

NO. 72924-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JASON M. LEE,

Appellant,

v.

JOSIAH WALKER *et ux.* and INFRASOURCE SERVICES, LLC

Respondents.

BRIEF OF RESPONDENTS JOSIAH WALKER AND INFRASOURCE
SERVICES, LLC

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I. SUMMARY OF RESPONDENTS' ARGUMENT

This case involves an incident that occurred at the corner of California Avenue and Southwest Frontenac Street in West Seattle when Appellant Jason Lee (“Plaintiff”) struck Respondent Josiah Walker’s truck behind the passenger side rear tire while Mr. Walker was engaged in a right-hand turn onto Southwest Frontenac Street. *See Verbatim Transcript of Proceedings Transcribed From Audio Recording Requested Excerpts November 12, 2014 (RP at 73-4, 79, 83).* The trial court, in its discretion, properly instructed the jury when it determined that (1) WPI 60.01 (based on RCW 46.61.140: staying in one lane of traffic until a driver has ascertained that he can safely move into another lane) did not provide any guidance to the jury in this case, and (2) the “*Sanchez*” instruction (based on RCW 46.61.180: right-of-way instruction for two vehicles approaching or entering an intersection from different highways at the same time) was not factually supported in this case.

II. RESTATEMENT OF THE ISSUE PRESENTED BY PLAINTIFF’S ASSIGNMENTS OF ERROR

Whether the trial court acted within its discretion when it determined that (1) WPI 60.01 did not give any guidance to the jury; and (2) the “*Sanchez*” instruction was not factually supported in this case where the incident occurred when Plaintiff, traveling on a bicycle, struck

Respondent Mr. Walker's truck behind the passenger rear tire while the truck was engaged in a right-hand turn.

III. COUNTERSTATEMENT OF THE CASE

A. Statement Of The Accident

Plaintiff alleges that on April 24, 2013, Mr. Walker was negligent for failure to keep a proper lookout while making a right hand turn across a marked bicycle lane. CP 2. On that day, Mr. Walker turned from Holden Street onto California Avenue SW in West Seattle. RP 73. Mr. Walker then proceeded northbound on California Avenue SW for several blocks intending to make a right hand turn onto Frontenac Street. RP 37-9. California Avenue SW is a steep hill that begins to flatten out a few blocks before Frontenac Street. RP 38-9. There is no designated bicycle lane on the downhill portion of California Avenue SW; instead, the marked bicycle lane begins one block before the intersection with Frontenac where the accident occurred. RP 72-3, 140-41.

Despite looking and checking his mirrors several times, Mr. Walker saw no cyclists while driving down California Ave SW. RP 73-4. As he approached the intersection to make his right hand turn onto Frontenac Street, Mr. Walker engaged his turn signal and started to slow down. RP 46, 79. He also checked his mirrors, but still did not see anyone in the bicycle lane to his right. RP 74, 79. Mr. Walker gradually

turned his vehicle across the bicycle lane and onto Frontenac Street.

RP 46, 79. Mr. Walker was more than half way through his turn, with the front end of his vehicle already on Frontenac Street, when Plaintiff ran into Mr. Walker's vehicle striking it behind the passenger side (right) rear wheel well of the vehicle. RP 82-3. Mr. Walker testified that Plaintiff must have been riding directly behind him in the roadway and believes that Plaintiff then attempted to pass him on the right side using the bicycle lane just as Mr. Walker was making his turn onto Frontenac Street. *See* RP 74-5, 93.

Prior to running into Mr. Walker's vehicle, Plaintiff was riding his bicycle northbound downhill on California Avenue SW, travelling the same direction as Mr. Walker. RP 102. Plaintiff first noticed Mr. Walker's vehicle ahead of him while riding in the street on California Avenue SW. RP 137. Plaintiff was gaining ground on Mr. Walker's vehicle. Towards the bottom of the hill, as California Avenue SW flattens out, Plaintiff recognized that Mr. Walker's vehicle was slowing down as it approached Frontenac Street. RP 138. Plaintiff, however, continued pedaling and gaining ground on Mr. Walker's vehicle even while the vehicle slowed down at the intersection with Frontenac Street (RP 139):

Q. Okay. So you were pedaling, gaining on the truck as it slowed down at the intersection of Frontenac. Is that fair?

A. Yes.

One block before the intersection, Plaintiff claims that he entered the marked bicycle lane existing to the right of the traffic lane. RP 140-41. Plaintiff admits that he ran into Mr. Walker's truck and confirmed that he struck Mr. Walker's vehicle near the passenger side (right) rear wheel well. RP 141-42 (identifying the "X" on trial Ex. 104(c) as accurately depicting the location where he struck Mr. Walker's vehicle). Shortly after running into the passenger side (right) rear wheel well of Mr. Walker's vehicle, Plaintiff told Mr. Walker that he was sorry and that he was riding too fast to stop. RP 144. Plaintiff testified that he was familiar with the bike rules of the road, that a bicycle is considered a vehicle in Washington, and that as a bicyclist he had the same responsibilities as the driver of a motor vehicle while on the road. RP 127-28.

As stated in his opening brief, Plaintiff's theory of the case "was that Mr. Walker was negligent in failing to merge into the bike lane before executing his right hand turn, instead turning across the lane to his right directly into Lee's path." Plaintiff's Brief at pg. 7. During trial, Plaintiff's counsel questioned Mr. Walker as follows:

Q. So and you're in a clearly marked car lane?

A. Yes.

Q. To the left of a clearly marked bike lane?

- A. Yes.
- Q. Did you merge over to the right? As you were approaching the intersection, did you merge over into the area, the 11 feet that was available to you to your right?
- A. I gradually made my turn. I turned on my turn signal. I made my turn around the corner. I didn't get into the parking strip. There was cars there. I came to the intersection and made my turn.
- Q. Okay. Didn't you actually come up to the intersection and make the turn in the intersection itself?
- A. If I had done that, I would have jackknifed my air compressor. If I had come straight to the intersection and made a hard right, the air compressor would have not made the turn. So I slowed up slow enough to make a gradual turn and made the gradual turn. That's how I did it.
- Q. Isn't it true that you turned your—your truck directly across into the path of the oncoming traffic?
- A. So I'll say it again, when I made my turn, gradually made my turn from California to Frontenac. I cannot come directly to the intersection and make a hard right. It wouldn't be possible to do that in the vehicle that you guys all saw.
- Q. We'll come back to that in a minute. How much—how much space was there—how far back from the intersection did you begin your turn?
- A. How am I supposed to gauge in feet? I don't know. When I started to turn my vehicle? Like when actually the steering wheel began to turn?
- Q. Right. How far were you from the curb line—
- A. The intersection, before I started to make my turn, I—you know, as you come up, you check your mirror, turn your turn signal on. No one's there. Slow down. You start to make your turn. I can't give you an estimate of how many feet. You know, it's—I can guess. Ten.

RP 46-7. Plaintiff's counsel engaged in additional questioning regarding this theory as follows:

- Q. When you testified in your deposition, you said that you were driving in this lane, and you came up and you were in the intersection when you made your right hand turn, correct?
- A. If that's what I said in my deposition, that's what I said.
- Q. Okay. The important thing is really not what you said. It's what did you do. Isn't that what you did?
- A. Well, I cannot physically take that truck and drive all the way through the intersection and then make a hard turn, so that's not what I did. I did not drive into the intersection and make a hard right, you know, jerky like. I gradually came to the intersection and made my turn. So if in my deposition, I said that I went into the intersection, I mean that's what I did. You have to go to the intersection to turn. I mean to put it into words, I don't know how else to describe it. I went to the intersection to make my turn, yes.
- Q. But when you started making your turn, you were making it from the car driving lane, correct?
- A. Well, you have to cross the bike lane to get on to Frontenac.
- Q. But you didn't start your turn until you got to the intersection, did you?

[Objection Omitted]

- Q. The question is, when you started your turn, you were still in the car driving lane, and then you started your turn across the bike lane and across the parking lanes?
- A. Yes, when---
- Q. At the intersection?
- A. Whenever I made my turn, as I approached the intersection, I gradually turn into the intersection yes.

- Q. Okay. So showing you now what's been marked as Plaintiff's Demonstrative Exhibit 7. You were over here in this lane when you started to make the turn into this—into Frontenac, correct?
- A. Okay. So I would have had to get into the bike lane to make my turn. I couldn't drive all the way to the intersection, like I said, and make a hard right. You can't do that.

RP 49-51. Additional questioning pertaining to Plaintiff's theory of the case can be found at RP 86-91. At trial, Plaintiff asked the trial court to give the following jury instructions:

WPI 60.01 (RCW 46.61.140)

A statute provides whenever any roadway has been divided into two or more clearly marked lanes for traffic a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Sanchez Favored Driver Instruction

The driver of a vehicle with the right-of-way is a favored driver. The driver required to yield the right of way is a disfavored driver. Although all drivers must exercise reasonable care, disfavored drivers have the primary duty to avoid collision and favored drivers are entitled to a reasonable reaction time after it becomes apparent in the exercise of due care that the disfavored driver will not yield the right of way. This rule applies even though the favored driver did not see the disfavored driver until it was too late to avoid the accident.

CP 29, 32. The trial court declined to accept the instructions, stating:

I did have a comment on that, because I went through and read all the cases. The favored driver instruction is based on 46.61.180, *which has to do with two vehicles from*

opposite roads in an intersection, so I don't think it's factually supported here. And I'm satisfied as to the other instruction that the statute is—doesn't give really any guidance at all to the jury in that it is a standard negligence, reasonable care.

Verbatim Transcript of Proceedings Transcribed From Audio Recording
Requested Excerpts November 13, 2014 (2nd RP at 2-3). (Emphasis added). Plaintiff's counsel took exception to the Court's decision, but made no additional comments in support of his exception. 2nd RP 2-3.

The trial court instead issued jury instructions that reflected the elements of a cause of action for negligence; specifically, jury instructions 2, 7, 8, 9, and 12. CP 2; *see also* CP 83, 88-90, 93. Instruction 2 identified the elements of a negligence claim:

Plaintiff has the burden of proving each of the following propositions: First, that the Defendants acted, or failed to act, in one of the ways claimed by the Plaintiff and that in so acting or failing to act, the Defendants were negligent; Second that Plaintiff was injured; and Third, that the negligence of the Defendants was the proximate cause of the injuries to Plaintiff.

CP 83. Instruction 12 defined the duty owed by a person operating a vehicle—which includes a bicycle—on a public roadway:

It is the duty of every person using a public street or highway to exercise ordinary care to avoid placing themselves or others in danger and to exercise ordinary care to avoid a collision. Every person using a public street or highway has the right to assume that other persons thereon will use ordinary care and will obey the rules of the road and had a right to proceed on such assumption until they know, or in the exercise of ordinary care should know,

to the contrary. Every person has a duty to see what would be seen by a person exercising ordinary care.

CP 93 (emphasis added). Instructions 7, 8, and 9 defined the elements of a negligence claim:

Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

Ordinary care means the care a reasonably careful person would exercise under the same or similar circumstances.

The term “proximate cause” means a cause which in a direct sequence unbroken by any superseding cause, produces the injury complained of and without which such injury would not have happened. There may be more than one proximate cause of an injury.

CP 88-90.

The jury was dismissed at 11:22 a.m. and returned a defense verdict that same afternoon. 2nd RP 68. Specifically, the jury answered “No” to Question 1 of the special verdict form, thereby finding that Mr. Walker was not negligent. CP 77-8.

IV. ARGUMENT

A. **The Standard Of Review In This Case Is Abuse Of Discretion, Not De Novo.**

Plaintiff’s assignment of error was the trial court’s refusal to give two particular instructions, which was a decision wholly within the trial court’s discretion. The proper standard of review in this case is therefore

abuse of discretion and not *de novo*, as Plaintiff contends. “Because the decision whether to give a particular instruction to the jury is a matter within the discretion of the trial court, this court reviews decisions whether to give requested instructions only for abuse of discretion.” *Ethridge v. Hwang*, 105 Wn. App. 447, 457, 20 P.3d 958 (2001). “The number and specific language of jury instructions is a matter within the trial court’s discretion.” *Havens v. C&D Plastics, Inc.*, 124 Wn.2d 158, 165, 876 P.2d 435 (1994) (citing *Douglas v. Freeman*, 117 Wn.2d 242, 256, 814 P.2d 1160 (1991)).

Conversely, the *de novo* standard of review is appropriate where there is an error of law in the instructions or the instructions contain an “erroneous statement of the applicable law.” *Hue v. Farmboy Spray Co., Inc.*, 127 Wn.2d 67, 92, 896 P.2d 682 (1995). However, the error is reversible only if it is prejudicial, meaning the error “affects or presumptively affects the outcome of the trial.” *Goodman v. Boeing Co.*, 75 Wn. App. 60, 68, 877 P.2d 703 (1994).

Plaintiff did not assign as error the jury instructions that were given by the Court. Even if he had, however, there would be no error. Jury instructions are “sufficient which permit a party to argue that party’s theory of the case, are not misleading, and when read as a whole properly inform the trier of fact on the applicable law.” *Havens*, 124 Wn.2d at 165.

There is “not error to refuse to give a detailed augmenting instruction,” where the above requirements are met. *Id.* The trial court does not abuse its discretion when it issues a jury instruction setting forth the elements of a claim that is an accurate statement of the law. *See Ethridge*, 105 Wn. App. at 456.

B. The Trial Court Acted Well Within Its Discretion When It Refused To Give Plaintiff’s Instructions Because The Proposed Instructions Would Not Have Been Helpful To The Jury, And Had The Potential To Mislead The Jury

The record is clear that the trial court did not believe that Plaintiff’s proposed instructions would be helpful to the jury. RP 169; 2nd RP 2-3.

1. WPI 60.01 Would Not Be Helpful To the Jury

The Court acted properly within its discretion when it determined that Plaintiff’s proposed WPI 60.01 would not be helpful to the jury.

Plaintiff’s proposed WPI 60.01 was based on RCW 46.61.140. RCW 46.61.140 provides in relevant part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall

not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.¹

The trial court noted that with respect to WPI 60.01 (RCW 46.61.140), the instruction “doesn’t give really any guidance at all to the jury” given that this is a standard negligence case. 2nd RP 3. The statute is clearly more appropriate for cases involving multiple vehicles and lane change violations, and not, as in this case, where a bicyclist runs into a truck while the truck is making a right turn at an intersection. *See, e.g., Hadley v. Maxwell*, 144 Wn.2d 306, 27 P.3d 600 (2001).

Moreover, even if the statute were applicable, RCW 46.61.140 (offered by Plaintiff as WPI 60.01) does not create a heightened duty or otherwise alter the validity of the general negligence instructions issued by the trial court. RCW 46.61.140 requires a driver to stay in his lane of traffic until he has ascertained that moving into a different lane can be

¹ Plaintiff cites to *Pudmaroff v. Allen*, 138 Wn.2d 55, 977 P.2d 574 (1999) for the proposition that the City of Seattle and Washington Legislature responded to that Court’s challenge to clarify the role of bicycles with regard to the rules of the road. Plaintiff’s Brief at 9. First, Plaintiff improperly cites to Seattle Municipal Code Section 11.53.190 to support his argument. As noted in Plaintiff’s brief, that code provision was offered to the trial court, but it was not given and no exception was taken. Plaintiff’s Brief at 9. The content of that code provision is not before this Court. Thus, contrary to counsel’s request, this provision should not be read in conjunction with RCW 46.61.140 to create a rule regarding a bicyclist’s right-of-way. Plaintiff’s Brief at 9.

safely done. *See* RCW 46.61.140(1). This point was articulated in jury instruction 12, which states in pertinent part: “Every person has a duty to see what would be seen by a person exercising ordinary care” in order to avoid a collision. CP 93. This would include a driver looking to see whether a vehicle was in the next lane prior to moving into that lane so as to avoid a collision. As proposed by Plaintiff, WPI 60.01 (based on RCW 46.61.140) was merely an augmenting instruction, which the trial court had complete discretion to deny where the existing instructions are not misleading and informed the jury of the applicable law. *See Havens*, 124 Wn.2d at 165.

Noteably, Plaintiff misquoted, and therefore misrepresented the trial court’s decision regarding RCW 46.61.140. In his brief, Plaintiff quoted the court as follows:

I did have a comment on that, because I went through and read all the cases. The favored driver instruction is based on 46.61.140, which has to do with two vehicles from opposite roads in an intersection, so I don’t think it’s factually supported here.

Plaintiff’s Brief at 10 (emphasis added). As indicated in the verbatim report of proceedings, however, the trial court actually stated:

I did have a comment on that, because I went through and read all the cases. The favored driver instruction is based on 46.61.180, which has to do with two vehicles from opposite roads in an intersection, so I don’t think it’s factually supported here.

2nd RP 2-3 (emphasis added). The difference is crucial, especially given that Plaintiff relies on this misquote to argue that the “trial court was clearly mistaken in its interpretation of 46.61.140.”

There was no mistake in the trial court’s interpretation of RCW 46.61.140 because the trial court was not interpreting that provision when discussing its reasons for refusing Plaintiff’s *Sanchez* instruction. Instead, the trial court was identifying RCW 41.61.180 as the proper statutory provision applicable to the facts of the cases cited by Plaintiff in support of his *Sanchez* instruction, which deals with collisions between vehicles approaching an intersection from different roads, travelling in different directions. Those facts are different than the facts of this case and do not support the language of RCW 41.61.140, which deals with a vehicle staying in its lane of traffic until the driver ascertains it is safe to move into a new lane of traffic. *See* RCW 41.61.140(1). The distinction is clear and was recognized by the trial court when it stated that the *Sanchez* favored driver instruction is not “factually supported here.” 2nd RP 3.

2. The “*Sanchez*” Instruction Is Not Applicable To This Case

With respect to the *Sanchez* “favored driver” instruction, the trial court noted that it reviewed all of the cases and found that the favored

driver instruction was not factually supported in this case. 2nd RP 2-3.

The relevant portion of RCW 46.61.180 provides that “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.” RCW 46.61.180(1) (emphasis added). As the trial court noted, this statute and the cases cited by Plaintiff to support the *Sanchez* favored driver instruction all pertain to the factual scenario where the collision occurred **between two vehicles approaching an intersection on different roads, from different directions.**

In *Sanchez*, one vehicle drove northbound on State Route 17 while the second vehicle approached the intersection driving eastbound on Providence Road. *See Sanchez v. Haddix*, 95 Wn.2d 593, 594, 627 P.2d 1312 (1981). In *Grobe v. Valley Garbage Serv., Inc.*, 87 Wn.2d 217, 219, 551 P.2d 748 (1976), one vehicle drove northbound on Glenn Road while the second vehicle approached the intersection driving westbound on 23rd Avenue. Similarly in *Poston v. Mathers*, 77 Wn.2d 329, 330-31, 462 P.2d 222 (1969), one vehicle drove eastbound on 96th Street in Tacoma while the second vehicle drove westbound on 96th Street on the opposite side of the intersection with Park Avenue.

Plaintiff cites *Borromeo v. Shea*, 138 Wn. App. 290, 156 P.3d 946 (2008) for the proposition that “a[n] instruction which follows the words of a statute is proper unless the statutory language is not reasonably clear or misleading.” Plaintiff’s Brief at 11. As noted by the trial court, the *Sanchez* favored driver instruction pertains to a completely different factual scenario then presented in this case and is supported by a statutory provision that was not before the trial court. 2nd RP 2-3. Therefore, giving that instruction would have misled the jury.

The trial court recognized the distinction between the facts of those cases cited by Plaintiff to support his *Sanchez* favored driver instruction and the facts of this case, and properly and within its discretion elected not to use the *Sanchez* instruction. See 2nd RP 2-3.

C. The Jury Instructions Given By The Trial Court Were Sufficient

Plaintiff did not assign as error the instructions that the trial court gave to the jury; rather, Plaintiff merely cited as error the trial courts failure to give two specific instructions. To the extent that the Court chooses to consider Plaintiff’s argument in his brief that the jury instructions given were inadequate or misleading, however, Respondents will respond here.

1. The Trial Court Accurately Stated The Applicable Law

The trial court properly instructed the jury on this cause of action for negligence. CP 83, 88-90, 93. The elements of a cause of action for negligence are: (1) the existence of a duty owed; (2) breach of that duty; (3) a resulting injury; and (4) proximate cause between the breach and the injury. *Tincani Inland Empire Zoological Soc.*, 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). Jury instructions 2, 7, 8, 9 and 12 properly set forth and defined the elements of a cause of action for negligence. CP 83, 88-90, 93.

The jury instructions: (a) informed the jury regarding the elements of a cause of action for negligence; (b) described the duty required of every person using a public street to see what could be seen in order to avoid a collision; (c) established ordinary care as the proper standard of care; (d) defined ordinary care; and (e) defined the meaning of proximate cause. On their face, these instructions accurately informed the jury regarding a cause of action for negligence.

2. The Jury Instructions Were Not Erroneous

Plaintiff relies on *Barrett v. Lucky Seven Salon, Inc.*, 152 Wn.2d 259, 267, 96 P.3d 386 (2004), to support the position that “a court’s omission of a proposed statement of the governing law will be ‘reversible error where it prejudices the party.’” But Plaintiff fails to recognize what

the trial court recognized: that neither WPI 60.01 (premised on RCW 46.61.140) nor the *Sanchez* favored driver instruction govern this case, and even if they were applicable, they were neither necessary nor helpful to the jury. *See* 2nd RP 2-3.

The trial court properly instructed the jury on the elements of a cause of action for negligence and properly defined the elements, including the duty to see what would be seen by a person exercising ordinary care. CP 93. The trial court did not assume that “every one of the jurors knew the ‘rules of the road,’” but instead clearly articulated the elements Plaintiff was required to establish in order to prove his cause of action for negligence. The jury clearly found that Mr. Walker exercised ordinary care and met his duty when he checked his mirrors while driving on California Avenue SW, slowed as he approached the intersection with Frontenac Street, engaged his turn signal, and checked his mirrors again prior to turning. RP 46, 73-4, 79. This was the evidence from which the jury could, and did, answer “No” to Question 1 of the special verdict form, thereby finding that Mr. Walker was not negligent. CP 77-8.

D. The Exception Taken By Plaintiff’s Counsel Did Not Sufficiently Apprise The Trial Court Of The Alleged Error

An “appellate court may consider a claimed error in a jury instruction only if the appellant raised the specific issue by exception at

trial,” which requires the trial court to be “sufficiently apprised of any alleged error to have been afforded an opportunity to correct the matter if that was necessary.” *Van Hout v. Celotex Corp.*, 121 Wn.2d 697, 702-03, 853 P.2d 908 (1993) (internal citations omitted).

Here, the exception taken by Plaintiff’s counsel did not apprise the trial court of the specific error. In response to the trial court’s refusal to give the two proposed instructions at issue on appeal, Plaintiff’s counsel simply stated: “Yes, Your Honor. We take exception to the Court’s decision not to give plaintiff’s WPI 60.01 based on RCW 46.61.140, which is driving on roadways, lanes of traffic,” and “we take exception to the Court’s decision not to give the *Sanchez* instruction, which is the right of way instruction for favored drivers.” 2nd RP 2.

In response, the trial court further explained its reasons for not issuing the two proposed jury instructions (2nd RP 2-3); however, Plaintiff did not take the opportunity to further explain his reason for taking exception. By failing to do so, Plaintiff did not take proper exception to the trial court’s decision in a manner that “sufficiently apprised” the trial court “of any alleged error” that could have “afforded an opportunity to correct the matter if that was necessary.” *Van Hout*, 121 Wn.2d at 702-03.

V. CONCLUSION

The trial court properly utilized its discretion when it refused to instruct the jury as proposed by Plaintiff. The trial court properly instructed the jury on the elements for a cause of action for negligence and further defined the duty and standard of care owed by vehicle drivers while operating on public roadways. Read as a whole, the jury instructions utilized by the trial court properly informed the jury of the applicable law, were not misleading, and did not contain an erroneous statement of the law. For these and for all of the foregoing reasons, Respondents respectfully request that this Court affirm the trial court's judgment entered in favor of Respondents.

RESPECTFULLY SUBMITTED this 11th day of May, 2015.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 11th day of May, 2015, I caused a true and correct copy of the foregoing document, "Brief of Respondents Josiah Walker and InfraSource Services LLC," to be delivered in the manner indicated below to the following counsel of record:

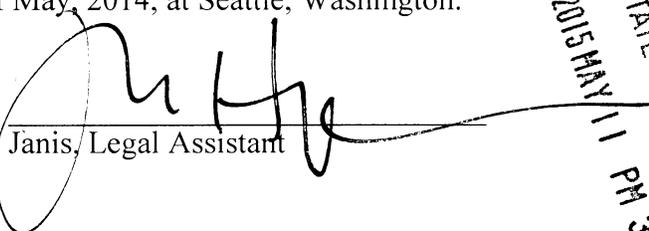
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Dated this 11th day of May, 2014, at Seattle, Washington.



Janis, Legal Assistant

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