Supreme Court No._____
COA No. 397441_____

THE SUPREME COURT OF THE STATE OF WASHINGTON

MARY ELLEN SMITH,

Petitioner

v.

SPOKANE TRANSIT AUTHORITY
a Political Subdivision of
the State of Washington, and John Doe

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTONFOR SPOKANE COUNTY

PETITION FOR REVIEW

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I. Identify of Petitioner and Decision Below

Mary Smith, petitioner here and appellant below, asks this Court to accept review of the Division III Court of Appeals decision terminating review filed December 10, 2024.

II. Issues Presented for Review

Whether as a matter of law, a Good Samaritan who comes to the aid of another placed in peril by the Defendant, can be contributorily negligent for injuries sustained while helping the person in need.

III. Statement of the Case

This Court should grant review as this issue involves a substantial public interest that should be determined by the Supreme Court pursuant to RAP 13.4(B)(4).

Mary Smith was the caregiver of Mr. Roller, a non-verbal, developmentally disabled man who utilized a wheelchair. RP 316:19-24. She and Mr. Roller were passengers on a Spokane Transit Authority bus for disabled people. RP 294:12-13. The driver of that bus has the responsibility to secure the wheelchair of his passengers and failed to do so. RP 37:1-2, RP 281:19-21; RP 1312:2-3; RP 1311:23-24, RP 293:8-10. When the driver turned a corner, Mr. Roller and the wheelchair fell over with Mr. Roller still strapped in. RP 1557:20. Spokane Transit

Authority admitted that its driver was negligent in failing to secure Mr. Roller and his wheelchair. RP 1548:14.

The bus driver attempted to lift Mr. Roller in the wheelchair but failed. RP 322:6-10, 325:23-24, RP 26:1-2. Mr. Roller was tipped over still strapped to his wheelchair on the floor of the bus and was panicking. RP 1053:9-10. Ms. Smith felt compelled to help Mr. Roller get back up despite having a back injury. RP 322:23-25. She assisted the driver and together, they were able to right Mr. Roller and his wheelchair back up. *Id*. While the driver testified at trial that he was able to lift the wheelchair himself, the undisputed video evidence showed him attempt to lift the wheelchair by himself and fail. RP 328-329; CP 82 (video), CP 515 (Exhibit P-15: video); RP 320, 328-329, 989. Furthermore, he did not tell Ms. Smith he could do it himself at the time and did not tell her not to assist him.

Ms. Smith injured her right shoulder and suffered a lumbar strain, thoracic strain, and right SI strain coming to the aid of Mr. Roller after Spokane Transit's negligent handling of Mr. Roller. RP 1146:7-8; RP 1189:21-24; RP 981:20-22, RP 962:1-3; RP 1146:7-8. The right SI strain was the most significant injury that stemmed from lifting the wheelchair. RP 1148:16-17.

Ms. Smith brought an action against Spokane Transit Authority to recover her lost wages and damages for pain and suffering due to its driver's negligence. RP 1446:9-20. Ms. Smith argued the driver had a duty to her as a passenger and

that she had a moral and ethical duty to help Mr. Roller after the driver's negligence placed him in a dangerous position. RP 1389:22-23 She also argued that contributory negligence should not apply where she had a moral obligation to help another human being. RP 1594:15-17.

While Spokane Transit Authority admitted negligence, they argued that Ms. Smith was contributorily negligent for coming to the aid of Mr. Roller when she knew the wheelchair was heavy and helping Mr. Roller could cause injury to her back. They argued she assumed the risk and did not exercise reasonable care for her own safety. RP 1550:19-20. RP 1582:24-25, RP 1583:17, RP 1585:1-5.

The jury found STA was liable for Ms. Smith's injuries but found Ms. Smith was contributorily negligent and apportioned 90% of the fault to Ms. Smith and only 10% to Spokane Transit Authority who caused the accident. RP 1620:21-25. RP 1621:5-9-13. RP 1621:14-22.

Ms. Smith made a pretrial motion for summary judgment and a motion for judgment notwithstanding the verdict with respect to contributory negligence. RP Vol. IV 1625:20-21. The good Samaritan, moral duty, principle is raised in Ms. Smith's Trial Brief on November 28, 2022 [CR94], in the additional jury instructions she filed December 6, 2022, and December 21, 2022, [138] in Ms. Smith's motion for a new trial filed January 5, 2023 [148] and again in Ms. Smith's

reply to Defendants response to plaintiff's motion for a new trial filed on January 27, 2023. [151] Those motions were denied. The lower court gave the contributory negligence instruction, and the Court of Appeals affirmed.

The public has an interest in this Court deciding the issue of whether a Good Samaritan, a person who comes to the aid of another placed in peril by the Defendant, can be contributorily negligent for injuries sustained while helping someone in need.

IV. Argument

A. The Trial Court Should Have Granted Ms. Smith's Motion for Summary Judgment on Contributory Negligence Because the Public Policy Considerations of the Good Samaritan and Rescue Doctrines Prohibit Contributory Negligence Absent a Showing of Gross Negligence or Wanton and Willful conduct.

The Good Samaritan Doctrine dictates that individuals who come to the aid of people in need should not be liable for injuries that occur when coming to the aid of such person who is put in peril by himself or a third party absent gross negligence or willful or wanton misconduct. It's a doctrine of immense importance, deeply rooted in sound public policy and this Court's common law. Nevertheless, the trial court's decision below to allow the defense to argue contributory negligence undercut this doctrine, eviscerated strong public policy and contravened

well-established law. The Court should take this case for review because of this policy's importance.

Washington courts have previously determined that public policy considerations can preclude the contributory negligence defense. For instance, "as a matter of public policy, contributory fault does not apply" to situations where minors seek to obtain redress for sexual abuse. Christensen v. Royal School Dist. No. 160, 156 Wn.2d 62, 124 P.3d 283 (Wash. 2005). The Christensen Court noted "societal interests" should be considered in determining whether contributory fault is available as a defense and relied on the public policy of "protecting children" in determining that contributory negligence was not an available defense in situations of sexual abuse of minors. Id. "Because we recognize the vulnerability of children in the school setting, we hold, as a matter of public policy, that children do not have a duty to protect themselves from sexual abuse by their teachers. Moreover, we conclude that contributory fault may not be assessed against a 13-year-old child based on the failure to protect herself from being sexually abused…" Id.

The Good Samaritan doctrine encompasses a broad range of conduct where one renders any kind of aid to someone in need of help. Gardner v. Loomis Armored Inc., 128 Wn.2d 931, 940, 913 P.2d 377 (Wash. 1996). Protecting the Good Samaritan has roots in common law and statutory law. "It has long been the policy of our law to protect the 'Good Samaritan'." State v. Hillman, 66 Wn.App.

770, 776, 832 P.2d 1369 (Wash. App. 1992). The Hillman Court traced the concept of the "Good Samaritan" to biblical times when Jesus told a parable about a Samaritan who helped an injured traveler in response to a question about how to obtain eternal life. State v. Hillman, 66 Wn.App. 770, n.3, 832 P.2d 1369 (Wash. App. 1992)(citing Luke 10:30-37 (King James)).

1. **Public policy Dictates that as a Matter of Law, a Good Samaritan Should not be Held Liable Under a Theory of Contributory Negligence for Injuries She Sustained While Helping Another and there Was No Evidence of Gross Negligence or Willful or Wanton Misconduct.**

Embracing the Good Samaritan common law rule, Washington enacted a "'Good Samaritan' statute which provides immunity against civil liability [for negligence] for those who render emergency care at the scene of an emergency…" State v. Hillman, 66 Wn.App. 770, 776 (Wash. App. 1992)(citing RCW 4.24.300). Emergency care includes "care, first aid, treatment, or assistance rendered to the injured person who is in need of immediate medical attention." RCW 4.24.310(2). Washington's Good Samaritan Statute protects citizens from civil liability who come to the aid of others during an accident or other sudden or unexpected event or combination of circumstances that calls for immediate action. RCW 4.24.310(3).

The protection of the "Good Samaritan" is so paramount that even if a person who aids a perceived victim who is later discovered to be the aggressor, the Good Samaritan is protected from criminal prosecution because the public policy

to help bystanders is so important that society wants Good Samaritans to come to the aid of innocent people without having to first determine who is at fault. State v. Penn, 89 Wash.2d 63, 66, 568 P.2d 797 (1977). The importance of protecting the Good Samaritan is further evidenced by the Washington Court of Appeals upholding an "exceptional sentence" where a defendant murdered a Good Samaritan who had come to his aid, reasoning that "although murder itself offends fundamental notions of morality, to murder a person who comes to one's aid discourages others from offering aid to persons in need of help. The ramifications to a civilized society are indeed disturbing." State v. Hillman, 832 P.2d 1369, 66 Wn.App. 770, 776 (Wash. App. 1992).

Our society supports and protects Good Samaritans who assist those in need. Society's strong public policy to encourage and support people who come to the aid of others is present in this case. Ms. Smith came to the aid of Mr. Roller who was tipped over in his wheelchair and lying on his side unable to move. She saw that the bus driver was not successful on his first attempt to lift Mr. Roller and she saw Mr. Roller in a state of panic. So, she came to his aid and helped the transit driver lift Mr. Roller and his wheelchair. Our sense of humanity dictates that a person who comes to the aid of a developmentally disabled person who is lying on the ground on his side, immobile, and strapped to his power wheelchair is a Good

Samaritan. And that Good Samaritan should be protected from liability for injuries she sustained where the event was caused by a third party.

2. The rescue doctrine is another public policy that protects those who rescue others and should bar the affirmative defense of contributory negligence where the defendant places the person being rescued in peril and the rescuer gets injured.

The Rescue Doctrine is based on the public policy that encourages people to help others in need. The rescue doctrine arises in the context of tort claims and seeks to encourage rescue. The doctrine "is intended to provide a source of recovery to one who is injured while reasonably undertaking the rescue of a person who has negligently placed himself in a position of imminent peril." Maltman v. Sauer, 84 Wash.2d 975, 976-77, 530 P.2d 254 (1975). Much like a plaintiff who can obtain recovery under the rescue doctrine from aiding someone who put themselves in peril, a plaintiff should be able to obtain recovery from a third party for coming to the rescue of someone who the third party put into peril without themselves having the same level of accountability as the third party who caused the incident. This finds support in the *Restatement (Third) of Torts*, which provides: "[I]f an actor's tortious conduct imperils another or the property of another, the scope of the actor's liability includes any harm to a person resulting from that person's efforts to aid or to protect the imperiled person or property, so long as the harm arises from a risk that inheres in the effort to provide aid."

Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 32 (Am. Law Inst. 2010) (hereinafter *Restatement*). "The theory behind the rescue doctrine is that rescuers, as a class, are always foreseeable when the defendant's negligence endangers anyone." Id. (citing Prosser, Torts (4th ed.) SS 43, p. 258, discussing Justice Cardozo's rationale of the doctrine.

Other jurisdictions have extended the protections of the rescue doctrine to people rescuing persons put in peril by a third party. Colorado courts have recognized the "human instinct to help those in need, even at the risk of one's own safety," and implemented the rescued doctrine to encourage the instinct to help. Garcia v. Colo. Cab Co. LLC, 467 P.3d 302, 303 (Colo. 2020), *reh'g denied* (July 27, 2020) (courts adopted the rescue doctrine, which ensures that negligent actors who put others at risk may be held liable when their negligence injures a third-party rescuer). *See also Williams v. Foster*, 666 N.E.2d 678, 681 (Ill.App. 1996) ("if the defendant is negligent toward the rescuee, he is also negligent toward the rescuer."); Solgaard v. Guy F. Atkinson Co., 6 Cal.3d 361, 368 (1971)("Under the rescue doctrine, an actor is usually liable for injuries sustained by a rescuer while attempting to help another person placed in danger by the actor's negligent conduct.") This jurisprudence provides persuasive authority for this Court to consider.

As indicated in the Good Samaritan section above, Ms. Smith coming to the rescue of a disabled man who was tipped over by Spokane Transit Authority's negligence and who is unable to get up on his own, should have come within the public policy that protects rescuers. Thus, any determination that Ms. Smith is 90% at fault while STA is 10% at fault is against public policy and against our notions of fairness. But that result obtained because the trial court allowed a contributory negligence instruction that undercut these important public policies. The trial court erred, the court of appeal condoned this error, and now this Court should take this issue to restore the importance of these doctrines that are critical to a well-functioning society.

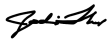
B. Conclusion

This Court should grant review as this issue involves a substantial public interest and this public policy and legal issue is too important for the Court not to consider.

This document contains 2302 words, excluding portions of the brief excludable under RAP 18.17(b).

DATED this 9th day of January 2025.

Respectfully submitted,



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APPENDIX

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CASE # 397441
Mary Ellen Smith v. Spokane Transit Authority
SPOKANE COUNTY SUPERIOR COURT No. 2120047132

Counsel:

Enclosed please find a copy of the opinion filed by the court today. A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or, if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
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c: **E-mail** Hon. Charnelle Bjelkengren

FILED
DECEMBER 10, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

MARY ELLEN SMITH, Appellant, v. SPOKANE TRANSIT AUTHORITY, a Political Subdivision of the State of Washington, and JOHN DOE, Respondent.	)	No. 39744-1-III UNPUBLISHED OPINION

LAWRENCE-BERREY, C.J. — Mary Smith appeals a jury verdict that assessed 90 percent contributory fault to her. We affirm.

FACTS

Background

Mary Smith was a direct support professional (DSP). A DSP assists physically disabled adult patients with daily living, including driving and accompanying them on outings. To become a DSP, Smith was required to undergo several hours of training, including training on how to avoid the risk of injury when lifting and moving patients and their equipment.

Smith suffered from chronic back pain. In 2016, she asked that her pain medication be increased. In May 2017, Smith reinjured her back while reaching into a minifridge. In January 2018, Smith sought spinal injections for her back pain.

Incident

In February 2018, Smith accompanied Cody Roller in his motorized wheelchair on an outing. The two rode in a paratransit van operated by Spokane Transit Authority (STA). As the van went around a corner, Roller and his wheelchair tipped over because the driver had failed to properly secure it.

Roller, who weighed between 250 and 270 pounds, was uninjured. The driver attempted to right Roller in his wheelchair. He knew he could do this without assistance and did not ask Smith for help.

By the time Smith approached the driver and Roller, Roller was calm. Smith, aware of her chronic back problems, knew that helping the driver would cause her pain. While helping, Ms. Smith injured her lower back.

Procedure

Smith filed suit against STA for her lower back injury. STA admitted negligence, but argued that Smith's injury was not related to its negligence. If related, STA argued, Smith either had assumed the risk or was contributorily at fault for her injury. STA also argued that Smith had failed to mitigate her damages.

Before trial, Smith moved for summary judgment as to negligence, causation, and STA's affirmative defenses. The trial court denied Smith's motion, finding an issue of material fact as to whether lifting Roller in his wheelchair had caused Smith's injury, or whether her injury had occurred the following day. Additionally, the court noted an issue of material fact as to whether *Smith's* injury was a foreseeable consequence of the transit driver's negligence. The court's ruling did not address STA's affirmative defenses.

The case was tried to a jury. After both parties rested, Smith renewed her motion for summary judgment with respect to STA's contributory negligence and assumption of risk defenses. Smith argued that a "legal, moral and ethical obligation to act" had compelled her to assist Roller, and that these obligations precluded STA from asserting either an assumption of risk or a contributory negligence defense. Clerk's Papers (CP) at 471. The trial court denied Smith's motion, finding that issues of material fact existed as to Smith's knowledge of the risk she undertook by assisting the driver, and as to the existence of a moral duty.

The jury found STA liable for Smith's injury in the amount of $100,000. However, the jury also found Smith contributorily negligent, and assigned her 90 percent of fault for her injury. The jury further found that Smith had failed to mitigate her damages, but concluded that the amount of her failed mitigation was $0.

Smith moved for a new trial or an increased award. In support of her motion, Smith argued that the trial court had erroneously instructed the jury on contributory negligence and failure to mitigate because those defenses were not supported by the evidence, and because permitting such defenses violated public policy. Smith further argued that her $10,000 recovery was inadequate, and had likely resulted from juror confusion. The trial court denied Smith's motion.

Smith appeals.

ANALYSIS

Smith raises four broad arguments on appeal, most of which are procedurally barred. We address each argument in turn.

I. DENIAL OF SUMMARY JUDGMENT

Smith argues the trial court erred when it denied her motions for summary judgment. Within this argument, she contends that the public policies of the "Good Samaritan" and the "Rescue" doctrines prohibit contributory negligence absent a showing of gross negligence or wanton and willful conduct. Smith failed to raise this issue to the trial court.

> Failure to raise an issue before the trial court generally precludes a party from raising it on appeal. RAP 2.5. While "this rule insulates some errors from review, it encourages parties to make timely objections, gives the trial judge an opportunity to address an issue before it becomes an error on appeal, and promotes the important policies of economy and finality."

Wilcox v. Basehore, 187 Wn.2d 772, 788, 389 P.3d 531 (2017) (quoting *State v. Kalebaugh*, 183 Wn.2d 578, 583, 355 P.3d 253 (2015)).

Smith argues she sufficiently preserved this issue below. We disagree. The closest she came to raising the issue was in her renewed motion for summary judgment. Without citing any legal authority or making any reference to the Good Samaritan or Rescue doctrines, she argued:

> [Smith] had a legal, moral and ethical obligation to act in light of her client falling over to the floor to attempt to help him and aid him. The law states she must not violate any legal or moral duty. Mary Smith, as the caretaker to the disabled person, had both a legal and moral duty to assist him.

CP at 471. This argument would not have apprised the trial court of the Good Samaritan or the Rescue doctrine, nor would it have apprised it of her novel theory, raised on appeal, that STA had a higher burden of proof to prevail on its defenses.

Smith next contends that the affirmative defense of contributory negligence should not have been submitted to the jury because there was no issue of material fact to support STA's argument that she had assumed the risk of being injured. We disagree.

The driver testified he did not need Smith's help and he did not ask for it. Moreover, Smith had injured her back, nine months before the incident, simply by reaching into a minifridge. Yet Smith—aware of her weak back and knowing that helping the driver would be painful—chose to help the driver. A rational trier of fact

could have found that Smith had known helping the driver would injure her back and that she had acted unreasonably by rendering such help.

Smith next contends, at a minimum, the trial court's jury instructions should have acknowledged the existence of a public policy encouraging people to come to the aid of others. In support of her argument, Smith cites *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 913 P.2d 377 (1996). We disagree that the trial court erred.

First, Smith did not propose such an instruction, so she cannot raise this claim of error for the first time on appeal. *Gorman v. Pierce County*, 176 Wn. App. 63, 86, 307 P.3d 795 (2013). Second, *Gardner* speaks of a public policy to "save others from life threatening situations." 128 Wn.2d at 940. Roller was uninjured, and by the time Smith chose to help, he was calm. Because Roller's life was not in peril, the public policy discussed in *Gardner* has no application.

II. FAILURE TO MITIGATE

Smith next argues the trial court erred by not granting her motion for summary judgment on STA's failure to mitigate defense. We decline to review her claim of error because the claimed error did not affect the jury's verdict. As noted previously, the jury did not reduce Smith's recovery because of her failure to mitigate.

III. SPECIAL VERDICT FORM

Smith argues the damages award was improper because (1) the verdict form created confusion as to which party—jury or court—would offset contributory negligence from her total recovery, and (2) the trial court failed to clarify the verdict form despite the jury's request that it do so.

Because Smith did not propose an alternate verdict form before the trial court submitted the challenged form to the jury, we agree with STA that the form itself is not reviewable on appeal. *Gorman*, 176 Wn. App. at 86. However, Smith did object to the trial court's subsequent clarification of the form. We review here the propriety of the trial court's clarification.

Standard of review

A trial court's response to a jury query constitutes further jury instruction. *See State v. Sublett*, 176 Wn.2d 58, 82, 292 P.3d 715 (2012). Accordingly, a query response—like a formal instruction—is proper where it "permit[s] the parties to argue their theories of the case, do[es] not mislead the jury, and properly inform[s] the jury of the applicable law." *State v. Barnes*, 153 Wn.2d 378, 382, 103 P.3d 1219 (2005). We review jury instructions de novo. *In re Pers. Restraint of Hegney*, 138 Wn. App. 511, 521, 158 P.3d 1193 (2007).

Confusion and clarification

Here, the special verdict form asked the following: (1) whether STA was negligent, (2) whether STA's negligence had proximately caused Smith's injuries, (3) what the total amount of Smith's damages was, (4) whether Smith was negligent, (5) whether Smith's negligence had proximately caused her injuries, (6) what proportions of fault were assignable to STA and Smith, respectively, (7) whether Smith had failed to exercise ordinary care in avoiding new damages, and (8) what amount of new damages Smith had failed to avoid.

Having received this form, the jury during deliberations asked the following: "If we decided on a percentage of negligence on both sides (i.e. 60/40) are the total damages automatically adjusted based on those percentages or do we address that amount in question 8?" CP at 513. In reply, the trial court wrote, "The court adjusts the total damages based on the percentages. Questions 4-6 are separate and distinct from questions 7-8." CP at 513.

Plainly, the jury's inquiry indicated they were confused. However, in the context of the full form and all instructions given to the jury, we can infer what likely confused them. *State v. Brown*, 132 Wn.2d 529, 605, 940 P.2d 546 (1997) ("Jury instructions are to be read as a whole and each instruction is read in the context of all others given.").

In question 8, the verdict form asked, "What do you find to be the amount of damages that the Plaintiff could have avoided or minimized had she exercised ordinary care?" CP at 484. While the question meant to apply only to unmitigated damages (pursuant to question 7, which introduced mitigation), the issue of "ordinary care" had arisen both in question 7 and—by implication—in question 4, which had dealt with contributory negligence. While question 4 did not use the phrase "ordinary care," and instead used the word "negligent," jury instruction 4 defined "negligence" as "the failure to exercise ordinary care." CP at 492.

For this reason, the jury when reading question 8 could reasonably have concluded that the question addressed *all* damages stemming from Ms. Smith's failure to exercise ordinary care, in which case the jury would have needed to carry forward the proportional amount of damages it had assigned to Ms. Smith in question 6, and add that amount to the damages she had failed to mitigate. Ms. Smith correctly argues that, had the jury done this, it would have resulted in a double deduction of Ms. Smith's contributory negligence fault.

However, no double deduction occurred because the trial court, in its reply to the jury, adequately dispelled the relevant confusion. First, the court made clear that the jury did not need to do anything with the fault proportions it had assigned under question 6, as adjusting damages based on fault was the court's responsibility. Second, the court made

clear that the jury's answers to questions 7 and 8 should be wholly distinct from their answers to questions 4-6. This was a correct statement. The verdict form had charged the jury with assigning fault under contributory negligence, and then had charged them separately with assigning fault under failure to mitigate. The court would then use both answers to reduce Ms. Smith's recovery.

Regardless, we know that no double deduction occurred in this case because the jury, under question 8, imposed no deduction at all.

IV. MOTION FOR NEW TRIAL OR INCREASED AWARD

In a three-sentence contention, Smith argues the trial court should have granted her motion for a new trial or increased award because no reasonable or unconfused jury could have found her 90 percent at fault. We disagree.

Smith had chronic back pain, and, in the year before the incident, had injured her back simply by reaching into a minifridge. The van driver did not need Smith's help to right Roller in his wheelchair. Roller was uninjured and calm by the time Smith decided to assist the driver. Smith knew that helping the driver would cause her pain, and a rational jury could have found that Smith knew she would injure herself by helping the driver lift a 250- to 270-pound man in his motorized wheel chair.

Moreover, juries often render compromise verdicts. In closing, the parties debated to what extent, if any, Smith's lower back pain was attributable to the incident and the

reasonableness of Smith's decision to assist the driver. A range of possibilities was presented to the jury. The jury may have agreed to enter a higher damage award than some of the jurors preferred, and a higher contributory fault percentage than other jurors preferred, simply to reach an award they all could agree was just.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, C.J.

WE CONCUR:

Fearing, J.

Cooney, J.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 9th day of January 2025, I caused a true and correct copy of this Appeallant's Opening Brief to be served on the following in the manner indicated: via the court's electronic service and email and by mail to the following address:

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Spokane, WA 99201

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Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Mary Ellen Smith v. Spokane Transit Authority (397441)

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