

No. 67570-2

IN THE COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CARLI ALVARADO

Appellant.

BRIEF OF APPELLANT

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INTRODUCTION

Not every traffic fatality equates to a vehicular homicide. Sometimes an accident that results in the death of an innocent person is just that: a terrible, tragic accident that is mourned by everyone involved.

On September 30, 2010, Appellant Carli Alvarado was driving a motor vehicle in Bellingham when she collided with another car being driven by Christine Bron. As a result of that collision, two year old Anna Brulotte was struck by Bron’s vehicle and died instantly at the scene. The life of one child was extinguished prematurely, while the life of another was changed forever.

The Prosecution must do much more than simply prove that Anna Brulotte died on September 30, 2010. They must do more

than prove that Carli Alvarado was driving. Alvarado seeks reversal of her conviction for vehicular homicide because the Court Commissioner erroneously found that the Appellant drove with disregard for the safety of others. The Commissioner's findings of fact and conclusions of law are not supported by the evidence presented at trial.

ASSIGNMENTS OF ERROR

1. The trial court erred in entering Finding of Fact number 24.
2. The trial court erred in entering Finding of Fact number 25.
3. The trial court erred in entering Finding of Fact number 27.
4. The trial court erred in entering Finding of Fact number 28.
5. The trial court erred in entering Finding of Fact number 29.
6. The trial court erred in entering Finding of Fact number 30.
7. The trial court erred in entering Finding of Fact number 31.
8. The trial court erred in entering Finding of Fact number 32.
9. The trial court erred in entering Finding of Fact number 33.
10. The trial court erred in entering Conclusion of Law 1c.

ISSUES PRESENTED

1. Even when viewed in the light most favorable to the State, was sufficient evidence presented that would allow a rational trier of fact to conclude beyond a reasonable doubt that Carli Alvarado's negligence went beyond ordinary and minor oversights or momentary inattention? (Assignments of Error 1 – 10.)

2. Is Carli Alvarado entitled to a reversal of her conviction and a dismissal of her case if this court finds insufficient evidence to convict her of vehicular homicide? (Assignments of Error 1 – 10.)

STATEMENT OF THE CASE

Facts

On September 30, 2010, Carli Alvarado was a sixteen year old student at Bellingham High School. RP at Vol. IV, page 9. September 30 began like any other typical day for Alvarado. She attended her classes at Bellingham High School (“BHS”) until school dismissed at 2:15 PM. RP at Vol. IV, page 16. When classes ended, Alvarado and her friends Samantha Wright and Nicholia

Kenison briefly attended a sophomore homecoming committee meeting. RP at Vol. IV, page 16. The three girls were on the varsity volleyball team together, and planned to leave campus and go to Alvarado's house in order to get a snack and retrieve volleyball equipment in anticipation of a game that was scheduled to begin at 5:30 PM. The girls planned to return to BHS by 4:00 PM in order to catch a school bus to Mt. Baker High School for the game. RP at Vol. IV, page 85.

Alvarado, Wright, and Kenison went to the parking lot of Bellingham High School and got into Alvarado's silver 2001 Volkswagen Jetta. RP at Vol. IV, page 17. Before leaving the parking lot, Alvarado unsuccessfully tried to call her mother on her cell phone. RP at Vol. IV, page 18. Alvarado did not use the phone, either for a voice call or for text, while driving. Wright was seated in the front passenger seat, and Kenison was in the left rear seat. RP at Vol. IV, page 18. The Jetta left the school parking lot at approximately 2:35 PM. RP at Vol. IV, page 19. There was no loud music or any other distraction in the car. RP at Vol. IV, page 19.

Alvarado was aware of the 20 MPH speed limit on Cornwall Ave. in effect at the time. RP at Vol. IV, page 26. The girls were not in a particular hurry. RP at Vol. IV, page 85. They didn't have to

be back on campus until 4:00 PM. RP at Vol. IV, page 85. They had ample time to run whatever errands they deemed necessary and still be back in time to catch the bus to the volleyball game.

At approximately the same time, Christine Bron was driving her 2001 black Ford Escort northbound on Cornwall Ave., ahead of Alvarado's Jetta. RP at Vol. I, pages 46-47. As Bron's Escort approached the intersection of Cornwall and Virginia, Bron saw Melissa Brulotte, her two year old daughter Anna, and Brulotte's two other small children getting ready to cross Virginia Street. RP at Vol. I, page 48. Bron slowed her vehicle to a full stop, and waited partway in the intersection for the Brulottes to cross Virginia St. RP at Vol. I, page 48.

As Carli Alvarado approached the intersection and the Bron vehicle, she was distracted for one to four seconds while helping Wright look for an item in a backpack. RP at Vol. IV, page 30. Alvarado's Jetta struck the back of the Escort, which in turn struck Melissa and Anna Brulotte. Melissa Brulotte was thrown over the hood and was injured. Anna Brulotte was swept under the Escort, and died tragically at the scene. RP at Vol. II, pages 75-76.

The Bellingham Police Department and medical personnel responded almost immediately. Officers Lewis Leake and Chad

Cristelli each conducted reconstructions of the accident, and concluded that Alvarado's Jetta was travelling at approximately 30 to 33 MPH at the time of the collision in an area where the speed limit was 20 MPH. RP at Vol. II, page 106. In contrast, the Defense's expert Mr. Timothy Moebes concluded that Alvarado's Jetta was travelling at a maximum of 24 MPH at the time of the impact. RP at Vol. IV, page 211.

Procedural Posture

The Juvenile Court Commissioner, Alfred Heydrich, found Alvarado guilty of vehicular homicide on June 10, 2011 after a four day fact-finding hearing. Disposition was entered on July 29, 2011. CP at 21-26. Commissioner Heydrich relied on a report from the Juvenile Probation Department, as well as argument by the Defense, and found that imposition of a standard range sentence would constitute a manifest injustice under RCW 13.40.020. CP at 45-58. The standard range sentence for vehicular homicide was 15 to 36 weeks in the custody of the Juvenile Rehabilitation Administration. Alvarado was sentenced to, among other things, thirty days in confinement, juvenile probation, curfew, a revocation of her driver's license, and a revocation of her firearm rights.

Alvarado has already served her thirty day sentence. CP at 21-26. Alvarado timely filed her Notice of Appeal on August 18, 2011. CP at 3.

LEGAL ARGUMENT

Standard of Review

Where a trial court has weighed the evidence, the appellate court must determine whether substantial evidence supports the trial court's findings of fact, conclusions of law, and judgment. *State v. Vickers*, 148 Wn.2d 91, 116, 59 P.3d 58 (2002). Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *State v. Luther*, 157 Wn.2d 63, 77, 134 P.3d 205 (2006); *State v. Wentz*, 149 Wn.2d 342, 68 P.3d 282 (2003); *State v. Mines*, 163 Wn.2d 387, 179 P.3d 835 (2008); *See also Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

Challenges to the sufficiency of the evidence necessarily admit the truth of the State's evidence. "A claim of insufficiency admits the truth of the State's evidence and all inferences that can

reasonably be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); *State v. Dejarlais*, 88 Wn.App. 297, 305, 944 P.2d 1110 (1997). The appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of evidence. *State v. Walton*, 64 Wn.App 410, 415-16, 824 P.2d 533 (1992).

A conviction must be supported by substantial evidence, as distinguished from a mere scintilla of evidence. Substantial evidence is evidence of a character “which would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed.” *Sommer v. DSHS*, 104 Wn.App. 160, 172, 15 P.3d 664 (2001); *Hojem v. Kelly*, 93 Wn.2d 143, 145, 606 P.2d 275 (1980). A verdict cannot be founded on mere theory or speculation. *Campbell v. ITE Imperial Corp.*, 107 Wn.2d 807, 817-18, 733 P.2d 969 (1987). Proof of a causal link between the defendant’s misconduct and the fatal accident is an essential element of the crime of vehicular homicide. *State v. Knowles*, 46 Wn.App. 426, 429-30, 730 P.2d 738 (1986); *State v. Gantt*, 38 Wn.App. 357, 359, 684 P.2d 1385 (1984).

If a reviewing court finds insufficient evidence to prove an element of a crime, reversal is required. *State v. Smith*, 155 Wn.2d 496, 505, 120 P.3d 559 (2005); *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998). “Retrial following reversal for insufficient evidence is unequivocally prohibited, and dismissal is the remedy.” *Hickman*, 135 Wn.2d at 103.

Ordinary negligence will not support a conviction for vehicular homicide. Driving with disregard for the safety of others implies an aggravated form of negligence. Exceeding the speed limit by five miles per hour is not aggravated negligence.

Alvarado was charged by information filed on January 21, 2011 with one count of vehicular homicide, alleging that she caused the death of Anna Brulotte by operating a vehicle “with disregard for the safety of others” in violation of RCW 46.61.520(1)(c). CP at 136. A person can also be convicted of vehicular homicide by driving in a reckless manner, or by driving while under the influence of an intoxicating liquor or drug. RCW 46.61.520(1)(a) & (b). The State did not advance either of these two alternate theories as the cause of Anna Brulotte’s death.

The seminal case concerning vehicular homicide by disregard for the safety of others is *State v. Eike*, 72 Wn.2d 760,

435 P.2d 680 (1967). The Defense and Prosecution referred extensively to *State v. Eike* in pre-trial briefing, and Commissioner Heydrich relied on the case when delivering his verdict. CP at 81-92. CP at 75-80. RP at Vol. IV, page 13. *Eike* states that:

“[O]rdinary negligence will not support a conviction for vehicular homicide. And if one drives a motor vehicle upon the public highways with disregard for the safety of others, this implies an aggravated kind of negligence or carelessness, falling short of recklessness but constituting a far more serious dereliction than the hundreds of minor oversights and inadvertences encompassed within the term ‘negligence.’ Every violation of a positive statute, from a defective taillight to an inaudible horn may constitute negligence under the motor vehicle statutes, yet be unintentionally committed without knowledge, and amount to no more than oversight or inadvertence but would probably not sustain a conviction of negligent homicide. To drive with disregard for the safety of others, consequently, is a greater and more marked dereliction than ordinary negligence. It does not include the many minor inadvertences and oversights which might be deemed ordinary negligence under the statutes.” *Eike*, 72 Wn.2d at 765-66.

Justice Donworth noted in his dissent to *Eike* that disregard for the safety of others is conduct more culpable than “driving in such a manner as to endanger or likely to endanger persons or property.” *Eike*, 72 Wn.2d at 779; *State v. Lopez*, 93 Wn.App. 619, 623, 970 P.2d 765 (1999).

The evidence presented at trial does not support the finding that Alvarado drove in a manner that deviated from the ordinary duty of care. Commissioner Heydrich found that Alvarado was travelling at approximately 25 miles per hour when she collided with Bron's Escort. RP at Vol. IV, page 10; CP at 23. Some evidence of conscious disregard of the danger to others is required in order to support a vehicular homicide conviction. *State v. Vreen*, 99 Wn.App. 662, 672, 994 P.2d 905 (2000).

Excessive speed and dangerous horseplay behind the wheel can certainly be examples of such conscious disregard. In *State v. Knowles*, supra, the defendant drove himself and five passengers home from a picnic at which he consumed alcohol and marijuana. Knowles crossed a double yellow line in a blind curve, travelling at 57 MPH where the cautionary speed limit was 35 MPH. While driving in the oncoming lane of traffic, Knowles struck another vehicle and two people died as a result.

Knowles was both a disregard and intoxication case. The Court affirmed Knowles' conviction under the "disregard for the safety of others" prong. Knowles was appreciably affected by marijuana and alcohol at the time of the incident, but even setting that aspect of the case aside, the factual circumstances of his case

are readily distinguishable from those of Alvarado. Alvarado was only travelling five miles per hour over the posted speed limit, not twenty two miles per hour over. Furthermore, she was in control of her vehicle before and after the moment of impact and did not cross into the oncoming lane of travel.

In *State v. Coates*, the defendant's conviction for vehicular homicide by disregard for the safety of others was upheld because he was exceeding the speed limit by at least 10 MPH, crossed into the oncoming lane of traffic, had consumed alcoholic beverages, and was aware that his left rear small "donut" tire had a detrimental effect on his ability to operate his vehicle. 17 Wn.App. 415, 563 P.2d 208 (1977). Once again, Alvarado's Jetta was only 5 MPH over the limit, did not cross into oncoming traffic, and was in proper working order at the time of the accident. The factors that led the court to conclude the evidence was sufficient to support Coates' conviction are not present in Alvarado's case.

A conviction for vehicular homicide by the disregard for the safety of others was affirmed in a case where the facts were similar to those of *Eike*: the defendant was travelling at high speed (above the legal speed limit) on a dark, rainy, windy night. He was driving in the wrong lane (as opposed to momentarily crossing the

centerline), struck another car, and killed the two occupants. *State v. Brooks*, 73 Wn.2d 653, 440 P.2d 199 (1968). The court compared the facts in *Brooks* to those in *Eike*:

Here, as in *Eike*, there was evidence that the defendant was driving at a high rate of speed – the distinction being that the speed in *Eike* was high but within the maximum legal speed limit, whereas here there was evidence of speed beyond the legal limit. In *Eike*, it was dark and raining lightly; here it was raining very heavily and visibility was bad. In both cases, the debris from the collision permitted a strong inference that the collision occurred in the oncoming lane. In other words, in each case there was proof that the accused, just before and at impact, was driving at a high rate of speed on the wrong side of the highway. This evidence supports a conviction of driving with disregard for the safety of others. *Brooks*, 73 Wn.2d at 659.

The court held that the factual elements were sufficient to sustain a conviction for driving with disregard for the safety of others. *Brooks*, 73 Wn.2d at 659. In stark contrast, none of those factual elements are present in the case at bar. Alvarado may have been exceeding the speed limit by 5 MPH, but 25 MPH is hardly driving at a high rate of speed. None of the other evidentiary factors found in *Brooks* and *Eike* are present.

In *State v. Lopez*, supra, a fourteen year old unlicensed driver overcorrected and rolled her car, killing one of her passengers. There was no evidence of substance abuse,

horseplay, or other reckless conduct leading to the accident. *Lopez*, 93 Wn.App. at 621. The appellate court affirmed dismissal of her case, stating that “[i]t is not enough to show that an unlicensed minor without formal driver’s education is likely to endanger persons or property by driving. Some evidence of the defendant’s conscious disregard of that danger is necessary to support vehicular homicide.” *Lopez*, 93 Wn.App. at 623. In the case at bar, the Prosecution presented no evidence that Alvarado consciously disregarded the safety of persons or property. Her minor speed violation and brief period of inattention are exactly the kinds of minor oversights contemplated by *Eike*.

All of the previously cited cases in which vehicular homicide convictions were affirmed involve conduct where the aggravated negligence of the driver is clear. Extreme speed, boisterous behavior, disregard for weather conditions, aggressive driving, and vehicles in mechanical disrepair are all precursors to disastrous consequences. None of those factors are present in Alvarado’s case. Indeed, testimony at trial characterized the accident as a low speed collision in which there was hardly any damage at all to Alvarado’s Jetta. RP at Vol. II, page 126-27. Alvarado and her passengers were all wearing seat belts. RP at Vol. IV pages 18 and

60. There was no loud music playing in the Jetta. RP at Vol. IV pages 19 and 61.

It also seems difficult to reconcile the findings and conclusions to which the appellant has assigned error with the Commissioner's finding that Alvarado slowed her vehicle after she saw the flashing school zone light. CP at 94. If Alvarado had been accelerating as she approached the intersection of Virginia and Cornwall, that fact would certainly be evidence of more than a minor oversight or inadvertence. The fact that Alvarado was decelerating lends credence to the appellant's argument that the Prosecution failed to present evidence of conscious disregard for another's safety, or of anything greater than ordinary negligence.

When Melissa Brulotte was struck by Bron's Escort, her higher center of gravity caused her to be swept over the hood of the car, and she was slightly injured. Mrs. Brulotte's relatively insignificant physical injury is consistent with a low speed impact. Because Anna Brulotte was so small and her center of gravity was much lower, she was forced under the Escort and her injuries were fatal. RP at Vol. II, pages 75-76. However, the tragic result does not dictate that a criminal conviction must be the only possible result.

The trier of fact must decide the case solely on the evidence presented, and not be swayed by grief or sympathy.

Alvarado became distracted for one to four seconds while approaching the intersection of Cornwall and Virginia. This momentary distraction falls far short of the serious dereliction of her duty of care necessary to support a conviction for vehicular homicide. Looking away from the road for one to four seconds is not aggravated negligence.

The only two witnesses who could accurately testify to Alvarado's level of distraction were Wright and Kenison. Each offered their recollection of the events of September 20, 2010 at trial. Wright told the court that Alvarado looked at the backpack for two to four seconds prior to the collision.

Q: Okay. Do you recall how long Carli looked at the backpack for?

A: Not that long.

Q: Can you be a little more specific for me?

A: Like a couple of seconds.

Q: Okay. A couple being how many?

A: Probably two, four.

RP at Vol. IV, page 71.

Kenison testified in somewhat greater detail, and told the court that Alvarado looked away from the road for one to two seconds.

Q: So she had her left hand on the wheel. Were her shoulders – if this is looking out the front window – were her shoulders turned this way or did she stay oriented towards the front of the car?

A: She stayed forward.

Q: Okay. What about her head? Did you see her head turned toward the right or did her head stay looking out the front of the window?

A: Yes. It glanced over towards the backpack.

Q: Did you have - how long did that glance last?

A: Like maybe two seconds.

Q: At any time did Carli try and undo the zippers or fumble with the zippers of the backpack?

A: No. She did not.

RP at Vol. IV, pages 90-91

Q: Based on what you observed, how long do you think that Carli's eyes were off the road for?

A: One to two seconds.

RP at Vol. IV, page 92.

Alvarado testified that she looked away from the road for "two to three seconds" before the collision. RP at Vol. IV, page 30.

The testimony of Wright, Kenison and Alvarado was uncontroverted. It does not support the Prosecution's theory that Alvarado behaved with the aggravated negligence constituting a more serious dereliction than the minor oversights encompassed by ordinary negligence. Every driver, no matter how experienced, takes his or her eyes off the road for any number of reasons while behind the wheel. In almost every case, the momentary diversion is harmless. In this case, it was fatal, but the tragic result does not mean that Alvarado committed aggravated negligence or

consciously disregarded the safety of others. The evidence does not support holding her criminally liable.

Based on this testimony, there is no factual support for the Commissioner's Findings of Facts related to the duration of Alvarado's inattention beyond one to four seconds. Any factual findings about what Alvarado should have or could have seen, or whether she was "paying sufficient attention" are pure conjecture.

In his findings of fact, the Court Commissioner holds that "[d]uring the entire drive time from leaving the Bellingham High School parking lot to the point of impact, Ms. Alvarado never saw the Bron vehicle until after the collision." CP at 23. In fact, Alvarado testified that she did not recall seeing other vehicles traveling north on Cornwall avenue on the date in question. RP at Vol. IV, page 22-23. "Not recalling" is an entirely different thing than "not seeing." The Commissioner assumes that Alvarado did not see any other vehicles travelling northbound on Cornwall Ave. on September 10, and drove blindly until she collided with Bron's Escort. This conclusion is not supported by the evidence presented at trial.

Almost everyone can recall driving themselves to work or school on a given day. Almost no one can recall the make, model, and color of the cars that drove in front of them on the way.

Alvarado's testimony is entirely credible when she states that she does not specifically recall the other northbound traffic. If her inability to recall specific vehicles amounts to a greater and more marked dereliction of the duty of care than ordinary negligence, then almost every driver on the road is similarly negligent.

Officer Cristelli's time/distance calculations were discredited at trial. The Court found that Alvarado was travelling at 25 MPH, not 32 MPH. The Commissioner became his own expert and made time/distance calculations that are not supported by the evidence.

On the second day of trial, the Prosecution called Bellingham police Officer Chad Cristelli to discuss a time and distance analysis he conducted after the accident involving Alvarado and Brulotte. Cristelli told the court that a time and distance analysis was a "study of the crash" and a "creation of an event time line." RP at Vol. II, page 199.

The Prosecutor asked Cristelli the following question: "Could you determine from your analysis the perception time that would have been available for the Alvarado vehicle as..." RP at Vol. II, page 208. Defense counsel objected on the basis of

assumption of facts not in evidence and speculation, and the objection was sustained. RP at Vol. II, page 209.

The Prosecutor tried again with the following question: "Were you able to formulate any time and distance based upon the vehicle, the Alvarado vehicle stopping at the 32 mile an hour speed without striking the Bron vehicle?" RP at Vol. II, page 209. Again, the defense raised the objections of speculation and assumption of facts not in evidence, and after a brief exchange with the parties, the court once again sustained the objection.

Cristelli's testimony resumed the following morning, and the Prosecutor tried unsuccessfully for a third time to elicit testimony regarding a time/distance calculation.

Q: Okay. And how long would it take for, in your computation, for the Alvarado vehicle to go from that position of the post to the collision?

MR. LUSTICK: Objection. No foundation.

THE COURT: Sustained.

RP at Vol. III, page 9.

After properly sustaining several objections, the Commissioner made the following remarks to the Prosecuting Attorney:

THE COURT: Seems to me what you're missing here is, maybe I've missed it, but I think that what we are missing here is a -- was there a calculation of the measurement of the distance from that particular point, that pole, to the point of impact. I'm not sure I've

heard that number. It seems to me that if you have made that measurement you can work it into your formula and then I think you do have a foundation, but without that, I don't think you've got a foundation.

RP at Vol. III, pages 10-11.

The Court eventually allowed Cristelli to opine that at 32 miles per hour, it would take Alvarado 3 seconds to travel 141 feet. Cristelli admitted on cross examination that if Alvarado were travelling at less than 32 MPH, then his time/distance study would not be accurate.

Q: Wouldn't you agree that if the speed of the approaching Jetta was actually lower than the 32 miles an hour that you assigned, then all of your diagrams, all 7 of them, would not be an accurate depiction of what actually happened that day?

A: That's correct.

RP at Vol. III, page 29.

In his findings, the Commissioner found that Alvarado was travelling at 25 miles per hour at the time of the accident, not the 32 MPH which Cristelli erroneously assumed to be true. By his own admission, Cristelli's time/distance analysis is therefore inaccurate, and has no evidentiary value. This is not an instance where the appellate court must defer to the fact finder who found evidence persuasive. See *State v. Walton*, supra. Here, Commissioner Heydrich became his own expert witness and conducted his own time/distance analysis, from which he concluded that Alvarado was

sufficiently inattentive to have committed aggravated negligence. The Commissioner did not evaluate evidence that was admitted during the course of trial. He created evidence during his deliberations that the defense had no opportunity to discredit or argue against. The Commissioner's theory is not supported by substantial evidence.

ATTORNEY'S FEES AND COSTS

Alvarado is entitled to an award of Attorney's Fees and Costs pursuant to RAP 18.1.

In the event that this Court reverses Alvarado's conviction and dismisses her case, Alvarado would be entitled to an award of reasonable attorney's fees and costs incurred as a result of this appeal.

Alvarado is currently a senior at Bellingham High School and earns no income. The cost of her legal defense at trial and on appeal has been borne thus far by her parents. Alvarado did not utilize the services of the Whatcom County Public Defender at trial, and has chosen to forego the assistance of the Washington State Office of Public Defense for her appeal. Alvarado did not request public funding for her expert witness at trial, although she was

entitled to make such a request under *State v. Punsalan*, 156 Wn.2d 875, 133 P. 3d 934 (2006).

On October 12, 2011, the trial court found that Alvarado required public funding pursuant to CrR 3.1(f) and ordered the verbatim transcript of proceedings in this case to be prepared at public expense.

CONCLUSION

No decision by this Court will ever restore Anna Brulotte to her loved ones, or erase the pain suffered by Melissa Brulotte and her family. While we may fervently wish for such a result, it is beyond the power of any Court to grant. To all of those who suffered as a result of the tragedy that occurred on that terrible day, Carli Alvarado has already expressed her profound sorrow and regret.

The indescribable pain and loss experienced by the Brulotte family is not the issue before this court. The issue is whether or not there was sufficient evidence to find that Alvarado acted with a greater and more marked dereliction of her duty of care than ordinary negligence. The State was only able to prove that Alvarado exceeded the posted speed limit by 5 miles per hour, and

that her attention was diverted from the road for one to four seconds. There is no other competent evidence of her supposed conscious disregard for the safety of others. Alvarado and her passengers were wearing seatbelts. There was no loud music. There was no boisterous horseplay such as jerking the steering wheel back and forth. Alvarado did not drive in the lane of oncoming traffic or at an extreme rate of speed. Her vehicle was not in disrepair. Her conviction for vehicular homicide is not supported by substantial evidence. Not every traffic fatality equates to a vehicular homicide.

Alvarado respectfully requests a reversal of her conviction and dismissal of the case.

RESPECTFULLY SUBMITTED this 23rd day of December, 2011.

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IN THE COURT OF APPEALS, DIVISION ONE
FOR THE STATE OF WASHINGTON

CARLI ALVARADO

Appellant,

vs.

STATE OF WASHINGTON

Respondent.

Case No. 67570-2

Declaration of Service

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2011 DEC 28 PM 12:06

I, Hieu Do, Legal Assistant to Mark A. Kaiman, Attorney for the Appellant in this matter do hereby certify that on December 23, 2011, in order to serve the Respondent, I personally delivered a true and correct copy of the Brief of Appellant to:

Mr. David McEachran
Whatcom County Prosecutor
311 Grand Ave.
Bellingham WA 98225

This is sworn under penalty of perjury under the law of the State of Washington at Bellingham, Washington on this 23rd day of December, 2011.

LUSTICK LAW FIRM PLLC,



Hieu Do
Legal Assistant, Lustick Law Firm PLLC





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December 23, 2011

Seattle Court of Appeals – Division I
Attn: Richard Johnson, Court Clerk
600 University Street
Seattle, WA 98101-1176

RE: Carli Alvarado v. State of Washington; Cause # 67570-2

Dear Clerk:

This mailing includes the following original document to be filed with your court in the matter listed above:

1. Brief of Appellant
2. Declaration of Service

I have also enclosed an extra copy to be conformed for our records along with a self addressed and postage provided envelope for your convenience. Thank you for your assistance.

Sincerely Yours,

THE LUSTICK LAW FIRM PLLC,

Hieu Do
Legal Assistant

Enclosures

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