2006

State of Utah v. Elizabeth M. DeSeelhorst : Reply Brief

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	)	CASE NO. 20060221
PLAINTIFF/APPELLEE,	)	DISTRICT CT. NO. 051400059
V.	)	
ELIZABETH M. DESEELHORST,	)	
DEFENDANT/APPELLANT.	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT
HONORABLE ROYAL I. HANSEN

CHRISTOPHER BOWN
DEPUTY DISTRICT ATTORNEY
8080 SOUTH REDWOOD ROAD
WEST JORDAN, UTAH 84088
TELEPHONE: (801) 468-3422

Attorneys for Plaintiff/Appellee

RODNEY R. PARKER
RICHARD A. VAN WAGONER
FREDERICK MARK GEDICKS
SNOW, CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE, ELEVENTH FLOOR
POST OFFICE BOX 45000
SALT LAKE CITY, UTAH 84145-5000
TELEPHONE: (801) 521-9000

Attorneys for Defendant/Appellant

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10 EXCHANGE PLACE, ELEVENTH FLOOR
POST OFFICE BOX 45000
SALT LAKE CITY, UTAH 84145-5000
TELEPHONE: (801) 521-9000

Attorneys for Defendant/Appellant

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SUMMARY OF ARGUMENT

The State's contention that Mrs. DeSeelhorst failed to marshal the evidence is a desperate sleight of hand apparently designed to avoid the necessity of confronting the State's failure to prove that the accident in question was the result of criminal negligence. Nothing in the State's marshaling arguments provides any affirmative insight into what precisely the State contends Mrs. DeSeelhorst was doing immediately prior to the accident that was "reckless[] or with an indifference to human life," *State v. Larsen*, 2000 UT App 106 ¶¶ 20-21, 999 P.2d 1252, so as to raise her level of culpability beyond ordinary negligence.

Instead, the State resorts to incomplete descriptions of the record and advocacy of what can only be described as fantastic inferences from the evidence. It advocates conclusions, such as that Mrs. DeSeelhorst applied her brakes, which directly contradict its position at trial, and then takes Mrs. DeSeelhorst to task for not advocating such contradictions herself. It does not fairly or accurately portray the marshaling of evidence that was presented in Mrs. DeSeelhorst's brief. Most egregiously, it presents incomplete and unreliable references to the record which, upon fair examination, do not support the propositions for which they are cited.

The search in this case is for evidence that Mrs. DeSeelhorst was impaired or distracted, or had been driving recklessly or erratically prior to the accident, in order to support a conclusion that her actions were not merely negligent, but criminal. Criminally negligent homicide entails "such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with a

proper regard for human life or, in other words, a disregard of human life or an indifference to consequences." 40 AM. JUR. 2D *Homicide* § 85 p. 549 (1999). While the State works the fringes of appellant's arguments, it never answers the simple question: Given the State's concession that Mrs. DeSeelhorst did not intentionally run down the cyclist, what distinguishes Mrs. DeSeelhorst's operation of her vehicle from ordinary negligence and renders it criminal? While Dr. Foley's testimony provides an answer to that question, this case is really about the failure of proof evident from the State's failure to provide an answer to the question.

ARGUMENT

I. APPELLANT CITED AND DISCUSSED ALL EVIDENCE NECESSARY TO COMPLY WITH THIS COURT'S MARSHALING REQUIREMENT.

A. *In her challenge to the sufficiency of the evidence supporting the jury's verdict, Mrs. DeSeelhorst cited and discussed all required evidence.*

The State argues that Mrs. DeSeelhorst failed to marshal evidence relating to four actual or potential facts that it says supported the finding of criminal negligence. First, the State argues that Mrs. DeSeelhorst failed to marshal evidence showing the inconsistencies in her testimony about whether or not she saw Ms. Johnson prior to the accident. Brief of Appellee, at 9-10. This is simply wrong. Both Mrs. DeSeelhorst's Statement of Facts and her argument in the body of her opening brief clearly state that she made contradictory statements, and gave detailed citations to the record. *See* Brief of Appellant, at 4, 10 ¶ (2); *see also id.*, at 9 n.3 (summarizing prosecutor's opening statement at trial that Mrs. DeSeelhorst saw Ms. Johnson immediately prior to the accident). Similarly, the

State argues that Mrs. DeSeelhorst failed to mention that there were two uphill travel lanes on the section of the highway road where the accident occurred, *see* Brief of Appellee, at 10, yet this fact is clearly disclosed in Mrs. DeSeelhorst's statement that "she was driving in the right hand lane of travel when the road split into two uphill lanes," see Brief of Appellant, at 3, and that the accident occurred near the fog line.

Second, the State argues that because Mrs. DeSeelhorst's car "came to a stop in the middle of the road," and followed a straight line after the accident, she must have applied her brakes to come to a controlled stop, Brief of Appellant, at 9. The evidentiary fact is that the car traveled uphill in a straight line partially onto the unpaved shoulder, back onto the roadway, and almost into the opposing downhill lane, where it came to rest. (R. 152 pp. 214-22.) There is no evidence regarding braking and indeed, contrary to its argument on appeal, the State argued to the jury in both its opening and closing statements that Mrs. DeSeelhorst did not apply her brakes (R. 152, p. 142; R. 154 p. 534; *see* Brief of Appellant, at 9 n.3, 10 n.4), and Mrs. DeSeelhorst did not dispute that argument.

Mrs. DeSeelhorst is not required to marshal evidence to challenge facts that were undisputed at trial and were advanced by the prosecution on numerous occasions. Her marshaling obligation is to "demonstrate how the [jury] found the facts from the evidence and then explain why those findings contradict the clear weight of the evidence." *Chen v. Stewart*, 2004 UT 82 ¶ 22, 100 P.3d 1177. Although the jury's verdict is entitled to deference on appeal, surely that deference does not include assuming that the jury found against a fact that the State affirmatively argued and that the defendant did not dispute.

The only reasonable assumption when a fact is undisputed is that the jury's verdict rested on that fact, and not on its negation.

Third, the State argues that Mrs. DeSeelhorst failed to marshal evidence that she turned her car along the curve of the road prior to the accident. Brief of Appellant, at 9. The State, however, gives no clue what this evidence is or where it can be found. Nothing in the State's Statement of Facts identifies such evidence, *see* Brief of Appellant, at 3-6, and the State provided no record citation in support of its later argument that Mrs. DeSeelhorst failed to marshal such evidence, *see id.* at 9. In fact, the physical evidence at trial showed that Mrs. DeSeelhorst's vehicle traveled in a straight line before, during, and after the accident. (R. 153 pp. 469-70, 482, 486.) Mrs. DeSeelhorst cannot be charged with failing to marshal non-existent evidence that the State itself does not identify and locate. *Cf. Woodward v. Fazzio*, 823 P.2d 474, 477 (Utah Ct. App. 1991) ("There is, in effect, no need for an appellant to marshal the evidence when the findings are so inadequate that they cannot be meaningfully challenged as factual determinations.").

Finally, the State argues that Mrs. DeSeelhorst did not marshal her own testimony that she always drove on the right side of the road, and that this might have explained why she took no evasive action prior to the accident. Brief of Appellee, at 9. The State is apparently suggesting that Mrs. DeSeelhorst's commitment to drive in the right-hand lane was so strong that she knowingly and intentionally ran down Ms. Johnson rather than change lanes, and that this compulsion supports the verdict of criminally negligent homicide. This "explanation" is not only ludicrous, it is inconsistent with the State's charge, and the jury's verdict, that Mrs. DeSeelhorst was guilty of criminally negligent rather

than reckless or intentional conduct. Mrs. DeSeelhorst should not be required to marshal evidence that is inconsistent with the state's charge and the jury's verdict on that charge.

B. *In her argument that Dr. Foley's unrebutted testimony constituted a reasonable alternative hypothesis, Mrs. DeSeelhorst cited and discussed all required evidence.*

The State does not accurately describe Dr. Foley's testimony and overlooks most of the evidence that Mrs. DeSeelhorst marshaled in connection with Dr. Foley's testimony. Dr. Foley testified that there was "no question" that Mrs. DeSeelhorst was "at very high risk of having suffered a recurrent small stroke, mini-stroke, or a partial complex seizure which would have rendered her unable to take appropriate action at a critical juncture." (R. 153 p. 469.) He explained that Mrs. DeSeelhorst's MRI shows multiple lesions on her brain which Dr. Foley opined were evidence of "transient ischemic attacks," also called "mini strokes" or "TIAs," which have resulted from blood clots breaking loose from a mitral heart valve implant. (R. 153 pp. 443, 455-57.) Those lesions render those regions of her brain more "epileptogenic," or in other words they heighten the risk for "partial complex seizures" in those areas. (R. 153 pp. 457, 447-49.) He testified that, "to a reasonable degree of medical certainty . . . she suffered a probably reasonably brief but critical lapse in consciousness for a short period of time." (R. 153 pp. 469-70.)

The State's marshaling claims do not go to the heart of Dr. Foley's testimony, and they are not accurate. The State argues, for example, that Mrs. DeSeelhorst failed to note that Dr. Foley could not specify the medical condition that would have caused the brain lesions he observed in the MRIs. The State's citation to the record, however, is not reli-

able. Dr. Foley was able to specify the medical condition: He testified that the lesions were caused by transient ischemic attacks. He also testified that the brief lapse of consciousness at the moment of the accident was caused by either a TIA or by a partial complex seizure. What he could not do is choose between those two explanations because Mrs. DeSeelhorst was not connected to laboratory equipment at that moment.

> I think that there was an event which occurred which transiently rendered her without ability to process—a kind of visual and everything—all the other kinds of signals coming at her, as a driver. Whether that was a brief partial seizure or a transient ischemic attach to the consciousness center or a seizure as a result of a transient ischemic attack, I cannot tell you for certain.
>
> Q. So you don't know whether it was a partial—I mean, you just can't say for certain which it was.
>
> A. No. We would have to have her wired up in the car or we—you know, theoretically, we can do that in an elaborately controlled laboratory situation. But obviously, there's no—there's no data like that available to us for this—this episode. (R. 153 pp. 477-78.)

The State also argues that Mrs. DeSeelhorst failed to marshal evidence that Dr. Foley could not date the neurological abnormalities evident in the two MRIs he compared in formulating his testimony, *see* Brief of Appellee, at 10-11, yet this evidence is clearly described and cited in Brief of Appellant, at 20 ¶ (ii). The State argues that Mrs. DeSeelhorst failed to note that Dr. Foley relied on her self-reported and self-contradicted testimony in formulating his opinion, *see* Brief of Appellant, at 11, yet this evidence is clearly described and cited in Brief of Appellant, at 20 ¶ (iii), 21 ¶ (ii). In fact, the contradictory nature of her statements forms part of the basis for his opinion: "[I]t has a couple of time points in it and is not really, to me, what really truly happened. And it wouldn't be that

inconsistent with someone who doesn't really know exactly what happened and is trying to put down something." (R. 153 p. 480.) Finally, the State argues that Mrs. DeSeelhorst failed to marshal the inconsistency between Dr. Foley's testimony that "mini strokes" or other such "neurological events" may last as little as 15 seconds or as long as a minute and a half, and police officer testimony that there were only a few seconds in which such a neurological event could have occurred, *see* Brief of Appellee, at 11, yet, once again, this evidence is clearly described and cited in Brief of Appellant, at 10 ¶ (2), 19.

In sum, the evidence that the State contends Mrs. DeSeelhorst failed to marshal in support of both of her arguments was properly marshaled in her brief. The few remaining pieces of evidence mentioned by the State are either unrelated to the jury's verdict, or unidentified by the State.

II. MERE FAILURE TO AVOID A THREATENED ACCIDENT DOES NOT CONSTITUTE CRIMINAL NEGLIGENCE.

Mrs. DeSeelhorst argued in her brief that in Utah and other jurisdictions proof of criminal negligence requires evidence of blameworthy conduct beyond a mere failure to avoid the accident. *See* Brief of Appellant, at 12-15. The State did not respond to this argument.[1] When the evidence in this case is measured against the evidence of blameworthy conduct which has in prior cases been held to satisfy the standard of criminal neg-

[1] Curiously, the State quotes *People v. Boutin*, 75 N.Y.2d 692, 555 N.E.2d 253, 254 (1990), for the standard definition of criminal negligence, see Brief of Appellee, at 13, but fails to quote or otherwise discuss the most important qualification to *Boutin's* definition, that "unless a defendant has engaged in some blameworthy conduct creating or contributing to a substantial and unjustifiable risk of death, he has not committed the crime of criminal negligence." 75 N.Y.2d at 696, 555 N.E.2d at 255, quoted in Brief of Appellant, at 12.

ligence, it is apparent that the state has failed to identify the blameworthy conduct and that the conviction cannot stand.

The State's theory of criminal negligence is that Mrs. DeSeelhorst saw Ms. Johnson bicycling in her lane several seconds before the accident, and did not take steps to avoid hitting her. *See* Brief of Appellee, at 14 ("Defendant was traveling on a curved road and when she observed a vehicle traveling lawfully in her lane of travel, she refused to change lanes to pass the slower moving vehicle."); *id.* at 15 ("[T]he Defendant saw the vehicle with which she collided, and drove in a way as to not avoid running down the slower vehicle from behind."). The decisions cited by the State in support of its theory of criminal negligence, however, actually support Mrs. DeSeelhorst's position that proof of criminal negligence requires evidence of blameworthy conduct beyond failure to avoid the accident itself.

The only Utah decision cited by the State in direct support of its theory of criminal negligence is *State v. Riddle*, 112 Utah 356, 188 P.2d 449 (1948), an involuntary manslaughter case decided at common law more than half a century ago. The State cites *Riddle* for the proposition that allowing one's vehicle to travel outside of its lane while following a curve, and failing to see another vehicle, necessarily constitutes criminal negligence, and then argues this as authority for its conclusion that Mrs. DeSeelhorst was criminally negligent in allowing her vehicle to drift outside the travel lane, and failing to avoid hitting Ms. Johnson, whom Mrs. DeSeelhorst had actually seen. *See* Brief of Appellee, at 14.

The *Riddle* case, however, does not rely on the defendant's mere failure to see the oncoming car. Rather, the *Riddle* defendant, on a "dangerous" or possibly "blind" curve where it was not possible to see whether there was oncoming traffic, drove into the lane of oncoming traffic without ascertaining whether the lane was clear. 112 Utah at 364, 188 P.2d at 453. This was plainly a gross deviation from the standard of care and created a substantial and unjustifiable risk of death or injury, and thus satisfied the *mens rea* for the crime:

> Whether or not it is criminal negligence to drive an automobile in such a manner that all or part of it extends over the center line of a highway must necessarily depend upon all of the surrounding circumstances. We do not say that in every case it is criminal negligence for a driver to permit part of his vehicle to project over the center line and onto the left hand side of the highway. Under some circumstances such conduct might not amount to criminal negligence. But where a driver enters a blind curve in the darkness of the night, and permits his automobile to get onto the left side of the road, and fails to see an automobile approaching in a lawful manner from the opposite direction, reasonable minds not only might fairly conclude that he was guilty of "reckless conduct or conduct evincing a marked disregard for the safety of others" but could hardly conclude otherwise.

112 Utah at 364, 188 P.2d at 453.

The other decision cited by the State in support of its theory of criminal negligence, *Hatcher v. State*, 230 Miss. 257, 92 So.2d 552 (1957), likewise supports the requirement of blameworthy conduct beyond the accident itself. The State contends that *Hatcher*'s affirmance of defendant's conviction for "culpable negligence" is persuasive authority for upholding Mrs. DeSeelhorst's conviction, because immediately before the accident the *Hatcher* defendant saw the victim riding his bicycle in defendant's lane and made no effort to avoid hitting him. *See* Brief of Appellee, at 15-16. The State neglects

to mention, however, that the *Hatcher* defendant was traveling well over the speed limit—between 75 and 90 miles per hour—and that just before the accident the defendant had been blowing his horn and looking off the roadway in an attempt to attract a bystander's attention. 230 Miss. at 259, 92 So.2d at 553.

Mrs. DeSeelhorst was not engaging in any such blameworthy conduct at the time that she struck Ms. Johnson; to the contrary, Mrs. DeSeelhorst was traveling five to ten miles per hour *under* the speed limit, and there is no evidence whatsoever that she was engaged in voluntary conduct or actions that would have distracted her attention from her driving immediately prior to the accident. The curve where Mrs. DeSeelhorst struck Ms. Johnson was not a section of highway that was dangerous or required special care, Mrs. DeSeelhorst was traveling with the flow of traffic at the time the accident occurred, not against it, and nothing about Mrs. DeSeelhorst's driving at the time of the accident was otherwise blameworthy.[2]

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[2] The State also cites *State v. Clark*, 188 Utah 517, 223 P.2d 184 (1950), another dated common law decision, though not in support of its argument that Mrs. DeSeelhorst's failure to avoid hitting Ms. Johnson after seeing her constituted criminal negligence. *See* Brief of Appellee, at 17 (suggesting that the jury's determination of criminal negligence must be upheld because criminal negligence is a "community standard of care" based on all of the evidence). *Clark*, however, actually supports Mrs. DeSeelhorst's contention that criminal negligence requires evidence of blameworthy conduct beyond failure to avoid an accident. In *Clark*, the defendant lost control of his vehicle and crossed the center line into oncoming traffic, striking an oncoming car and causing a fatal injury to one of his passengers. The court upheld the jury verdict, pointing to evidence that the defendant was going too fast, given the icy condition of the highway and the presence of other vehicles, and was carrying nine passengers in a five- or six-passenger car. 118 Utah at 519, 528, 519, 223 P.2d 185, 189. Once again, none of this evidence of blameworthiness is present in the instant case.

The State cannot satisfy the requirement of blameworthy conduct with the assertion that Mrs. DeSeelhorst "cut the corner" of the highway prior to the accident, because it is inconsistent with the State's claim that Mrs. DeSeelhorst saw the cyclist yet acted without intent. It is also undisputed that the accident occurred well within the roadway, not on the shoulder (Ex P-22; R. 152 pp. 187-88, 206-08, 220, 224, 231-33; R. 153 p. 294), so Mrs. DeSeelhorst's vehicle would still have struck Ms. Johnson even if all of the vehicle had been in the travel lane and inside of the fog line. "Cutting the corner" was not a cause of the accident. Evidence of blameworthy conduct that does not contribute to an accident cannot be used to support a conviction for criminally negligent homicide. *See State v. Larsen*, 2000 UT App 106 ¶ 20, 999 P.2d 1257 (holding evidence that defendant had been drinking prior to fatal collision, did not have his headlights on, and did not use his turn signal could not be used to support trial court finding of defendant's criminal negligence, "[b]ecause there is no nexus between the collision and the presence of alcohol, the absence of headlights, or [the] inactivated turn signal").

Reduced to its essence, the State's argument is that criminal negligence is present if the defendant saw the victim immediately before the accident, and absent if the defendant did not see the victim before the accident. *See* Brief of Appellant, at 14 (arguing that Mrs. DeSeelhorst cannot rely on *Larsen* because the *Larsen* defendant "did not see an coming vehicle when he turned in front of it" and was guilty of "[m]ere inattentiveness," whereas Mrs. DeSeelhorst stated that "she saw a bicyclist 150 feet in front of her"); *id.* at 15 (arguing that *People v. Boutin*, 75 N.Y.2d 592, 555 N.E. 253 (1990), is distinguishable because the *Boutin* "defendant did not see the vehicle he collided with,"

whereas Mrs. DeSeelhorst "saw the bicycle ahead of her"); *id.* at 16 (arguing that *Hatcher* is persuasive authority because both the *Hatcher* defendant and Mrs. DeSeelhorst saw their victims prior to their respective accidents).

That is not the law, in Utah or in any other jurisdiction. Mere failure to avoid an accident does not constitute criminal negligence in the absence of evidence of blameworthy conduct, even when the defendant sees the victim prior to the accident. *See* Brief of Appellant, at 12-15. Mrs. DeSeelhorst's conduct must be measured against the conduct of the defendants in the other cited cases in which criminal negligence was found: *Riddle*, where the defendant drove around a blind corner on the wrong side of the road; *Boss*, where the defendant was speeding and executing a dangerous pass into the path of oncoming traffic so recklessly that she overcorrected upon returning to her lane; *Hatcher*, where the defendant was traveling between 75 and 90 miles per hour while attempting to catch the attention of a pedestrian; and *Clark*, where the defendant was driving too fast for icy conditions with nine passengers in his car.

In contrast, in the cases of inadvertence or inattention, where no aggressive driving, speeding, undue risk-taking, intoxication, or other gross negligence was present, the convictions were found not to be supported by the evidence and were reversed. While Mrs. DeSeelhorst may have been negligent in failing to avoid the accident at issue in this case, the State's failure to adduce any evidence of blameworthy conduct beyond her not avoiding the accident prevents her negligence from forming the basis for a criminal conviction.

III. THE STATE'S ARGUMENT AT TRIAL THAT THE ACCIDENT WAS THE RESULT OF CRIMINALLY NEGLIGENT RATHER THAN INTENTIONAL CONDUCT IS INHERENTLY IMPROBABLE AND SUBJECT TO REASONABLE DOUBT AS A MATTER OF LAW.

As Mrs. DeSeelhorst noted in her opening brief, *see* Brief of Appellant, at 18-24, the State did not provide an account of the accident that is consistent with its charge of criminal negligence or the evidence which it presented to the jury supporting that charge. According to the State, Mrs. DeSeelhorst saw Ms. Johnson riding in her lane several seconds before the accident; Mrs. DeSeelhorst's vehicle traveled in an straight line before, during, and after the accident; Ms. Johnson was struck by the exact center of Mrs. DeSeelhorst's vehicle; the right-hand tires of Mrs. DeSeelhorst's vehicle were on the right-hand edge of the highway at the time of the accident; and there was no evidence of braking.

One explanation for the accident that is consistent with the State's account of the accident is that Mrs. DeSeelhorst saw Ms. Johnson riding in her lane, aimed her vehicle at Ms. Johnson, and ran her down. That explanation, however, is inconsistent with the State's charge of criminally negligent homicide; indeed, the State repeatedly denied that Mrs. DeSeelhorst was even reckless in hitting Mrs. Johnson, let alone that she did so intentionally. *See* Brief for Appellant, at 13 & n.5. Instead, the State argued at trial that Mrs. DeSeelhorst saw the cyclist and then for unknown reasons "cut the corner."

The State's explanation is simply not a believable one. It is simply ludicrous to suggest that a 66 year-old women with an unblemished driving record, who was familiar with the road and always drove in the right lane because she never went fast enough to

pass anyone, and who was driving five to ten miles per hour under the speed limit at the time of the accident, would drive directly into a cyclist in her lane by taking her vehicle off of a paved highway and onto the unpaved shoulder rather than using an available passing lane. There is no evidence in the record that this is what Mrs. DeSeelhorst attempted to do.

The only credible explanation of the accident that is consistent with the evidence was offered by Dr. Foley, that Mrs. DeSeelhorst suffered a brief loss of consciousness as the result of a partial complex seizure or other similar neurological event caused by her medical condition. The State attempts to show that Dr. Foley was unsure of his diagnosis, and that the jury rejected his medical explanation because of this lack of certainty, by quoting this portion of his testimony:

> **Dr. Foley:** And my feeling is that she is, no question, at a very high risk of having suffered a recurrent small stroke, mini stroke, or a partial complex seizure which would have rendered her unable to take appropriate action at a critical juncture.
>
> **Defense Attorney:** And to what degree of certainty can you give us that opinion, Doctor?
>
> **Dr. Foley:** Well, I think that—that to a—I mean I can't—well, to a reasonable degree of medical certainty . . . .

Brief of Appellee, at 19.

The State's selective quotation of Dr. Foley's testimony shows a regrettable lack of candor. Dr. Foley's entire response shows that he was, indeed, quite certain of his diagnosis and explanation:

> **Dr. Foley:** Well, I think that—that to a—I mean I can't—well, to a reasonable degree of medical certainty, *I think that, given all of the facts in this*

> *case that I have been able to review, including her examination, her MRIs, the police reports, the lack of braking–we haven't really talked about the physical features—it all—it all makes complete sense to me, in a lady who is at a very high risk for having an event like this, that she suffered a probably reasonably brief but critical lapse in consciousness for a short period of time.* (R. 153, 470 (emphasis added).)

The State's obligation at trial was to prove beyond a reasonable doubt that the evidence supported its charge of criminal negligence. The jury's verdict relies on a determination that Mrs. DeSeelhorst, seeing the cyclist but not intending to hit her, inexplicably drove her car directly into her. This explanation is illogical, especially in the absence of any evidence of other blameworthy conduct which created an unreasonable risk of serious bodily injury or death. At the same time, the jury rejected Dr. Foley's alternative explanation that is consistent with the evidence. Under these circumstances, Mrs. DeSeelhorst submits that the State's inability to put the evidence together to tell a story that makes any sense leaves reasonable doubt as a matter of law as to whether Mrs. DeSeelhorst was criminally negligent in causing the accident.

CONCLUSION

For the foregoing reasons, defendant requests that this court reverse the conviction in this case.

DATED this 17 day of January, 2007.

SNOW, CHRISTENSEN & MARTINEAU

By _____
Rodney R. Parker
Attorneys for Appellant

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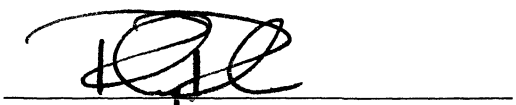
CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing REPLY BRIEF OF APPELLANT were served by U.S. Mail on January 17, 2007 as follows:

CHRISTOPHER BOWN
DEPUTY DISTRICT ATTORNEY
8080 S REDWOOD RD
WEST JORDAN UT 84088



RODNEY R. PARKER