NO. 1044402

SUPREME COURT OF THE
STATE OF WASHINGTON

DANA PROVENCHER, an individual, ARIANA PROVENCHER, an individual, and their marital community,
Petitioners,

v.

PIERCE COUNTY, a subdivision of the State of Washinton d/b/a Pierce County Sheriff's Department, and Shane Edward Eppens, an individual,
Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case arises out of a police pursuit by Pierce County Sheriff Department (County) Deputies of co-defendant Shane Eppens (Eppens). County Deputies pursued Eppens because he fit the description of a person with outstanding no-bail felony warrants, fled the scene during the initial investigation, and then refused to pull over after a deputy activated his lights and siren.

After an almost five-minute pursuit, during which Eppens fled at high speeds, ran stop signs and red lights, ran over stop sticks, all the while ignoring the officers' lights and sirens and his obligation to pull over, Eppens ran a red light at 84th Street and Pacific, and collided with the plaintiff Dana Provencher. The Provenchers sued alleging the County was negligent in its decisions to initiate and maintain the pursuit. The Provenchers also sued Eppens alleging negligence.

This matter was tried before a jury in Pierce County. At the conclusion of the 12-day trial, the jury returned a verdict finding that the County was not liable for the collision.

Specifically, the jury found that while the County was negligent, the negligence was not a proximate cause of the accident.

The conclusion of the trial was not without some confusion. The jury's verdict initially appeared to be inconsistent. Even though the jury found the County was not a proximate cause in answering Question 2 on the verdict form "no," the jury went on to apportion damages to the County in response to Question 5.

In addition, the jury had been discharged before the inconsistency was addressed in open court. After roughly six minutes during which the parties decided how to approach the inconsistency, the trial court recalled and rescinded the discharge, reinstated the usual cautionary instructions, and directed they return the following court day.

The next court day, after individually polling the jurors and finding no evidence the jury was tainted during the roughly six-minute stretch the jury was discharged and in the jury room,

the trial court gave the jury an additional set of questions to which the jury once again answered "no" to whether the County was a proximate cause.

On appeal, the Provenchers asked for a new trial asserting, among other things, it was error to recall the jury, that the jury verdict was irreconcilably inconsistent, and broadly, the trial court's handling of the issues surrounding whether the jury should not have been allowed to consider whether Eppens' conduct was intentional. To that end, the Provenchers argue that it was error and caused jury confusion to allow the jury to consider whether Eppens' conduct was intentional for the purpose of apportioning damages caused by negligent conduct versus intentional conduct as required by *Tegman v. Accident and Med. Investigations, Inc.,* 150 Wn. 2d 102, 75 P. 2d 497 (2003).

The Court of Appeals properly denied the Provenchers' request for a new trial. The Opinion applied the well-settled law to determine that it was proper to recall the jury to correct

inconsistencies under the circumstances. The Opinion also concluded that the jury returned a verdict, twice, that the County was not the proximate cause of the accident, and as such, the jury reached the ultimate determination on liability and any potential error arising concerning damages were harmless and are moot.[1] *See,* Opinion, p. 3.

II. STATEMENT OF THE CASE

The Division II opinion (Opinion) accurately sets forth the basic facts and procedural posture of the case and the appeal. *See,* Opinion, p. 3-13.

III. ARGUMENT

A motion for a new trial is governed by CR 59, which provides in pertinent part:

> (a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of

[1] The Provenchers' characterization of the trial court's handling of this matter as a "comedy of errors" is needlessly insulting and completely incorrect.

> the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:
>
> (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;
>
> ….
>
> (9) That substantial justice has not been done.

CR 59.

The Provenchers moved the trial court for a new trial based on the premise that the verdict was irreconcilably inconsistent, reasoning that while the jury determined the County was not a proximate cause of damages, it also apportioned the County 25 percent of the damages. The trial court denied that motion and gave the jury modified questions that eliminated the possibility the jury could apportion damages to the County in the event it found the County was not a

proximate cause of the damages. The jury once again determined the County was not a proximate cause of damages.

The Provenchers asserted on appeal, *inter alia*, that it was error to rescind the discharge and recall the jury. The Court of Appeals rejected this citing established caselaw that recalling a jury to fix inconsistencies is not error when caught quickly and the jury has not been tainted by the outside world. Opinion, p. 16, citing *State v. Clements*, 4 Wn. App. 2d 628, 423 P.3d 253 (2018) (a Court may recall the jury to correct mistakes if the jury remained under the direction of the court). *See, also, State v. Edwards*, 15 Wn. App. 848, 552 P. 2d 1095 (1976) (jury may be recalled if it did not pass from the control of the Court or otherwise mingle with others outside the jury room). *See, also*, *Dietz v. Bouldin*, 579 U.S. 40, 41, 136 S.Ct. 1885, 195 L.Ed.2d 161 (2016) (recall is appropriate after the Court should determine whether any juror was directly tainted by the outside world). Here, the jury never left the control of the Court. The Court was within its discretion to recall the jury.

In their Petition for Review (PFR), the Provenchers do not challenge the trial court's decision to recall the jury to correct inconsistencies but still conflate the jury's "first" verdict with the jury's "second" verdict in order to assert that the verdict is irreconcilable. For example, at PFR p. 23, 25, the Provenchers point to the jury attributing 25 percent fault to the County as evidence of a confused jury.

Regardless, only the "second verdict" is under review, and the Provenchers based the request for a new trial on two broad grounds. First, that the verdict is irreconcilably inconsistent because it allowed the jury to conclude that Eppens was acting both intentionally and negligently at the same time. Second, the trial court's inclusion of instructions and questions on the verdict form allowing the jury to determine that Eppens was acting intentionally was in error. According to the Provenchers, this, combined with various instructions, resulted in jury confusion which could be the only explanation for why

the jury answered "no" on proximate cause. These assertions are without merit.

A. THE VERDICT WAS NOT IRRECONCILABLY INCONSISTENT

1. The Jury Reached the Ultimate Determination on Liability

The Court of Appeals held that the verdict was not irreconcilably inconsistent because the jury reached the ultimate determination of liability by answering "no" to whether the County was a proximate cause. Opinion, p. 18. It is well-settled that where the jury reaches the ultimate determination on liability, subsequent answers to questions on the verdict form that appear to be otherwise inconsistent are moot. *See, Estate of Stalkup v. Vancouver Clinic, Inc., PS*, 145 Wn. App. 572, 583, 187 P.3d 291 (2008) (the trial court improperly ordered a new trial where the jury reached the ultimate determination on liability by answering "no" to the question on proximate cause even though it answered "yes" to negligence); *Nania v. Pacific Northwest Bell Telephone Co., Inc.*, 60 Wn. App. 706 (1991)

(court rejected request for new trial where jury answered "no" to proximate cause, but then apportioned fault, because the verdict was not inconsistent, and the answers subsequent to liability questions were "surplusage"); *Dep't of Highways v. Evans*, 22 Wn. App. 202, 209, 589 P. 2d 290 (1978) (trial court's refusal to interpret special interrogatories to the jury because of inconsistencies rejected and matter remanded to the trial court to enter judgment based on the jury's ultimate determination of proximate cause).

The Opinion is consistent with well-established caselaw governing interpretation of a jury verdict on appeal. "Once a jury renders a verdict, the trial court must declare its legal effect." *Espinoza v. American Commerce Ins. Co.,*184 Wn. App. 176, 196-97, 336 P. 3d 115 (2014) citing *Dep't of Highways v. Evans Engine & Equip. Co.,* 22 Wn. App. 202, 205-06, 589 P. 2d 290 (1978); *Minger v.Reinhard Distrib. Co.*, 87 Wn. App. 941, 946, 943 P. 2d 400 (1997). In doing so, "A court liberally construes a verdict so as to discern and

implement the jury's intent." *Espinoza*, 184 Wn. App. at 197 citing *Wright v. Safeway Stores, Inc.*,7 Wn. 2d 341, 344, 109 P. 2d 542 (1941). Accordingly, "If special verdict answers conflict with each other, a court must attempt to harmonize them; where the answers are reconcilable, the trial court must enter judgment accordingly and where the answers are irreconcilable, the trial court must order further deliberations or a new trial." *Espinoza*, 184 Wn. App. at 197, citing *Estate of Dormaier v. Columbia Basin Anesthesia, PLLC,*177 Wn. App. 828, 866, 313 P. 3d 431 (2013).

A verdict is irreconcilable when "the verdict contains contradictory answers to interrogatories making the jury's resolution of the ultimate issue impossible to determine." *Espinoza*, 184 Wn. App. at 197 citing *Estate of Stalkup*, 145 Wn. App. at 586; *Blue Chelan, Inc., v. Dep't of Labor & Indus.*, 101 Wn. 2d 512, 515, 681 P. 2d 233 (1984).

However, this Court has stated that in reviewing a jury's verdict:

> [the] court will not willingly assume that the jury did not fairly and objectively consider the evidence and the contentions of the parties relative to the issues before it. *Phelps v. Wescott*, 68 Wn. 2d 11, 410 P.2d 611 (1966). The inferences to be drawn from the evidence are for the jury and not for [the] court. The credibility of witnesses and the weight to be given to the evidence are matters within the province of the jury and even if convinced that a wrong verdict has been rendered, the reviewing court will not substitute its judgment for that of the jury, so long as there was evidence which, if believed, would support the verdict rendered. *Burke v. Pepsi-Cola Bottling Co.*,64 Wn. 2d 244, 391 P. 2d 194 (1964).

Stalkup, 145Wn. App. at 586 citing *Burnside v. Simpson Paper Co.,* 123Wn. 2d 93, 108, 864 P. 2d 937 (1994).

Here, the jury's verdict on the ultimate issue of liability is easy to determine as, twice, they said "no" on the question of whether Pierce County was a proximate cause of the accident. As shown above, case law is replete with examples that show where the jury answers "no" to proximate cause, their intent is clear even if there is a seemingly conflicting answer elsewhere in the verdict form. The Opinion relied on *Nania*, 60 Wn. App. 706.

In that case, the jury, as here, responded to two separate questions on negligence and proximate cause. The jury responded "yes" to the question regarding negligence, but in response to the question on proximate cause answered "no" to two of the three parties. Then the jury, as they did here, went on to answer the subsequent questions and apportioned fault to each party.

The Court of Appeals rejected PNB's request for a new trial because "[t]he jury made the ultimate determination of proximate cause imposing liability upon PNB" and that made the apportioning of fault question "and its answers surplusage." *Nania*, 60 Wn. App. at 708-09, citing *Evans*, 22 Wn. App. 202, 209. The *Nania* Court reasoned that finding proximate cause is necessary for an allocation of fault, and the trial court correctly entered judgment based upon the jury's resolution of the ultimate determination of proximate cause.[2]

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[2] The trial court would have been within its discretion to enter a verdict in favor of the County after the "first" verdict.

The Opinion correctly ruled that any potential error regarding differentiating between negligent and intentional conduct was solely related to apportioning fault among the tortfeasors who proximately caused damages. The Opinion appropriately rejected the assertion that determination of Eppens' conduct made the jury's verdict invalid as it related to the County because the County was not a proximate cause of the accident and thus any issues related to apportioning fault were moot. Opinion, p. 18.

Furthermore, there is no basis to conclude the jury was confused over Eppens acting negligently or intentionally or that any such confusion impacted the determination that the County was not a proximate cause. The testimony of the officers was that a pursuit can and does end if/when the fleeing suspect decides to abandon the car and flee on foot, or the fleeing suspect just decides to give up. RP (1/10/24) 45-46; (1/10/24) 164; (1/11/24) 162; (1/23/24) 146-47. *See, Estate of Stalkup,* 145 Wn. App. at 586 (a jury verdict finding that a defendant is

negligent but not the proximate cause is consistent if there is evidence in the record to support such a finding). There was evidence supporting the jury's verdict.

The Provenchers did not cite to any authority supporting the position that once a jury reaches a determination on the ultimate issue of liability, a new trial should be granted based on subsequent, seemingly inconsistent answers. In fact, decades of case law stand for the opposite proposition.

The Opinion properly determined that because the jury ruled the County was not a proximate cause of damages, questions regarding apportioning damages or regarding Eppens' conduct are moot. *See*, Opinion, p. 21. This was the correct decision and does not meet the criteria contained in RAP 13.4.

2. The Provenchers Invited Any Alleged Error in the Verdict Form

The Provenchers invited any error in the verdict form and therefore should not be granted a new trial on appeal. *Sdorra v. Dickson*, 80 Wn. 695, 702-03, 910 P. 2d 1238 (1996). The

invited error doctrine is strictly enforced to prevent "parties from benefiting from an error they caused at trial regardless of whether it was done intentionally or unintentionally." *State v. Ortiz-Triana*, 193 Wn. App. 769, 777, 373 P.3d 335 (2016); *Nania v. PNB*, 60 Wn. App. 709-10 (after all counsel reviewed and did not object to the verdict form before submitting to the jury, the *Nania* Court rejected PNB's argument for new trial on appeal reasoning that "PNB cannot now claim error, having invited it").

Here, the verdict form in general was agreed upon by the parties, and the language agreed upon for question five came from Provenchers' counsel, who suggested this version would be in accord with WPI 45.22. RP (1/24/24) 64-74. In fact, the inclusion of the question of whether Eppens was negligent was at the request of the Provenchers, who argued that the claims of negligence still stand after the trial court's ruling on intentionality and ought to go to the jury for apportionment. RP (1/24/24) 66. The Provenchers cannot now claim they are

entitled to a new trial because the verdict form allowed for an irreconcilably inconsistent verdict as this error was invited.

Reviewing this matter in order to grant a new trial does not meet the criteria set forth in RAP 13.4(b)(1), (2).

B. WHETHER THE TRIAL COURT ERRED IN INSTRUCTING ON INTENTIONAL CONDUCT IS MOOT AND THE TRIAL COURT WAS CORRECT IN ANY EVENT

1. The Issues Regarding Instructing on Intentionality Are Moot

The bulk of the Provenchers' PFR centers on the argument that the trial court mishandled the question of whether Eppens acted intentionally and misapplied *Tegman v. Accident & Med. Investigations, Inc*., 150 Wn. 2d 102, 75 P. 3d 497 (2003). The Provenchers suggest that the reason the jury found the County was not the proximate cause was because it was confused by the instructions on intentional conduct and was asked in the verdict form whether Eppens acted intentionally. This is purely speculative and asks this Court to insert the Provenchers' interpretation of the verdict rather than

harmonizing the jury's verdict as described above based on the well-settled caselaw.

Mainly, however, this Court should reject the PFR for the same reason the Court of Appeals did not rule on this issue, because the issue is moot. As this Court knows, in assessing damages in negligence cases, the legislature requires that "[i]n all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages." *Tisdale*, 25 Wn. App. 2d at 57; RCW 4.22.070(1). The definition of "fault" in chapter 4.22 RCW does *not* include intentional torts. RCW 4.22.015.

The Court of Appeals accurately summarized the arguments of each party and then ruled that distinction between negligent and intentional conduct "is relevant only for allocation of damages *for actors that proximately caused the plaintiff's damages*." Opinion, p. 21 (emphasis theirs). Accordingly, the Opinion went on to hold that because the

County "did not proximately cause the plaintiff's damages, that party is not involved in the damage allocation" and was "simply out of the picture." *See*, Opinion, p. 21, citing *Lavington v. Hillier*, 22 Wn. App. 2d 134, 148, 510 P. 3d 373 (2022). This was the correct ruling.

The gist of the Provenchers' argument is that the County was required to prove that Eppens engaged in an intentional tort demonstrating subjective intent to injure rather than merely demonstrate intentional conduct. PFR, p. 9. This is flawed for numerous reasons.

First, throughout this litigation, the Provenchers have asserted that use of the phrase "intentional tortfeasor" in *Tegman* and its progeny demonstrate that a defendant is required to prove a "traditional intentional tort" or a tort demonstrating a subjective intent to injure. This is incorrect.

Tegman and its progeny do refer to "intentional tortfeasors," but this is simply used for identification of a party for the purpose of analysis. *Tegman, et. seq.,* also repeatedly

refers to "intentional acts or omissions." In fact, the *Tegman* Court stated: "This case presents the situation where both *negligent and intentional acts caused the plaintiff's harm,* and ... whether that defendant is jointly and severally liable for damages caused both by that negligence *and* the intentional *acts* of other defendants." *Id*. at 110 (emphasis added). *See, also*, *Rollins v. King Cnty Metro Transit*, 148 Wn. App. 370, 199 P. 3d 499 (2009) (the *Rollins* instruction instructs the jury that "In calculating a damage award, you must not include any damages that were caused by *acts* of the unknown assailants and not proximately caused by negligence of the defendant." (emphasis added)); *Tisdale v. APRO, LLC*, 25 Wn. 2d 47, 522 P. 3d 116 (2022) (the trial court "erred when it failed to instruct the jury to segregate damages proximately caused by APRO's negligence from damages caused solely by Sabian's *intentional conduct,*" the jury should have been instructed to segregate damages based on "intentional acts," and asked whether "intentional *conduct* proximately caused" damages). There is

simply no case or authority which stands for the proposition that a defendant has to demonstrate that conduct falls within a "recognized intentional tort like fraud or assault," or that a "traditional intentional tort" is required to avail itself of *Tegman*. PFR, p. 9.

Second, the concept that someone could be acting intentionally without subjectively intending a specific outcome is far from new and is as "traditional" as any aspect of tort law. It is well-settled that an actor can intentionally cause harm without intending a specific harm to a specific person. When a person pulls a chair out from under a houseguest with the intent that the guest will hit the ground but not the intent to injure, this is an intentional act, even though the person did not intend to injure the guest. The intent was to move the chair with substantial certainty that a fall would result. *Garratt v. Dailey*, 46 Wn. 2d 197, 201 (1955). When a person fires a gun into a crowded movie theater injuring or killing someone, that is intentional.

The trial court applied the standard this Court called the "'usual and ordinary meaning' of "intent" in *State v. Grocery Manufacturers Ass'n*, 195 Wn.2d 442, 471–72, 461 P.3d 334, 350–51 (2020). There, this Court reversed a Court of Appeals decision that ruled "a person must 'subjectively intend to violate the law ..." for intent to apply. *Grocery Manufacturers,* 195 Wn. 2d at 471, citing *Grocery Mfrs. Ass'n*, 5 Wn. App. 2d 169, 209, 425 P.3d 927 (2018). This Court held that where the underlying statute was silent the 'usual and ordinary meaning' of "intent," "in both civil and criminal contexts, requires intent to accomplish an unlawful act, but not subjective knowledge that the act is unlawful." *Grocery Mfrs Ass'n*, 195 Wn.2d at 471–72.

This is consistent with the Restatement (Second) of Torts § 8A (1965) which provides that "intent" as used throughout the Restatement of Torts references the consequences of an act rather than the act itself. Restatement (Second) of Torts § 8A (1965), comment a. The Restatement (Second) makes it clear

that "[i]ntent is not, however, limited to consequences which are desired. If the actor knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result." Restatement (Second) of Torts § 8A (1965), comment b.

The trial court ruled that it was "clearly the case" and based on the evidence presented, "the jury could find that Mr. Eppens was acting intentionally." The evidence showed that Eppens was intentionally fleeing law enforcement to avoid apprehension, driving at excessive speeds upwards of 60 or 80 miles per hour, running red lights, and ignoring the deputies' obvious intention for him to pull over. RP (1/24/24) 14-15. CP 252. He continued at a high rate of speed even after hitting spike strips and then ran a red light when he collided with Dana Provencher. CP 252. The trial court's use of the "usual and ordinary meaning" of intent was appropriate.

The cases cited by the Provenchers from the insurance context simply do not stand for the proposition that there is a subjective requirement to show intent, or otherwise stand in contrast to *Grocery Mfrs*. *See, Yakima Cement Products Co v. Great American Ins. Co.*, 93 Wn. 2d 210, 608 P.2d 254 (1980) (unintentional and unexpected mismanufacture of concrete panels was an "accident" covered by insurance); *State Farm Fire & Cas. Co. v. Ham & Rye, LLC.*, 142 Wn. App. 6, 17-18, 174 P.3d. 1175 (2007) (where the insured acts intentionally but claims that the result was unintended, the incident is not an accident if the insured knew or should have known facts from which a prudent person would have concluded that the harm was reasonably foreseeable); *Webb v. USAA Cas. Ins. Co*., 12 Wn. App. 2d 433, 457 P. 3d 1258 (2020) (applied a specific provision of an intent to injure clause in the insurance policy).

Furthermore, adding a requirement that a defendant prove a subjective intentional tort would result in a waste of judicial resources and trigger the absurd result of requiring a

defendant to add parties or claims, instructions, and more questions on the verdict form in order to prove a particular person engaged in intentional conduct. This would be wholly unnecessary given trial courts can simply determine in their discretion whether there is evidence of intentional conduct.

The Provenchers' reliance on criminal statutes applied to Eppens has no bearing on whether the trial court properly concluded he was an intentional actor. The Provenchers did not raise a collateral estoppel argument below which in any event would have been meritless. Mainly, Eppens' guilty plea and the crimes he committed while fleeing the deputies had no bearing on what evidence was before the trial court. Regardless of Eppens' criminal culpability – which is based on a person's decision to engage in criminal conduct – the evidence before the trial court in this matter was that Eppens was acting intentionally when he was fleeing police and injured Mr. Provencher. There was evidence to support the trial court's

conclusion and how ensuing criminal cases played out is irrelevant.

In short, the Provenchers seek review of an issue that was not decided by the Court of Appeals and which is based on their interpretation of the jury's verdict in order to have this Court add a list of "traditional intentional torts" involving subjective intent to injure which a defendant would have to prove to avail itself of *Tegman*. The Provenchers' attempt to bring a subjective component of the meaning of "intent" into the calculation of damages required by *Tegman* should be rejected. *Tegman* simply requires that damages from intentional conduct be segregated from damages caused by negligence. Once the court decides in its discretion that there is intentional conduct, the trial court is required to instruct the jury to segregate damages based on conduct. There is no need to complicate matters by adding the requirement to prove, and disprove, additional torts. This Court should reject this invitation.

2. The Provenchers Waived Error in Regard to the Superseding Cause Instruction

The Provenchers also request review based on the trial court giving the superseding cause instruction. However, this was not objected to at trial. Rather, the trial court said, "Next is WPI 15.05, superseding cause," to which Provenchers' counsel said, "No objection." RP (1/24/24) 43.

The Opinion properly concluded Provenchers failed to preserve this issue. The Opinion did not find an exception under RAP 2.5(a) that could apply. The Court held that "the Provenchers' failure to object deprived the trial court of the opportunity to correct it." Opinion, p. 23.

3. The Jury Instructions Were Appropriate

The Opinion also correctly determined the jury instructions given were appropriate and/or that any error was moot as it did not pertain to the issue of whether the County was the proximate cause of the collision. The trial court did not abuse its discretion. *See, Tisdale*, 25 Wn. App. 2d at 56, citing

In re Det. of Taylor-Rose, 199 Wn. App. 866, 880, 402 P. 3d 357 (2017).

Here, Instruction 6, CP 1456 (summary of claims); Instruction 9, CP 1459 (*Tegman* defense); Instruction 11, CP 1461 (definition of intent); Instruction 20, CP 1470 (proximate cause); Instruction 21, CP 1471 (superseding cause); Instruction 28, CP 1479 (*Tegman* segregation instruction) were all appropriate. Furthermore, the Provenchers' "curative instruction," CP 1496-1499, was simply unnecessary. All the definitions regarding negligence and intentional conduct were given in accord with the WPIs, where applicable, and there was no reason to submit a three-page explanation of the various forms of culpability to the jury.

4. The Requests for Admission Not Being Admitted Is Not Grounds for Review

The Provenchers also assert the trial court mishandled the Requests for Admissions (RFAs) per CR 36 and should have admitted those into evidence. This is not grounds to grant

review. The Provenchers do not cite authority supporting vacating the judgment in favor of the County based on unanswered RFAs from another party.

Furthermore, as the Opinion correctly points out, the RFAs concern Eppens' behavior, and are therefore irrelevant to the County's liability because the jury decided the County was not a proximate cause. The RFAs had limited value given the reasons for the RFAs' admission, that Eppens would have slowed prior to the collision, was put before the jury anyway. The Provenchers' expert witness testified that based on studies and experience, fleeing suspects return to normal driving when they see the police have ended their pursuit. RP (1/17/24) 68-69. Even if the RFAs should have been admitted, which the County does not concede, any error was harmless.

IV. CONCLUSION

There are no valid grounds to vacate the jury's determination that the County was not a proximate cause of the collision. The issues raised by the Provenchers unrelated to the

jury's verdict are therefore moot. The Court of Appeals properly applied well-settled law and did not decide this matter on any issue that satisfies the requirements for review set forth in RAP 13.4(b)(4). This Court should decline to review and let the Opinion stand.

I certify that this brief contains 4,776 words and is in compliance with the length limitations of RAP 18.17(c).

DATED this 8th day of September, 2025.

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CERTIFICATE OF SERVICE

On September 8, 2025, I hereby certify that I electronically filed the foregoing ANSWER TO PETITION FOR REVIEW with the Clerk of the Court using the Washington State Appellate Courts' Secure Portal, which will send notification of such filing to the following:

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