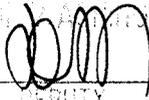


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY  _____
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No. 34549-8-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

ALEKSANDR BOGDANOV,

Appellant,

v.

STEVEN KING and JANE DOE KING,

Respondents.

BRIEF OF APPELLANT

Submitted By:

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A. Assignments of Error

Assignments of Error

1. The trial court erred in denying plaintiff's motion for direct verdict as to the issue of plaintiff's lack of contributory negligence.
2. The trial court erred in denying plaintiff's motion for directed verdict as to the issue of defendant's negligence.
3. The trial court erred in denying plaintiff's motion for judgment notwithstanding the verdict and/or new trial, by order entered on February 17, 2006.

Issues Relating to Assignments of Error

Plaintiff was driving his vehicle on an arterial road. He approached an intersection adjacent to an elementary school, where he had no stop sign and cross-traffic was controlled by stop signs. The intersection was clear. Plaintiff testified he observed Mr. King's vehicle just before temporarily stopping at a school crosswalk on the South side of the intersection, due to the presence of school children at the curb. He saw that the King vehicle was either stopped or preparing to stop at a stop sign. Before moving forward from a stopped position at the crosswalk, did plaintiff have a duty to make additional observations of the intersection to make sure that

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3 no vehicles were moving through the intersection in violation of his right of
4 way? Alternatively, was plaintiff's duty limited to a duty of ordinary care
5 after seeing that Mr. King's vehicle had failed to yield? (*Assignment of*
6 *Error No. 1 and 3*)

7 The court instructed the jury that if they found that plaintiff saw
8 Mr. King's vehicle stopped or preparing to stop at the stop sign, that they
9 were instructed that plaintiff had a right to rely on the assumption that Mr.
10 King would continue to yield to his vehicle until such time as plaintiff
11 actually observed Mr. King failing to yield. The court also instructed the
12 jury that both parties had a duty of ordinary care to avoid a collision and a
13 duty to see what would be seen by a driver using ordinary care. Under
14 these instructions, is it permissible for the jury to find plaintiff
15 contributorily negligent for failing to make further observation of
16 defendant's vehicle until defendant's vehicle actually entered his field of
17 vision? (*Assignment of Error No. 1 and 3*)

18 The court instructed the jury that they were required to give
19 plaintiff a reasonable reaction time after observing the defendant failing to
20 yield the right of way. Plaintiff testified that he saw defendant
21 immediately prior to impact and did not have time to apply his brakes.
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3 No evidence was introduced to impeach or contravert this statement.

4 Defendant submitted no witness testimony to establish the position of his
5 vehicle when plaintiff began moving forward, the point or time at which
6 plaintiff should have seen defendant's vehicle, or what a reasonable
7 response time for plaintiff would be from that point. Under these
8 circumstances, is it permissible for the jury to find plaintiff was
9 contributorily negligent for failing to take reasonable actions to avoid the
10 collision? (*Assignment of Error No. 1 and 3*)
11

12 A motor vehicle collision occurs adjacent to an elementary school,
13 at an intersection between an arterial road and a non-arterial road. The
14 favored driver has no stop sign, but temporarily stops at a school crosswalk
15 because of the presence of children on the curb. The disfavored driver
16 comes to a stop at a posted stop sign, but then fails to yield and moves into
17 the intersection because he believes that he was waved through by the
18 favored driver. The court determines there was no deception caused by
19 any conduct of the favored driver and does not give the jury a deception
20 instruction. Is the disfavored driver negligent as a matter of law for failing
21 to yield, or is confusion (without deception) a defense to failure to yield?
22 (*Assignment of Error No. 2 and 3*)
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BRIEF OF APPELLANT --3

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3 Plaintiff's chiropractor and orthopedic surgeon testified that
4 plaintiff sustained back, neck and knee injuries as a result of the motor
5 vehicle collision. Defendant's medical expert agreed that plaintiff sustained
6 back and neck injuries as a result of the collision and that certain treatment
7 plaintiff obtained for those injuries was related to the collision.
8 Defendant's counsel argued in closing that plaintiff had proven temporary
9 back and neck injuries from the collision and that a certain amount of
10 medical expenses should be awarded. Under these circumstances, is it
11 permissible for a jury to find that plaintiff did not sustain any injury as a
12 result of the collision? (*Assignment of Error No. 3*)
13

14 **B. Statement of the Case**

15
16 At approximately 8:45 in the morning of December 11, 2001,
17 Alexander Bogdanov was driving Northbound on NE 172nd Avenue, a
18 public road in Clark County, Washington. He was approaching the
19 intersection of NE 172nd Avenue and NE 20th Street. RP, Vol. III, p. 159.
20 Prior to reaching the intersection, Mr. Bogdanov noticed the presence of
21 children on the West side of NE 172nd Avenue. RP, Vol. III, p. 159.
22 These children were positioned near a marked school crosswalk adjacent to
23 NE 20th Street, which serves an elementary school that is situated on the
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3 East side of the intersection. Students with flags were also present on
4 both sides of the crosswalk, but these flaggers had not yet lowered their
5 flags or entered the intersection. RP, Vol. III, p. 160-161.

6 Due to the presence of the children and the presence of flaggers on
7 both sides of NE 20th Street, Mr. Bogdanov stopped his vehicle just before
8 the marked school crosswalk. RP, Vol. III, p. 162. As he was stopping,
9 he noticed a truck present at the stop sign to his left on NE 20th Street.
10 RP, Vol. III, p. 161. He could not say if the struck was fully stopped or
11 not, but did not see anything that led him to believe that the driver of the
12 truck was not going to yield. RP, Vol III., p. 161-162, 186.

13
14 After remaining stopped at the crosswalk for a short period of time,
15 Mr. Bogdanov testified that a woman on the right side of the intersection
16 motioned him through the intersection by waving her flag. RP, Vol. III, p.
17 162-163. He then began moving forward through the intersection.
18 RP, Vol III, p. 163. He admitted that he did not make an attempt to
19 observe the other vehicle again before passing through the intersection.
20 RP , Vol. III, p. 192. He explained that he was sure the driver of the other
21 vehicle would yield to him because it had a stop sign. RP, Vol III, p. 192.
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3 Mr. Bogdanov stated that before moving forward from the
4 crosswalk, he looked at the children on his right side at the curb. RP, Vol.
5 III, p. 206. He testified that he recalled there was nothing in the roadway
6 when he started moving forward. RP, Vol III, p. 191-192. He stated that
7 he looked straight ahead through the intersection as he began moving
8 forward. RP, Vol III, p. 206-207. On cross-examination, Mr. Bogdanov
9 stated that he did not remember whether he had checked directly in front of
10 him before moving. RP, Vol. III, p. 193. He admitted the next thing he
11 recalls after moving past the crosswalk area was Mr. King's vehicle being
12 in his way. RP., Vol. III, p. 193. Mr. Bogdanov could not estimate the
13 distance he travelled to the point of impact with any accuracy. RP, Vol.
14 III, p. 166. He also could not estimate his speed, but thought that he
15 moved forward a little bit faster than usual in order to clear through the
16 intersection as soon as possible. RP, Vol. III, p. 166.

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19 Mr. Bogdanov stated that after he originally saw Mr. King's vehicle
20 near the stop sign, he did not see Mr. King's vehicle again until he was less
21 than 1 second before impact. RP, Vol III, p. 164. He stated he had no
22 time to brake or swerve to avoid a collision. RP, Vol III, p. 165. Mr.
23 Bogdanov denied ever making any hand motions or other gestures to Mr.
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2 King to allow him to pass through the intersection first. RP, Vol. III, p.
3 164.
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5 Steven King was the driver of the truck at NE 20th Street. He
6 testified that he came to a stop at NE 20th Street. RP, Vol. VI, p. 402.
7 He then testified that while he was stopped, he looked at Mr. Bogdanov
8 and saw that he had stopped his vehicle before the crosswalk area. RP,
9 Vol. VI, p. 404. Upon looking at Mr. Bogdanov, he testified that observed
10 Mr. Bogdanov make nodding motions and hand motions. RP, Vol. VI, p.
11 404, 406-408. He stated that the motions he observed indicated to him
12 that he was being waved through the intersection. RP, Vol. VI, p. 404.
13

14 Mr. King stated that as he began crossing through the intersection,
15 he observed Mr. Bogdanov's vehicle and noticed it was still stopped at the
16 crosswalk. RP, Vol. VI, p. 416. He was unable to estimate where his
17 vehicle was in the intersection at that point. RP, Vol. VI, p. 416-417.
18 He admitted that he did not look at Mr. Bogdanov's vehicle again as he
19 was passing through the intersection. RP, Vol. VI, p. 408-409, 416.
20 He stated he did not see the Bogdanov vehicle again until the collision
21 occurred. RP, Vol. VI, p. 417.
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3 Mr. King admitted that before the impact, he heard Mr.
4 Bogdanov's engine revving up and knew that Mr. Bogdanov was in the
5 process of moving forward. RP, Vol. VI, p. 408. He stated that by the
6 time he heard this, the impact occurred. RP, Vol. VI, p. 408. On cross-
7 examination, Mr. King admitted he heard Mr. Bogdanov's engine revving
8 up "a couple seconds" before the impact, but that he was "pretty much
9 guessing" about that. RP, Vol. VI, p. 418. Mr. King estimated that Mr.
10 Bogdanov's car travelled 10 to 15 feet from the crosswalk to the point of
11 the collision impact. RP, Vol. VI, p. 430.
12

13 Mr. King also presented testimony by his son, Joshua. Joshua was
14 12 at the time of his trial testimony, and 9 years old on the morning of the
15 collision in December 2001. RP, Vol. VI, p. 379. He a front seat
16 passenger in his father's pickup at the time of the collision. RP, Vol. VI, p.
17 393. Joshua King also testified he saw hand motions from Mr. Bogdanov
18 and felt that Mr. Bogdanov was indicating for his father to pass through the
19 intersection. RP, Vol. VI, p. 384-385. Joshua King claimed that after his
20 father started moving through the intersection, Mr. Bogdanov "punched it"
21 and started moving forward. RP, Vol. VI, p. 385-386. He estimated that
22 Mr. Bogdanov started moving forward "a couple seconds" before the
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3 collision. RP, Vol. VI, p. 394. He testified that he thought his father was
4 going about 5 mph because he was going slowly, but admitted he could not
5 say how fast his father was moving. RP, Vol. VI, p. 389.

6 Witness Donna Molenaar was called by Mr. King. She was a
7 teacher that was there on the East side of the crosswalk at 20th Street,
8 supervising the student flaggers. RP, Vol. IV, p. 215-216. She recalled
9 that she may have motioned for Mr. Bogdanov to go through the
10 intersection because she was concerned about congestion. RP, Vol. IV, p.
11 225-226. Ms. Molenaar could not say which of the vehicles began
12 moving first before the collision. RP, Vol. IV, p. 224, 239. She did not
13 observe any acceleration by either of the vehicles. RP, Vol. IV, p. 247.
14 She did not remember hearing any revving of engine by Mr. Bogdanov
15 before the collision. RP, Vol. IV, p. 247. She also could not give any
16 estimate on how fast the cars were moving at impact. RP, Vol. IV, p.
17 239. However, she did remember that the Bogdanov vehicle was
18 completely away from the crosswalk area when the collision occurred.
19 RP, Vol. IV, p. 246. She recalled that the impact occurred on the North
20 side of the entrance driveway into the elementary school, at the
21 approximate location where a car would be pulling out of the driveway and
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3 entering onto NE 172nd Avenue. RP, Vol. IV, p. 238.

4 On the afternoon of September 29, 2005 (day 4 of the trial),
5 Mr. King attempted to introduce testimony from Wayne Slagle, an engineer
6 and accident reconstructionist. Mr. Slagle was prepared to offer testimony
7 regarding the positions of the parties' vehicles at various times prior to the
8 collision, and to give related opinions about whether Mr. Bogdanov should
9 have seen Mr. King before entering the intersection.
10

11 Plaintiff had requested that Mr. Slagle's testimony be struck as part
12 of his Motions In Limine and had submitted a related Memorandum.

13 CP 45, 46. Plaintiff had also submitted before trial the Declaration of
14 Keith Cronrath, P.E. (accident reconstructionist). CP 32. Mr. Cronrath's
15 declaration explains that due to insufficient known data regarding the
16 vehicle impact positions, paths of travel and post-impact rest positions, it
17 was not possible to calculate with reasonable scientific certainty the vehicle
18 pre-impact speeds. CP 32. Therefore, it was not possible for Mr. Slagle
19 to state his derivative conclusions about the vehicle pre-impact positions
20 with any scientific certainty, or to reach scientific conclusions about the
21 visibility of each vehicle to the other drivers. CP 32. The court agreed
22 with plaintiff on this point, and struck Mr. Slagle's testimony.
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3 Mr. Bogdanov presented medical expert testimony from Dr. Eric
4 Strehlow, a chiropractor, and Dr. Paul Puziss, an orthopedic surgeon.
5 Dr. Strehlow and Dr. Puziss both testified that plaintiff sustained injuries as
6 a result of the collision to his knees, back and neck. CP 74, p. 13-14, 37,
7 45 and 165; CP 75, p. 27-28, 47-48.

8
9 Mr. King called as his expert Dr. Paul Tesar, also an orthopedic
10 surgeon. Dr. Tesar testified that Mr. Bogdanov sustained temporary
11 injuries to his back and neck as a result of the collision, but denied that
12 plaintiff sustained knee injuries. RP, Vol. 5, p. 278-280, 323-324.
13
14 Dr. Tesar admitted that portions of plaintiff's treatment for neck and back
15 injuries were necessary and were related to the collision. RP, Vol. V., p.
16 322-324.

17 At the conclusion of the parties' respective cases in chief, the court
18 conferred with counsel in the jury room to review proposed jury
19 instructions. Mr. King offered a "deception" instruction. CP 37,
20 proposed Inst. No. 21. The court refused to give this instruction. RP,
21 Vol. VI, p. 454. The court gave Instruction No. 17, which set forth Mr.
22 King's duty to yield to Mr. Bogdanov after stopping but clarified that both
23 drivers still had a duty of ordinary care to avoid a collision at the
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3 intersection. CP--48 The court also informed the jury that if they found
4 that Mr. Bogdanov saw Mr. King's vehicle stopped or coming to a stop at
5 a stop sign before the collision, that they were instructed that plaintiff had
6 the right to rely upon the assumption that defendant would continue to
7 yield the right of way. CP-48, Instruction 23.

8
9 After the court clarified on the record the instructions that were
10 going to be given, Mr. Bogdanov moved for a directed verdict determining
11 as separate issues that (1) Mr. Bogdanov was not contributorily negligent
12 and (2) that Mr. King was negligent. RP, Vol. VI, p. 437 and p. 444.

13 The court denied these motions and determined that both issues presented
14 questions of fact for the jury. RP, Vol. VI, p. 444 and 448. In doing so,
15 the court stated that the case presented an "unusual circumstance" where
16 the appellate cases did not specify what the parties' duties should be if the
17 favored driver stopped at a crosswalk. RP, Vol. VI, p. 444 and 448-449.

18
19 In Mr. King's closing argument, defense counsel argued that Mr.
20 Bogdanov was not trying to wave Mr. King through the intersection, but
21 must have been making hand motions to the school children on the side of
22 the road to encourage them to cross. RP, Vol. VII, p. 540. Defense
23 counsel further argued that Mr. Bogdanov had "created a situation that
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3 was confusing". RP, Vol. VII, p. 534. He emphasized that Mr. King had
4 only entered the intersection and failed to yield because he was confused by
5 Mr. Bogdanov's actions. RP, Vol. VII, p. 539.

6 Regarding the issue of contributory negligence, defense counsel
7 argued that Mr. Bogdanov was negligent for failure to use reasonable care
8 to observe that the intersection was clear before moving forward.

9
10 RP , Vol. VII, p. 535-537. He argued that if Mr. Bogdanov had simply
11 looked back into the intersection before putting on the gas, he would have
12 seen Mr. King there and the collision would not have occurred. RP, Vol.
13 VII, p. 537. He argued that this failure to observe was the sole proximate
14 cause of the collision. RP, Vol. VII, p. 559.

15
16 At the conclusion of Mr. King's closing argument, defense counsel
17 argued to the jury that plaintiff had proven some temporary injuries to his
18 neck and back were caused by the collision. RP , Vol. VII, p. 557-558.
19 Defense counsel encouraged the jury to include these medical expenses in
20 their verdict, but not other medical expenses relating to Mr. Bogdanov's
21 disputed knee injuries. RP, Vol. VII, p. 558.

22
23 After deliberation, the jury returned a verdict which determined that
24 there was no negligence on the part of defendant that was a proximate
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3 cause of injuries to the plaintiff. CP 49.

4 Plaintiff brought a timely motion for judgment notwithstanding the
5 verdict and/or motion for new trial. CP 50A. The court denied plaintiff's
6 motion. CP 58. Plaintiff's appeal followed this ruling.

7 **C. Summary of Argument**

8
9 A driver in motion on an arterial road that sees another driver at a
10 non-arterial road stop or prepare to stop at an intersecting road has the
11 right to rely upon the disfavored driver continuing to yield, and has no duty
12 to reobserve that driver before passing into the intersection. Mr.
13 Bogdanov was driving on an arterial road. Washington law should not
14 impose a greater duty on Mr. Bogdanov to re-observe a disfavored driver's
15 vehicle or the intersection area, merely because he prudently stopped at a
16 pre-intersection crosswalk versus driving through it. Failure to make such
17 additional observations should not be grounds for a finding of contributory
18 negligence against him.

19
20 The court made an error of law by permitting the defense to argue
21 that plaintiff was contributorily negligent for failing to make such additional
22 observations of Mr. King's vehicle or the intersection before moving
23 forward. Since Mr. King's contributory negligence argument was based
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3 entirely upon this alleged duty of observation, the court also erred in
4 failing to grant a directed verdict on the issue of plaintiff's contributory
5 negligence.

6 Mr. King had the burden of proof regarding contributory
7 negligence. Defense counsel argued that plaintiff was negligent for failing
8 to ensure the intersection was clear before moving, but no evidence was
9 presented to establish where Mr. King's vehicle was at the time plaintiff
10 started moving. There was insufficient evidence to enable a jury to
11 determine that Mr. Bogdanov should have seen the King vehicle before
12 moving forward if he was looking straight ahead through the intersection in
13 the direction of his intended travel. Defendant also offered no evidence to
14 that Mr. Bogdanov could have avoided the collision after actually seeing
15 Mr. King's vehicle and having the benefit of a reasonable reaction time.
16 For the above reasons, the court erred in denying plaintiff's motion for
17 directed verdict regarding the issue of contributory negligence and in
18 submitting that issue to the jury.
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22 Confusion on the part of a disfavored driver at an intersection is
23 only a defense if it amounts to a deception of the disfavored driver. Since
24 the court determined that Mr. Bogdanov's conduct did not amount to a
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3 deception of Mr. King and Mr. King admitted he failed to yield because he
4 was confused, the court erred in failing to grant plaintiff's motion for direct
5 verdict on the issue that defendant was negligent.

6 To the extent that the jury's verdict was based upon their
7 determination that plaintiff was not injured in the collision, that
8 determination is inconsistent with the evidence presented by all the expert
9 witnesses. The jury is bound by unrebutted evidence and must accept it as
10 true.
11

12 The verdict of the jury is inconsistent with the court's instructions
13 and is not supported by the evidence which was submitted in this case. The
14 court erred in failing to recognize that the jury had disregarded its
15 instructions and the evidence, and in failing to grant a new trial on these
16 grounds.
17

18 **D. Argument**

19 **(1) Standard of Review**

20 To the extent the court's failure to grant plaintiff's motions for
21 directed verdict, JNOV or new trial was based upon issues of law, the
22 court reviews these legal conclusions of the trial court de novo, for error of
23 law. *Hawkins v. Marshall*, 92 Wn. App. 38, 48, 962 P. 2d 834, 839
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3 (Div II, 1998). Whether a duty exists on the part of any party and the
4 extent of that duty is a question of law. *Caulfield v. King County*, 108
5 Wn. App. 242, 249, 29 P.3d 738, 742 (Div. II, 2001). It makes no
6 difference to the standard of review whether the motion denied was a
7 motion for summary judgment, a motion for directed verdict or a motion
8 for judgment as a matter of law. *Id.*
9

10 To the extent the court's failure to grant plaintiff's motions for
11 directed verdict, JNOV or new trial was based upon issues of fact, the
12 appellate court applies the same standard as the trial court. The Court of
13 Appeals will uphold the denial so long as any reasonable inference sustains
14 the verdict, and will give the nonmoving party the benefit of all reasonable
15 inferences from the evidence. *Byrne v. Courtesy Ford, Inc.*, 108 Wn. App.
16 683, 691, 32 P. 3rd 307, 312 (Div II, 2001).
17

18 Where the proponent of a new trial argues that the verdict was not
19 based upon the evidence, the appellate court reviews the record to
20 determine whether there was sufficient evidence to support the verdict.
21 *Sommer v. Department of Social and Health Services*, 104 Wn. App. 160,
22 172, 15 P.3d 664, 670 (Div. I, 2001).
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3 Where a party makes appropriate motions for directed verdict on
4 points of law and fact and these motions are denied by the trial court, that
5 party is not required to except to the jury instructions relating to these
6 issues in order to preserve these issues for review on appeal. *Cherberg v.*
7 *Peoples National Bank Of Washington*, 15 Wn. App. 336, 347, 549 P. 2d
8 46, 53 (Div. II, 1976).

9
10 **(2) Review of Verdict and Required Necessary Findings**

11 The verdict of the jury was that there was no negligence on the part
12 of defendant that was a proximate cause of injuries to the plaintiff. CP 49.
13 There are only three (3) possible ways the jury could have arrived at this
14 verdict. These are to have made any of the following determinations:

15 (a) Mr. King was not negligent; or

16 (b) Mr. King was negligent, but the sole proximate cause of injuries
17 to Mr. Bogdanov was his superseding contributory negligence; or

18 (c) Mr. Bogdanov was not injured in the collision.

19 As set forth hereinafter, findings (a) and (b) above presented issues
20 of law which the trial court should have determined in plaintiff's favor.

21 Furthermore, insufficient evidence existed for the jury to make findings (a),
22 (b) or (c) if the jury was following the trial court's instructions.

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3 **(3) Without Deception, Failure To Yield at a Stop Sign**
4 **Constitutes Negligence as a Matter of Law**

5 In this case, Mr. King testified that he only failed to yield to Mr.
6 Bogdanov because Mr. Bogdanov was stopped, and because he thought
7 Mr. Bogdanov waved him through the intersection. The court determined
8 that there was no deception of Mr. King as a matter of law. This raised a
9 further question of law for the trial court, as to whether Mr. King's
10 confusion created an issue of fact for the jury on the issue of his
11 negligence. By submitting the issue of Mr. King's negligence to the jury,
12 the trial court impliedly found that his confusion did create an issue of fact
13 as to whether or not he exercised reasonable care and was or was not
14 negligent.
15

16 The Washington Supreme Court has previously considered and
17 resolved the above issue. It has determined that where no deception
18 exists, the disfavored driver is negligent as a matter of law for failing to
19 yield to the favored driver who was benefitted by a stop sign right of way.
20 See *Gray v. Pistoressi*, 64 Wn. 2d 106, 111, 390 P. 2d 697, 701 (1964)
21 (trial court should have held the disfavored driver negligent as a matter of
22 law for failing to yield after coming to stop at stop sign, where there was
23 no more than a "scintella" of evidence to support a deception argument).
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3 Also supporting this same result in the situation of an uncontrolled
4 intersection is *Zorich v. Billingsley*, 52. Wn. 2d 138, 142-143, 324 P. 2d
5 255, _____ (1958) (trial court properly granted new trial whether jury
6 determined no negligence and court refused to give deception instruction,
7 and could have granted new trial as to damages only).

8
9 Although the above cases were decided some time ago, they remain
10 good law today. There are no appellate cases known to appellant's
11 counsel that indicate that a disfavored driver's confusion (without
12 deception) creates a question of fact for the jury when the disfavored driver
13 fails to yield as required. If mere confusion were a defense to failing to
14 yield at a stop sign, the right of way protected by a stop sign would be lost
15 in a variety of situations merely as a result of the disfavored driver's
16 subjective state of mind. Furthermore, if a disfavored party that fails to
17 yield at a stop sign without any recognized legal excuse can be held by a
18 jury to be not negligent, then having a stop sign right of way provides no
19 legal benefits upon the favored driver. This is inconsistent with
20 Washington public policy, which is that a right of way protected by a stop
21 sign is one of the strongest rights of way that the law allows. *Zahn v.*
22 *Arbelo*, 72 Wn. 2d 636, 637, 424 P. 2d 570, 571 (1967).
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3 For the above reasons, the trial court made an error of law in
4 concluding that Mr. King's negligence was an issue of fact for the jury and
5 in failing to grant plaintiff's motion for a directed verdict on that issue.
6 This error was made a second time when the trial court denied plaintiff's
7 motion for JNOV and/or new trial on the same grounds.
8

9 **(4) Mr. Bogdanov had No Duty to Re-Observe Mr.**
10 **King or to Ensure the Intersection Was Clear After**
11 **Stopping at the Crosswalk**

12 In *Wilson v. Stone*, 71 Wn. 2d 799, 805, 431 P. 2d 209, 212
13 (1967), the Washington Supreme Court noted that the legislative purpose
14 in enacting the stop sign right of way statute, RCW 46.61.190, was to
15 facilitate the movement of traffic on arterial roads. For this reason, the
16 Court held the rule of "relative rights of way" originally adopted in *Martin*
17 *v. Hadenfeldt*, 157 Wash. 563, 289 P. 533 (1930) does not apply to arterial
18 roads and would defeat the legislative purpose if it were to be applied to
19 arterial roads. *Id.*

20 In *Merrick v. Stansbury*, 12 Wn. App. 900, 533 P. 2d 136 (Div III,
21 1975), Division III of the Washington Court of Appeals recognized this
22 rule and clarified the duty of observation of the favored vehicle at a
23 controlled arterial intersection. *Merrick* involved a bicyclist on an arterial
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3 road that was benefitted by a stop sign for cross-traffic at an intersection in
4 front of him. He testified that when approaching the intersection, he saw
5 the defendant's vehicle stopped at a stop sign as required by law.
6 Thereafter, he did not continue to look at defendant's vehicle and when he
7 looked in the direction of that vehicle again, it was directly in front of him.
8 The trial court held that the defendant was negligent but also held that
9 plaintiff was contributorily negligent, because he could have avoided the
10 collision if he had maintained a continuous lookout ahead. *Id.* at 905, 533
11 P. 2d 139.
12

13 Division III rejected the trial court's approach, noting that it placed
14 an "undue burden" on the favored driver. *Id.* Citing to *Zahn v. Arbelo*,
15 *supra*, the Court of Appeals reiterated the rule from *Zahn*, that a favored
16 driver who sees a disfavored driver stopped or stopping at a stop sign has a
17 right to rely upon the disfavored driver continuing to yield. *Id.* The court
18 then set forth its holding as follows:
19

20 Our holding in this case is restricted to the situation where the
21 favored driver on an arterial actually sees the disfavored driver
22 lawfully obeying a stop sign, or as in *Zahn v. Arbelo*, *Supra*, where
23 he sees the disfavored driver proceeding so slowly toward a stop
24 sign that the favored driver has a right to assume that the disfavored
25 driver is about to stop. **In such cases, the favored driver has the
26 right to rely on this assumption until such time as he actually
sees (not 'should have seen') that the disfavored driver is not**

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3 **going to yield the right of way.** At that instant, the favored
4 driver, is, of course, allotted a reasonable reaction time. Accord,
5 *Bellantonio v. Warner*, Supra. Such a standard recognizes the
6 strong right of way accorded the favored driver at a controlled
7 intersection.

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9 *Id.* at 906, 533 P.2d at 139-140 (bold added for emphasis).

10 In this case, the trial court distinguished *Merrick* at the time of
11 plaintiff's motion for partial summary judgment on the issue of contributory
12 negligence. The trial court determined that *Merrick* applied to moving
13 vehicles only and did not apply to a favored driver on an arterial road that
14 stopped at a crosswalk. RP, Vol. I, p. 37. The court advised the parties
15 that it was her conclusion that a favored driver who stopped at a crosswalk
16 had a further duty of reasonable care to make sure the intersection was
17 clear before proceeding forward. RP, Vol. I, p. 40-41. When asked for
18 clarification, the court explained to the parties' counsel that the favored
19 driver "does have a duty to take a second look." RP, Vol. I, p. 46. This
20 same "reasonable care" standard was applied by the court in denying
21 plaintiff's motion for directed verdict on the issue of defendant's
22 negligence, although the court acknowledged that the deception doctrine
23 did not apply to plaintiff's conduct. RP, Vol. I, p. 39-40. The court
24 indicated that it was possible a jury could find that Mr. King acted
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3 reasonably in entering into the intersection because it appeared that Mr.
4 Bogdanov would be stopped for a while. RP, Vol. I, p. 40-41. The court
5 later employed the same legal conclusions in denying Mr. Bogdanov's
6 subsequent motions for directed verdicts, and his post-trial motion for
7 JNOV or new trial. RP, Vol. VI, p. 443-444 and 448-449; CP 58.

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9 For the reasons adopted in *Wilson v. Stone*, supra, and *Zahn v.*
10 *Arbelo*, supra, the court erred in determining that Mr. Bogdanov had a
11 duty of reasonable care to re-observe the intersection area. This is because
12 plaintiff was the favored driver on an arterial road, and RCW 46.61.190
13 clarifies that 'relative rights of way' do not exist at arterial road
14 intersections with nonarterial roads. Mr. Bogdanov did not lose the
15 preferential right of way protection of RCW 46.61.190(2) because he
16 stopped versus continuing in motion. Nothing within RCW 46.61.190 (2)
17 authorizes the imposition of greater duties upon him if he temporarily stops
18 on an arterial road.

19
20 The Washington legislature has also set forth its intent that drivers
21 of motor vehicles must exercise "due care to avoid colliding with any
22 pedestrian on any roadway." RCW 46.61.245. In order to exercise
23 such due care, it is reasonable and necessary for motorists to stop at
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3 crosswalks where the circumstances indicate that pedestrians may be about
4 to enter into a marked crosswalk area. That is what Mr. Bogdanov did in
5 this case. Elementary school children were present on the West side of the
6 intersection and were waiting to cross through the crosswalk area. RP,
7 Vol. VI, p. 393.

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9 This case provides the Court of Appeals with the important
10 opportunity to clarify whether or not a driver on an arterial road who stops
11 at a pre-intersection crosswalk should be treated less favorably than a
12 driver who fails to slow down and drives right through the crosswalk.
13 As a matter of public policy, drivers should be encouraged to be cautious
14 of pedestrians and to stop when dangerous circumstances may be
15 presented. A rule that requires the favored driver to re-observe the
16 disfavored driver and/or the entire intersection area after already observing
17 the intersection was clear and the disfavored driver was slowing or stopped
18 will frustrate that policy. It would have the effect of exposing a responsible
19 favored driver to increased liability for doing the right thing and stopping at
20 crosswalks, in situations where stopping is important to save the lives of
21 pedestrians. This result defeats the intent of RCW 46.61.245, part of
22 which is to encourage motorists to be careful around crosswalks.
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BRIEF OF APPELLANT --25

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3 Plaintiff's position is that the rule from *Merrick* should be applied
4 to the circumstances where the favored driver on an arterial road makes a
5 pre-intersection stop at a crosswalk. Having made such a stop,
6 the favored driver should only be required to exercise ordinary care to
7 avoid a collision after actually seeing the disfavored driver failing to yield
8 the right of way. If the Court of Appeals applies the *Merrick* rule as
9 requested herein, then the trial court erred in denying plaintiff's motion for
10 directed verdict on the issue of contributory negligence and in denying
11 appellant's motion for JNOV and/or new trial on the same legal grounds.
12 This is because Mr. King introduced no evidence indicating that Mr.
13 Bogdanov could have avoided the collision after actually seeing his vehicle.
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16 **(5) There was Insufficient Evidence to Support a**
17 **Finding of Contributory Negligence**

18 Mr. Bogdanov was unable to estimate how far North he drove past
19 the crosswalk into the intersection before the collision occurred. RP, Vol.
20 III, p. 165. He did not state the speed at which he was going at impact.
21 Mr. King could not identify the point where his vehicle was located when
22 he claimed to be in motion through the intersection and stopped looking at
23 Mr. Bogdanov's vehicle. RP, Vol. VI, p. 416. He claimed to have heard
24 Mr. Bogdanov's engine revving up, a couple seconds before the impact.
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3 RP, Vol. VI, p. 417-418. He admitted he was "pretty much guessing"
4 about the amount of time that passed between that point and the point of
5 impact. RP, Vol. VI, p. 418. He was only able to say that he felt the
6 Bogdanov vehicle travelled 10 to 15 feet from its stopped position to the
7 point of impact. RP, Vol. VI, p. 430. Mr. King was not asked about the
8 speed of his vehicle by either party's counsel, and did not state any
9 testimony about the speed of his vehicle.
10

11 Mr. King's counsel called accident reconstructionist Wayne Slagle
12 for the express purpose of showing the jury where Mr. King's vehicle
13 would have been before Mr. Bogdanov's vehicle started moving. Mr.
14 Slagle had taken measurements of the intersection and was prepared to
15 give testimony that Mr. Bogdanov should have seen the King vehicle
16 within his peripheral vision, if he was looking straight ahead. CP 32.
17 This testimony was offered so that the jury would have some basis, other
18 than speculation, for finding that Mr. Bogdanov was contributorily
19 negligent for failing to see the King vehicle in motion before moving into
20 the intersection. However, when the court struck this testimony as
21 nonscientific none of this information was presented to the jury, including
22 any of the geographic dimensions of the intersection.
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3 No testimony was presented by any party regarding Mr.
4 Bogdanov's available reaction time, or what reaction time would have
5 been reasonable at any hypothetical point for Mr. Bogdanov. Presumably,
6 these are matters on which Mr. Slagle may have been going to testify if
7 there had been enough foundation evidence to support his opinions.

8
9 The evidence presented to the jury was not sufficient for the jury to
10 determine that Mr. Bogdanov should have seen the King vehicle in the
11 intersection, if he was looking North in the direction of his intended travel.
12 The evidence was also insufficient to support any finding that once the
13 Bogdanov vehicle was in motion, Mr. Bogdanov could have avoided the
14 collision after a reasonable response time.

15
16 The verdict of the jury must be based upon the evidence and cannot
17 be founded upon speculation or conjecture. *Sommer*, supra, 104 Wn.
18 App. 172, 15 P. 3d 670. To be sufficient, the evidence "must be such as
19 would convince an unprejudiced, thinking mind." *Id.* An inference from
20 evidence is not reasonable where it is based upon speculation.
21 Accordingly, the trial court erred in submitting the issue of contributory
22 negligence to the jury and failing to grant appellant's motion for directed
23 verdict on that issue. The court repeated the same error in denying
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3 appellant's motion for JNOV and/or new trial.

4 **(6) The Verdict was Inconsistent with the Jury**
5 **Instructions**

6 The trial court instructed the jury that if they determined that Mr.
7 Bogdanov saw the King vehicle stopped or coming to a stop at the stop
8 sign, that he had the right to rely upon the assumption that Mr. King would
9 continue to yield the right of way. CP 48, Instruction No. 23. Mr.
10 Bogdanov testified he saw Mr. King stopped or stopping. The evidence on
11 this point was unchallenged.

12
13 Since Mr. Bogdanov was entitled to rely on the assumption that
14 Mr. King would continue to yield the right of way, a finding of
15 contributory negligence against Mr. Bogdanov cannot be founded on the
16 theory that he had a legal duty to look to his left (in the direction of Mr.
17 King) before entering the intersection. Under the court's instructions, he
18 could only be negligent for failing to see and respond to Mr. King's vehicle
19 when looking North through the intersection, in the direction of his
20 intended travel. Otherwise, his "right to rely" on Mr. King continuing to
21 yield would be meaningless.

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23 For the reasons set forth in part (5) of the argument above, any
24 finding of the jury that Mr. Bogdanov was contributorily negligent is not
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2 supported by substantial evidence or reasonable inferences from the
3 evidence. Similarly, any finding of the jury that Mr. King was not
4 negligent was inconsistent with Jury Instruction No. 17, which imposed a
5 primary duty of care to yield and avoid the collision on Mr. King.
6
7 The testimony of Steven King and Joshua King was that Mr. Bogdanov's
8 vehicle was in motion within the intersection prior to the impact, and this
9 fact triggered Mr. King's related duty to yield.
10

11 The opening statement and the closing argument of defense counsel
12 emphasized Mr. King's confusion as his sole excuse for entering into the
13 intersection and failing to yield. RP , Vol. II, p. 106; Vol VII, p. 539.
14 The court's instructions did not instruct the jury that confusion was an
15 excuse for failing to yield. Defense counsel also argued inconsistently with
16 the instructions that Mr. Bogdanov had a duty to make sure the entire
17 intersection was clear before proceeding forward. RP, Vol VII, p. 537.
18 However, as set forth above, this scope of duty would have required
19 looking to the left at Mr. King's vehicle. That is something that Mr.
20 Bogdanov did not have the obligation to do if he had the "right to rely" on
21 Mr. King continuing to yield, as the court had instructed the jury.
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3 The verdict of the jury embraced the above arguments of defense
4 counsel, and was inconsistent with the court's instructions. The trial court
5 erred in failing to recognize that the jury disregarded its instructions and in
6 failing to grant plaintiff's related motion for JNOV and/or new trial.
7

8 **(7) A Finding that Plaintiff was not Injured is**
9 **Inconsistent With the Evidence**

10 To the extent the verdict of the jury was based upon the jury's
11 determination that plaintiff was not injured in the collision, this
12 determination was inconsistent with the testimony of the medical providers
13 for both parties. This determination is also inconsistent with the closing
14 argument of Mr. King's counsel, which expressly admitted that Mr.
15 Bogdanov had proven that some injuries and some medical expenses were
16 related to the collision. The jury was bound by this un rebutted evidence to
17 find that plaintiff did suffer injuries in the collision. *Ide v. Stoltenow*, 47
18 Wn. 2d 847, 850-851, 289 P2d 1007, ___ (1955).
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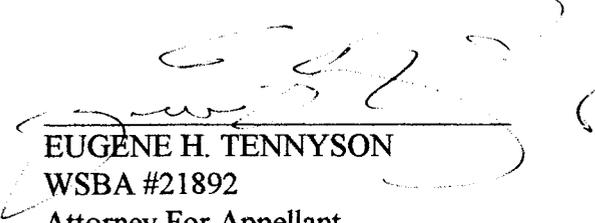
21 **E. Conclusion**

22 Appellant Alexander Bogdanov requests that the Court of Appeals
23 reverse the trial court's rulings which denied his motions for directed
24 verdict as to the issues of negligence of Mr. King and contributory
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negligence, and determine each of these motions in his favor. Appellant requests that this case then be remanded back to the trial court for new trial on the sole issue of damages.

RESPECTFULLY SUBMITTED this 16th day of July, 2006.


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APPENDICES

RCW 46.61.190	A-1
RCW 46.61.245	A-2

APPENDIX

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.

(2) The right of way rule declared in subsection (1) of this section is modified at arterial highways and otherwise as stated in this chapter. [1975 c 62 § 26; 1965 ex.s. c 155 § 28.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.183 Nonfunctioning signal lights. Except when directed to proceed by a flagger, police officer, or fire fighter, the driver of a vehicle approaching an intersection controlled by a traffic control signal that is temporarily without power on all approaches or is not displaying any green, red, or yellow indication to the approach the vehicle is on, shall consider the intersection to be an all-way stop. After stopping, the driver shall yield the right of way in accordance with RCW 46.61.180(1) and 46.61.185. [1999 c 200 § 1.]

46.61.185 Vehicle turning left. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. [1965 ex.s. c 155 § 29.]

46.61.190 Vehicle entering stop or yield intersection.

(1) Preferential right of way may be indicated by stop signs or yield signs as authorized in RCW 47.36.110.

(2) Except when directed to proceed by a duly authorized flagger, or a police officer, or a fire fighter vested by law with authority to direct, control, or regulate traffic, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and after having stopped shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

(3) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and then after slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways: PROVIDED, That if such a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, such collision shall be deemed prima

facie evidence of the driver's failure to yield right of way. [2000 c 239 § 5; 1975 c 62 § 27; 1965 ex.s. c 155 § 30.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Captions not law—2000 c 239: See note following RCW 49.17.350.

Severability—1975 c 62: See note following RCW 36.75.010.

Stop signs, "Yield" signs—Duties of persons using highway: RCW 47.36.110.

46.61.195 Arterial highways designated—Stopping on entering. All state highways are hereby declared to be arterial highways as respects all other public highways or private ways, except that the state department of transportation has the authority to designate any county road or city street as an arterial having preference over the traffic on the state highway if traffic conditions will be improved by such action.

Those city streets designated by the state department of transportation as forming a part of the routes of state highways through incorporated cities and towns are declared to be arterial highways as respects all other city streets or private ways.

The governing authorities of incorporated cities and towns may designate any street as an arterial having preference over the traffic on a state highway if the change is first approved in writing by the state department of transportation. The local authorities making such a change in arterial designation shall do so by proper ordinance or resolution and shall erect or cause to be erected and maintained standard stop signs, or "Yield" signs, to accomplish this change in arterial designation.

The operator of any vehicle entering upon any arterial highway from any other public highway or private way shall come to a complete stop before entering the arterial highway when stop signs are erected as provided by law. [1984 c 7 § 66; 1963 ex.s. c 3 § 48; 1961 c 12 § 46.60.330. Prior: 1955 c 146 § 5; 1947 c 200 § 14; 1937 c 189 § 105; Rem. Supp. 1947 § 6360-105. Formerly RCW 46.60.330.]

Severability—1984 c 7: See note following RCW 47.01.141.

City streets subject to increased speed, designation as arterials: RCW 46.61.435.

Stop signs, "Yield" signs—Duties of persons using highway: RCW 47.36.110.

46.61.200 Stop intersections other than arterial may be designated. In addition to the points of intersection of any public highway with any arterial public highway that is constituted by law or by any proper authorities of this state or any city or town of this state, the state department of transportation with respect to state highways, and the proper authorities with respect to any other public highways, have the power to determine and designate any particular intersection, or any particular highways, roads, or streets or portions thereof, at any intersection with which vehicles shall be required to stop before entering such intersection. Upon the determination and designation of such points at which vehicles will be required to come to a stop before entering the intersection, the proper authorities so determining and designating shall cause to be posted and maintained proper signs of the standard design adopted by the state department of transportation indicating that the intersection has been so determined and designated and that vehicles entering it are required to stop. It is unlawful for any person operating any vehicle when enter-

ans shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

(6) No pedestrian shall cross a roadway at an unmarked crosswalk where an official sign prohibits such crossing. [1990 c 241 § 5; 1965 ex.s. c 155 § 35.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.245 Drivers to exercise care. Notwithstanding the foregoing provisions of this chapter every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway. [1965 ex.s. c 155 § 36.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Blind pedestrians: Chapter 70.84 RCW.

46.61.250 Pedestrians on roadways. (1) Where sidewalks are provided it is unlawful for any pedestrian to walk or otherwise move along and upon an adjacent roadway. Where sidewalks are provided but wheelchair access is not available, disabled persons who require such access may walk or otherwise move along and upon an adjacent roadway until they reach an access point in the sidewalk.

(2) Where sidewalks are not provided any pedestrian walking or otherwise moving along and upon a highway shall, when practicable, walk or move only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction and upon meeting an oncoming vehicle shall move clear of the roadway. [1990 c 241 § 6; 1965 ex.s. c 155 § 37.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.255 Pedestrians soliciting rides or business. (1) No person shall stand in or on a public roadway or alongside thereof at any place where a motor vehicle cannot safely stop off the main traveled portion thereof for the purpose of soliciting a ride for himself or for another from the occupant of any vehicle.

(2) It shall be unlawful for any person to solicit a ride for himself or another from within the right of way of any limited access facility except in such areas where permission to do so is given and posted by the highway authority of the state, county, city or town having jurisdiction over the highway.

(3) The provisions of subsections (1) and (2) above shall not be construed to prevent a person upon a public highway from soliciting, or a driver of a vehicle from giving a ride where an emergency actually exists, nor to prevent a person from signaling or requesting transportation from a passenger carrier for the purpose of becoming a passenger thereon for hire.

(4) No person shall stand in a roadway for the purpose of soliciting employment or business from the occupant of any vehicle.

(5) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

[Title 46 RCW—page 214]

(6)(a) Except as provided in (b) of this subsection, the state preempts the field of the regulation of hitchhiking in any form, and no county, city, or town shall take any action in conflict with the provisions of this section.

(b) A county, city, or town may regulate or prohibit hitchhiking in an area in which it has determined that prostitution is occurring and that regulating or prohibiting hitchhiking will help to reduce prostitution in the area. [1989 c 288 § 1; 1972 ex.s. c 38 § 1; 1965 ex.s. c 155 § 38.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.260 Driving through safety zone prohibited. No vehicle shall at any time be driven through or within a safety zone. [1965 ex.s. c 155 § 39.]

46.61.261 Sidewalks, crosswalks—Pedestrians, bicycles. The driver of a vehicle shall yield the right of way to any pedestrian or bicycle on a sidewalk. The rider of a bicycle shall yield the right of way to a pedestrian on a sidewalk or crosswalk. [2000 c 85 § 2; 1975 c 62 § 41.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.264 Pedestrians yield to emergency vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of RCW 46.37.380 subsection (4) and visual signals meeting the requirements of RCW 46.37.190, or of a police vehicle meeting the requirements of RCW 46.61.035 subsection (3), every pedestrian shall yield the right of way to the authorized emergency vehicle.

(2) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian. [1975 c 62 § 42.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.266 Pedestrians under the influence of alcohol or drugs. A law enforcement officer may offer to transport a pedestrian who appears to be under the influence of alcohol or any drug and who is walking or moving along or within the right of way of a public roadway, unless the pedestrian is to be taken into protective custody under RCW 70.96A.120.

The law enforcement officer offering to transport an intoxicated pedestrian under this section shall:

(1) Transport the intoxicated pedestrian to a safe place; or

(2) Release the intoxicated pedestrian to a competent person.

The law enforcement officer shall take no action if the pedestrian refuses this assistance. No suit or action may be commenced or prosecuted against the law enforcement officer, law enforcement agency, the state of Washington, or any political subdivision of the state for any act resulting from the refusal of the pedestrian to accept this assistance. [1990 c 241 § 7; 1987 c 11 § 1; 1975 c 62 § 43.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

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DIVISION II

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STATE OF WASHINGTON

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**NO. 34549-8-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

ALEKSANDR BOGDANOV,

Appellant,

v.

STEVEN KING and JANE DOE KING,

Respondents.

AFFIDAVIT OF SERVICE

Submitted By:

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