

## Court

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ment of the charge, but the judge declined to give them.

In Imokawa's appeal, Thayer, with co-counsel Mark Muenster, argue that the prosecution should bear the burden of proving the absence of an unforeseeable intervening cause of the crash.

The appeals court agreed and found that the Superior Court should have instructed the jury as such.

"Due process requires the state to prove every element of the crime beyond a reasonable doubt. When the evidence raises superseding cause, the state should be required to prove beyond a reasonable doubt that there was no superseding cause. The problem with the pattern instructions is that is not made clear to the jury," Thayer said in an interview Tuesday.

He added that Imokawa is "pleased to have an opportunity for a new trial and a fair trial this time."

Senior Deputy Prosecu-

tor Kasey Vu declined to comment on the higher court's decision.

"We are going to talk about the case within our office and analyze it to see what our next options will be — whether seek review from the (Washington state) Supreme Court or seek reconsideration (from the Washington Court of Appeals) or whatever else," Vu said.

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## Appellate court finds jury instructions violated his right to due process

By **JESSICA PROKOP**  
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The Washington Court of Appeals has reversed a Battle Ground man's convictions for vehicular homicide and vehicular assault after finding that the jury instructions presented at his trial violated his right to due process.

In an opinion issued Tuesday, the higher court declined to dismiss the charges against Dean Imokawa and instead sent his case back to Clark County Superior Court for further proceedings.

Imokawa, 49, was sentenced in February 2017 to 26 months in prison after a jury found him guilty of causing a deadly crash on state Highway 503. The April 2, 2015, crash resulted in the death of 86-year-old Eleanor Tapani of Battle Ground. She died from multiple blunt-force injuries.

Imokawa was acquitted of a charge of reckless driving.

He has remained out of custody while he appealed his convictions.

According to court records and testimony at trial, Imokawa was driving a 2006 GMC pickup north on the highway shortly after 9:30 a.m. when he attempted to pass a Land Rover he was traveling behind in the left lane. He used the right lane to pass and then merged back into the left lane on the Salmon Creek bridge. But while merging, his pickup struck the front right corner of the Land Rover, and both vehicles lost control, crossed the median and entered the southbound lanes. A southbound Kia Sorento, driven by Tapani's daughter, Linda Dallum, struck Imokawa's pickup.

Dallum, also of Battle Ground, suffered multiple fractured ribs and fractures to her right ankle, foot and kneecap in the crash.

At trial, Imokawa's lawyer, Steve Thayer, argued that Imokawa had enough space to make the lane change safely but that the other driver sped up to prevent him from passing, ultimately causing the crash.

Thayer argued that the other vehicle's acceleration into Imokawa's vehicle was a superseding, or unforeseeable intervening, cause of the crash. The defense proposed jury instructions that defined and required the state to disprove superseding cause as an additional ele-