No. 1036124
(Court of Appeals, Division I, No. 85812-2)

SUPREME COURT OF THE STATE OF WASHINGTON

KAREN HARDER, individually, and on behalf of the ESTATE OF DAVID HARDER; and RACHEL HARDER, individually,

Petitioners,

v.

CITY OF SEATTLE, a subdivision of the State of Washington d/b/a SEATTLE POLICE DEPARTMENT,

Respondents, and

PAYTON MADDY, an individual,

Defendant.

RESPONDENT CITY OF SEATTLE'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION AND IDENTIFY OF DEFENDANT-RESPONDENT.

Respondent is the City of Seattle and the Seattle Police Department, which is the principal law enforcement agency of the City (hereinafter "the City"). This case arises from an incident in 2019 that lasted approximately 83 seconds, in which Officer Robert Stevenson observed an individual, later identified as Payton Maddy, parked in a Brown Bear car wash stall but not washing his car. Because Officer Stevenson knew the car wash to be a drug hot spot, he made a circle of the parking lot. Maddy exited the car wash and drove across the steeet to a gas station. For reasons known only to Maddy, who was driving while drug-impaired, he suddenly pulled out of the gas station, cut off another driver, and drove away erratically. Officer Stevenson initially signaled a traffic stop with his emergency lights after observing this driving conduct. When Maddy did not stop, Officer Stevenson de-activated the lights and allowed Maddy to pull away at an increasing distance, while keeping him in sight.

As Maddy continued to separate from Officer Stevenson, he turned on several streets, repeatedly breaking visual sight-lines between them. Ultimately, Maddy blew through a stop sign as he attempted to turn left on 15th Avenue, and in doing so he struck David Harder's motorcycle. Mr. Harder was killed instantly. At the time Maddy blew the stop sign and struck Mr. Harder, Officer Stevenson was not visible to him and had not been for 15 seconds.

Plaintiffs' Petition is rife with factual errors, and replete with issues irrelevant to the one over which they seek this Court's review: whether anything the City did proximately caused David Harder's death. Plaintiffs' entire case hinges on their assertion that the City can be liable for Maddy's driving conduct even though it occurred outside Officer Stevenson's view and Maddy was completely unaware that Officer Stevenson was behind him at an ever widening distance between the two. The undisputed facts show only four instances where Officer Stevenson was possibly visible to Maddy, and there was nothing negligent about

Officer Stevenson's driving conduct during those four split second moments. Throughout the incident, Maddy was consistently pulling away from Officer Stevenson, who was not even keeping at a constant distance and certainly not closing in as he would for a pursuit. Officer Stevenson was not present or even particularly nearby when the fatal crash occurred, and Maddy repeatedly stated both on scene and in his deposition that he never saw Officer Stevenson and was not fleeing from Officer Stevenson when he struck David Harder.

Plaintiffs repeatedly characterize Officer Stevenson's conduct as a "high speed" "police pursuit" and this being a "police pursuit case," all contrary to the undisputed physical facts. Further, they attempt to shoehorn in arguments regarding duty and breach collateral to the holding below that focused on the lack of proximate cause. By doing so, Plaintiffs effectively invite this Court to review unpublished dicta from the Court of Appeals. However, the opinion below (and in the trial court) is clear that this case turned on causation. The rulings below are

entirely consistent with prior decisions of this Court and the Court of Appeals. The City respectfully requests that this Court decline review.

II. ISSUE PRESENTED.

Plaintiffs' statement of the issue presented is lengthy and imprecise. Condensed for clarity it is whether there were "questions of fact as to proximate cause…from which a reasonable jury could determine or infer that the…suspect fled, and collided with the motorcyclist, because the City's officer was negligent[.]"

III. COUNTER-STATEMENT OF THE CASE.

The facts are well documented in prior opinions, but the City briefs them here because Plaintiffs' Petition contains critical factual errors, discussed further in argument below.

A. Payton Maddy Strikes and Kills David Harder.

Plaintiff-Petitioners are the Estate and family of David Harder, a motorcycle driver who was tragically struck and killed at approximately 9:01 a.m. on May 20, 2019. (CP 397.) The

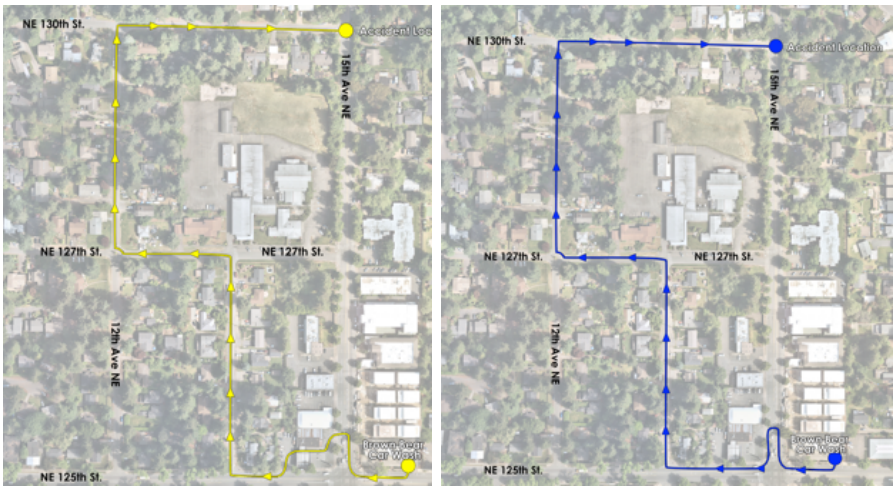
individual who struck Mr. Harder was Payton Maddy, the driver of a blue Daewoo Nubira. (*Id*.) Maddy's Daewoo had no license plates and an expired trip permit. (CP 398.) At the time of the collision, Mr. Harder was riding his motorcycle south on 15th Avenue, and Maddy had just blown a stop sign on NE 130th Street where it intersected with 15th Avenue. (*Id*.) Maddy did not stop prior to entering the intersection, and this failure to stop caused the collision. (CP 447.)

B. Initial Encounter at Car Wash.

At around 8:49 a.m., just a few minutes earlier, Seattle Police Officer Stevenson was on routine patrol just north of the Northgate neighborhood in Seattle. (CP 398.) While driving through the Brown Bear Car Wash on the corner of 125th Street and 15th Avenue North, Officer Stevenson observed a blue Daewoo parked in a car wash stall that did not have license plates but did have an expired temporary trip permit. (*Id*.) The driver of the Daewoo was not washing his car. (CP 329.) Officer Stevenson also knew that this Brown Bear was known as a

location for drug sales. (*Id*.) Officer Stevenson drove through the parking lot and then stopped a short distance away to continue observing the Daewoo. (CP 330.) The driver abruptly left the car wash stall, pulled through a gas station, and almost collided with another vehicle. (CP 398.) When Officer Stevenson saw this reckless driving conduct, he initiated a traffic stop by activating his emergency lights. (CP 331.) The basis for Officer Stevenson initiating the traffic stop was the expired trip permit and the reckless driving. (*Id*.)

The City's summary judgment motion and Court of Appeals brief included both vehicle paths:



(CP 579 (Maddy) (left) and CP 516 (Stevenson) (right).)

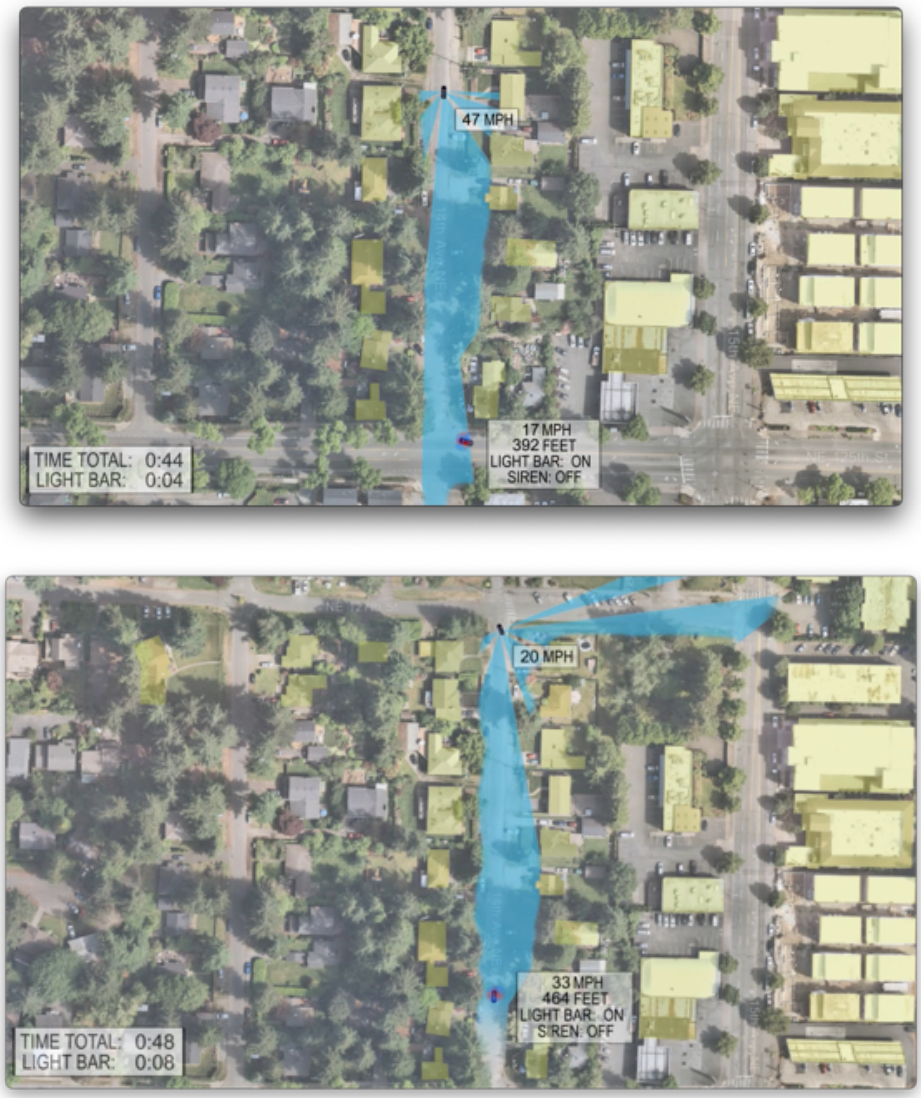
Officer Stevenson's in-car and body-worn video systems captured the entire 83-second vehicle interaction, and the City's experts were able to reconstruct it from beginning to end. (CP 390 (video exhibit).) The reconstruction video, which was submitted as part of the City's summary judgment motion in the trial court, is described as "an accurate representation" and not disputed by Plaintiffs' expert Dr. Jeremy Bauer. (CP 345.)

The video shows the potential sight-cones from Maddy's vehicle throughout the interaction in blue. When Officer Stevenson's vehicle is within the sight cones, it is *potentially* visible to a driver in Maddy's position should that driver be facing in the correct direction or looking in the mirror. (CP 372-73.) There were four instances in which Maddy *could have* seen Officer Stevenson's vehicle: once at the beginning of the interaction prior to Officer Stevenson activating his emergency lights, once for no more than five seconds on 14th Avenue with lights active during the attempted traffic stop, and two split-second instances where Maddy was turning on side streets and

Officer Stevenson with lights de-activated, was falling further behind him. (*Id*.) It is undisputed that Maddy has repeatedly said he *never* saw Officer Stevenson's vehicle. (CP 302-303; 313; 315-320; 323-324.)

C. Attempted Traffic Stop.

When Officer Stevenson activated his emergency lights, Maddy had already turned north onto 14th Avenue NE and had accelerated to 29 miles per hour. (CP 618, 1085-1086; CP 631.) Maddy further accelerated to 45 mph, his speed at the first moment that he possibly had a sight line with Officer Stevenson's patrol car and activated lights. (CP 678.) Officer Stevenson's speed at that split second was 18 mph and he was 417 feet behind Maddy's vehicle. (CP 678.) The distance between the two vehicles during those 4 seconds of potential visibility grew from 392 feet to 447. (CP 672, 718.) This possible sight line on 14th Avenue lasted for 4 seconds before Maddy turned onto 127th Street, as depicted in these two screenshots from the reconstruction video:



(CP 390, 1085-1086 ("TIME TOTAL 0:44-0:48); CP 678, 714.) After time total 0:48, when Maddy turned left onto 127th and broke sight line with Officer Stevenson's vehicle, Maddy would

never again have the potential sight of Officer Stevenson with emergency lights activated. (CP 390; 1085-1086; 717.)

Officer Stevenson deactivated his emergency lights and abandoned the traffic stop while Officer Stevenson was still on 14th Avenue, after Maddy failed to stop, and Officer Stevenson returned to "routine driving." (CP 332.) At this point, Officer Stevenson was making no effort to stop Maddy and decided to follow Maddy's path of travel in case Maddy decided to park his car and get out. (CP 332-33.) Officer Stevenson's speed briefly reached 39 mph along 14th Avenue, *after* Maddy turned out of sight. (CP 724-759.)

D. Officer Stevenson Trailing Maddy's Path of Travel.

From this point on, Officer Stevenson did not use his emergency lights for the remainder of the incident. (CP 1085-86.) During the remaining time until Maddy struck Mr. Harder, Officer Stevenson was in position for two split-second moments when Maddy could *possibly* have seen him had Maddy turned around and looked backwards while executing turns: (1) when

Officer Stevenson turned left (west) onto NE 127th Street traveling 12 mph as Maddy was turning right (north) onto 12th Avenue NE:

(CP 390, 1085-1086 ("TIME TOTAL 0:58"); CP 831.) And (2), a final time when Officer Stevenson turned north onto 13th Avenue at the same instant Maddy was turning right, onto NE 130th Street:

(CP 390, 1085-1086 ("TIME TOTAL 1:08"); CP 870.) As the distance notations in these four screen shots show, the total separation between Maddy and Officer Stevenson's vehicles was steadily increasing over time from just over 392 feet at the beginning to nearly 579 feet when Maddy turned onto 130th. Because NE 130th Street slopes downhill between 12th Avenue NE and 15th Avenue NE, it would have been impossible for Maddy, had he looked, to see Officer Stevenson after Maddy turned right on NE 130th Street. (CP 435, 447.) The last time Maddy could have possibly observed Officer Stevenson's

vehicle, in the screenshot above, was just over 15 seconds prior to the collision. (CP 447.)

After he was arrested by police, Maddy repeatedly told the arresting officers that he never saw Officer Stevenson's car behind him and that he was not fleeing from the police. (CP 302-303.) At his deposition under close questioning of Plaintiffs' counsel, Maddy repeatedly stated that he never saw Officer Stevenson at any time during the entire 83-second interaction between their two vehicles. (CP 313; 315-320; 323-324.)

E. Procedural History.

The City and Plaintiffs filed cross-motions for summary judgment in the trial court. Plaintiffs moved to set aside the City's affirmative defenses as to fault, assumption of the risk, and mitigation, collectively amounting to a determination that Mr. Harder was fault-free in his collision with Maddy. The City stipulated and the Court granted Plaintiffs' motion. (CP 1286-88.) The City moved for summary judgment on Plaintiffs' only claim, that Officer Stevenson was negligent in "pursuing"

Maddy. (CP 260-293.) The Court granted that motion too. (CP 1290.) Separately, the Court attached written analysis indicating that the motion was granted on "a factual cause and proximate [legal] cause analysis." (CP 1292-94.)

Plaintiffs appealed, and the Court of Appeals upheld the trial court's ruling, again on causation grounds. (Ct. App. Opinion at 13-16.) Specifically, the Court of Appeals found that "[t]he Estate offers no affirmative evidence that Maddy saw Officer Stevenson" and that Plaintiffs' argument hinged on the mere "possibility that Maddy could have seen Officer Stevenson, coupled with his erratic driving." (Op. at 15.) Plaintiffs now petition this Court for review.

IV. AUTHORITY AND ARGUMENT.

Plaintiffs seek review under RAP 13.4(b)(1), (2), and (4). They fail to establish that the Court of Appeals decision conflicts with either this Court's or a published Court of Appeals decision. Further, this petition does not involve an issue of substantial public interest.

More broadly, however, Plaintiffs' Petition demonstrates serial confusion about the factual record below. Prior to analyzing the RAP 13.4 issues, it is necessary to briefly review these issues to ensure the record before this Court is accurate.

A. Plaintiffs' Petition Misstates the Undisputed Facts Analyzed by the Court of Appeals.

First, the City nowhere—and certainly not at BR 11—conceded that Officer Stevenson's decision to stop Maddy for driving recklessly and with an expired trip permit after observing him behaving suspiciously at the Brown Bear was pretextual (or "*illicit*" as Plaintiffs would have it).[1] Instead, the City noted that Officer Stevenson knew the Brown Bear was a location for drug activity and had suspicions about what Maddy was doing. He *also* "noticed the expired temporary permit, so when [Maddy's] Daewoo began to exit the car wash, Officer Stevenson decided to follow the vehicle and perhaps conduct a traffic stop." (BR

[1] RAP 10.3(a)(5) requires that the statement of the case be without argument. The Petition for review, authored by sophisticated counsel, repeatedly violates this rule.

11.) What Plaintiffs' Petition elides, however, is that while observing Maddy, Officer Stevenson saw Maddy cut off another car, and *then* Officer Stevenson activated his emergency lights to signal a traffic stop for reckless driving. (BR at 12, citing CP 331, 631.) The reason for the stop was reckless driving. (CP 331.) Read fairly, Officer Stevenson conducted a legal, mixed-motive traffic stop.[2]

More importantly to the causation issues presented in Plaintiffs' Petition, it is a mystery whence Plaintiffs draw the "fact" that the City believed "Maddy had to have seen Stevenson's marked SPD cruiser in the [car wash] parking lot initially." (Petition at 3.) That supposition is absent from the City's briefing to the Court of Appeals on the pages cited by

[2] Though the issue is not properly raised in a petition seeking review solely on causation, this Court has previously held such "mixed motive" stops to be legal. *State v. Arreola*, 176 Wn.2d 284, 288, 290 P.3d 983 (2012). Clearly, Plaintiffs do not dispute that Maddy was driving recklessly during the 83 seconds he was intermittently visible to Officer Stevenson. To the extent Plaintiffs contend Officer Stevenson lacked the right to stop Maddy, they are simply wrong about the law.

Plaintiffs (or anywhere else). (*See* BR at 11-12.)[3] It is also contrary to what Maddy repeatedly said to arresting officers and at his deposition: he never saw Officer Stevenson. No facts in the record contradict Maddy's statements. Plaintiffs cannot convert speculation into a fact simply by wrongly asserting that the City somehow admitted Maddy "had to have seen" Officer Stevenson in its briefing to the Court of Appeals. (Reply BR of Appellants at 3.)

B. Plaintiffs Did Not Seek Review of the Court of Appeals' Decision on Duty and Breach.

Plaintiffs' Petition expounds on issues of duty and breach

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[3] Officer Stevenson reported *he thought* Maddy saw him prior to activating his emergency lights. (CP 1160.) Officer Stevenson cannot know what Maddy perceived. Plaintiffs have consistently misrepresented this statement by Officer Stevenson as proof-positive that Maddy *did see* Officer Stevenson and *was fleeing* from him at every point in time thereafter. However, speculation that a dispute of fact might exist is not a basis to deny summary judgment, where a plaintiff must come forward with facts in the record giving evidence of such dispute. *Kyreacos v. Smith*, 89 Wn.2d 425, 429, 572 P.2d 723 (1977); *and see Strauss v. Premera Blue Cross*, 194 Wn.2d 296, 301, 449 P.3d 640 (2019) (speculation and conclusory statements, even by an expert, will not preclude summary judgment).

for several pages, but none of this is relevant to the causation issue over which they seek review, nor did the Court of Appeals' ruling on duty and breach below conflict with any published decision of this Court or the Court of Appeals. RAP 13.4(b)(1) and (2).

This Court generally does not consider issues outside those raised in the petition for review. *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 435 n.9, 395 P.3d 1031 (2017). Here, Plaintiffs have not suggested that the Court of Appeals was wrong about duty or breach when it found that the City and Officer Stevenson "had a duty to drive his patrol car with reasonable care to prevent foreseeable harm to others even if he was engaged in a pursuit." (Op. at 9.) Indeed, it is their position that the Court of Appeals was right, but they would go further: that officers always have a common law duty to every citizen. (Petition at 8 (citing cases).) That is not what the Court of Appeals held: instead, it followed *Mason v. Bitton* and RCW 46.61.035, that Officer Stevenson had a duty to exercise care in

how he operated his vehicle, a duty that would not have been relieved even if he was engaged in a vehicle pursuit with his emergency equipment activated. RCW 46.61.035(4). This duty extends to "all persons" foreseeably affected by the driving conduct, because "the test of due regard as applied to emergency vehicle drivers is whether, given the statutory privileges of RCW 46.61.035, [the officer] acted *as a reasonably careful driver under the existing facts and circumstances*." *See Brown v. Spokane County Fire Protection Dist. No. 1*, 100 Wn.2d 188, 183, 668 P.2d 571 (1983) (emphasis added).

The Court of Appeals' articulation of Officer Stevenson's duty quoted above is a concise and accurate application of the holding in *Brown*. Moreover, it is consistent with other decisions where, like Officer Stevenson, the driver in question was *not* engaged in an emergency response. *Martini ex rel. Dussault v. State*, 121 Wn. App. 150, 161, 98 P.3d 250 (2004) (*rev. denied*, 153 Wn.2d 1023, 108 P.3d 133 (2005)). Where Plaintiffs identify no conflict with other precedential decisions as to duty, there is

no reason for this Court to opine on an issue not contained in Plaintiffs' statement of the issue presented for review.

Notably, the cases cited by Plaintiffs on page 8 of their brief do not hold that officers have a general duty of care encompassing everything they do. However, *even if* that is a necessary implication of this Court's jurisprudence since *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 550, 442 P.3d 608 (2019) as Plaintiffs implicitly suggest, that question is not squarely before this Court given the Court of Appeals' decision, which is entirely consonant with even an expansive reading of *Beltran-Serrano* and subsequent cases, since it finds that under the circumstances Officer Stevenson *did* owe a duty. Whether it arose from a duty to drive with due care, as in *Mason* or *Brown*, or under a broader common-law duty in *Beltran-Serrano*, it was owed to Mr. Harder. (Op. at 9.)

Why Plaintiffs focus on duty would be a mystery, except their citation to a Wyoming case recognizing negligent investigation claims. (Petition at 10 *citing Palm-Egle v. Briggs*,

545 P.3d 828 (Wyo. 2024)). The purpose of this citation is to argue, *sub silentio*, that Washington should follow Wyoming in recognizing a negligent investigation claim. This Court recently declined to do precisely that. *See Mancini v. City of Tacoma*, 196 Wn.2d 864, 869, 479 P.3d 656 (2021). Regardless of whether tort law in Wyoming develops differently, this Court should not revisit its holding in *Mancini* unless the issue is squarely and unambiguously presented, as it has not been here.

For the same reason, there is nothing for this Court to review with respect to any breach of duty by Officer Stevenson. The Court of Appeals found that the opinion of Russ Hicks created an issue of fact as to whether Officer Stevenson breached a duty by "keeping pace" with Maddy, sufficient to preclude summary judgment. (Op. at 12.) Expert opinions properly supported by fact are generally sufficient to create issues of fact as to breach. *Strauss*, 194 Wn.2d at 301. While the City below contested whether Mr. Hicks' opinions *were* based in fact, as opposed to speculation, the City did not move to strike them and

so they were properly before the Court on summary judgment. (See Reply Br. of Appellant at 4-5.) Since the Court of Appeals' opinion is consistent with *Strauss* and other cases holding that an expert's opinions can create fact issues on breach, there is nothing for this Court to review under RAP 13.4(b)(1) or (2), and this Court should not consider issues of breach that were not raised by the Plaintiffs' issue statement.

C. There is No Fact Issue Regarding Causation.

Both the Court of Appeals and the trial court analyzed this case through the lens of proximate cause. (Op. at 15-16; CP at 1292-94.) The trial court found that both factual and legal causation were lacking; the Court of Appeals focused on factual causation and did not reach the legal cause issues. (*Id*.) This places the cause-in-fact issue squarely before this Court, as that is the sole issue upon which Plaintiffs sought review.

Nor is there anything unusual or conflicting about the Court of Appeals' decision. As articulated by the authorities Plaintiffs cite in their own petition for review, "[c]ause in fact is

a factual question left to the trier of fact *unless reasonable minds could not differ*." *Michaels v. CH2M Hill*, 171 Wn.2d 587, 597, 257 P.3d 532 (2011) (emphasis added). That is what the Court of Appeals said too. (Op. at 13 (quoting *Martini v. Post*, 178 Wn. App. at 164-65).) Plaintiffs must present evidence allowing a reasonable juror to "conclude that the harm more probably than not happened in such a way that the moving party should be held liable." *Id*. at 165 (paraphrasing *Gardner v. Seymour*, 27 Wn.2d 802, 808, 180 P.2d 564 (1947).) This evidence must rise above speculation or mere possibility. *Gardner* at 808; Restatement (Second) of Torts § 328A.

Yet here, the undisputed evidence is that Maddy could only have *possibly* seen Officer Stevenson for about five seconds with his lights activated, 34 seconds before the fatal crash, and two split-second instances when he was making 90-degree turns and Stevenson's emergency lights were off while Officer Stevenson fell further behind. It is likewise undisputed that Maddy flatly denies *ever* seeing Officer Stevenson's patrol

vehicle, either during those instances or any other time. Plaintiffs have no evidence otherwise; instead they argue that they are entitled to an inference not that Maddy *could have* seen Officer Stevenson (an inference that the City and its experts have freely given to them, *see* BR at 30) but that Maddy *did see Officer Stevenson and that this visual connection is what caused him to flee*, a proposition for which there is no evidence whatsoever. There is also evidence against this inference, which Plaintiffs argue the courts below should have treated as a nullity because the source was "impeachable."[4] Yet Plaintiffs did not and cannot *actually* impeach the undisputed evidence that Maddy denies seeing Officer Stevenson on this record because there is no evidence contradicting what he said. The closest they come is Officer Stevenson's own *speculation* about what Maddy might have perceived. This is not enough.

[4] It is unclear what Plaintiffs argue here, but it seems to be that Maddy's drug use rendered him incompetent to testify as a witness as to his own perceptions and conduct. There is no authority for this proposition. ER 601, 608, 609.

Plaintiffs also make much of Officer Stevenson exceeding speed limits, which they argue is negligence that somehow caused the crash between Maddy and Mr. Harder. However, the only time Officer Stevenson did exceed the speed limit in Maddy's potential view was when he was attempting a traffic stop that he broke off when Maddy turned onto 127th. At all other times when Officer Stevenson exceeded posted speed limits, he was invisible to Maddy and nobody else was nearby. It is immaterial that Officer Stevenson exceeded 20 miles per hour in these instances, because Maddy could not have and did not see him do so.

The Court of Appeals correctly applied the law to this set of undisputed facts, because given Maddy's repeated denials he ever saw Stevenson and absent any evidence contradicting them, Plaintiffs have no evidence of a causal link between anything Officer Stevenson did and Maddy's decision to blow the stop sign on 130th. Plaintiffs are asking this Court to *infer* the opposite of what the evidence shows. This is an improper

application of the inference rule, which entitles the nonmovant to reasonable inferences when they are based on evidence in the record. The familiar summary judgment standard does not entitle a nonmovant to a favorable inference when the record is against him or her on a particular matter at issue, as it is here.

More broadly, if such inferences were proper, no case could ever be decided on summary judgment, because plaintiffs could always posit a different set of hypothetical facts that might entitle them to relief. This case was not decided on a CR 12(b)(6) motion, and extensive discovery revealed no evidence to dispute the issue of causation.

The "conflicts" Plaintiffs identify with published Washington decisions are illusory. Washington case law says that generally, where reasonable minds can differ, a case should not be decided on cause in fact grounds at summary judgment. However, each case cited by Plaintiffs makes clear that where reasonable minds *cannot* differ, summary judgment is proper. Because there is no conflict between this decision and others of

this Court or the Court of Appeals, Plaintiffs' petition should be denied to the extent it is based on RAP 13.4(b)(1) and (2).

D. There is No Substantial Public Interest in Revisiting *Mason v. Bitton*.

As noted elsewhere, much of Plaintiffs' conclusion that this was a "police pursuit" that was "admittedly illicit" because the stop was "pretextual" is belied by the undisputed facts and the record. The Court should put this argument aside altogether.

Mason v. Bitton is an old case, but it is consistent with the law applicable to emergency response today. First, RCW 46.61.035 is a legislative enactment, and *Mason* clarified that its protections to "all persons" extend to motorists struck by fleeing suspects—precisely the position urged by Plaintiffs here. (Petition at 28, noting policy supporting protection of "bystanders" as a basis for review.) It is for the legislature to enact different protections applicable to "police pursuits," should it decide to do so. That the legislature has been recently active in pursuit law generally (specifically, when and how it is

authorized) is not a reason to alter the *liability* provision the legislature has elected to leave alone since 1969 (apart from correcting gendered language in 2010). Moreover, the legislature has essentially made the judgment that its 2021 enactment went too far in restricting police pursuits and returned to the *status quo ante* by enacting Initiative 2113. *See* Laws of 2024, ch. 6 § 1. It is ultimately for the legislature to make such policy decisions.

Finally, Plaintiffs' suggestion that *Selander* furnishes a reason to revisit *Mason* is inaccurate. In *Selander*, the Court of Appeals noted the procedural and factual differences between *Mason* and that case (namely, the length and complexity of the pursuit in *Mason* and the different procedural posture). *Estate of Selander v. Pierce County*, 32 Wn. App. 2d at 1036, 2024 WL 4356739 at *9. In *Selander*, the court correctly decided to apply the plain language of the statute and the duty to act as a reasonably careful driver articulated in *Brown*. *Id*. at *5. In that case and here, the duty is clear and it applies to officers like Officer Stevenson. There is no need for this Court to further

articulate the statutory duty, which the Court of Appeals applied in this case and which the City did not contest (*see* BR at 20 citing RCW, *Brown*, *Mason*, and *Martini ex rel. Dussault*.)

There being no substantial public interest in revisiting *Mason* where questions of liability are properly vested with the legislature and the law is in any event clear, this Court should decline review under RAP 13.4(b)(4).

V. CONCLUSION.

David Harder's death is a tragic accident caused by Payton Maddy, who sits in prison for his actions. However, there is no evidence in this record that SPD Officer Stevenson's actions caused Maddy to act as he did on May 20, 2019. Moreover, the Court of Appeals decision below was narrowly focused on causation, and Plaintiffs' attempt to inject other issues for this Court's consideration—issues upon which the Court of Appeals (and the trial court) did not decide summary judgment—should be rejected. So too, this Court should carefully review the record,

because much of how Plaintiffs have characterized the underlying facts is mistaken.

The Court of Appeals correctly determined that where Plaintiffs' argument on causation rests on mere speculation that Maddy was reacting to Officer Stevenson, when that is contradicted by the evidence, reasonable minds cannot differ and summary judgment is appropriate. The City respectfully requests that this Court decline review.

This document contains 4,760 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 23rd day of January, 2025.

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CERTIFICATE OF SERVICE

On said day below, I electronically served a true and accurate copy of the **RESPONDENT CITY OF SEATTLE'S ANSWER TO THE PETITION FOR REVIEW** in the Supreme Court of Washington, Case No. 1036124, to the following parties:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED this 23rd day of January, 2025.

/s/ Stefanie Palmer
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Paralegal

BAKER STERCHI COWDEN & RICE LLC

January 23, 2025 - 9:50 AM

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