

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JOHN NICHOLAS WOODS,

Appellant.

No. 38936-3-II

UNPUBLISHED OPINION

Bridgewater, P.J. — John Nicholas Woods appeals his conviction for vehicular homicide, leaving the scene of an accident resulting in death, and driving on a revoked or suspended license. Woods was driving twice the posted speed limit when he careened into Radion Plyut, who was making a left turn onto a side street. He argues that sufficient evidence does not support the finding that he was the proximate cause of Plyut’s death because Plyut made an illegal left turn that was a superseding intervening event. We disagree and affirm his convictions.

**FACTS**

Around 11:00 pm, Woods was driving his BMW between approximately 60 and 70 miles per hour on Brookdale Road when he collided at an intersection with Radion Plyut’s Mazda. Woods was traveling eastbound when he struck Plyut, who was making a left turn from westbound Brookdale Road onto a side street.

Brookdale Road is a two-lane paved road, with a posted speed limit of 35 miles per hour. On the night of the collision, the road was slick and icy.

Residents living near the collision scene described hearing and seeing a speeding BMW traveling on Brookdale Road moments before hearing the sound of the collision. Some residents saw a man, later identified as Woods, walking away from the BMW.

The Pierce County Sheriff's deputies who responded found Woods walking on the side of a road near the collision scene. Woods had blood on his hands and mouth. The deputies also found a key in Woods's pocket that fit the BMW's ignition.

The deputies took Woods into custody and took him to a hospital for treatment. Woods's blood had an alcohol content of 0.15 and traces of THC, the active ingredient in marijuana. Plyut died the night of the collision from blunt force trauma that he sustained in the collision.

At trial, the State's collision reconstruction expert, Scott Powers, testified that the BMW's front end struck the Mazda's passenger side as the Mazda made a left turn. Powers estimated the BMW's pre-collision speed at 72 miles per hour and Mazda's pre-collision speed at 14 miles per hour.

Woods's collision reconstruction expert, Tim Moebes, estimated the BMW's pre-collision speed at 60 miles per hour. Moebes testified that although Brookdale Road had a slight curve near the collision site and that visibility was impacted at about 575 feet from the intersection where the collision occurred, Plyut could see the BMW at the moment he started to make the left turn. Moebes also testified that drivers have a harder time estimating the speed of approaching vehicles in darkness.

A jury found Woods guilty of vehicular homicide, failure to remain at the scene of an accident resulting in death, and second degree driving on a suspended or revoked license.

#### ANALYSIS

Woods argues that sufficient evidence does not support finding that he was the proximate cause of Plyut's death because Plyut's left turn was a superseding intervening event. Woods argues that Plyut had a duty to yield to him, regardless of whether he was driving the speed limit, and that he could not have reasonably foreseen that Plyut would make a left turn in front of him. We disagree.

In reviewing whether evidence is sufficient to sustain a conviction, we review the evidence in the light most favorable to the State. *State v. Drum*, 168 Wn.2d 23, 34, 225 P.3d 237 (2010). The relevant question we ask is “whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.” *Drum*, 168 Wn.2d at 34-35 (quoting *State v. Wentz*, 149 Wn.2d 342, 347, 68 P.3d 282 (2003)). An appellant claiming insufficient evidence necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from that evidence. *Drum*, 168 Wn.2d at 35. Circumstantial and direct evidence are equally reliable in determining sufficiency of the evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The State charged and convicted Woods for vehicular homicide under RCW 46.61.520, which states in part:

When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:

- (a) While under the influence of intoxicating liquor or any drug, as defined

- by RCW 46.61.502; or
- (b) In a reckless manner; or
- (c) With disregard for the safety of others.

RCW 46.61.520(1). To convict Woods under RCW 46.61.520, the State had to prove that Woods's driving was the proximate cause of Plyut's death, which is the only element Woods challenges. RCW 46.61.520(1).

Contributory negligence is not a defense to negligent or vehicular homicide. *State v. Judge*, 100 Wn.2d 706, 718, 675 P.2d 219 (1984). But a defendant is not culpable for a death resulting from the defendant's driving if a superseding intervening event caused the death. *State v. Souther*, 100 Wn. App. 701, 708-09, 998 P.2d 350, *review denied*, 142 Wn.2d 1006 (2000). "To escape liability, the defendant must show that the deceased's contributory negligence was a supervening cause without which the defendant's contributory negligence would not have caused the accident." *Souther*, 100 Wn. App. at 709.

"An intervening cause is a force that operates to produce harm *after* the defendant has committed the act or omission." *State v. Roggenkamp*, 115 Wn. App. 927, 945, 64 P.3d 92 (2003), *aff'd*, 153 Wn.2d 614, 106 P.3d 196 (2005). "A force set in motion at an earlier time is an intervening force if it first operates after the actor has lost control of a situation and the actor neither knew nor should have known of its existence at the time of his negligent conduct." *Roggenkamp*, 115 Wn. App. at 945 (quoting Restatement (Second) of Torts § 441(1), cmt. a).

Only an intervening act not reasonably foreseeable is a superseding cause sufficient to relieve defendant from culpability. *Roggenkamp*, 115 Wn. App. at 945. In determining whether an intervening act is a superseding cause, we consider whether the intervening act (1) created a

different type of harm, (2) constituted an extraordinary act, and (3) operated independently. *Roggenkamp*, 115 Wn. App. at 945 (citing *Campbell v. ITE Imperial Corp.*, 107 Wn.2d 807, 812-13, 733 P.2d 969 (1987)).

In *Roggenkamp*, Division One of this court considered an issue very similar to the issue at bar, and our Supreme Court affirmed. In that case, Roggenkamp was driving down a residential county road that was lined with driveways and mailboxes and that had a posted speed limit of 35 miles per hour. *Roggenkamp*, 115 Wn. App. at 931. He entered the oncoming traffic lane to pass another vehicle and reached a speed of about 70 miles per hour. *Roggenkamp*, 115 Wn. App. at 933. According to Roggenkamp, as he was in the midst of passing, still in the oncoming traffic lane, he saw a vehicle, driven by Chilcoate, pull left out from an intersection in the same direction he was traveling. *Roggenkamp*, 115 Wn. App. at 933. Roggenkamp immediately applied the brakes, sending his vehicle into a skid. *Roggenkamp*, 115 Wn. App. at 933. Yet another vehicle, driven by Carpenter, pulled out of the same intersection behind Chilcoate. *Roggenkamp*, 115 Wn. App. at 933. Roggenkamp was unable to stop before he collided in the intersection with Carpenter's vehicle. *Roggenkamp*, 115 Wn. App. at 933. The collision seriously injured three occupants of Carpenter's vehicle and instantly killed another. *Roggenkamp*, 115 Wn. App. at 933. Carpenter had a blood alcohol content level of 0.13. *Roggenkamp*, 115 Wn. App. at 934.

Division One held that Carpenter's actions were not a superseding cause of the accident because Roggenkamp could foresee that vehicles would turn onto a rural residential road that was lined with driveways and mailboxes and that had a posted speed limit of 35 miles per hour. *Roggenkamp*, 115 Wn. App. at 946. Even though Roggenkamp was locked in a brake-skid at the

time of the collision, the *Roggenkamp* court reasoned that Roggenkamp's recklessness was ongoing at the time of Carpenter's act of pulling into the intersection, making Carpenter's action at most a concurring cause. *Roggenkamp*, 115 Wn. App. at 947. In affirming Division One, our Supreme Court was "entirely in agreement" with the court's decision and reasoning. *State v. Roggenkamp*, 153 Wn.2d 614, 630-31, 106 P.3d 196 (2005).

Here, Woods argues that Plyut made an improper, negligent turn when he failed to yield. He is not persuasive. Although Plyut had a duty to yield to oncoming traffic, Plyut was not negligent making his left turn. Brookdale Road had a slight bend that effectively limited Plyut's sightline to 575 feet. Even if Plyut could have seen Woods at the moment he made the turn, the collision happened at night in the dark when, according to Woods's own accident reconstruction expert, it is harder to judge a vehicle's speed.

Instead, sufficient evidence supports finding that Woods's recklessness was the proximate cause of Plyut's death. Woods was traveling between approximately 60 and 70 miles per hour on Brookdale Road, where the posted speed limit is 35 miles per hour and where residents live. Indeed, one witness testified that Brookdale is "little two-lane" rural county road. 3 RP at 62. At the time of the accident, Brookdale was slick with ice, and Woods's blood alcohol content was 0.15. While driving under the influence at about twice the posted speed limit on a rural residential road that was slick with ice, Woods disregarded the reasonable possibility that a vehicle would turn left in front of him and that he would be unable to stop. Woods was speeding at the time he collided with Plyut, so his recklessness was ongoing at the time of Plyut's act of turning left. We hold that Plyut's left turn was not a superseding intervening event.

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Affirmed.

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

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Bridgewater, P.J.

We concur:

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Hunt, J.

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Van Deren, J.