:

02 *Stop lines may be used to indicate the point behind which vehicles are required to stop in compliance with a STOP (R1-1) sign, a Stop Here For Pedestrians (R1-5b or R1-5c) sign, or some other traffic control device that requires vehicles to stop, except YIELD signs that are not associated with passive grade crossings.*

03 *Yield lines may be used to indicate the point behind which vehicles are required to yield in compliance with a YIELD (R1-2) sign or a Yield Here To Pedestrians (R1-5 or R1-5a) sign.*

Standard:

04 **Except as provided in Section 8B.28, stop lines shall not be used at locations where drivers are required to yield in compliance with a YIELD (R1-2) sign or a Yield Here To Pedestrians (R1-5 or R1-5a) sign or at locations on uncontrolled approaches where drivers are required by State law to yield to pedestrians.**

05 **Yield lines shall not be used at locations where drivers are required to stop in compliance with a STOP (R1-1) sign, a Stop Here For Pedestrians (R1-5b or R1-5c) sign, a traffic control signal, or some other traffic control device.**

06 **stop lines shall consist of solid white lines extending across approach lanes to indicate the point at which the stop is intended or required to be made.**

07 **yield lines (see Figure 3B-16) shall consist of a row of solid white isosceles triangles pointing toward approaching vehicles extending across approach lanes to indicate the point at which the yield is intended or required to be made.**

Guidance:

08 *Stop lines should be 12 to 24 inches wide.*

09 *The individual triangles comprising the yield line should have a base of 12 to 24 inches wide and a height equal to 1.5 times the base. The space between the triangles should be 3 to 12 inches.*

10 *If used, stop and yield lines should be placed a minimum of 4 feet in advance of the nearest crosswalk line at controlled intersections, except for yield lines at roundabouts as provided for in Section 3C.04 and at midblock crosswalks. In the absence of a marked crosswalk, the stop line or yield line should be placed at the desired stopping or yielding point, but should not be placed more than 30 feet or less than 4 feet from the nearest edge of the intersecting traveled way.*

11 *Stop lines at midblock signalized locations should be placed at least 40 feet in advance of the nearest signal indication (see Section 4D.14).*

12 *If yield or stop lines are used at a crosswalk that crosses an uncontrolled multi-lane approach, the yield lines or stop lines should be placed 20 to 50 feet in advance of the nearest crosswalk line, and parking should be prohibited in the area between the yield or stop line and the crosswalk (see Figure 3B-17).*

Standard:

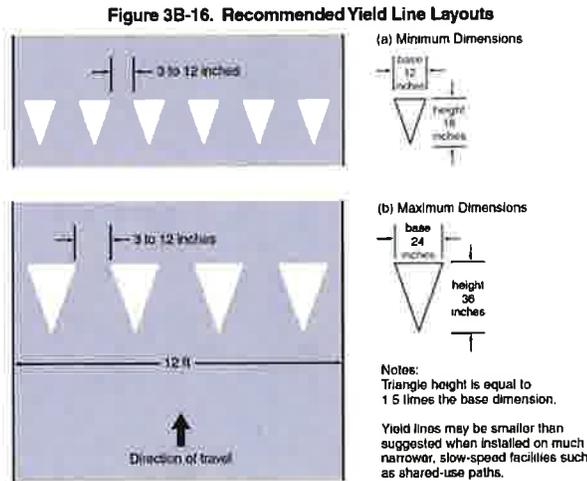
13 If yield (stop) lines are used at a crosswalk that crosses an uncontrolled multi-lane approach, Yield Here To (Stop Here For) Pedestrians (R1-5 series) signs (see Section 2B.11) shall be used.

Guidance:

14 Yield (stop) lines and Yield Here To (Stop Here For) Pedestrians signs should not be used in advance of crosswalks that cross an approach to or departure from a roundabout.

Support:

15 When drivers yield or stop too close to crosswalks that cross uncontrolled multi-lane approaches, they place pedestrians at risk by blocking other drivers' views of pedestrians and by blocking pedestrians' views of vehicles approaching in the other lanes.



Option:

16 Stop and yield lines may be staggered longitudinally on a lane-by-lane basis (see Drawing D of Figure 3B-13).

Support:

17 Staggered stop lines and staggered yield lines can improve the driver's view of pedestrians, provide better sight distance for turning vehicles, and increase the turning radius for left-turning vehicles.

18 Section 8B.28 contains information regarding the use of stop lines and yield lines at grade crossings.

**Supplement Memorandum
Walker v. Washington State Department of
Transportation**



Figure 1: Location of incident

**Prepared by: Carl Berkowitz, Ph.D., PE
September 18, 2018**

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1. Accident Overview¹

On July 26, 2013 at 1:07pm, Mr. James Walker was driving his Kawasaki motorcycle eastbound on Ford-Wellpinit Road in Ford, Washington. According to the accident report, Mr. Walker failed to stop at the intersection with State Road 231 and collided with a Toyota Camry driven by Ms. Jaqueline Alvarez in the Southbound lane of State Road 231. Ford-Wellpinit Road had a stop sign at the intersection with State Road 231. State Road 231 had no traffic control. The posted speed limit for both roadways was 50 mph. In the accident Mr. Walker was ejected from his motorcycle and sustained severe injuries.

2. Personal Information and Qualifications

As fully laid out in my attached CV, an accurate copy of which is attached and fully incorporated herein, I have extensive experience working in the transportation industry, including the government, private and academic sectors. I have comprehensive multi-modal experience in transportation planning, design, engineering, safety, security, construction, maintenance, operations and management. In addition to my work experience, I have conducted research, consulted, and given presentations on transportation safety, including specifically rail passenger safety. I have worked as a transportation engineer for over fifty-five years, including four years as the highest ranking civil-service engineer in the New York City Transportation Department. I have multiple degrees, including a Ph.D. in Transportation Planning and Engineering from the Polytechnic Institute of New York (NYU-Polytechnic), have held numerous teaching positions, have published academic and news articles, and I am a member of various industry and professional associations.

3. Additional Findings

The findings and opinions in this supplemental memorandum are based on additional information provided by the Attorney for the Defendant and Plaintiff and depositions.

A. Relevant information from depositions

Steven Harbinson

- Mr. Harbinson did not take any measurements from the scene of the accident or perform any independent analysis to determine from various photos what the exact sight distance was to the stop sign.
- Based on analysis of Mr. Skelton, Mr. Harbinson assumes the stop sign is visible at a distance of 125 feet.

¹ Police report

- The sight distance, assuming 1.5 second perception reaction time, necessary for Mr. Walker to have stopped his bike prior to entering SR 231 was 214 feet. Confirmed in analysis presented in letter from Mr. Harbinson to the Law office of Geoffrey D. Swindler, P.S. on August 22, 2018.
- The stop sign is approximately 26 feet back from SR 231

James Flott

- Mr. Flott measured the trunk of the tree in proximity to the stop sign but did not take measurements of the height and spread. Instead chose to make a visual measurement.
- Performed general analysis to determine the height of the tree in 2018 which is the tallest the tree could have been.

B. Conclusions

According to the deposition and analysis of Mr. Harbinson, Mr. Walker had 151 feet to stop before entering the intersection. This distance is calculated as the sight distance of the stop sign, 125 feet, plus the distance from the stop sign to the intersection, 26 feet.

As noted in the "Safety Report," according to the analysis by the expert witness John Hunter,² the sight distance to the stop sign for a motorcyclist with the foliage present was between 325 to 350 feet. According to Google Earth, the distance from the Ford-Wellpinit Road stop line to the edge of SR 231 shoulder is 30 feet, plus the stop sign is set back several feet before the stop line. However, assuming the Mr. Harbinson's more conservative estimate of 125 feet and 26 feet, Mr. Walker still would have had sufficient distance to stop before reaching the intersection. As noted in the "Safety Report," the required braking distance for Mr. Walker at a speed of 50 mph was between 141.64 and 143 feet. According to Ride Smart Florida (based on a study by the NHTSA), a motorcycle traveling at 50 mph needs approximately 143 feet and 3.19 seconds to stop. According to this report this distance includes 55 feet reaction distance and 89.43 feet braking distance. This is also consistent with a study by bikesafer.com (with Montreal Promocycle Foundation),³ which calculates the braking distance with ABS brakes and reaction time is 141.64 feet and 3.24 seconds to stop.

According to the deposition and analysis of Mr. Flott, Mr. Flott was only able to make general assessment of the impact of the foliage on the visibility of the stop sign. The

² John Hunter preliminary report dated January 23, 2018

³ <http://bikesafer.com/detail/braketime.html>, Safer Motorcycling in Today's Kill Zone, Stopping Distance Revisited

assessment is not based on any exact measurements of the height and spread of the foliage and is based on the tree in 2018 and not 2013.

C. Pictures of Mr. Walker's motorcycle



4. Depositions

Depositions Reviewed

- 1. Deposition of Steven Harbinson , August 27, 2018
- 2. Deposition of James Flott, August 20, 2017

Summary of Testimony Related to the Incident

Question	Answer
Examination of Steven Harbinson (Consultant, Collision Analysis and Reconstruction, LLC), 8/27/18	
When you were at the scene of the accident was the elm tree that is approximately 15 feet away from the stop sign that existed in 2004 still standing or had it been cut down?	It was still standing.

Question	Answer
And when you were out there on July 23 rd , 2018, were there two stop signs at that intersection?	They were both exposed.
So, the elm tree that was, you estimated, 10 to 15 feet away from the old stop sign that was still standing when you were there on July 23 rd ?	Well, something was still standing. I'm not sure it's an elm tree, but it's a bush-type tree.
When you were at the scene of the accident, did you do any measurements of anything?	No, I did not.
Is stopping distance affected in any way by whether the ABS brakes were integrated or linked?	It could but in the case will not because Mr. Walker states he uses both brakes. If you have a rider that just uses front brakes that integrates the rear brake when you apply the front brake it would make a difference, but since Mr. Walker applies both brakes, it will not make a difference.
Based upon your interview of Mr. Walker, did you determine that his experience level as a bike rider was that he was highly experienced?	I would say he was well trained.
Would you put his experience level as experienced?	I would put it as experienced but I would not put it as an expert.
But with those photos you didn't do any type of independent analysis, such as taking measurements or trying to determine from various photos what the exact sight distance was to the old stop sign?	I did not.
...the first calculation you have is based upon Mr. Walker traveling 50 miles per hour as he approached that intersection, correct?	That is correct.
And you read in Mr. Walker's recorded statement that he reported approaching the intersection "very slowly and very cautiously" because he was unclear as to which road he would take at the intersection. Yes?	That is correct.
So, it is your opinion that Mr. Walker's post-accident resting place is consistent with him entering that intersection at 50 miles per hour?	I would have to do those calculations, which I was not asked and have not done.
...your opinions are; I think you said, based upon the 125 feet of visibility that Mr. Skelton came up with?	That is correct.
The 1.5 second perception-reaction time that you are using comes from what?	All my accident reconstruction courses, that's the standard time.

Question	Answer
What does it mean?	What that means is Mr. Walker has to perceive and react to the stop sign. So, we have his perception-reaction travel distance. And then he has to hit both of his brakes, basically to their fullest capacity and bring his bike to a stop, and that's 214 feet for a one and a half second perception-reaction travel distance and the braking time from 50 miles per hour.
...that the minimum sight distance necessary for Mr. Walker to have stopped his bike prior to entering SR 231 was 214 feet?	Correct, using full braking capacity of that motorcycle or most motorcycles out.
As it related to Opinion No. , how do we know that Mr. Walker simply was not paying attention and that's the reason he drove into the intersection?	Couple reasons. One, Mr. Walker did not see a stop sign. Mr. Schildt stated he did not see a stop sign until after the collision. And even if he had been paying attention and saw it at the 125 feet, at the 40 to 50 miles an hour reaction at the standard 1.5 second perception-reaction, he's going into the intersection.
Did you see any evidence that he slowed prior to the impact?	Mr. Walker was not sure. He does not remember slowing. Mr. Schildt believes they slowed a bit, but did not actually quantify a number. And that's assuming that they were actually staring at the posted speed limit of 50 and not slightly above.
What is that other point?	The stop sign is approximately 26 feet back from State Route 231.
Examination of James Flott (Consultant Arborist, Community Forestry Consultants, Inc.), 8/20/18	
Describe that for me.	We work with municipalities in all capacities related to urban forestry programs.
What measurements or studies did you conduct when you were there on May 30 th or on August 9 th ?	I measured the trunks of the Siberian Elm tree and did not take exact measurements of the height and spread using any kind of measuring device, but estimated the height and spread of the tree.
How was it that you measured the trunks?	Using a diameter tape.
So, the tree had been cut down to three feet in August when you returned?	Yes.
Would it have been possible to measure the stump at that point?	It would have been possible, but it would have been below the standard measuring height for trunk diameter is four-and-a-half feet.

Question	Answer
And how it was that you estimated the height of the tree?	Well, there are benchmarks out there that you can use, like the utility poles, stop sign height that give you a rough estimate. The tree fell in between those two as far as height goes. So, I estimated it to be 20 feet.
And how tall is the stop sign?	I believe the stop sign was eight feet.
How'd did you measure the stop sign?	I didn't.
And how tall was the telephone pole that you are referencing?	I didn't measure it, but utility poles are typically in the 25 to 30 – foot range, depending on the utility.
And while you were out there looking for any of this understory vegetation, did you find any that you thought somehow was going to impair the stop sign or view of the stop sign?	Yes. Some of the native grasses.
And then once you arrived on the site, how long did your inspection take to complete?	About an hour.
And how is it that you determined that this particular tree is a Siberian elm?	Through the morphological features on the tree, the bud, the leaves, the character of the tree, how it grows, the growth habit, and outgrowth.
And was there any reason you didn't perform that measurement while you were out there in 2018?	I felt my visual measurement or eyeballing it was accurate enough?
So, what'd your eyeball tell you the spread was in 2018?	20 feet.
Did you examine the tree to see if it looked like anyone had ever been trying to maintain it, like evidence of pruning or anything along those lines?	There was evidence of a couple of the trunk stems that had been removed recently. But no other indications of any type of maintenance.
Can you tell me where it was the understory was located that was making the stop sign post back in 2013?	It was growing around the base of the stop sign post around the actual whole area around the Siberian elm in the intersection where the stop sign's located.
And did you do any measurements to see how far out it was growing from the stop sign?	No, I did not.
So, if I understand the scope of your opinions, the only vegetation that you've reached a conclusion somehow obstructed the stop sign back in 2013 was the understory you've described and that one Siberian elm?	Yes. So, the visibility would have been good, I believe in 2004. Visibility on the day of the accident, from seeing the tree in May and looking at the annual incremental twig growth, the visibility would have been blocked, or partially blocked, because of the tree, as the branches grew. It

Question	Answer
	would have partially, not entirely, but partially blocked some of the stop sign.
In 2013?	Yes.
And I don't see any description in here that would help me understand the severity with which the visibility was negatively impacted. Are you able to describe for me the severity of the impact?	No, I'm not.
And tell me what you saw that led you to say some trunks had recently been removed?	There were cuts that were not from fresh but recent on the May date when I was up there.
But from when you saw it in 2018, Aren't we going to take or subtract approximately 120 inches of height and width from what you observed in order to determine whether there was any blockage in 2013?	That's correct.
Do you know how many branches?	No, not exactly.
But what I'm, trying to figure out is did you, like, go up to the tree, then, and look at those branches that were partially obstructing the stop sign and measure back 120 inches to determine where those branches would have been in 2013?	No, I did not.
So, what I'm trying to get at is do you know if, as you were looking at that stop sign in 2018, you subtract a hundred inches off of every branch that was in front of the stop sign, whether there would be visibility issues with that stop sign?	Losing a hundred inches off that tree would probably would have cleared it from the stop sign.
We know, though, do we not, that between 2013 and 214, the Siberian elm could have grown as much as 30 inches?	Yes.
And did you do any type of measurements to determine what the visibility of the sign in 2013 would have been if you subtracted 30 inches from all of the branches that we see in that Siberian elm in the 2014 pictures?	No, I did not.
Was the 2013 stop sign there when you went to the scene?	Not in May or August.
So, what you estimate as 20 feet of height of this tree in 2018 is the tallest you think that tree ever was. Correct?	Correct.

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

JAMES WALKER and BARBARA WALKER,
husband and wife and the marital community
comprised thereof,

Case No. 16-2-00708-7

DECLARATION OF STEVE DELL

Plaintiffs,

vs.

THE WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, DIVISION OF
HIGHWAYS, a State agency, STEVENS
COUNTY, DEPARTMENT OF PUBLIC
WORKS,

Defendants.

I, STEVE DELL, hereby declare as follows:

I am over the age of 18, competent to be a witness and not a party in the above-captioned matter.

I am employed in the Stevens County Public Works Department as the South Area Supervisor. I have been employed with the Stevens County Public Works Department since 2000. During that time, I have been a Road Technician (11 years), Area Lead Technician (4 years) and the South Area Supervisor (3 years).

DECLARATION OF STEVE
DELL - page 1

Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

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On August 27, 2018, I was asked to go to the intersection of Ford-Wellpinit Road and SR-231 and take some measurements. Specifically, I was asked to determine whether an elm tree that is approximately 15 feet to the west of the "old" stop sign (the one that is further south at the intersection) is within Stevens County's right-of-way. The tree in question is adjacent to the green sign ("Kurt's Corner") seen in the photograph attached Exhibit A. The "old" stop sign is the one further to the left of the photograph attached as Exhibit A.

Exhibit A is a true and correct copy of a photograph I took on August 27, 2018 while making the measurements at the intersection of Ford-Wellpinit Road and SR-231. Exhibit A shows my measurement of the distance from the center line of Ford-Wellpinit Road and the "new" stop sign.

Having worked for the Stevens County Public Works Department, I am aware that Stevens County has a right-of-way that extends 30 feet in either direction of the center of county roads.

Attached to this declaration as Exhibit B is a drawing I created documenting the measurements I made on August 27, 2018 at the intersection of Ford-Wellpinit Road and SR-231. The elm tree in question is 42 feet from the center of Ford-Wellpinit Road. As such, that tree is outside Stevens County's right-of-way and is on private, deeded land. Attached to this declaration as Exhibit C is a true and correct copy of a photograph I took on August 27, 2018. The orange stake shows is placed at the outside edge of Stevens County's right-of-way.

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

DATED this 30 of August, 2018, at Spokane, Washington.



STEVE DELL

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the ___ day of September, 2018, the foregoing was delivered to the following persons in manner indicated:

Counsel for Plaintiffs

Geoffrey D. Swindler
Attorney at Law
103 E. Indiana Avenue, Suite A
Spokane, WA 99207

Via Regular Mail []
Via Certified Mail []
Via Overnight Mail []
Via Facsimile []
Hand Delivered []

Co-Counsel for Plaintiffs

Adam Symington
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Hand Delivered []

DECLARATION OF STEVE
DELL - page 3

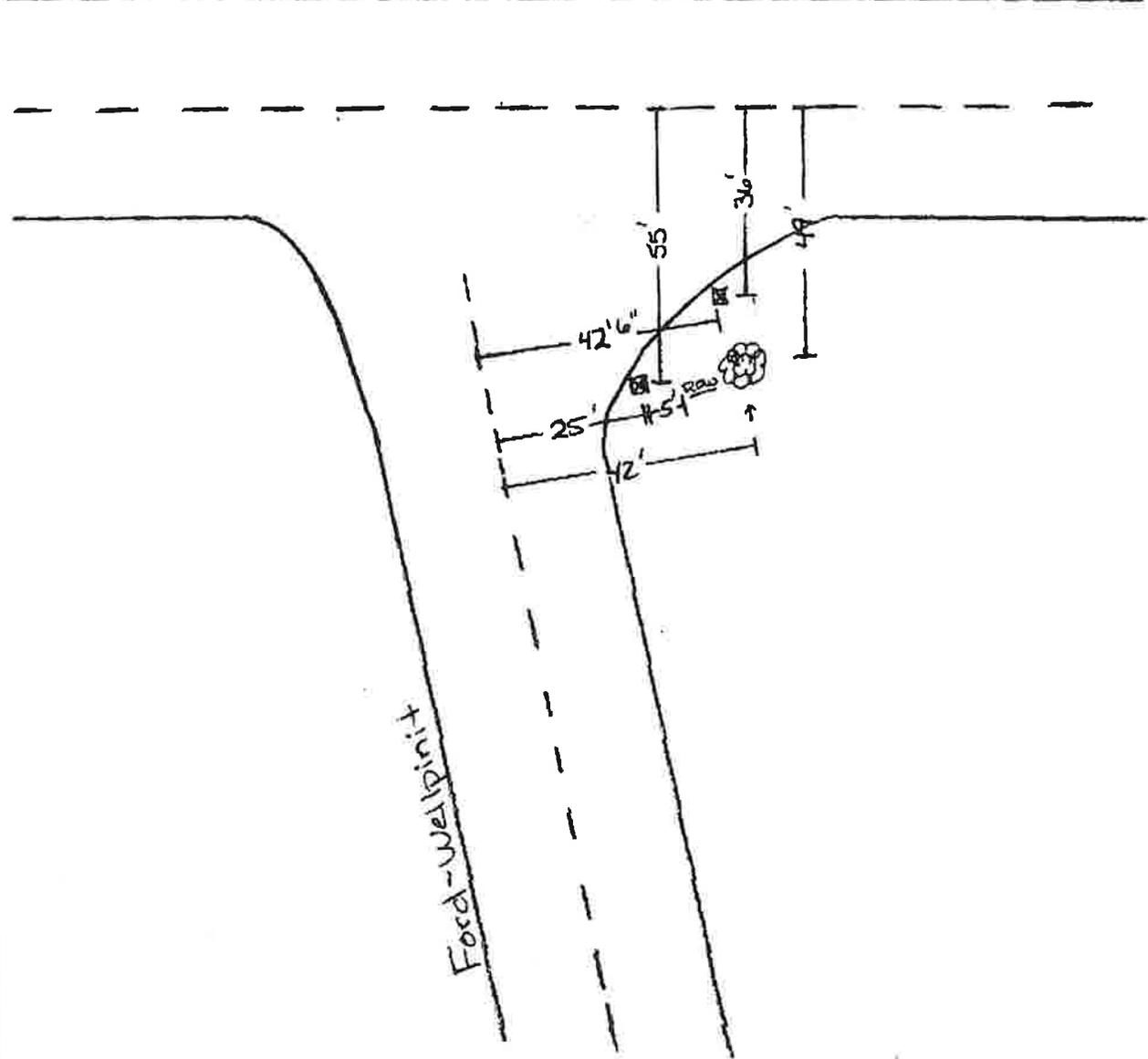
Crawns, Crawns & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

Exhibit A



Exhibit B

HWY 231



Ford-Walbridge

Steve [Signature]

Exhibit C



Investigative Training Service, LLC



I.T.S.
P. O. Box 16487
Seattle, Washington 98116
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August 11, 2018

Mr. Michael E. McFarland, ESQ.
Evans, Craven & Lackie, P.S.
818 W. Riverside Avenue, Suite 250
Spokane, Washington 99201

RE: James Walker v. WSDOT & Stevens County

Dear Mr. McFarland:

I have completed an analysis of the provided material with the goal of determining the sight distance of the stop sign at the intersection of SR 231 and Ford-Wellpinit Road. I also examined the eastbound approach to the intersection with respect to the operation of a motorcycle. The collision involved two eastbound motorcyclists traveling on Wellpinit Road, one of which failed to stop prior to entering the intersection and was struck by a southbound 2002 Toyota Camry, driven by Jacqueline Alvarez. The collision occurred during daylight conditions at approximately 1:07 p.m. on July 26, 2013. The collision was investigated by Trooper Karre (#723) of the Washington State Patrol.

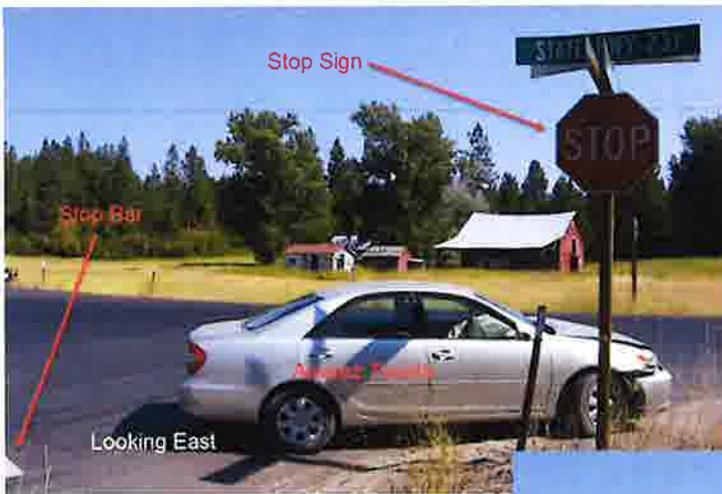
My analysis involved reviewing the Washington State Patrol investigation material, and scene photographs. I was also provided with a series of photographs taken both before and after the incident. I also reviewed Google Earth images. I contacted the collision site on July 21, 2017 and was assisted with the sight inspection by Eric Hunter. He operated the FARO scanner and documented the environmental conditions at the time of our inspection. I also drove the routes of the vehicles on my motorcycle.

In July 2013, Washington State BMW Riders Association was holding their annual rally in Republic, Washington during the weekend of July 25th to July 28th. James Walker and Ulrich Schildt were both attending the rally and were on a day ride. Walker was operating a 2012 Kawasaki ZX1000 Ninja sport motorcycle and was being followed by Schildt, who was also riding a sport motorcycle.

According to the Police Traffic Collision Report (PTCR), Walker failed to stop for a stop sign at the intersection and entered SR 231 directly into the path of Alvarez' Toyota. The impact occurred in the southbound lane of SR 231. Alvarez was able to brake and slow prior to impact. The description of the event on page three of the PTCR states that Walker "failed to stop for a clearly erected stop sign".

The intersection of SR 231 and Ford-Wellpinit Road is shown in the aerial image below. The posted speed limit on SR 231 was 55 mph. The posted speed limit on Ford-Wellpinit Road was 50 mph. A

STEVENS COUNTY A068



vehicle traveling east on Ford-Wellpinit Road,¹ approaching SR 251, has a view of the approaching intersection that allows a driver to see the westbound stop sign, the newly painted stop bar on the westside of the intersection and the eastbound stop sign. The eastbound stop sign was erected near the south asphalt edge of Ford-Wellpinit Road and adjacent to the stop bar as can be seen in the photographs taken at the time of the

event. The aerial above illustrates that an eastbound vehicle would need to steer to the right if it were to continue across the intersection as the westbound lane is offset from the eastbound lane of travel. An eastbound driver has a clear view of the painted stop bar on the



¹ The direction of travel of Walker.

westside of SR 231 and a clear view of a stop sign for westbound traffic that is located across the



intersection.

The image above was taken on August 23, 2014 and is labelled P1020764 from Walker photographs. The location of the photograph appears to be between 210-230 feet west of the stop bar for eastbound traffic.² The image was taken from the right wheel track and both stop signs (eastbound/westbound) and the eastbound stop bar can be observed. When comparing the Walker photographs with the scene images, there appears to be a growth to the bush that is just south of the green sign that was not evident in the scene images.

The image below was taken on September 26, 2014 at 11:15 a.m. with a Panasonic (Lumix) DMC-ZS7 camera using a 4 mm lens and a resolution of 180 dpi. The location of the image was approximately 250 feet west of the stop bar at the intersection of SR231. Even with the wide angle shot, the stop sign can be clearly seen in the image.

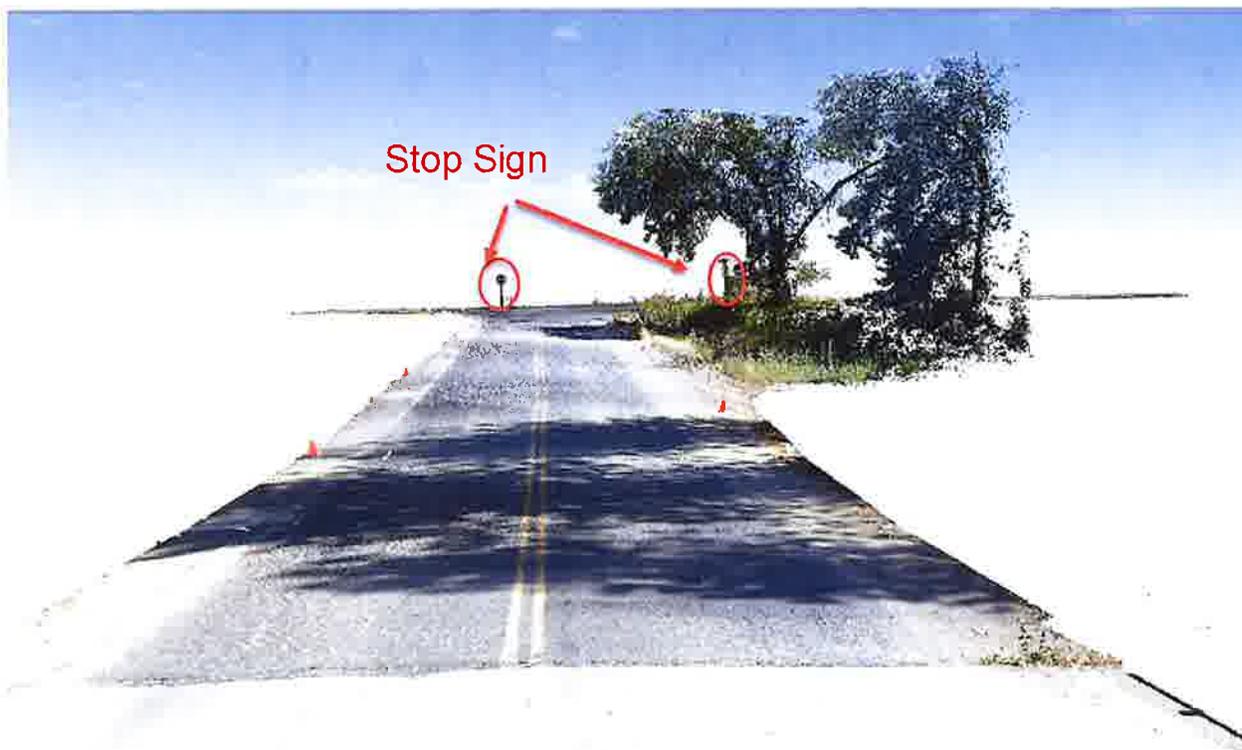
A photographic image cannot always represent what the eye actually detects since the eye and the brain function differently than the camera sensor and processing of the image. At least this image will give a minimum value for the ability to detect the stop sign.

² Based on extracting data from the image.



When I contacted the scene of the collision, I measured the dynamic sight distance (for a motorcyclist traveling in the left wheel track) to the stop sign based on the foliage as shown in the scene images and the Walker photographs that were taken over a year later. I determined the sight distance to the stop sign was in the range of 335 feet.

As part of the investigation, a 3-d scan of the scene was completed, and the excess foliage was removed in an attempt to duplicate the visibility of the eastbound stop sign at the time of the collision. A FARO scanner was used to document the roadway environment. The image below illustrates the approximate sight distance from the scan reconstruction. The actual dynamic sight distance was likely in the 325~ 350-foot range based on the simulated event.



It appears from the physical evidence that the stop sign was likely visible to Walker for well over 300 feet. This is consistent with the trooper's evaluation that the stop sign was "clearly" erected and the stop bar was "clearly" painted white.

Walker was operating a sport motorcycle and was unfamiliar with the area, but knew he needed to make a left hand turn as part of his mapped-out route. A motorcycle with an experienced rider can stop from 50 mph in under 200 feet without leaving a tire mark.³ Even if the stop sign was in the condition shown a year later, the sight distance was sufficient for Walker to stop without entering the traveled portion of SR 231.

James Walker was deposed on November 15, 2016 and stated that he rode his Ninja motorcycle "fairly frequently". He apparently was wearing full protective gear and appeared to be an experienced rider. He didn't know his approach speed but assumed he would be traveling near the posted speed limit. He doesn't recall anything after leaving the town of Wellpinit and getting up to highway speeds.⁴ He was the lead motorcycle occupying the left wheel track and was being followed by Ulrich Schildt. He stated that he had "the best visibility there as the leader."⁵

³ This assumes a one second PRT period and a controlled brake application with both brakes.

⁴ Deposition page 41, lines 17~19.

⁵ Deposition page 55, lines 15~16.

Ulrich Schildt was deposed on December 20, 2016. He was riding approximately 50~100 feet behind Walker and the collision “happened right in front of me.”⁶ When asked if he came to a stop, his response was “Oh, I had enough room to stop, yeah.” He brought his motorcycle to a controlled stop prior to the intersection.⁷ He didn’t recall it being a hard stop. He did not know their speed, but assumed they were traveling at or near the 50- mph speed limit prior to slowing. He stated he would have been traveling at a lower speed than the speed limit “because the intersection—going up to the intersection, if I recall, the road we were on was on a slight incline. And so you could see there was something coming up, so we would have slowed down, you know, prior to that.”⁸ Schildt stated “I know he would have slowed down” when discussing Walker’s speed when he entered the intersection.⁹ “...he definitely would have slowed down because, when you approach the intersection, you see something is coming up, so he was not going probably the 50 miles per hour that we were going before, but I could not tell you how fast he was going at that point.”¹⁰ Jim Walker was the lead motorcyclist because he was setting the route and Schildt was simply following him. Schildt stated he wasn’t paying a great deal of attention¹¹ and was not aware of the stop sign until after the collision.

Schildt’s observations was that there was a change in the environment. I drove the approach route on my motorcycle and it was obvious that there was other advanced warning that the environment was changing well before the intersection with SR 231.

Proficient operational skills for a motorcyclist is to be attentive to roadway conditions and approaching changes. There was an image provided that shows the approach route of the two motorcyclists. The image was taken from a seated position in a passenger car. A motorcycle rider typically sits higher than a passenger car driver and would have a little better view of the approaching changes.

The image below was reportedly taken by William Skelton on September 26, 2014 at 11:15 a.m. The image was shot with a Panasonic (Lumix) DMC-ZS7 camera with a 4mm lens (equivalent to a 25 mm lens on a 35 mm full frame camera) at an f:4.5. The image resolution was only 180 dpi. Based on the image information, the photograph was taken approximately 980 feet west of the stop bar at the intersection with SR 231.

In the image (below) an approaching rider can see an intersection and buildings (store) in the immediate foreground that would constitute a potential hazard to a motorcyclist. Beyond the store is a change in surface conditions. The roadway transitions from asphalt to concrete and back to asphalt as the roadway crosses a bridge. Beyond the bridge it is obvious that the roadway terminates and transitions into a grassy field, not to mention the massive forest of trees that stand out in the background. The back of a stop sign can also be seen.

⁶ Deposition page 11, lines 11~25.

⁷ Deposition page 12.

⁸ Deposition page 13, lines 16~25.

⁹ Deposition page 15, lines 7~8.

¹⁰ Deposition page 60, lines 12~22.

¹¹ Deposition page 34, lines 18~21.



The approach photos show that the roadway is aimed directly at a forest of trees. Experienced motorcyclists are trained to watch tree lines to assist in determining the direction of the roadway. If the motorcycles were traveling at a constant speed of 50 mph. It would take them a little over 13 seconds to travel from the location 980 feet from SR 231, shown in the large photograph, to the stop bar.

I am a retired member of the Washington State Patrol and as a trooper worked the road for many years. I am familiar with the Washington State Patrol training and how troopers work. Washington State Patrol troopers are required to ensure that the roadway is safe after a collision event and are trained not to open the roadway if any safety issues are observed. For instance, if there is a fuel spill or debris on the highway or a sign knocked down or not visible to approaching motorists, the WSP will close the roadway or re-direct traffic until the issue is resolved. In this case, Trooper Karre determined that the stop sign was clearly erected and there was no apparent sight distance problem or any other issue that would have affected traffic safety before leaving the scene.

In my opinion, the sight distance for the stop sign was likely in the 325~350-foot range. At the time of the collision, the intersection was apparent to Schildt as he knew something was coming up and was slowing and was able to stop even though he was not paying close attention to the route.

Schildt stated he did not recall making an aggressive stop but recalled making a controlled stop. A controlled non-aggressive stop would require a stopping distance in the range of 282~352 feet.¹² He was slowing before the collision even though he was not looking for the stop sign or any other traffic control, but simply following Walker. The roadway environment was changing, and he needed to slow and control his speed¹³. This would tend to support a recognition of the approaching intersection by Schildt somewhere in the 300+ foot range.



The most obvious environmental condition I observed when I rode the area was the forest of trees directly ahead. This environmental condition/change should have been detected by a motorcyclist at a significant distance prior to crossing the bridge. Slowing in the area of the bridge would reduce the stopping distance necessary to avoid any potential conflict. If Schildt and Walker had slowed, as suggested by Schildt's deposition testimony¹⁴, their respective stopping distance would be reduced accordingly.

For example, if they had slowed to 40 mph, their stopping distance would have been approximately 135 feet. At 30 mph, it would have been under 90 feet.

¹² Deceleration factor of 0.3~0.4g and one second PRT period.

¹³ A requirement of RCW 46.61.400.

¹⁴ Deposition page 13, lines 24~25; page 15, lines 7~8; page 60, lines 17 to page 61 line 4.

The 12 Second Rule:

“Anyone operating a motor vehicle -- whether its a car, truck or motorcycle -- should be vigilant about watching for upcoming traffic hazards. The 12-second rule is designed to remind motorists that they need room to slow down, stop or take evasive action if something happens on the road in front of them. By watching for possible road hazards 12 seconds ahead, drivers will have more of a chance to avoid a collision. Many collisions are caused by people not looking far enough up the road to determine they need to stop or slow down. Using the 12-second rule can help avoid vehicle damage from accidents. The Nevada Department of Motor Vehicles, like many states, suggests looking ahead even further -- perhaps 20 or 30 seconds -- when driving at highway speeds or during inclement weather.”¹⁵

The Motorcycle Safety Foundation Basic Rider’s Course addresses the 12 Second Rule. “Evaluating your path 12 seconds ahead gives you time to respond to changing conditions, which may help you avoid emergency situations.”¹⁶

The stop sign sight distance, even a year after the collision, was more than adequate for an attentive driver to respond appropriately. The lack of awareness, by Walker, to the changing roadway conditions over an extended period of time (13+ seconds), as illustrated in the image taken 980 feet from the stop bar, would suggest that the “12 Second Rule” was not being used.

Should you need further analysis of the sight distance associated with this collision or any other aspect of this event, please let me know.

Sincerely,



John Hunter, ITS

¹⁵ A modified version of the “12 second rule” reduces the time to 8 seconds under certain conditions; source Kurt Erickson, “What is the 12 Second Rule in Driving?” Motorcycle Safety Tips on the 12 Second Rule by Jerry Palladino. The Washington State Driver’s License Manual recommends a minimum of 10 seconds.

¹⁶ MSF Basic Rider’s Course page 23.



STEVENS COUNTY A077

COA III NO. 369871

APPENDIX B

SUPPLEMENTAL CLERK'S PAPERS

Brief Reference Nos.	Description
	Supplemental Designation of Clerk's Papers
CP 1245-1253	Declaration of Steve Dell, filed May 21, 2020.
CP 1254-1258	Declaration of Jason Hart, filed May 21, 2020.
CP 1259-1262	Order Granting Stevens County's Motion to Settle Appellate Record, filed/entered May 21, 2020.

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

JAMES WALKER and BARBARA
WALKER, husband and wife and the marital
community comprised thereof,

Plaintiffs,

vs.

THE WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS, a State agency,
STEVENS COUNTY, DEPARTMENT OF
PUBLIC WORKS,

Defendants.

Case No. 16-2-00708-7

COA No. 369871

DEFENDANT STEVENS COUNTY'S
SUPPLEMENTAL DESIGNATION OF
CLERK'S PAPERS

This supplemental designation serves to supplement the previous Designation of Clerk's Papers filed by the parties. The materials identified herein were the subject of a motion brought by Stevens County to supplement the record on appeal with two declarations considered by the trial court during summary judgment proceedings.

The materials identified herein will not be transmitted to Division III of the Court of Appeals prior to the May 27, 2020 briefing deadline for Defendants/Respondents. Accordingly,

1 for the sake of efficiency and completeness, the declarations and trial court order will
2 accompany this supplemental designation. The declarations and trial court order will be
3 numbered in accordance with the 2nd supplemental Index to Clerks Papers filed with the Court
4 on May 12, 2020.
5

6 **Title/Filed/Page No.**

7 Declaration of Steve Dell, filed May 21, 2020.¹ CP 1245-1253

8 Declaration of Jason Hart, filed May 21, 2020. CP 1254-1258
9

10 Order Granting Stevens County's Motion to Settle Appellate Record, filed/entered May
11 21, 2020. CP 1259-1262.

12 DATED this _____ day of May, 2020.
13

14 EVANS, CRAVEN & LACKIE, P.S.

15 By:

16 _____
17 MICHAEL E. McFARLAND, JR., #23000
18 SEAN M. KING, #52104
19 Attorneys for Defendant Stevens County,
20 Department of Public Works
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28 ¹ The filing date for each declaration reflects the date in which the trial court entered the order granting Stevens's
29 County's motion to settle the appellate record.

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

JAMES WALKER and BARBARA WALKER,
husband and wife and the marital community
comprised thereof,

Case No. 16-2-00708-7

DECLARATION OF STEVE DELL

Plaintiffs,

vs.

THE WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, DIVISION OF
HIGHWAYS, a State agency, STEVENS
COUNTY, DEPARTMENT OF PUBLIC
WORKS,

Defendants.

I, STEVE DELL, hereby declare as follows:

I am over the age of 18, competent to be a witness and not a party in the above-captioned matter.

I am employed in the Stevens County Public Works Department as the South Area Supervisor. I have been employed with the Stevens County Public Works Department since 2000. During that time, I have been a Road Technician (11 years), Area Lead Technician (4 years) and the South Area Supervisor (3 years).

DECLARATION OF STEVE
DELL - page 1

Evans, Coram & Luckie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

1 On August 27, 2018, I was asked to go to the intersection of Ford-Wellpinit Road and
2 SR-231 and take some measurements. Specifically, I was asked to determine whether an elm
3 tree that is approximately 15 feet to the west of the "old" stop sign (the one that is further south
4 at the intersection) is within Stevens County's right-of-way. The tree in question is adjacent to
5 the green sign ("Kurt's Corner") seen in the photograph attached Exhibit A. The "old" stop sign
6 is the one further to the left of the photograph attached as Exhibit A.

7 Exhibit A is a true and correct copy of a photograph I took on August 27, 2018 while
8 making the measurements at the intersection of Ford-Wellpinit Road and SR-231. Exhibit A
9 shows my measurement of the distance from the center line of Ford-Wellpinit Road and the
10 "new" stop sign.

11 Having worked for the Stevens County Public Works Department, I am aware that
12 Stevens County has a right-of-way that extends 30 feet in either direction of the center of county
13 roads.

14 Attached to this declaration as Exhibit B is a drawing I created documenting the
15 measurements I made on August 27, 2018 at the intersection of Ford-Wellpinit Road and SR-
16 231. The elm tree in question is 42 feet from the center of Ford-Wellpinit Road. As such, that
17 tree is outside Stevens County's right-of-way and is on private, deeded land. Attached to this
18 declaration as Exhibit C is a true and correct copy of a photograph I took on August 27, 2018.
19 The orange stake shows is placed at the outside edge of Stevens County's right-of-way.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 DATED this 30 of August, 2018, at Spokane, Washington.

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23 
24 STEVE DELL

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DECLARATION OF STEVE
DELL - page 2

Evans, Craven & Lockie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the ___ day of September, 2018, the foregoing was delivered to the following persons in manner indicated:

Counsel for Plaintiffs

Geoffrey D. Swindler	Via Regular Mail	[]
Attorney at Law	Via Certified Mail	[]
103 E. Indiana Avenue, Suite A	Via Overnight Mail	[]
Spokane, WA 99207	Via Facsimile	[]
	Hand Delivered	[]

Co-Counsel for Plaintiffs

Adam Symington	Via Regular Mail	[]
Deissner Law Office	Via Certified Mail	[]
1707 W. Broadway	Via Overnight Mail	[]
Spokane, WA 99201	Via Facsimile	[]
	Hand Delivered	[]

Co-Counsel for Plaintiffs

Peter J. Johnson	Via Regular Mail	[]
Johnson Law Group, P.S.	Via Certified Mail	[]
103 E. Indiana, Suite A	Via Overnight Mail	[]
Spokane, WA 99207	Via Facsimile	[]
	Hand Delivered	[]

***Counsel for Washington State DOT,
Division of Highways***

Carl P. Warring	Via Regular Mail	[]
Assistant Attorney General	Via Certified Mail	[]
Attorney General of Washington	Via Overnight Mail	[]
Torts Division	Via Facsimile	[]
1116 W. Riverside , Suite 100	Hand Delivered	[]
Spokane, WA 99201		

DECLARATION OF STEVE
DELL - page 3

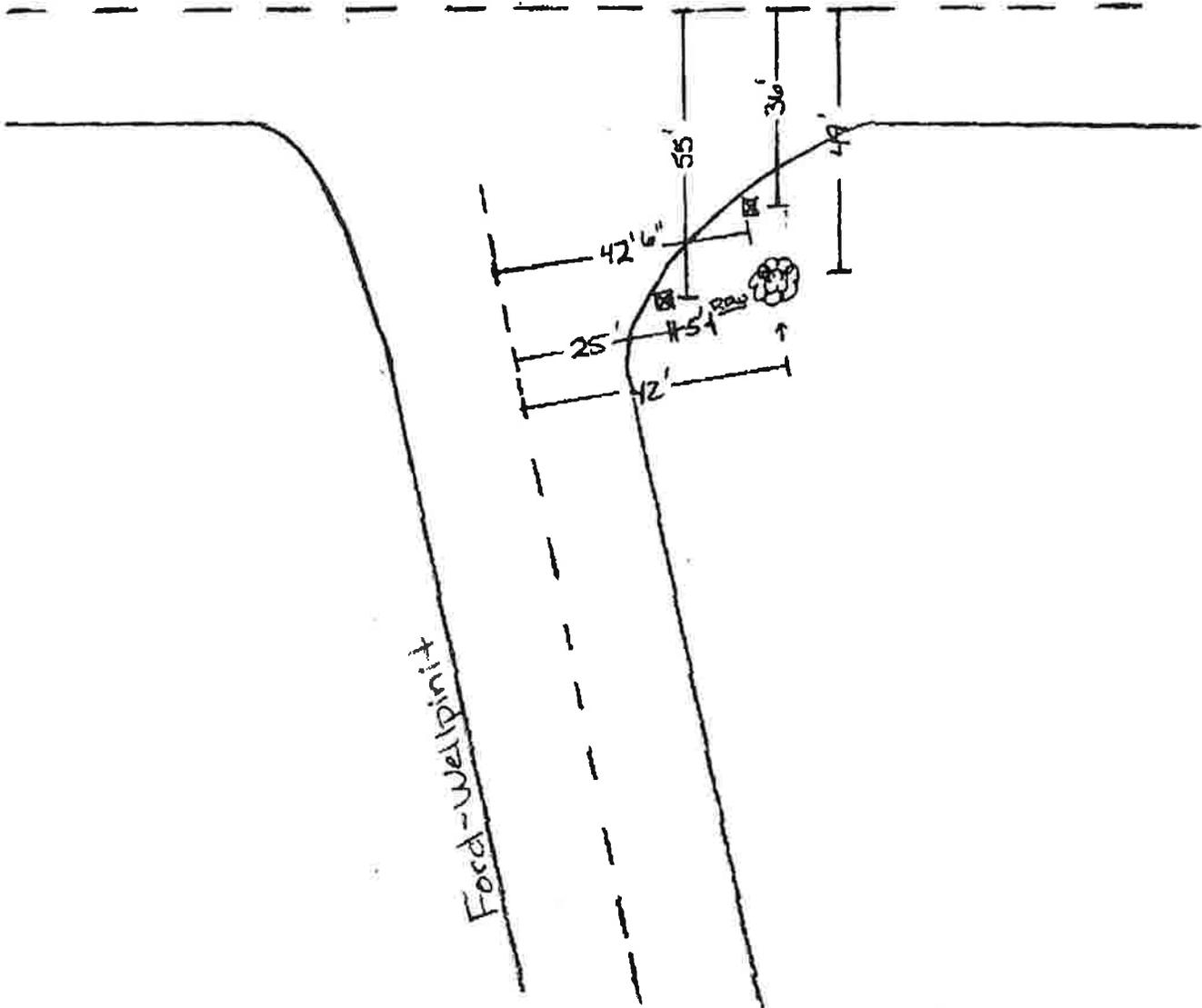
Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

Exhibit A



Exhibit B

HWY 231



Steve J...

Exhibit C



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

JAMES WALKER and BARBARA WALKER,
husband and wife and the marital community
comprised thereof,

Case No. 16-2-00708-7

Plaintiffs,

DECLARATION OF JASON C. HART

vs.

THE WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, DIVISION OF
HIGHWAYS, a State agency, STEVENS
COUNTY, DEPARTMENT OF PUBLIC
WORKS,

Defendants.

I, JASON HART, hereby declare as follows:

I am over the age of 18, competent to be a witness and not a party in the above-captioned matter.

I was previously employed in the Stevens County Public Works Department. Most recently, I was employed with Stevens County as the Acting Director of Public Works/Assistant County Engineer.

1 On October 31, 2017, I was deposed as the CR 30(b)(6) designee on behalf of Stevens
2 County in the above-captioned matter. That deposition testimony was true and accurate and
3 nothing in this declaration should be construed to contradict any testimony I gave during that
4 deposition. In fact, I reviewed the deposition transcript and made no corrections to it.

5 During the deposition, I was asked if Stevens County has an obligation to maintain road
6 signage on Ford-Wellpinit Road. I answered affirmatively. I was also asked if it is Stevens
7 County's responsibility to determine if a "stop ahead" sign is indicated on Ford-Wellpinit Road.
8 Again, I answered affirmatively, stating: "On a county road the county engineer determines
9 whether a 'Stop Ahead' sign is warranted or not."

10 I understand that the State of Washington is now citing to this testimony in support of
11 an argument that Stevens County has conceded that it had some obligation to determine if a
12 "stop ahead" sign was necessary in advance of a state-owned, state-placed and state-maintained
13 stop sign. I never testified to that and in fact there has never been a practice in Stevens County
14 to inspect state-owned, state-placed and state-maintained stop signs in the absence of a
15 reconstruction project on a county road.

16 As I testified to in the deposition, when the State of Washington places a stop sign to
17 control access from a county road onto a state highway, Stevens County does not work with the
18 State to determine if a "stop ahead" sign is necessary. However, if Stevens County does
19 reconstruction on a county road that may impact an intersection with a state highway, Stevens
20 County will perform an evaluation of whether the reconstruction has necessitated the installation
21 of a "stop ahead" sign. In fact, that process occurred during a 2001 reconstruction project on
22 Ford-Wellpinit Road near the intersection of SR-231. At the time, then County Engineer Jim
23 Whitbread, during the design phase of the construction project, evaluated whether a "stop ahead"
24 sign would be necessary after the construction project was completed. Mr. Whitbread
25 determined that the MUTCD-required site distance to the state-owned stop sign at the
26 intersection of Ford-Wellpinit Road and SR-231 would not be affected by the construction
27 project. At the time of this construction project, I was the Assistant County Engineer and was
28 working with the plans and preparation for the project.

29 So when I testified that Stevens County determines whether a stop ahead sign is
30 necessary on a county road, I had two scenarios in mind. First, if two county roads intersect and
are controlled by county-owned, county-placed and county-maintained stop signs, Stevens

1 County will determine whether a “stop ahead” sign is necessary. Second, if Stevens County
2 designs a new road, or reconstructs an existing road that intersects with a state highway, Stevens
3 County will evaluate the need for a “stop ahead” sign.

4 It is my understanding that at some point after the 2001 construction project on Ford-
5 Wellpinit Road (around 2004), the State of Washington moved the stop sign at the intersection
6 of Ford-Wellpinit Road and SR-231. When the State moved the stop sign, the State did not
7 notify Stevens County that it was moving the stop sign and did not ask Stevens County to
8 evaluate any sight distances to the sign.

9 It has never been Stevens County’s practice to check the work of the State of Washington
10 with respect to its maintenance of its signs. The State controls access to its highways and has
11 the right to place stop signs along those highways. The State has always maintained those stop
12 signs in Stevens County. Conversely, Stevens County has never maintained those stop signs and
13 does not evaluate whether those state-owned, state-placed and state-maintained stop signs were
14 placed at such a location that they do not comply with the MUTCD.

15 It is my understanding that the plaintiff in this matter, James Walker, is alleging that the
16 stop sign at the intersection of Ford-Wellpinit Road and SR-231 was partially obstructed by
17 vegetation back in July 2013 and that the same was a cause of his motorcycle accident. My
18 understanding is that the vegetation that allegedly partially obstructed the stop sign was an elm
19 tree that was approximately 15 feet from the stop sign. If that stop sign was partially obstructed
20 by vegetation as claimed by Mr. Walker, the remedy is to prune the vegetation, not place a “stop
21 ahead” sign. In my experience of having worked for Stevens County for 17 years, “stop ahead”
22 signs are not used for transient or temporary conditions such as growing vegetation. Instead,
23 “stop ahead” signs are used for such conditions of the road (i.e., a curve or elevation) that
24 precludes adequate site distance to the stop sign. Rather than incurring the costs of a new sign,
25 and the maintenance costs that follow, offending vegetation is removed to address sight distance
26 issues that may exist.

27 During the October 31, 2017 deposition, I was also asked regarding vegetation
28 maintenance around a State stop sign. I responded that vegetation maintenance “at state
29 highways” is performed by the State. I was then asked if Stevens County maintains vegetation
30 “along Ford-Wellpinit Road outside of the ‘Stop’ sign easement area.” I responded “Stevens
County.” That answer is accurate. As I explained in the deposition, Stevens County maintains

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vegetation growing alongside county roads. I understand that the State is using this testimony to argue that Stevens County conceded that it had the duty to maintain vegetation that I understand was approximately 15 feet from the state-owned, state-placed and state-maintained stop sign at the intersection of Ford-Wellpinit Road and SR-231. That was not my testimony. In fact, I testified specifically that it has always been the State's duty to maintain vegetation "at the intersection of a state highway." I also testified that it has been the practice in Stevens County that when the State installs a stop sign, the State maintains the vegetation around the stop sign. As I testified to, during my tenure working for Stevens County, the County has never had any role in maintaining around a stop sign installed by the State.

I have reviewed photographs of the tree that I understand Mr. Walker claims obstructed his view of the stop sign. I have also reviewed the measurements taken by Steve Dell on August 27, 2018 of the intersection of Ford-Wellpinit Road and SR-231. If Mr. Dell's measurements are accurate, that tree is not on Stevens County's right-of-way.

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

DATED this 7th of September, 2018, at Lake Havasu City, Arizona.



JASON HART

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the ___ day of November, 2017, the foregoing was delivered to the following persons in manner indicated:

Counsel for Plaintiffs

Geoffrey D. Swindler Via Regular Mail []
Attorney at Law Via Certified Mail []
103 E. Indiana Avenue, Suite A Via Overnight Mail []
Spokane, WA 99207 Via Facsimile []
Hand Delivered []

Co-Counsel for Plaintiffs

Adam Symington Via Regular Mail []
Deissner Law Office Via Certified Mail []
1707 W. Broadway Via Overnight Mail []
Spokane, WA 99201 Via Facsimile []
Hand Delivered []

Co-Counsel for Plaintiffs

Peter J. Johnson Via Regular Mail []
Johnson Law Group, P.S. Via Certified Mail []
103 E. Indiana, Suite A Via Overnight Mail []
Spokane, WA 99207 Via Facsimile []
Hand Delivered []

Counsel for Washington State DOT, Division of Highways

Carl P. Warring Via Regular Mail []
Assistant Attorney General Via Certified Mail []
Attorney General of Washington Via Overnight Mail []
Torts Division Via Facsimile []
1116 W. Riverside, Suite 100 Hand Delivered []
Spokane, WA 99201

Evans, Craven & Luckie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632



**STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT**

Annette S. Plese
Superior Court Judge

Spokane County Courthouse
1116 West Broadway Avenue
Spokane, Washington 99260-0350
(509) 477-4709
dept1@spokanecounty.org

May 21, 2020

Sean M. King
Michael E. McFarland
818 W. Riverside, Suite 250
Spokane, WA 99201-0910

Geoffrey D. Swindler
Peter J. Johnson
103 E. Indiana Ave, Suite A
Spokane, WA 99207

Adam Symington
1707 W. Broadway
Spokane, WA 99201

Carl P. Warring AAG
1116 W. Riverside, Suite 100
Spokane, WA 99201

RE: Walker v. WSDOT & Stevens County 16-2-00708-7

Dear Counsel,

The Court received a motion by Defendant Stevens County to Settle the Appellate Record. It was heard on May 12, 2020 without oral argument.

The Court reviewed and received all materials submitted by the parties including the Response from WSDOT and the joinder filed by the Plaintiff, Walker.

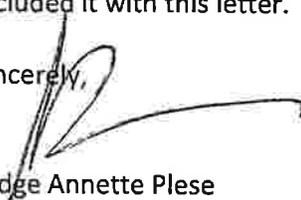
The Court reviewed the documents that were filed for the competing summary judgment motions heard by this Court. In several documents there were references to both Dell and Hart's declarations in the briefing provided by Stevens County. Specifically, in court documents

58, 67 and 76. The Court noted there were no objections or requests by opposing counsel to strike the declarations of Dell and Hart.

The Court of Appeals will need to view all information presented by the parties that was considered by the court. While the Court does not have an independent recollection as to Mr. Dell's declaration other than what was provided in the briefing by Stevens County, the Court has some slight recollection of a declaration by Mr. Hart in the materials presented. The Court finds no prejudice to WSDOT or to the Plaintiff as the declarations were used in Stevens County briefing.

The motion is granted. The Court signed an order Granting Stevens County's motion and have included it with this letter.

Sincerely,



Judge Annette Plese

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

JAMES WALKER and BARBARA
WALKER, husband and wife and the marital
community comprised thereof,

Plaintiffs,

vs.

THE WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS, a State agency,
STEVENS COUNTY, DEPARTMENT OF
PUBLIC WORKS,

Defendants.

Case No. 16-2-00708-7

ORDER GRANTING STEVENS
COUNTY'S MOTION TO SETTLE
APPELLATE RECORD PURSUANT TO
RAP 7.2(b) and RAP 9.12

THIS MATTER came before the Court on May 12, 2020 without oral argument on
Stevens County's Motion to Settle Appellate Record Pursuant to RAP 7.2(b) and RAP 9.12.

The Court considered Stevens County's motion and memorandum of authorities, the
Declarations of Jason Hart and Steve Dell, and the records and files herein.

Having considered the above, the Court finds and rules as follows:

ORDER GRANTING STEVENS COUNTY'S
MOTION TO SETTLE APPELLATE RECORD PURSUANT
TO RAP 7.2(B) AND RAP 9.12 - page 1

Evans, Craven & Luckie, P.S.
818 W. Riverside, Suite 250
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1. The Declarations of Jason Hart and Steve Dell were called to the attention of the trial court in various summary judgment pleadings of Stevens County and during the hearing on the parties' summary judgment motions on March 15, 2019.

2. Because they were called to the attention of the trial court at summary judgment, the Declarations of Jason Hart and Steve Dell shall be made a part of the record on appeal by supplemental order of the trial court pursuant to the Court's authority under RAP 7.2(b) and 9.12 so the appellate court can engage in the same inquiry as the trial court.

3. It is therefore ORDERED, JUDGED, AND DECREED that Stevens County's Motion to Settle the Appellate Record is GRANTED.

DONE IN OPEN COURT this 21 day of May, 2020.



THE HONORABLE ANNETTE PLESE

ORDER GRANTING STEVENS COUNTY'S
MOTION TO SETTLE APPELLATE RECORD PURSUANT
TO RAP 7.2(B) AND RAP 9.12 - page 2

Evans, Craven & Luckie, P.S.
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EVANS, CRAVEN & LACKIE, P.S.

May 27, 2020 - 12:10 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36987-1
Appellate Court Case Title: James Walker, et ux v. Washington State Dept. of Transportation, et al
Superior Court Case Number: 16-2-00708-7

The following documents have been uploaded:

- 369871_Briefs_20200527121010D3221653_9820.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Resp Brief and Appendix.20 may 27.pdf

A copy of the uploaded files will be sent to:

- DDEISSNER@GMAIL.COM
- Nikki.Gamon@atg.wa.gov
- adam.deissnerlaw@gmail.com
- bgswindler@comcast.net
- carl.warring@atg.wa.gov
- deissnerlaw@aol.com
- gds@swindlerlaw.com

Comments:

Sender Name: Michael McFarland - Email: mmcfarland@ecl-law.com
Address:
818 W RIVERSIDE AVE STE 250
SPOKANE, WA, 99201-0910
Phone: 509-455-5200

Note: The Filing Id is 20200527121010D3221653