

No. 96217-1

NO. 49995-9-II

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

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STATE OF WASHINGTON, Respondent

v.

DEAN MASAO IMOKAWA, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-01561-3

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BRIEF OF RESPONDENT

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**TABLE OF CONTENTS**

RESPONSE TO ASSIGNMENTS OF ERROR..... 1

- I. The jury instructions correctly stated the law. By proving proximate cause beyond a reasonable doubt, the State necessarily disproved any superseding cause. Imokawa’s right to due process of law was not violated because the burden to prove causation was placed upon the State. .... 1
- II. The record contains sufficient evidence to support the jury’s finding that Imokawa acted with disregard for the safety of others. .... 1

STATEMENT OF THE CASE..... 1

ARGUMENT..... 13

- I. The jury instructions correctly stated the law. By proving proximate cause beyond a reasonable doubt, the State necessarily disproved any superseding cause. Imokawa’s right to due process of law was not violated because the burden to prove causation was placed upon the State. .... 13
- II. The record contains sufficient evidence to support the jury’s finding that Imokawa acted with disregard for the safety of others. .... 20

CONCLUSION..... 24

## TABLE OF AUTHORITIES

### Cases

<i>In re Winship</i> , 397 U.S. 358, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970) .....	20
<i>State v. Acosta</i> , 101 Wn.2d 612, 683 P.2d 1069 (1984) .....	19
<i>State v. Barnes</i> , 153 Wn.2d 378, 103 P.3d 1219 (2005).....	14
<i>State v. Brooks</i> , 73 Wn.2d 653, 440 P.2d 199 (1968).....	22
<i>State v. Colquitt</i> , 133 Wn. App. 789, 137 P.3d 893 (2006) .....	20
<i>State v. Delmarter</i> , 94 Wn.2d 634, 618 P.2d 99 (1980) .....	21
<i>State v. Eike</i> , 72 Wn.2d 760, 435 P.2d 680 (1967).....	21, 22
<i>State v. Escobar</i> , 30 Wn. App. 131, 633 P.2d 100 (1981).....	22
<i>State v. Goodman</i> , 150 Wn.2d 774, 83 P.2d 410 (2004) .....	21
<i>State v. Jackman</i> , 156 Wn.2d 736, 132 P.3d 136 (2006).....	13
<i>State v. Lopez</i> , 93 Wn. App. 619, 970 P.2d 765 (1999).....	22
<i>State v. McNeal</i> , 98 Wn. App. 585, 991 P.2d 649 (1999), <i>aff'd</i> , 145 Wn.2d 352, 37 P.3d 280 (2002).....	22
<i>State v. Meekins</i> , 125 Wn. App. 390, 105 P.3d 420 (2005).....	19
<i>State v. Morgan</i> , 123 Wn. App. 810, 99 P.3d 411 (2004) .....	14, 15, 17
<i>State v. Roggenkamp</i> , 115 Wn. App. 927, 64 P.3d 92 (2003), <i>aff'd</i> , 153 Wn.2d 614 (2005) .....	14, 16, 17, 18
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992) .....	21
<i>State v. Souther</i> , 100 Wn. App. 701, 998 P.2d 350 (2000).....	19
<i>State v. Stevens</i> , 158 Wn.2d 304, 143 P.3d 817 (2006).....	13
<i>State v. Vreen</i> , 99 Wn. App. 662, 994 P.2d 905 (2000).....	21
<i>State v. W.R.</i> , 181 Wn.2d 757, 336 P.3d 757 (2014) .....	18

### Statutes

RCW 46.61.520 .....	14
RCW 46.61.522 .....	14

### Other Authorities

WPIC 90.05.....	21
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### Constitutional Provisions

U.S. Const. amend. XIV, § 1 .....	20
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## RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The jury instructions correctly stated the law. By proving proximate cause beyond a reasonable doubt, the State necessarily disproved any superseding cause. Imokawa's right to due process of law was not violated because the burden to prove causation was placed upon the State.**
- II. **The record contains sufficient evidence to support the jury's finding that Imokawa acted with disregard for the safety of others.**

## STATEMENT OF THE CASE

On August 18, 2015 the State charged Dean Masao Imokawa with Count 1 – Vehicular Homicide alleging recklessness or disregard for the safety of others, Count 2 – Vehicular Assault alleging recklessness or disregard for the safety of others, and Count 3 – Reckless Driving for his actions on April 2, 2015. CP 1 – 2.

Imokawa went to trial on the charges on January 9, 2017. RP 74. The State presented testimony from 14 witnesses. RP 180 – 631.

Testimony established that on April 2, 2015 Imokawa was driving north in a GMC pickup truck on State Route 503 in Clark County, Washington. RP 191, 312. Nicholas Grier was going the speed limit and travelling north in a Land Rover in the left lane when he first noticed the pickup truck driven by Imokawa around the intersection of SR 503 and

NE 119th. RP 356 – 57, 362 – 63. Imokawa approached within feet of Mr. Grier's rear bumper and flashed his headlights because he wanted Mr. Grier to move to the right so that he could pass . RP 357 – 58, 675 - 76. Mr. Grier tapped his brakes and put his hand up as they were slowing down for the next stoplight. RP 358 – 59, 385 – 86. At this point, there were other vehicles in front of Mr. Grier and there was a vehicle next to him in the right lane. RP 359, 361, 676 – 77. As they continued through the intersection, Imokawa backed off but then came back up behind Mr. Grier and changed into the right lane of travel. RP 360, 681 – 82. Travelling down a hill toward Salmon Creek Bridge, Imokawa accelerated by Mr. Grier in the right lane going approximately 70 miles per hour, turned on his left turn signal, and started to merge into the left lane when his rear tires were still only equal to Mr. Grier's front tires. RP 361 – 62, 364 – 65 – 392 – 93, 682 – 83. Mr. Grier was not trying to prevent Imokawa from passing him and did not speed up, but there was not sufficient space for Imokawa to squeeze in between Mr. Grier and the vehicle in front of him. RP. 362 – 64, 368 – 69. Imokawa's vehicle struck Mr. Grier's vehicle, skidded sideways, and then lost control heading left into the southbound lanes of travel. RP 361 – 62, 364 – 65 – 392 – 93. A southbound car struck Imokawa's truck and both vehicles were carried into the guardrail. RP 366 – 68.

Mr. Grier held onto his steering wheel and hit his breaks. RP 361 – 62, 364 – 65 – 392 – 93. After he slowed down, he went to help the passenger of the southbound car and wait for an ambulance to arrive. RP 366 - 67. The airbags of the southbound car had gone off, the passenger was in a lot of pain, and there was blood everywhere. *Id.*

Just before the collision on April 2nd, Linda Dallum was driving the speed limit in her Kia SUV southbound on SR 503. RP 465, 467, 479 - 70. Her mom, Eleanor Tapani, was riding with her in the front passenger seat. RP 466. As they were approaching the Salmon Creek Bridge, she noticed something happening in the northbound lanes. RP 467 – 68, 471. At that point, the truck driven by Imokawa came sideways into her lane facing west. RP 471 – 72, 482. Ms. Dallum hit her brakes and tried to steer away, but had no time to avoid the crash. RP 474. Imokawa's truck then collided with Ms. Dallum's SUV. RP 474. She spent the next four days in the hospital and suffered numerous injuries due to the collision caused by Imokawa. RP 446 – 48. Ms. Tapani was also significantly injured in the collision; she passed away as a result of those injuries. RP 442.

Several witnesses provided their accounts of the collision at trial. Just prior to the collision, Debbie Mera was driving north on SR 503 headed toward Salmon Creek Bridge when she saw a plume of black

smoke just ahead as if a car was spinning its tires. RP 281. She had been travelling about 55 miles per hour, the speed limit, but expecting a collision she pulled over to call 911. RP 281, 283 – 84. Ms. Mera then saw that a collision had happened. RP 281. When it was safe, she made her way over to the scene to see if anyone needed help and waited for police to arrive. RP 284, 287. She noticed that the truck had put a large dent into the guardrail, that another car had been really damaged and was sitting just north of the truck facing west, and that there was a third vehicle involved with less damage. RP 285 – 86.

A few minutes prior to the collision, John Gain was heading north on SR 503 in the left lane. RP 294. After the light for 199th St. turned green, Mr. Gain noticed a truck behind him that went into the right lane to pass because he was driving under the speed limit. RP 295. He pulled into the right lane and continued north. *Id.* From about three to four hundred feet behind, he noticed a Land Rover that was closely followed by the truck driven by Imokawa proceed through the next intersection, about two and a half miles from the last intersection, in the left lane; the truck continued to follow the Land Rover closer than normal.. RP 297, 299 – 300, 302 – 04, 306. As the truck pulled into the right lane, Mr. Gain noticed that it pulled behind the car in the right lane at a high rate of speed. RP 304, 318 – 19. It appeared that the truck was trying to pass the

Land Rover and Mr. Gain thought that it wasn't going to make it because the space between the vehicles was too tight. RP 302, 305, 319 – 21. As the truck started to merge into the left lane it nicked the front of the Land Rover, which caused the truck to slide sideways across the road, hit the guardrail on the outside of the southbound lanes, and be struck by a car in oncoming traffic. RP 305. Mr. Gain did not think that the Land Rover had increased its speed to prevent the truck from passing. RP 307. Mr. Gain pulled to the shoulder across from the collision, called 911, and waited five to ten minutes until he heard sirens begin to arrive before leaving the scene. RP 308 – 10.

Steven Wicklander was also a witness to the collision. RP 331 – 32, 339. He was pulling a fifth-wheel trailer as he travelled north on SR 503. RP 325 – 26. After the stoplight at 119th St., he pulled into the left lane and set his cruise control at 60 miles per hour. RP 326 – 28. He was the leader of a group of cars with a Land Rover about three to four car lengths behind him in the left lane, and another car about a car length behind him in the right lane. RP 328 – 30, 338. As he was crossing Salmon Creek Bridge, he noticed a truck coming up in the left lane that was going faster than the group of cars and then saw it change lanes into the right lane. RP 329 – 31. Mr. Wicklander looked somewhere else; when he looked back into his rearview mirror he saw the truck sideways in front

of the Land Rover, which was in the left lane, and heading into the southbound lanes. RP 331 – 32, 339. He then he heard a bang. RP 332. He immediately stopped, turned around, called 911, and waited for the police to respond. RP 332, 335. Before the collision, Mr. Wicklander did not see the Land Rover speed up. RP 333, 339.

Richelle Streitt was driving south on SR 503 when she noticed two vehicles in the northbound lane collide. RP 344 – 46. One of the vehicles, a truck, was out of control, went into the southbound lanes, and collided with the vehicle in front of Ms. Streitt. RP 346 – 47. Ms. Streitt immediately pulled over and went to help the passengers of the southbound vehicle, a mother and daughter. RP 348 – 49. She could see that the mother and daughter were hurt. RP 350. Ambulances arrived about ten minutes later. RP 349 – 50.

Washington State Patrol Trooper Bobby Clark arrived on scene at approximately 9:36 am. RP 181 – 82, 191. When he arrived, he saw Imokawa's truck and Ms. Dallum's Kia facing perpendicular to the guardrail on the west side of the road. RP 182, 184, 188. Both vehicles had extensive damage and it appeared that Ms. Dallum's vehicle had hit Imokawa's truck on the passenger side of the truck. RP 183 – 84. Trooper Clark identified the driver of the truck by a state-issued driver's license as

Imokawa. RP 185 – 86. He then identified the driver of the Kia, Ms. Dallum, her passenger, Ms. Tapani, and the driver of the Land Rover, Mr. Grier. RP 185 – 87. Due to the nature of Ms. Dallum's and Ms. Tapani's injuries, he called his supervisor to have detectives with the Criminal Investigation Division respond. RP 191 – 92.

Washington State Patrol Trooper Jeffrey Heath arrived on scene before 10:00 am that morning. RP 199 – 200. He identified all the vehicles involved and then contacted Imokawa. RP 200, 202. Imokawa confirmed that he was the driver of the GMC truck. RP 202 – 03. He then stated that he wasn't sure what had happened – that all he knew was that he was passing a black Land Rover, lost control, collided into a guardrail on the southbound shoulder, and was struck by another vehicle travelling south. RP 203. Along with Washington State Patrol Trooper Nick Jennings, Trooper Heath determined that Imokawa was not impaired by drugs or alcohol. RP 205. Later that day, Imokawa told Detective Justin Maier at the hospital that he attempted to change lanes and that the driver of the Land Rover sped up to cut him off. RP 524.

Washington State Patrol Trooper Matthew Hughes arrived on scene around 9:27 am on April 2nd. RP 215 – 16. After determining that the involved vehicles were a GMC truck, a Kia SUV, and a Land Rover,

he began to document the scene by looking for any roadway evidence so that he could reconstruct the collision. RP 217. Through Trooper Hughes, the State presented multiple photographs of the scene. RP 219 – 45. His documentation included tire friction marks that began within the left northbound lane then arched northwest toward the yellow centerline of the road. RP 220 – 21, 256. The trooper identified these as yaw marks created by the truck and noted that they indicated the rotation of the vehicle as it approached the center median of the road. RP 221 – 23, 242, 252. He also noted that the truck had a high impact with the guardrail and that it was moved sideways before coming to its final resting position. RP 223.

Other marks on the road included marks created by the Kia braking and the Kia's rotation into the guardrail after colliding with the truck. RP. 242 – 45. Trooper Hughes found no marks associated with braking by the Land Rover but indicated that heavy braking does not always leave tire marks. RP 254, 263 – 64.

Trooper Hughes then documented the damage to each of the vehicles involved. RP 224. Photographs included images of the damage to the truck associated with its collisions with the guardrail and the Kia SUV. RP 224, 229 – 31. Based on the damage profile, he determined that the truck contacted the Land Rover with its left rear quarter panel. RP 225 –

227. Specifically, he noted contact damage consistent with two objects sliding together that matched the color of the Land Rover and an intact headlight and headlight housing stuck in the wheel well of the truck that had come from the Land Rover. RP 225 – 27, 272 – 74. Trooper Hughes was able to determine that the angle of impact between the truck and the Land Rover was side-swept, but that it would be difficult to calculate the exact angle. RP 227.

Evidence analyzed by Detective Jennifer Ortiz from the truck's event data recorder indicated that airbags were deployed when Imokawa struck the guardrail. RP 606, 611. Less than a second later, the truck was struck in the passenger side by Ms. Dallum's Kia. RP 611. The event recorder also indicated that five seconds before the airbags deployed, Imokawa was travelling at 68 miles per hour with his brakes depressed. RP 615 – 17, 627. There was no captured recording from the collision with Mr. Grier's Land Rover because the dynamics of that contact were not significant enough to cause the Land Rover's event data recorder to record the event. RP 626.

The damage on the Land Rover was consistent with what was found on the truck. RP 232 – 35. There was apparent contact damage on

the right front of the Land Rover and it was missing one of its headlight assemblies. *Id.*

Damage to the Kia indicated that its primary impact was with the truck and not the guardrail. RP 235 – 39.

Using all of this information, Detective Dave Ortner forensically mapped the scene with a Total Station and created a scale diagram of the collision. RP 487 – 89. Relying on this information as well as the vehicle damage evidence, data from the truck’s event recorder, and witness statements, Detective Maier determined that it was Imokawa’s truck that struck Mr. Grier’s vehicle as it was changing lanes. RP 555 – 56, 563, 565. Detective Maier testified that there was no evidence that Mr. Grier’s vehicle ran into Imokawa’s truck. RP 562.

Imokawa testified in his defense. He stated that he wanted to get around Mr. Grier’s Land Rover because he felt that Mr. Grier tapping his brakes was dangerous driving. RP 659, 678 – 79. He testified that he had enough space to pass the vehicle and merge into the left lane safely, but that Mr. Grier sped up and hit him. RP 661 – 63, 685 – 86, 694. He stated that he didn’t remember speaking with Trooper Heath at the scene but told Detective Maier about the collision at the hospital. RP 664, 687, 690. He

also stated that he learned about Ms. Dallum's and Ms. Tapani's injuries when he was at the hospital. RP 665, 688 – 89.

After the close of evidence, Imokawa requested a jury instruction that added language to the standard WPIC 90.08 stating that the State had the burden to prove that Mr. Grier was not a superseding cause of Ms. Dallum's injuries or Ms. Tapani's death. CP 28 – 29, RP 703, 705, 716 - 19. Imokawa also requested that an element be added to the "to convict" instructions for the crimes of Vehicular Homicide and Vehicular Assault stating that Mr. Grier was not a superseding cause. CP 30 – 31, 33 – 34, RP 704 – 05, 716 - 19. The trial court declined to include these additions ruling that, read as a whole, the "to convict" instructions and the definition of proximate cause are a correct statement of the law. RP 722 – 24. The court also noted that giving these instructions would not preclude Imokawa from arguing his theory of the case. RP 724.

The court instructed the jury using the standard WPIC instructions for the definitions of proximate cause and the "to convict" instructions. CP 56 – 58, 61 – 63. Both "to convict" instructions 11 and 16 indicate that the State had to prove beyond a reasonable doubt that Imokawa was the proximate cause of the injuries or death. CP 58, 63. The pertinent section of the definitions of proximate cause in instructions 9 and 14 stated

The term “proximate cause” means a cause which, in a direct sequence, unbroken by any new independent cause, produces the [death/substantial bodily harm], and without which the [death/substantial bodily harm] would not have happened.<sup>1</sup>

CP 56, 61. Adding to that definition, the pertinent section of instructions 10 and 15 stated

However, if a proximate cause of the death was a new independent intervening act of the [deceased/injured person] or another which the defendant, in the exercise of ordinary care, should not reasonably have anticipated as likely to happen, the defendant’s act is superseded by the intervening cause and is not a proximate cause of the death. An intervening cause is an action that actively operates to produce harm to another after the defendant’s act has been committed.

CP 57, 62.

During the trial, Imokawa moved to dismiss twice, arguing that there was insufficient evidence of reckless driving or disregard for the safety of others, once after the close of the State’s case and once after the close of evidence. RP 651 – 52, 744 – 45. Both motions were denied. *Id.*

On January 19, 2017, the jury found Imokawa guilty of Vehicular Homicide with disregard for the safety of others and Vehicular Assault with disregard for the safety of others. CP 74 – 77, RP 847 – 48. He was

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<sup>1</sup> To be brief, the definitions of proximate cause for both Vehicular Homicide and Vehicular Assault have been combined.

found not guilty of Reckless Driving. CP 78, RP 848. Imokawa subsequently filed a notice of appeal on February 9, 2017. CP 111.

#### ARGUMENT

- I. **The jury instructions correctly stated the law. By proving proximate cause beyond a reasonable doubt, the State necessarily disproved any superseding cause. Imokawa's right to due process of law was not violated because the burden to prove causation was placed upon the State.**

Imokawa argues that the jury instructions presented at trial did not correctly explain the State's burden of proof because the "to convict" instruction did not include an added element that Mr. Grier's actions did not supersede Imokawa's. He argues that because of these instructions, counsel was unable to argue that the State had to disprove the superseding cause. Imokawa's claim fails because proving proximate cause necessarily disproves any superseding cause. Thus, the instructions presented to the jury were a clear and correct statement of the law. This Court should affirm Imokawa's convictions.

Whether jury instructions properly state the controlling law is a question of law that this Court reviews de novo. *State v. Stevens*, 158 Wn.2d 304, 308, 143 P.3d 817 (2006). A challenged instruction is reviewed within the context of the instructions as a whole. *State v. Jackman*, 156 Wn.2d 736, 743, 132 P.3d 136 (2006). Instructions are

adequate if they allow a party to argue his theory of the case, do not mislead the jury, and do not misstate the law. *State v. Barnes*, 153 Wn.2d 378, 382, 103 P.3d 1219 (2005). Proper jury instructions are necessary for a fair trial. *State v. Morgan*, 123 Wn. App. 810, 814, 99 P.3d 411 (2004).

Revised Code of Washington (RCW) 46.61.520 requires that an individual's death be the "proximate result of injury proximately caused by the driving" of the defendant.<sup>2</sup> Washington courts have already considered the issue of how to properly instruct jurors on superseding causes in vehicular homicide and vehicular assault cases. These Courts have already expressly denied the arguments being presented by Imokawa here. *State v. Morgan* and *State v. Roggenkamp* state that by proving proximate cause beyond a reasonable doubt the State necessarily disproves any superseding or new independent cause. *Morgan*, 123 Wn. App. at 817 – 18; *State v. Roggenkamp*, 115 Wn. App. 927, 948, 64 P.3d 92 (2003), *aff'd*, 153 Wn.2d 614 (2005) (stating that "[a]ssuming the burden of proving the absence of a superseding cause is on the State, the State met that burden by proving that Roggenkamp's actions were a proximate cause of the injuries and death."). In essence, these Courts have concluded that the burden of proving the absence of a superseding cause is no different

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<sup>2</sup> The vehicular homicide statute, RCW 46.61.520, specifically uses this language when discussing causation. The statute penalizing vehicular assault, RCW 46.61.522, simply uses the phrase "causes substantial bodily harm." In this case, the jury instructions for both charges required proof that Imokawa's driving was the "proximate cause."

than the State's burden of proving that the defendant's actions were the proximate cause.

In *Morgan*, the defendant drove his truck after drinking some wine while skiing. *Morgan*, 123 Wn. App. at 812. His truck crossed into oncoming lanes and struck a car killing its driver. *Id.* *Morgan*'s blood alcohol level was measured at 0.13 grams of ethanol per 100 milliliters of blood. *Id.* at 812 – 13. *Morgan* testified at trial that he had been temporarily blinded by sunlight. *Id.* at 813. He was convicted of vehicular homicide. *Id.* On appeal, to support his contention that jury instructions should have listed his intoxication instead of his driving as the proximate cause of death, *Morgan* argued that a superseding, intervening event could be a defense. *Id.* at 817. After ruling that a superseding event does not change the fact that an individual's driving must be the proximate cause, Division 1 of the Court of Appeals noted that the given instructions surrounding a superseding, intervening event were proper because the jury was instructed that such an event would disprove the causation requirement. *Id.* The Court specifically highlighted the fact that these instructions indicated that the defendant was not the proximate cause if death was caused by a superseding, intervening event and that proximate cause was not met if a "new independent cause" breaks the sequence between the act and the death. *Id.* at 817 – 18. Regarding these

instructions, the Court stated “if the jury had found sufficient evidence to prove that blinding sunlight caused the accident, it could not have convicted Morgan because the State would not have proven the proximate cause element of the crime.” *Id.* at 818.

In *Roggenkamp*, the defendant was driving down a two-lane road at 70 miles per hour in a 35 mile per hour zone when he moved into the left lane to pass his friend driving in front of him. *Roggenkamp*, 115 Wn. App. at 933. Another car driven by JoAnn Carpenter turned left onto the same road. *Id.* *Roggenkamp* was unable to stop in time and crashed into Carpenter’s car. *Id.* The collision killed a passenger in Carpenter’s car, and seriously injured Carpenter and another passenger. *Id.* It was later determined that Carpenter had a blood alcohol concentration of 0.13 at the time of the crash. *Id.* at 934. On appeal, *Roggenkamp* argued that the defense of superseding cause negated the element of proximate cause and that the trial court erred by not requiring the State to disprove the superseding cause beyond a reasonable doubt. *Id.* at 947. In response, the State argued that it “assumed the burden of proving beyond a reasonable doubt all the elements of vehicular homicide and vehicular assault” thus necessarily disproving a superseding cause when it proved that *Roggenkamp*’s actions were the proximate cause of the injuries and death. *Id.* at 948. Division 1 of the Court of Appeals expressly agreed with the

State holding that “[a]ssuming the burden of proving the absence of a superseding cause is on the State, the State met that burden by proving that Roggenkamp’s actions were a proximate cause of the injuries and death.”

*Id.*

The issue here is substantially similar to the issues already considered and decided by the *Morgan* and *Roggenkamp* Courts. Just like the instructions in *Morgan*, the instructions presented at trial in this case made it clear that Imokawa was not the proximate cause if there was a superseding, intervening event. Specifically, instructions 9 and 14 stated in part

The term ‘proximate cause’ means a cause which, *in a direct sequence, unbroken by any new independent cause*, produces the death, and without which the death would not have happened.

CP 56, 61 (emphasis added). Similarly, instructions 10 and 15 stated in part

However, *if a proximate cause of the death was a new independent intervening act of the deceased/injured person or another* which the defendant, in the exercise of ordinary care, would not reasonably have anticipated as likely to happen, *the defendant’s act is superseded by the intervening cause and is not a proximate cause of the death.*”

CP 57, 62 (emphasis added). The language in these instructions essentially mirror the language approved by the *Morgan* Court. As in *Morgan*, these instructions correctly state that a superseding event would disprove the

element of causation. Likewise, because the State assumed the burden of proving that Imokawa's driving was the proximate cause of death and injury in the second elements of the "to convict" instructions 11 and 16, it met its burden to disprove a superseding cause beyond a reasonable doubt as stated by the Court in *Roggenkamp*. Additionally, because of the relationship between proximate and superseding cause, these instructions would allow Imokawa to argue his theory of the case in closing argument that the State would have to disprove that Mr. Grier was a superseding cause in order for the jury to determine that Imokawa was the proximate cause of the injuries and death.

In his brief, Imokawa cites case law pertaining to the issues of self-defense and consent for the crimes of murder and rape. Specifically, Imokawa cites to *State v. W.R.* and *State v. Acosta* to support his claim. However, these cases are not relevant on the issue of what the essential elements of vehicular homicide and vehicular assault are. They are especially unpersuasive considering the above Courts' express rulings regarding proximate cause. *State v. W.R.* held that consent necessarily negates forcible compulsion in a charge of rape in the second degree and that therefore the burden to prove consent cannot be shifted to the defendant. *State v. W.R.*, 181 Wn.2d 757, 336 P.3d 757 (2014). The Court in *State v. Acosta* determined that failure to inform a jury of the State's

burden to disprove self-defense where the jury instructions were unclear was error. *State v. Acosta*, 101 Wn.2d 612, 623, 683 P.2d 1069 (1984).

Considering these cases discuss different crimes with different elements they are not relevant to the issue presented here. Regardless, in this case the jury instructions clearly placed the burden of proving proximate cause on the State, and thus necessarily placed the burden of disproving superseding cause on the State as well. Because no burden was shifted to Imokawa, his due process rights were not violated.

Similarly Imokawa's reliance on *State v. Souther* and *State v. Meekins* is misplaced. In discussing proximate cause instructions to a charge of vehicular homicide, the Court in *Souther* declined to decide whether the jury instructions were given in error determining that any additional factors in the collision were *concurring* rather than *intervening* causes. *State v. Souther*, 100 Wn. App. 701, 709 – 10, 998 P.2d 350 (2000). Similarly, this Court found in *State v. Meekins* that the trial court's instructions prevented the jury from considering whether the victim's potential lack of a headlight constituted a superseding cause because they delved into "contributory negligence" and ultimately were misleading. *State v. Meekins*, 125 Wn. App. 390, 400 – 01, 105 P.3d 420 (2005). Unlike here, it appears the jury in *Meekins* was not instructed on the relationship between proximate cause and superseding cause.

Because the State assumed the burden of proving all elements of the crimes charged, and the jury found that the State proved that Imokawa's driving was the proximate cause of the injuries and death, any superseding cause was necessarily disproved beyond a reasonable doubt. The jury instructions presented in this case were a correct statement of the law and this Court should deny Imokawa's request to reverse his convictions.

**II. The record contains sufficient evidence to support the jury's finding that Imokawa acted with disregard for the safety of others.**

Imokawa claims that the trial court erred in failing to grant his second motion to dismiss and that the State failed to present sufficient evidence to support his conviction. As the State presented sufficient evidence to allow a rational trier of fact to find that all elements were proven beyond a reasonable doubt, the trial court properly denied Imokawa's motion to dismiss and this Court should affirm his convictions.

Under the Due Process Clause, the State is required to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362 – 65, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). When determining whether there is sufficient evidence to support a conviction, the evidence must be viewed in the light

most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). If “any rational jury could find the essential elements of the crime beyond a reasonable doubt,” the evidence is deemed sufficient. *Id.* An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Specifically, Imokawa claims that the record lacks evidence that he acted with disregard for the safety of others. To drive with disregard for the safety of others is an aggravated kind of negligence or carelessness that is greater than ordinary negligence but falls short of recklessness. CP 55; WPIC 90.05; *State v. Eike*, 72 Wn.2d 760, 766, 435 P.2d 680 (1967). “It does not include the many minor inadvertences and oversights which might well be deemed ordinary negligence under the statutes.” *Eike*, 72 Wn.2d at 766. There must be some evidence of a “defendant’s conscious disregard of the danger to others.” *State v. Vreen*, 99 Wn. App. 662, 672, 994 P.2d 905 (2000).

Courts have held that the element of disregard for the safety of others has been satisfied where there has been evidence of driving in bad

weather and speeding, *State v. Brooks*, 73 Wn.2d 653, 659, 440 P.2d 199 (1968); crossing the center line on a rainy night at 45 to 50 miles per hour, *Eike*, 72 Wn.2d at 766; driving on the wrong side of the road, *State v. McNeal*, 98 Wn. App. 585, 593, 991 P.2d 649 (1999), *aff'd*, 145 Wn.2d 352, 37 P.3d 280 (2002); and engaging in a racing and passing game with a friend at excessive speeds, *State v. Escobar*, 30 Wn. App. 131, 137, 633 P.2d 100 (1981). In contrast, disregard for the safety of others is not proved when an unlicensed underage driver violates the licensing statute. *State v. Lopez*, 93 Wn. App. 619, 622, 970 P.2d 765 (1999).

The evidence here is sufficient to allow a rational jury to find that Imokawa drove with disregard for the safety of others on April 2, 2015. The record establishes that Imokawa was engaged in an aggravated kind of negligence or carelessness. In addition to driving at least 15 miles over the speed limit and going faster than other vehicles on the road, Imokawa tailgated Mr. Grier's rear bumper in the left lane on and off from the intersection of SR 503 and 119th St. until he attempted to pass – a distance of over two and a half miles. Prior to that, he had pulled into the right lane to pass Mr. Gain's vehicle. Both Mr. Grier and Mr. Gain testified that Imokawa was closer than normal to the back of Mr. Grier's vehicle. Although she did not see which vehicle had caused it, Ms. Mera testified that she saw a plume of black smoke as if a car was spinning its tires

shortly before coming upon the collision. When Imokawa did attempt to pass Mr. Grier, he did so at a high rate of speed and at a time when there was not sufficient space for him to squeeze in between the Land Rover and the vehicle in front of it. Both Mr. Grier and Mr. Gain testified that the space between the two vehicles was too tight. Because of the insufficient space, he struck Mr. Grier's Land Rover as corroborated by the headlight assembly that was lodged into Imokawa's wheel well and the testimony of Detective Maier. This collision caused Imokawa's truck to rotate and head into oncoming traffic where it was struck by Ms. Dallum's Kia. The other witness testimony and evidence presented by the State corroborated these events.

In addition, Imokawa told Trooper Heath at the scene that he wasn't sure what had happened – that all he knew was that he was passing a black Land Rover, lost control, collided into a guardrail on the southbound shoulder, and was struck by another vehicle travelling south. After learning of Ms. Dallum's and Ms. Tapani's injuries at the hospital, Imokawa told Detective Maier that he was attempting to change lanes when the driver of the Land Rover sped up to cut him off.

Imokawa cites no legal authority, other than stating that it is not illegal to pass another vehicle in the right lane, and disregards the testimony of key witnesses such as Mr. Grier to argue that his actions

constituted nothing more than ordinary negligence. However, the action of weaving in and out of traffic between the lanes, tailgating vehicles, speeding, and attempting to pass in front of vehicles without sufficient space to do so is beyond ordinary negligence. It is aggravated behavior consistent with a disregard for the safety of others.

Taken in the light most favorable to the State, the evidence presented at trial is sufficient for a rational trier of fact to find a disregard for the safety of others. Therefore, this Court should deny Imokawa's request to reverse his convictions for Vehicular Homicide and Vehicular Assault.

#### CONCLUSION

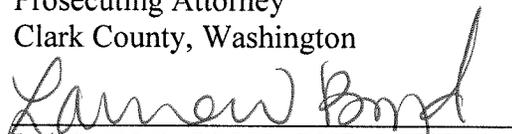
For the reasons stated above, the State respectfully asks this Court to affirm Imokawa's convictions.

DATED this 20<sup>th</sup> day of September, 2017.

Respectfully submitted:

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