

2005

Louise Mann v. Samuel P. Fredrickson, Riddle  
Services Inc., and Does 1 through 10 inclusive :  
Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

William R. Rawlings; Attorney for Plaintiff/Appellant.

Richard K. Glauser; Albert W. Gray; Smith & Glauser; Attorney for Defendants/Appellees.

---

#### Recommended Citation

Brief of Appellee, *Mann v. Fredrickson*, No. 20050955 (Utah Court of Appeals, 2005).

[https://digitalcommons.law.byu.edu/byu\\_ca2/6097](https://digitalcommons.law.byu.edu/byu_ca2/6097)

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

---

IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

---

LOUISE MANN,

Plaintiff/Appellant,

v.

SAMUEL P. FREDRICKSON, RIDDLE  
SERVICES, INC., and DOES 1  
THROUGH 10 INCLUSIVE,

Defendants/Appellees.

Case No. 20050955 - CA

---

**BRIEF OF THE APPELLEES**

---

APPEAL FROM THE THIRD DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH  
THE HONORABLE DENO HIMONAS PRESIDING

---

WILLIAM R. RAWLINGS  
Law Offices of William R. Rawlings  
11576 South State Street, Suite 401  
Draper, Utah 84020

*Attorney for Plaintiff/Appellant*

RICHARD K. GLAUSER, #4324  
ALBERT W. GRAY, #A6095  
SMITH & GLAUSER, P.C.  
7351 S. Union Park Ave., Suite 200  
Midvale, Utah 84047  
Telephone: (801) 562-5555  
*Attorneys for Defendants/Appellees*

---

FILED

---

IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

---

LOUISE MANN,

Plaintiff/Appellant,

v.

SAMUEL P. FREDRICKSON, RIDDLE  
SERVICES, INC., and DOES 1  
THROUGH 10 INCLUSIVE,

Defendants/Appellees.

Case No. 20050955 - CA

---

**BRIEF OF THE APPELLEES**

---

APPEAL FROM THE THIRD DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH  
THE HONORABLE DENO HIMONAS PRESIDING

---

WILLIAM R. RAWLINGS  
Law Offices of William R. Rawlings  
11576 South State Street, Suite 401  
Draper, Utah 84020

*Attorney for Plaintiff/Appellant*

RICHARD K. GLAUSER, #4324  
ALBERT W. GRAY, #A6095  
SMITH & GLAUSER, P.C.  
7351 S. Union Park Ave., Suite 200  
Midvale, Utah 84047  
Telephone: (801) 562-5555  
*Attorneys for Defendants/Appellees*

---

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	iii
JURISDICTION OF THE COURT .....	1
STATEMENT OF THE ISSUES .....	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES .....	3
STATEMENT OF THE CASE .....	3
STATEMENT OF FACTS .....	5
I.    RESPONSE TO MANN’S STATEMENT OF FACTS. ....	5
II.   STATEMENT OF FACTS MATERIAL TO THE ISSUES PRESENTED. .	8
SUMMARY OF THE ARGUMENT .....	12
ARGUMENT .....	15
I.    Mann is Precluded From Raising Insufficiency Of The Evidence Due to Her Failure to Make a Motion For Directed Verdict .....	15
II.   There Was More Than Sufficient Evidence To Uphold The Jury Verdict . .	17
A.    Sufficiency as to Liability Verdict. ....	17
1.    Mann has Failed to “Marshall the Evidence” .....	17
2.    The Trial Court Did Not Abuse Its Discretion by Denying Mann’s Motion For a New Trial. ....	19
B.    Sufficiency As To Proximate Cause. ....	26
1.    Mann Failed to Preserve Issue as to the Jury Verdict on Proximate Cause. ....	26
III.  Mann Failed To Properly Object To Jury Instruction No. 28 .....	27
IV.  Jury Instruction No. 28 Was A Proper Statement Of The Law .....	28
CONCLUSION .....	30
CERTIFICATE OF SERVICE .....	32

## ADDENDA

- A. R. 160, Statement and Diagram of Fredrickson at the scene(duplicate of blown-up trial Exhibit 11, ordered for delivery to this Court)
- B. Utah Code Annotated § 41-6-69(2) (2002)
- C. Instruction 33, MUJI 3.3

## TABLE OF AUTHORITIES

### **CASES**

<i>Anderson v. Sharp</i> , 899 P.2d 1245, 1247 (Utah Ct. App. 1995) .....	20
<i>Anderson v. Toone</i> , 671 P.2d 170, 175 (Utah 1983) .....	30
<i>Bennion v. LeGrand Johnson Const. Co.</i> , 701 P.2d 1078, 1083 (Utah 1985) .....	27
<i>Brigham v. Moon Lake Elec. Assn.</i> , 24 Utah 2d 292, 1970 at p. 297 .....	16
<i>Child v. Gonda</i> , 972 P.2d 425 (Utah 1998) .....	19
<i>Christensen v. Stuchlik</i> , 427 P.2d 278, 280 (Id. 1967) .....	16
<i>Christensen v. Utah Transit Authority</i> , 649 P.2d 42 (Utah 1982) .....	29
<i>Coleman v. Stevens</i> , 2000 Utah 98 .....	27
<i>Deats v. Commercial Sec. Bank</i> , 746 P.2d 1191 (Utah Ct. App. 1987), cert. denied, 765 P.2d 1277 (Utah 1988) .....	19
<i>E.A. Straut v. W.C. Foy &amp; Sons</i> , 665 P.2d 1320 (Utah 1983) .....	27
<i>Employer's Mut. Liability Ins. Co. v. Allen Oil Co.</i> , 258 P.2d 445 (Utah 1953) .....	28
<i>Fairbourn v. Lloyd</i> , 440 P.2d 257, 258 (Utah 1968) .....	21
<i>Godesky v. Provo City Corp.</i> , 690 P.2d 541 (Utah 1984) .....	27
<i>Gorostieta v. Parkinson</i> , 2000 UT 99 .....	2
<i>Holbrook v. Master Protection Corp.</i> , 883 P.2d 295 (Utah Ct. App. 1994) .....	27
<i>Holland v. Brown</i> , 394 P.2d 77 (Utah 1964) .....	24
<i>Jensen v. Thomas</i> , 570 P.2d 695 (Utah 1977) .....	20
<i>King v. Feraday</i> , 739 P.2d 618 (Utah 1987) .....	22, 23

<i>Maltby v. Cox Construction</i> , 598 P.2d 336 (Utah 1979) .....	21, 22
<i>McCloud v. Bond</i> , 569 P.2d 1125, 1127 (Utah 1977) .....	23
<i>Nelson v. Trujillo</i> , 657 P.2d 730 (Utah 1982) .....	1, 2, 20
<i>Newsom v. Gold Cross Serv.</i> , 779 P. 2d 692 (Utah Ct. App. 1989) .....	28
<i>Oneida/SLIC v. Oneida Cold Storage &amp; Warehouses, Inc.</i> , 872 P.2d 1051, 1053 (Utah Ct. App. 1994) .....	19
<i>Onyeabor v. Pro Roofing</i> , 787 P.2d 525, 529 (Utah Ct. App. 1990) .....	18
<i>Polleche v. Trans American Ins. Co.</i> , 497 P.2d 236 (Utah 1972) .....	15
<i>Price v. Sinnott</i> , 460 P.2d 837, 842 (Nev. 1969) .....	16
<i>Reeves v. Gentile</i> , 813 P.2d 111 (Utah 1991) .....	27
<i>Rushton v. Salt Lake County</i> , 977 P.2d 1201, 1203 (Utah 1999) .....	1
<i>Saunders v. Sharp</i> , 806 P.2d 198, 199 (Utah 1998) .....	19
<i>Snyderville Transp. Co. v. Christensen</i> , 609 P.2d 939 (Utah 1980) .....	27
<i>United States v. First Sec. Bank</i> , 28 F.2d 424 (10 <sup>th</sup> Cir. 1953) .....	28, 29
<i>Weber Basin v. Nelson</i> , 358 P.2d 81 (Utah 1960) .....	27
<i>West Valley City v. Majestic Investment Co.</i> , 818 P.2d 1311 (Utah Ct. App. 1991) ....	18

## STATUTES

Utah Code Ann. § 41-6-62(a) .....	21
Utah Code Ann. § 41-6-69(2) .....	3, 26
Utah Code Ann. § 78-2-2(3)(j)(1998) .....	1, 3, 12
Utah Code Ann. § 78-27-39 .....	4

## **JURISDICTION OF THE COURT**

The Appellate Court has appellate jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(j)(1998).

## **STATEMENT OF THE ISSUES**

Louise Mann's ("Mann") appeal of the trial court's denial of her Motion Notwithstanding the Verdict and Motion for New Trial based upon insufficiency of the evidence and the giving of Jury Instruction No. 28 presents the following issues:

1. Is Mann precluded on appeal from raising the issue of "insufficiency of the evidence" by failing to make a motion for directed verdict at trial? This issue presents a question of law and is reviewed under a correctness standard. See Rushton v. Salt Lake County, 977 P.2d 1201, 1203 (Utah 1999).
2. Did the trial court correctly deny Mann's Motion for New Trial on liability based on "insufficiency of the evidence"? This issue presents a question of law and is reviewed under an abuse of discretion standard where the Court looks at the evidence in the light most favorable to the party successful at trial. See Nelson v. Trujillo, 657 P.2d 730 (Utah 1982).
3. Has Mann failed to properly raise the "sufficiency of the evidence" regarding the proximate cause relationship between Mann's claimed injuries and Appellees' alleged negligence? This presents a question of law and a review under a correctness standard. See Rushton v. Salt Lake County, 977 P.2d 1201, 1203 (Utah 1999).



4. Did the trial court correctly deny Mann's Motion for New Trial based on Jury Instruction No. 28? This issue presents a question of law and is reviewed under a correctness and harmless error standard. See, Gorostieta v. Parkinson, 2000 UT 99.
5. Is Mann precluded from raising claims of error to Jury Instruction No. 28 by failing to properly object? This issue presents a question of law and is reviewed under a correctness and harmless error standard. See, Gorostieta v. Parkinson, 2000 UT 99.

## **CONSTITUTIONAL PROVISIONS, STATUTES AND RULES**

Utah Code Ann. § 41-6-69(2).

### **STATEMENT OF THE CASE**

Mann filed a lawsuit against Samuel Fredrickson (hereinafter “Fredrickson”) and his employer, Riddle Services (hereinafter “Riddle”) arising out of an automobile accident occurring on November 1, 2002. (See Plaintiff’s Complaint, R. 3-7.)

Mann claimed negligence and injuries as a result of being struck from the rear by Fredrickson. (R. 3, ¶ 13.) Mann also alleged that Riddle was responsible as Fredrickson’s employer, (i.e., respondeat superior) but no independent cause of action for negligence was alleged against Riddle. (R. 3-7.)

Fredrickson and Riddle answered by denying Mann’s allegations of negligence, proximate cause and injuries. (R. 13-17.) Fredrickson and Riddle also specifically asserted as an affirmative defense that Mann was negligent and that pursuant to Utah’s Comparative Negligence law Mann could be barred from recovery. (R. 15, Third Defense.) Fredrickson and Riddle also raised as affirmative defenses that they were not responsible for the accident and that the injuries were caused by the fault of third-person events or conditions not within their control, and therefore the jury should apportion fault pursuant to Utah Code Ann. § 78-27-39. (R. 16, Seventh Defense.) Fredrickson and Riddle also raised the defense that fault should be allocated to construction workers who caused or contributed to the incident pursuant to Utah Code Ann. § 78-27-39 et seq. (R. 17, Ninth Defense.)

The case proceeded through discovery, and prior to trial Fredrickson and Riddle filed a notice requesting apportionment of fault pursuant to Utah Code Ann. § 78-27-39 et seq., in regards to the flagger that was near the scene at a construction site. (R. 156-160.) Mann filed an objection to the request for apportionment of fault. (R. 171-199.)

During the trial, after the close of evidence, Fredrickson and Riddle made a motion to the court to have the “flagger” placed on the jury verdict form for the purposes of apportionment of fault. (R. 593, p. 435, lines 11-25; p. 436-438, lines 1-9.) Mann objected to the motion to have the flagger put on the jury verdict. (R. 593, p. 435, lines 18-21; p. 436, lines 4, 16, 21-22.) The court ruled there was insufficient evidence indicating any negligence on the part of the flagger and the flagger was left off the jury verdict form. (R. 593, p. 437-438, lines 1-9.)

At the close of evidence Mann failed to make any motion for a directed verdict on either liability or proximate cause. (R. 391-394; 593, p. 428, lines 24-25; p. 429, lines 1-4.)

The court then prepared the instructions to the jury. (R. 332-379.) Exceptions were taken to the instructions by the parties. (R. 593, p. 443-444, lines 1-21.) Mann objected to Jury Instruction No. 28 but only stated a general objection that it was misleading, confusing and inappropriate. (R. 593, p. 444, lines 11-16.)

The jury was then instructed on the case. (R. 593, p. 448, lines 1-12.) After deliberations the jury returned a verdict in favor of Fredrickson and Riddle both as to liability and proximate cause. (R. 383-385; 593, p. 459, lines 19-25; p. 460.)

Mann immediately made a Motion for Judgment Notwithstanding the Verdict as to liability before of the trial court, which was denied. (R. 593, p. 464, lines 8-25; p. 465.) Judgment thereafter entered on the verdict on June 24, 2005, as to both liability and causation. (R. 395-398.)

On or about July 5, 2005, Mann made a Motion for New Trial on liability and Jury Instruction No. 28 pursuant to Rule 59, Utah Rules of Civil Procedure. (R. 406-441.) This motion was opposed by Fredrickson and Riddle. (R. 449-481.) Thereafter, Mann filed her reply to the opposition for her Motion for New Trial. (R. 499-529.) After reviewing the memoranda, evidence and hearing oral argument, the court denied Mann's Motion for New Trial based on Mann's claim of insufficiency of the evidence on liability and that Jury Instruction No. 28 was improper. (R. 555-575, p. 1-11.)

Thereafter, Mann filed her notice of appeal. (R. 543-545; 562-564.)

### **STATEMENT OF FACTS**

#### **I. RESPONSE TO MANN'S STATEMENT OF FACTS.**

Initially, it is important to note that Mann incorrectly states in her introduction to her statement of facts that the jury did not reach the issue of causation. (R. 383-385.) The jury in fact found that not only was there no negligence on the part of Appellees, but affirmatively concluded there was no proximate cause as well. (R. 383-385.) Mann has never raised any issue nor provided any evidence regarding proximate cause.

Mann's statement of facts merely reargues the same liability facts that she did at trial. The statement of facts does not "marshal the evidence" nor provide evidence in the light most favorable to Appellees who had a verdict in their favor at trial.

The accident occurred at about 9500 South and Redwood Road. (R. 573, p. 17, lines 14-24.) However, Mann fails to state facts indicating that Fredrickson had been following her since approximately 10100 South, which is approximately five or six blocks. (R. 573, p. 22, lines 3-8; 574, p. 15, lines 12-25, p. 16, lines 1-9.) Even though Fredrickson was behind Mann for some time, Mann, who was traveling at 10 miles per hour, was never aware that Fredrickson was behind her and was therefore entirely oblivious as to the potential consequences to a vehicle behind her if she were to make a sudden stop. (R. 573, p. 72, lines 13-25, p. 73, p. 74, lines 1-12.)

While there was discussion at trial regarding there being an area of construction, Officer Brown, who investigated the scene, indicated that the speed limit was 45 miles per hour and that the advisory speed limit was also 45 miles per hour. (R. 573, p. 40, lines 11-20.) Officer Brown further indicated that there were no signs otherwise modifying the speed limit. (R. 573, p. 40, lines 18-25, p. 41, lines 1-5.) Mann fails to provide such facts for the purposes of her appeal.

Mann also indicates in her statement of facts that she "made a normal stop, and had stopped for 10 or 15 seconds before Mr. Fredrickson's vehicle struck her from behind."

Appellate's Brief at p. 5. This hardly could be a factual statement construed in a light most favorable to Appellees.

It is clear that the jury did not believe such facts and agreed with Fredrickson that Mann made a sudden stop in front of him. Mann's reference to facts not favorable to her, which the jury rejected, is not an isolated reference but is repeated in Mann's "discussion" under her "marshaling of the evidence." (See Appellant's Brief, pp. 7-9.)

Mann does state the facts that Mann had stopped "suddenly" in the middle of the road and that Fredrickson did not have enough time to stop. However, Mann fails to indicate that Fredrickson was also two to three car lengths behind her. (R. 574, p. 26, lines 13-16; R. 160, duplicate of blow-up of trial Exhibit 11, attached as Addendum A.) Mann fails to point out that Fredrickson was attentive and watching the back of Mann's vehicle and was not distracted by any conversation with his co-driver/passenger Tony Ruiz. (R. 574, p. 26, lines 17-25; p. 27, lines 1-7.)

Fredrickson also testified that he first tried to give Mann the benefit of the doubt when he found out from another source after the accident that there may have been some confusion with the flagger. (R. 574, p. 29-31; p. 33, lines 7-20.) Had the flagger been the reason for Mann's sudden stop, Fredrickson was more than willing to at least state his non-expert

opinion that Mann, in such limited circumstances, would not have contributed to the accident.<sup>1</sup>  
(R. 574, p. 33, lines 6-22.)

In her statement of facts Mann also sets forth the statement of Officer Brown, the investigating officer, and indicates in his report that Fredrickson's vehicle was following too closely. However, Mann fails to state the principal reason why Officer Brown's testimony was apparently rejected by the jury. Officer Brown was entirely unaware that there was a law that prevented anyone from suddenly stopping or slowing down. (R. 573, p. 43, lines 14-20.) Officer Brown was specifically shown the statute and did not recognize it, nor was he aware of any such law. (R. 573, p. 43, lines 24-25; p. 44, lines 1-23.)

## **II. STATEMENT OF FACTS MATERIAL TO THE ISSUES PRESENTED.**

The motor vehicle accident which is the subject of this appeal occurred on November 1, 2002. (R. 5.) Fredrickson was driving a delivery truck for Riddle and was headed northbound on Redwood Road prior to the accident. (R. 574, p. 14.) There was one lane for travel north and south in each direction at Redwood Road. (R. 573, p. 41, lines 6-7.) Fredrickson had just completed a delivery and was returning to Riddle's warehouse on

---

<sup>1</sup>It should be noted that throughout her brief Mann, on four separate occasions, indicates Fredrickson supposedly absolved Mann from liability but fails to inform the Court of the facts which are favorable to the verdict, that Fredrickson specifically indicated that if for any reason the flagger had not been at fault then he could not see any reason why Mann should have suddenly stopped in front of him. (R. 574, p. 33, lines 6-22.)

Redwood Road to get another load. (R. 574, p. 14, lines 2-9.) In the truck as a passenger was a co-worker, Tony Ruiz.<sup>2</sup> (R. 574, p. 14, lines 10-14.)

Fredrickson stopped at 10400 South Redwood Road at a light and when the light changed he and the other four or five vehicles behind him proceeded through the intersection northbound on Redwood Road. (R. 574, p. 15-16.)

Fredrickson then slowed down, noticed Mann's vehicle ahead of him and was continuing to follow her when Mann "suddenly" stopped in the middle of the road such that Fredrickson did not have enough time to stop. (R. 574, p. 16, lines 5-9.)

Fredrickson testified he was traveling at the same speed as Mann, at about 30 miles per hour. (R. 574, p. 15, lines 5-12.) Mann testified she was traveling 10 to 15 miles per hour. (R. 573, p. 71, lines 7-20; p. 73, lines 8-16.) The speed limit was 45 miles per hour and even though it was a construction area the advisory speed limit was still 45 miles per hour. (R. 573, p. 40, lines 11-25; p. 41, lines 1-5.)

Mann lived at 10100 South and the accident occurred about five or six blocks away at about 9500 South at Redwood Road. (R. 573, p. 17, 19-25, lines 16-20.) The day before the accident Mann had been prescribed a powerful narcotic pain medication, Roxicet. (R. 591, p. 93, lines 14-16.) Her family doctor, Dr. Kevin Stigge, indicated Roxicet was a potent narcotic pain medication, the same as Percoset or Oxycodone. (R. 591, p. 91, lines 5-12.) Dr. Stigge

---

<sup>2</sup>It should be noted that Mr. Ruiz left the employment of Riddle and that he could not be located by Riddle after an extensive search. (R. 593, p. 424, lines 18-25; p. 425, lines 1-2; p. 426, lines 4-25.)



would advise against anyone driving a motor vehicle while taking such medication. (R. 571, p. 91, lines 6-24.) Mann denied any knowledge of even receiving the medication before the accident nor what it was for. (R. 573, p. 83, lines 21-25; p. 84-85.)

At no time before the accident could Fredrickson recall ever taking his eyes off of Mann's vehicle. (R. 574, p. 26, lines 17-19.) Fredrickson did not have any warning that Mann was going to stop. (R. 574, p. 16, lines 10-12.) When Mann suddenly stopped Fredrickson tried to stop by slamming on his brakes. (R. 574, p. 16, line 15.) At the time of the accident Fredrickson was very surprised that Mann had stopped suddenly and he did not see any reason why Mann should have stopped suddenly. (R. 574, p. 17, lines 6-15.) The impact speed of the accident was approximately 10 miles per hour. (R. 573, p. 41, lines 8-14.) The weather was clear and it was daytime when the accident occurred. (R. 573, p. 40, lines 7-10.)

After the collision, Mann had a conversation with Fredrickson and both agreed to pull their vehicle off to the side of the road, which they did. (R. 573, p. 20, lines 12-19; 574, p. 17, lines 24-25; p. 18, line 1-6.)

Mann was not aware of Fredrickson being behind her at any time prior to the collision. (R. 573, p. 73, lines 21-23.) Mann also could not give any estimate of the impact speed in the accident. (R. 573, p. 74, lines 9-12.) There were no injuries at the scene and no ambulance was called. (R. 573, p. 36, lines 7-10; p. 75, lines 17-25; p. 76, line 1; 574, p. 17, lines 22-25, p. 18, lines 1-3.) At the time of the accident Fredrickson was very surprised Mann had stopped suddenly and saw no reason why she would have made such a sudden stop. (R. 574, p. 17,

lines 6-15.) After the accident Fredrickson was informed by his co-worker, Tony Ruiz, that the flagger had possibly been involved in creating the need for Mann's sudden stop. (R. 574, p. 29, lines 9-25; p. 31, lines 14-20.) Based on those facts, Fredrickson first reconsidered whether Mann had a reason to stop suddenly or if Mann could have avoided the accident. (R. 573, p. 33, lines 7-22.) However, Fredrickson clearly indicated that if the flagger had no involvement then Mann had no reason to suddenly slam on her brakes. (R. 574, p. 33, lines 7-22.) Mann had seen the flagger for 10 to 15 seconds before the collision occurred. (R. 573, p. 19.)

Officer Matt Brown performed an investigation at the scene. (R. 573, p. 33, lines 23-25; p. 34, lines 1-4.) There were no injuries reported by Mann or anyone else involved in the accident. (R. 573, p. 36, lines 7-10.) The speed limit where the accident occurred was 45 miles per hour. (R. 573, p. 40, lines 13-17.) The advisory speed where the accident occurred was also 45 miles per hour. (R. 573, p. 40, lines 18-20.) There were no signs with a lower speed limit than 45 miles per hour in the area of the accident. (R. 573, p. 40, lines 18-25; p. 41, lines 1-3.) The accident occurred in the middle of the street on Redwood Road. (R. 573, p. 41, lines 3-5.) Officer Brown's opinion was that the speed at impact of Fredrickson with Mann was 10 miles per hour, which was recorded on the police report at the time of the accident. (R. 573, p. 41, lines 8-14.) Officer Brown, after reviewing the photographs of the property damage at trial, was still of the opinion that the impact speed was approximately 10 miles per hour. (R. 573, p. 45, lines 4-25; p. 46, lines 1-2.)

Officer Brown admitted Fredrickson filled out a statement at the scene of the accident with a drawing stating that Mann had stopped so quickly that Fredrickson had no time to stop before the accident. (R. 573, p. 42, lines 12-25; p. 43, lines 1-7; 381; See Trial Exhibit 11 and Addendum A.) However, Officer Brown was not aware of a Utah statute that prevented a vehicle from stopping quickly and was not aware of Utah Code Ann. § 41-6-69(2).<sup>3</sup> (R. 573, p. 42, lines 14-20.)

### **SUMMARY OF THE ARGUMENT**

Mann appeals the trial court's denial of her Motion for Judgment Notwithstanding the Verdict and for her Motion for New Trial. However, Mann failed to make any motion for a directed verdict at trial. Mann therefore is precluded from claiming on appeal that the Motion for Judgment Notwithstanding the Verdict was improper based on insufficiency of the evidence.

Mann also has failed to "marshal the evidence" by providing all relevant facts in favor of the verdict and then indicating to the Court why such evidence viewed in a light most favorable to Appellees is not sufficient.

Mann's marshaling of the evidence merely argues her own version of the accident rather than the "marshaling" that is required in an appeal. Mann has merely slanted the facts in her

---

<sup>3</sup>Utah Code Ann. § 41-6-69(2) states: A person may not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the operator of any vehicle immediately to the rear when there is opportunity to give a signal. See Addendum B.

favor which is entirely improper. The marshaling of the evidence standard is a rigorous one and where the Appellant has failed to properly marshal such evidence the Court must reject the appeal.

The trial court did not abuse its discretion when it denied Mann's Motion for a New Trial based upon insufficiency of the evidence. When viewed in the light most favorable to the Appellees, there is more than sufficient evidence to uphold the jury verdict. Mann argued unsuccessfully that she was stopped for a flagger for 10 to 15 seconds before being rear-ended. Fredrickson successfully argued that Mann made a sudden stop such that he was prevented from the ability to stop before the collision occurred. Mann also admitted that for approximately four or five blocks she never saw traffic behind her before her stop.

The conflicting theories as to how Mann stopped are mutually exclusive and the jury was justified in deciding that Fredrickson's version was correct. Furthermore Fredrickson indicated he was confronted by an emergency not of his own making when Mann stopped suddenly. Fredrickson was paying attention and watching the rear of Mann's vehicle. He was two to three car lengths behind Mann when her sudden stop "surprised" him. Fredrickson immediately applied his brakes but was unable to stop before making contact with Mann.

Mann incorrectly asserts that there is a "common sense rear-end presumption." No such law exists. The correct standard is that just because an accident occurs does not mean anyone is necessarily at fault. In the present case, the jury evaluated the evidence and found Fredrickson not at fault.

The jury was justified in finding that Fredrickson was not negligent. Whether Fredrickson was negligent and whether Mann was negligent were questions of fact for the jury to consider and the Appellate Court should not disturb this finding as the facts indicate more than sufficient evidence to support the verdict.

The jury verdict included not only a verdict for Appellees on liability but also on proximate cause. Mann failed in the trial court to ever raise the issue of sufficiency of the evidence as it related to the jury's verdict on proximate cause. As such, Mann cannot now raise any issue regarding the sufficiency of the verdict regarding proximate cause. The proximate cause verdict is consistent with the finding of liability and must be upheld by the Court of Appeals. A verdict must be both inconsistent and irreconcilable for the Court to overturn a jury verdict. Mann's failure to preserve this issue precludes consideration as to the sufficiency of the evidence on proximate cause.

Mann also argued that Jury Instruction No. 28 was improper. However, Mann did not properly object by giving the specifics of the objection whereby the Court could have tried to fashion any remedy. Instead Mann's objection to Jury Instruction No. 28 was nothing more than a general objection and insufficient to preserve any claimed error.

Even if Mann had raised a proper objection to Jury Instruction No. 28, it was nevertheless a proper statement of the law. The evidence at trial was that Mann made a sudden stop. Therefore it was proper to instruct on Appellees' theory of the case and as such it a proper jury instruction for the jury to consider. If there was possibly any error in the giving

of Instruction No. 28 when viewed in light of the entire jury instructions given, it would have been a harmless error.

## **ARGUMENT**

### **I. Mann is Precluded From Raising Insufficiency Of The Evidence Due to Her Failure to Make a Motion For Directed Verdict**

Mann failed at the time of trial to make a motion for a directed verdict on either liability or proximate cause. (R. 391-394; 593, p. 428, lines 22-25; p. 429, lines 1-4.)

In Pollesche v. Transamerican Ins. Co., 497 P.2d 236 (Utah 1972), an uninsured motorist went to trial against her carrier, Transamerican, for injuries suffered in a rear-end automobile accident. Id. at 237. The case went to trial and the jury returned a verdict of no cause.<sup>4</sup>

On appeal the plaintiff asserted that the trial court erred by denying a motion for new trial on the grounds of insufficiency of the evidence to justify a verdict. However, the court found that the plaintiff had not made any motion for directed verdict during trial. The court held:

The failure of a party to make a motion for directed verdict not only forecloses the trial court from consideration of a motion for judgment notwithstanding the

---

<sup>4</sup>The plaintiff testified that as he approached two vehicles ahead of him on State Street he took his foot off the accelerator and was rear-ended by uninsured driver Patterson. Patterson testified that she was behind the plaintiff who kept applying his brakes for no apparent reason and she did not observe any cars in front of him. Patterson was following at approximately 25 miles per hour and was approximately 20 feet behind the plaintiff when the vehicle came to a complete stop and the collision occurred. Id. at 237.

verdict, but such failure in addition precludes the appellate court from reviewing the sufficiency of the evidence to sustain the verdict.

Id. at 238, footnote 1.

The reason why a directed verdict request must be made is that such a motion allows a court to make a decision of law as to the sufficiency of the evidence. Without a ruling on a directed verdict motion, the Appellate Court is being asked to review and re-weigh the facts of the case rather than the legal ruling of the trial court. See, Brigham v. Moon Lake Elec. Assn., 470 P.2d 393 (Utah 1970).

In Brigham, the court held that without a directed verdict motion there could be no challenge to the sufficiency of the evidence.

It is solidly established that when there is no request for a directed verdict, the question of the sufficiency of the evidence to sustain the verdict is not reviewable. A party may not gamble on the jury's verdict and then later, when displeased with the verdict, challenge the sufficiency of the evidence to support it.

Id. at 396, citing Price v. Sinnott, 460 P.2d 837, 842 (Nev. 1969).

The court went on to clarify that if no motion for directed verdict is made a Motion for Judgment Notwithstanding the Verdict cannot be made and that an appeal is likewise foreclosed on the basis of the sufficiency of the evidence.

The failure of the appellant here to present to the trial court a motion for directed verdict not only foreclosed the trial court from consideration of his motion for judgment notwithstanding the verdict, but under decisions interpreting the Federal Rules of Civil Procedure, such failure precludes the appellate court from reviewing the sufficiency of the evidence to sustain the verdict.

Id. at 396, citing Christensen v. Stuchlik, 427 P.2d 278, 280 (Id. 1967).

Mann simply has precluded a review of the sufficiency of the evidence as to her motion for judgment notwithstanding the verdict due to her failure to make a motion for directed verdict at trial.

**II. There Was More Than Sufficient Evidence To Uphold The Jury Verdict.**

The jury found that Appellees were not at fault when Mann stopped suddenly in front of Frederick in the middle of the road without any appropriate signal or justification. The jury also found that Mann was not injured as a result of any acts of the Appellees.

Having failed to persuade the jury of the merits of her case in the trial of this matter, Mann also was denied her Motion for Judgment Notwithstanding the Verdict on the issue of liability and the court thereafter denied her Motion for New Trial also based on the issue of liability. Furthermore, Mann also failed at any time to request a directed verdict. (R. 391-394.)

Mann claims that there was insufficient evidence as to liability to justify the verdict, and argues her Motion for New Trial should have been granted in this regard. The jury verdict also concluded there was no proximate cause. Mann failed to raise and preserve the issue of “sufficiency of the evidence” as to proximate cause.

Mann asks the Court to disregard appropriate legal standards and to ignore the factual determinations resolved by the jury after considering the evidence presented at trial.

**A. Sufficiency as to Liability Verdict.**

**1. Mann has Failed to “Marshall the Evidence”**



Mann has failed to affirmatively show all of the evidence supporting the verdict and is merely picking and choosing her own evidence. (See Appellate Brief, pp. 7-9.) Mann is required to “marshal the evidence” supporting the verdict and then show that the evidence is insufficient to support it even when used in the light most favorable to the verdict. Onyeabor v. Pro Roofing, 787 P.2d 525, 529 (Utah Ct. App. 1990).

In order to meet its burden on “marshaling the evidence,” Mann must present all of the evidence that supports the verdict.

The marshaling process is not unlike becoming the devil’s advocate. Counsel must extricate himself or herself from the client’s shoes and fully assume the adversary’s position. In order to properly discharge the duty of marshaling the evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists. After constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in the evidence. The gravity of this flaw must be sufficient to convince the appellate court that the court’s finding resting upon the evidence is clearly erroneous.

West Valley City v. Majestic Investment Co., 818 P.2d 1311 (Utah Ct. App. 1991).

A review of Mann’s attempt to “marshal the evidence” in her brief clearly shows that she has not met the required burden.

Mann merely re-argues her position taken at trial. Such facts (i.e., allegations propounded by Mann, which apparently were not accepted by the jury) are inappropriately and inaccurately set forth in her “marshaling” and should be disregarded. Rather, Mann is required, but failed, to show all of the evidence that supports the verdict and why the evidence viewed in favor of the verdict does not support the verdict.

An appellate court reviewing the denial of a motion for new trial based on insufficiency of the evidence will not re-weigh the evidence assessed by the jury and a party's slanting of such evidence in its favor in its brief will not meet the burden of showing insufficiency of the evidence. See, Child v. Gonda, 972 P.2d 425 (Utah 1998).

If the Appellant fails to marshal the evidence, the Appellate Court assumes that the record supports the findings of the trial court. Elm, Inc. v. M.T. Enterprises, 968 P.2d 861, 866 (Utah Ct. App. 1998).

This Court has previously indicated that they will not retry cases where the facts are disputed and the duty to marshal is not properly discharged. The Court will not consider the merits of the challenges to the findings of fact.

This rigorous standard reflects the doctrine that appellate courts “do not sit to retry cases submitted on disputed facts.” Accordingly, “when the duty to marshal is not properly discharged, we refuse to consider the merits of challenges to the findings and accept the findings as valid.”

...

Rather than bearing its marshaling burden Oneida has merely presented carefully selected facts and excerpts of trial testimony in support of its position. Such selective citation to the record does not begin to marshal the evidence; it is nothing more than an attempt to reargue the case before this court – a tactic that we reject.

Oneida/SLIC v. Oneida Cold Storage & Warehouses, Inc., 872 P.2d 1051, 1053 (Utah Ct. App. 1994). (Citations omitted.)

## **2. The Trial Court Did Not Abuse Its Discretion by Denying Mann's Motion For a New Trial.**

Even if the Court finds Mann's “marshaling of the evidence” to be adequate, the Court should review the evidence and every reasonable inference fairly drawn in the light most

favorable to the jury's verdict. Deats v. Commercial Sec. Bank, 746 P.2d 1191 (Utah Ct. App. 1987), cert. denied, 765 P.2d 1277 (Utah 1988).

Furthermore, where the trial court has denied Mann's Motion for New Trial based upon insufficiency of the evidence, its decision will be upheld on appeal if there is an evidentiary basis for the jury's decision and will be reversed only if the evidence to support the verdict was completely lacking and so plainly unreasonable as to make it unjust. Nelson v. Trujillo, 657 P.2d 730 (Utah 1982). A ruling on a motion for new trial will not be disturbed on appeal unless there is a clear abuse of discretion. Jensen v. Thomas, 570 P.2d 695 (Utah 1977).

Mann begins her argument on insufficiency of the evidence by incorrectly claiming that a rear-end "common sense presumption" exists and cites Anderson v. Sharp, 899 P.2d 1245, 1247 (Utah Ct. App. 1995), for authority.

Mann claims that, pursuant to Anderson, Utah courts have held that in a rear-end collision that the following car is at fault for not keeping a proper lookout and keeping the car under control. Not only does no such law exist, but Mann has entirely misread Anderson.

The language quoted by Mann in her brief is not a holding in Anderson but a proposed jury instruction that was rejected and denied by the trial court and is not Utah law.<sup>5</sup> In fact the trial court in the present case correctly instructed the jury that just because an accident occurs does not support a conclusion that a defendant or any party is necessarily at fault. (R. at 365.)

---

<sup>5</sup>Mann previously incorrectly cited this case in her Motion for New trial, which was pointed out to Mann in Appellees' reply brief. (R. at 410, 459-460.)

This instruction was never objected to by Mann and is a proper statement of the law indicating that there is no presumption of negligence. (See Instruction 33, Addendum C; MUJI No. 3.3.) There is no such law as a “common sense rear-end presumption.”

It has long been held that Utah Code Ann. § 41-6-62(a) does not create any presumption nor does it compel a jury to conclude negligence of the car to the rear as such a determination of a question of fact for the jury.

The statute’s language itself espouses the reasonable, prudent man doctrine, and in truth invites and demands that some arbiter of the facts determine whether speed, traffic or road conditions were such as to adjudge one as being reasonable or unreasonable, – or, in other words, negligent or non-negligent in a compensable sense. The statute gives no controlling, mathematical formula to test the outcome, but leaves it to the judiciary and/or the venire under its terms to establish the fault of the person involved, or the lack of it.

Fairbourn v. Lloyd, 440 P.2d 257, 258 (Utah 1968).

In Maltby v. Cox Construction, 598 P.2d 336 (Utah 1979), a rear-end accident occurred where the defendant’s truck loaded with 80,000 pounds of sand and traveling at approximately 45 miles per hour could not stop in time to avoid plaintiff in the lead car that was slowing down on the freeway. Defendant braked, switched gears, and swerved to try and avoid the accident but still rear-ended plaintiff. Id. at 338.

At trial, the plaintiff requested an instruction that a rear-end accident “furnishes some evidence that such defendant driver was either driving at too high a rate of speed or was following too closely.” Id. at 340.

The Utah Supreme Court held that there could be no instruction that assumes negligence in a rear-end collision.

This requested instruction is tantamount to an instruction that rear-end collisions are invariably the result of the negligence of the driver of the following vehicle. The instruction was properly refused. The Court properly instructed the jury as to the duties and responsibilities of each of these parties to keep a proper lookout, to keep their respective vehicles under proper control, and to use such care as a reasonable prudent person would use under the circumstances. The jury was persuaded that Pritchard's actions were reasonable under these circumstances, and that plaintiff's were not. As there is substantial credible evidence on which to base these findings, the jury's verdict will not be disturbed.

Maltby, supra., at 340.

Mann also argues that there could be no finding that she was 100 percent at fault. This ignores that the conflicting facts regarding how Mann stopped were mutually exclusive. Mann could not have both stopped suddenly and come to a normal gradual stop. The jury decided that Mann stopped suddenly and inappropriately and was therefore at fault. The jury also decided that Fredrickson was attentive and did everything he could to stop his vehicle but was unable to do so and was therefore not negligent.

However, even in Maltby, in a rear-end accident where 100 percent negligence was found in the lead car, the court stated that even if "some" negligence on defendant could be found it did not compel overturning the verdict.

Further, a finding of *some* negligence on the part of Kimball based on the violation of this statute would not be helpful to plaintiff, for, pursuant to our comparative negligence statute, the jury must find that she was more than 50 percent negligence, or plaintiff cannot recover.

Id. at 340 (italics in original).

In King v. Feraday, 739 P.2d 618 (Utah 1987), another case cited by Mann, the trial court held in a rear-end accident that there was in fact sufficient evidence to justify the verdict in favor of Defendants to relieve them of all (i.e., 100 percent) liability. The court in King cited McCloud v. Bond, 569 P.2d 1125, 1127 (Utah 1977), indicating that “a collision alone does not create an inference of negligence.” Id. at 1127-28.

In King, the court held:

In viewing the evidence in a light most favorable to the defendant, we find that the record contains substantial evidence to support the jury verdict. The evidence indicated that the traffic stopped suddenly and the plaintiff hit her brakes to avoid colliding with the car in front of her.

Id.

In the present case, the facts are even stronger in that Mann never claimed any justification for why she stopped suddenly and slammed on her brakes. In fact, she denied such making a sudden stop.<sup>6</sup>

There is no justification provided for the sudden stop made by Mann and the jury had the right to make that determination based on the evidence.

The evidence at trial was conflicting on how the accident occurred. It is clear that the jury did not believe that Mann had been stopped 10 or 15 seconds at the time of the accident but that Mann made an unjustified sudden stop without sufficient warning. Furthermore, Mann

---

<sup>6</sup>Mann removed any possibility of justification for the sudden stop by claiming that the flagger did nothing improper. After successfully removing any reason for a sudden stop, Mann is simply left with no reason to explain why she stopped suddenly, especially since she denied making such a stop.

was not paying attention to traffic behind her even though she was traveling very slowly in a 45 mile per hour zone. Mann had a duty to watch and because of traffic from behind if she was going to make a stop in the middle of the road. See Jury Instructions. (R. 357; 367.) Mann's credibility was shown to be lacking and the jury decided she made an unjustified stop and was not even aware of the traffic around her.<sup>7</sup>

Holland v. Brown, 394 P.2d 77 (Utah 1964), stands for the proposition that as far as credibility is concerned, where there is any reasonable basis for refusing to believe a witness the jury is not obliged to accept the testimony. There was sufficient reason for the jury to find a lack of credibility on the part of Mann. The jury was properly instructed that they could disregard Mann's testimony if they found her to be untruthful. (R. 341-343.)

In the present case, viewed in a light most favorable to the Defendants, Mann turned right on Redwood Road going approximately 10 to 15 miles per hour and was followed by a line of cars including Fredrickson. For no apparent reason Mann made a sudden stop without warning which surprised Fredrickson. (See Exhibit Trial 11 and Addendum A.) He slammed on his brakes and attempted to avoid the collision but was unable to do so. Clearly the

---

<sup>7</sup>As stated above, there is evidence that Mann had obtained a narcotic medication, Roxicet, the day before the accident. The jury certainly could have believed she was also under the influence at the time of the collision, although such conclusion is not necessary to upholding the verdict. (R. 573, p. 83, lines 11-25; p. 84-85.) Mann denied any knowledge of the medication and gave evasive answers. (R. 573, p. 81, lines 2-25; p. 82, lines 1-25; p. 83, lines 1-2).

evidence was sufficient to find Mann negligent and also find that Fredrickson did all he could given the circumstances and was therefore not negligent.

The potential of a rear-end accident is the major purpose for having a law that prevents a sudden stop without a proper signal to the rear vehicle. Mann was entirely unaware of the traffic behind her before she made her unwarranted sudden stop. Mann created an emergency situation by her sudden stop. Fredrickson did all he could do to stop as soon as the emergency situation presented itself. (R. 361; MUJI 4.2.)

Mann was traveling 10 to 15 miles per hour. Officer Brown testified that the speed limit was 45 miles per hour and that the advisory speed limit was also 45 miles per hour. Officer Brown was provided with a statement and diagram by Fredrickson at the scene of the accident indicating that Mann had made a sudden stop. (See, Exhibit 11 and Addendum A.)

Even though he knew that there was a quick stop, Officer Brown failed to take into account the law in this matter, as he was not even aware that sudden stops were prohibited. The jury had every reason to disregard his conclusions about what caused the accident and in fact did so in its verdict for Appellees. Officer Brown was not a qualified reconstruction expert, however even if he was considered such based on his incomplete knowledge of the relevant laws concerning this accident (i.e., lack on knowledge as to the duties of a lead car) the jury was more than justified as in disregarding Officer Brown's opinion. (R. 347; MUJI 2.14.)



Just because an accident occurs does not mean that a defendant is at fault. The facts and circumstances have to be looked into. Clearly, the jury found that Mann stopped without giving a reasonable notice when she slammed on her brakes. This is in conformity with the existing law at the time of the collision, Utah Code Ann. § 41-6-69(2), which specifically prohibits a person from stopping or suddenly decreasing their speed without giving an appropriate signal to the vehicle immediately to the rear when there is an opportunity to give a signal. There was nothing to show why Mann made a sudden stop which would have justified her actions.

**B. Sufficiency As To Proximate Cause.**

**1. Mann Failed to Preserve Issue as to the Jury Verdict on Proximate Cause.**

The jury returned a verdict indicating that the Appellees' negligence was not a proximate cause of the injuries sustained by Mann. (R. 383-385.) In order for Appellees to have a no-cause in this action the jury could either find that they were not negligent or that there was no proximate cause. In the present case they found both.

Mann at no time has raised any issue regarding the sufficiency of evidence as to proximate cause. Mann did not do this in her Motion for Judgment Notwithstanding the Verdict, nor in her Motion for New Trial. Those motions were based strictly on the issue of liability.

There is nothing inconsistent with the jury finding both the lack of negligence and proximate cause.

A verdict must be both inconsistent and irreconcilable for the Court to overturn a jury's verdict. Holbrook v. Master Protection Corp., 883 P.2d 295 (Utah Ct. App. 1994). Furthermore, the reviewing court cannot go behind the answers of the jury to special interrogatories and analyze or speculate as to the process by which the jury arrived at them. Weber Basin v. Nelson, 358 P.2d 81 (Utah 1960). The Court is obligated to attempt to harmonize any apparent inconsistencies in the verdicts wherever possible. Holbrook, supra., at 298.

To the extent the verdict could possibly be found to be inconsistent or ambiguous, Mann waived any objection by failing to object to the verdict or move that the cause be resubmitted to the jury for clarification prior to their dismissal. See, Bennion v. LeGrand Johnson Const. Co., 701 P.2d 1078, 1083 (Utah 1985). In the present case the jury found that there was no proximate cause and that if there were any injuries it was due to Mann's own negligence. Normally the appellate courts will not review any issues raised for the first time on appeal. See, Coleman v. Stevens, 2000 Utah 98.

### **III. Mann Failed To Properly Object To Jury Instruction No. 28**

An objection to a jury instruction should be specific enough to give the trial court notice of the very error in the instruction which is complained of and an objection that lacks specificity and does not direct the court's attention to anything particular is insufficient. See Reeves v. Gentile, 813 P.2d 111 (Utah 1991); E.A. Strout v. W.C. Foy & Sons, 665 P.2d 1320 (Utah 1983); Snyderville Transp. Co. v. Christensen, 609 P.2d 939 (Utah 1980); Godesky v.

Provo City Corp., 690 P.2d 541 (Utah 1984); Employer's Mut. Liability Ins. Co. v. Allen Oil Co., 258 P.2d 445 (Utah 1953).

In the present case, while Mann generally objected to Jury Instruction No. 28, such objection lacked the legal specificity needed. Mann's improper objection to Jury Instruction No. 28 stated that it was "somewhat misleading, confusing and inappropriate to the situation that we have testimony that frankly excludes this sort of instruction." (R. 593, p. 444.)

This type of objection does not specify what specifically is incorrect about the instruction and therefore does not provide the Court sufficient notice to make an appropriate correction if such was needed. See Newsom v. Gold Cross Serv., 779 P. 2d 692 (Utah Ct. App. 1989). As a result of Mann's failure to properly object to the instruction she cannot now claim error.

#### **IV. Jury Instruction No. 28 Was A Proper Statement Of The Law**

Jury Instruction No. 28 was prepared by the trial court and is a correct statement of the law. Appellees' theory was that Mann stopped suddenly without justification and Appellees are entitled to get an instruction on their theory of the case. See Newsom, supra.

In United States v. First Sec. Bank, 28 F.2d 424 (10<sup>th</sup> Cir. 1953), a U.S. postal vehicle was traveling about 10 to 15 miles per hour when it suddenly stopped to deliver mail. A truck behind the mail vehicle jack-knifed and an attached trailer hit an oncoming car. The truck driver testified he found it necessary to stop suddenly when he saw the mail vehicle's brake lights illuminated.

In First Security Bank, supra., the federal court interpreted the same Utah law that applies in this case that “no person shall stop or suddenly decrease the speed of a vehicle without first given an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.”

The court in First Security Bank, supra., held that “when two automobiles are being driven along a public highway in the same direction, each driver must exercise that degree of care which the conditions demand. No hard and fast rule as to the conduct of either can be laid down.” Id. at 429.

The court stated that the conflicting testimony on the facts was for the jury to decide. Id. at 429. The court indicated that an inference may be drawn from the testimony that the brake lights which were given were simultaneous with the sudden decrease in speed was not effective notice to the vehicle in the rear and not in compliance with the statute. Id. at 429.

Christensen v. Utah Transit Authority, 649 P.2d 42 (Utah 1982), involved a sudden stop fact pattern where the plaintiff, as he approached a red light, changed into the right-hand lane ahead of the defendant’s bus and came to a stop. The bus applied its brakes but ran into the rear of the plaintiff’s vehicle. There was a dispute in the facts as to whether or not a “quick stop” occurred. The court stated as follows:

A review of the record indicates that there is evidence of a violation of Christensen’s duty to the vehicle following. Again, Christensen erroneously assumes that there was only one conclusion to be drawn from the evidence, i.e., that “the collision was the cause by faulty brakes.” The rule is that defendants as well as plaintiffs, are entitled to instructions supporting their theory of the case.

Id. at 46.

Clearly Mann's sudden stop in the present case was a violation of Mann's duty to the Appellees' vehicle which was following her of which she was not ever aware. Jury Instruction No. 28 was an appropriate jury instruction given the circumstances of the fact pattern in this case if any error occurred it would have been harmless. See Anderson v. Toone, 671 P.2d 170, 175 (Utah 1983).

[W]hether the giving of an instruction constitutes reversible error must be determined by whether all the instructions read in harmony fairly presented to the jury in a clear and understandable way the issues of fact and applicable law.

Id. at 175 (citations omitted).

In Toone, the Utah Supreme Court indicated that even though an incorrect "assumption of the risk" instruction was given, the jury instruction must be read as a whole, and therefore there was no harmful error. Id. at 175.

In the present case, Jury Instruction No. 28 was appropriate and even if it was in error, when viewed in light of all the instructions any claimed error was harmless.

### CONCLUSION

The jury verdict as to negligence and proximate cause should be upheld. As to liability, there was more than sufficient evidence to show that Mann inappropriately made a sudden stop thereby causing the accident. Mann merely wants the Appellate Court to choose her version of how the accident occurred over Fredrickson. As to the proximate

verdict, Mann failed to preserve any issue before this Court and the verdict on proximate cause should therefore be sustained.

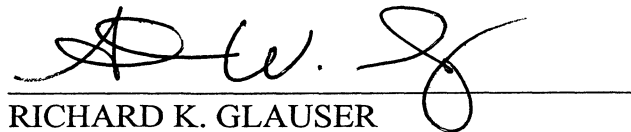
Mann made no real effort to marshal the evidence. Mann in fact did not marshal the evidence and simply restated her theory, which the jury rejected. This Court should decline Mann's argument as to insufficiency of the evidence simply on Mann's failure to properly marshal the evidence.

Mann further did not properly preserve any claimed error as to Jury Instruction No. 28. Furthermore, Jury Instruction No. 28 was a correct statement of law. When the jury instructions are viewed as a whole, clearly no error occurred.

It is respectfully requested that Mann's appeal be denied.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of April, 2006.

**SMITH & GLAUSER, P.C.**

A handwritten signature in black ink, appearing to read "R. K. Glauser", is written over a horizontal line.

RICHARD K. GLAUSER

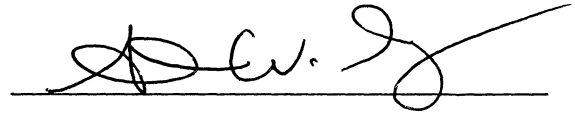
ALBERT W. GRAY

Attorneys for Defendants/Appellees

**CERTIFICATE OF SERVICE**

I hereby certify that two true and correct copies of the foregoing Brief of the Appellees was hand delivered this 25<sup>th</sup> day April, 2006, to the following:

William Rawlings  
LAW OFFICE OF WILLIAM RAWLINGS  
11576 South State St, #401  
Draper, Utah 84020

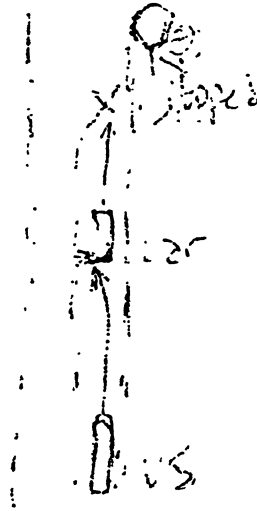
A handwritten signature in black ink, appearing to read "W. Rawlings", is written over a horizontal line.

## ADDENDUM A

R. 160, Statement and Diagram of Fredrickson  
at the scene (duplicate of blown-up trial Exhibit  
11, ordered for delivery to this Court)



Draw a diagram of how the collision occurred. Please use an arrow to indicate North.



Describe how the collision occurred (include direction of travel, drivers intent, road conditions, and type of traffic control).

Following car I noticed the  
skipped quickly not enough time  
for our big truck to stop

 **COPY**

Signature \_\_\_\_\_ Witness to signature \_\_\_\_\_

**READ CAREFULLY BEFORE SIGNING.** I hereby  
Certify that all statements made in this witness statement  
Are done voluntarily and are true and I understand and  
Agree that any false statement will be prosecuted to the  
Full extent of the law.

1160

## ADDENDUM B

Utah Code Annotated § 41-6-69(2) (2002)

Utah Code Ann. §§ 41-6-69(2)(2002)

(2) A person may not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the operator of any vehicle immediately to the rear when there is opportunity to give a signal.

# ADDENDUM C

Instruction 33, MUJI 3.3

INSTRUCTION NO. 33

The mere fact that an accident or injury occurred does not support a conclusion that the Defendant or any other party was at fault or was negligent.

**MUJI 3.3****FAULT/NEGLIGENCE NOT IMPLIED FROM  
INJURY ALONE**

**The mere fact that an accident or injury occurred does not support a conclusion that the defendant or any other party was at fault or was negligent.**

***References:***

*Beach v. University of Utah*, 726 P.2d 413 (Utah 1986)

*Williams v. Ogden Union R.R., Ry. & Depot Co.*, 119 Utah 529, 230 P.2d 315 (1951)

*Deats v. Commercial Security Bank*, 746 P.2d 1191 (Utah App. 1987)

JIFU No. § 16.6 (1957)