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No. 66467-1

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COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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RENEE M. MALDONADO AND ANN LOMBARDO

Appellant,

v.

RAYMOND AND BEVERLY HOLDREN AND KELLY HOLDREN

Respondent.

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APPELLANT'S REPLY BRIEF

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KING COUNTY SUPERIOR COURT  
CASE NO. 09-2-18027-0 SEA  
HONORABLE JUDGE CATHERINE SHAFFER

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*Counsel for Appellant Renee Maldonado:*

DAVID A. WILLIAMS, WSBA #12010  
9 Lake Bellevue Drive, Suite 104  
Bellevue, Washington 98005  
Telephone: (425) 646-7767  
Facsimile: (425) 646-1011

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REPLY TO RESPONDENT'S COUNTERSTATEMENT OF THE CASE

All parties agree that an intoxicated and drugged Casey Elmer left a party with his girlfriend Kelly Holdren's car keys in his hand. All parties agree that Respondent Kelly Holdren was forbidden by her parents to let Casey (or anyone else) use the car at all, let alone when drugged and intoxicated.

Where was Renee Maldonado as Casey Elmer got in the car and turned the ignition? That is the key question in the case. Renee Maldonado and her mother testified that she was at home waiting for a ride to the very party Casey had just left. CP 77, CP 137.

An hour or so later, Casey was dead and Renee was seriously injured. Renee testified that Casey had crashed the car after picking her up at her home, on their way back to the party. CP 90, 91.

With Elmer killed and Renee injured while using a car she was forbidden to let anyone drive, Kelly Holdren told her parents that Renee was at the party all along and that Casey and Renee had "stolen" the car keys from her while she was "asleep". CP 19. The Trial Court granted summary judgment based on this totally uncorroborated claim.

The issue presented for review is whether there was evidence "from which a reasonable jury could determine that Holdren had negligently allowed Elmer to use the car" (Appellant's Brief, p. 2).

Tellingly, Respondents' Brief relies completely upon moving party Kelly Holdren's disputed version of events. Indeed, Respondent's "Statement of the Case" contains ten paragraphs, the first six of which blithely recite the moving parties' version of events as "fact".

How is this a "fair statement of the facts and procedure relevant to the issues presented for review, without argument" (RAP 10.3 (5))?

Respondents do not say.

#### MOTION TO STRIKE

"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." RAP 9.12.

In direct contravention of RAP 9.12, Respondent's Brief refers to "several" eyewitness declarations (actually only two) that were not before the Court at the time summary judgment was ruled upon. Indeed, these declarations aren't even a part of the record now!

Appellant moved to strike Respondent's Brief and the Commissioner passed the ruling on to the panel.

REPLY TO "ARGUMENT"

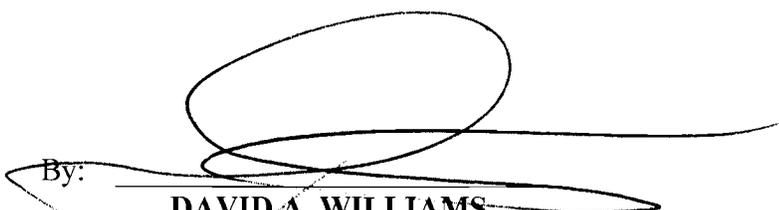
Respondents' Brief literally does nothing more than declare Appellants' testimony "incredible", and adopt the uncorroborated testimony of moving party Kelly Holdren. In addition to flouting the rules of summary judgment, this tactic is a tad ironic; by her own testimony Kelly Holdren was drinking throughout the evening in question. CP 17. Further, with her boyfriend dead and her girlfriend injured while using a car she knew she wasn't to loan out, she has obvious motivation to lie.

CONCLUSION

The Respondents' Brief clarifies that summary judgment was improper, by trying to support it using the moving parties' version of events.

The Judgment should be reversed.

DATED this 21 day of July, 2011.

By: 

**DAVID A. WILLIAMS**

*Attorney for Plaintiff, WSBA #12010*

AFFIDAVIT OF MAILING

I hereby certify that a copy of the Appellant's Reply Brief, was forwarded for service upon the counsel of record:

Court of Appeals:  Washington State Court of Appeals Division One One Union Square 600 University Street Seattle, WA 98101-4170	Attorney for Respondent:  Eric Freise Freise & Welchman Law Firm 105 S. Washington Street, #400 PO Box 4567 Seattle, WA 98194-0567
<b><u>SENT VIA:</u></b>  <input checked="" type="checkbox"/> US Mail	<b><u>SENT VIA:</u></b>  <input checked="" type="checkbox"/> US Mail

DATED this 21<sup>st</sup> day of July, 2011.

  
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Jen L. Bassetti  
Paralegal