Supreme Court No. 98133-7

THE SUPREME COURT
STATE OF WASHINGTON

From Court of Appeals No. 36244-2-III

From Kittitas County Superior Court No. 16-2-00254-7
Hon. Richard Bartheld, Visiting Judge

GRANT COUNTY, D. ANGUS LEE, PATRICK K. SCHAFF, HON. JANIS WHITENER-MOBERG, HON. BRIAN D. BARLOW, HON. JOHN A. ANTOSZ,

Defendants / Respondents,

v.

JOHN LOUIS CORRIGAN, SR.,

Plaintiff / Petitioner.

RESPONDENTS' REVISED ANSWER TO PETITION FOR REVIEW

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[NOTE – Attached to this Answer are Appendices 1-9.]

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A. IDENTITY OF RESPONDENTS

Respondents are Grant County, a municipal corporation; D. Angus Lee, former Prosecuting Attorney for Grant County (now in private practice in Vancouver, WA); Patrick K. Schaff, former Grant County Deputy Prosecuting Attorney (now a deputy prosecuting attorney in Spokane County); Hon. Janis Whitener-Moberg, Grant County District Court Judge; Brian D. Barlow, Grant County District Court Judge and Hon. John A. Antosz, Grant County Superior Court Judge.

Petitioner is a career *pro se* litigant. The Grant County Defendants compiled a list of some of Petitioner's numerous court actions. (**Appendix 9** to this Answer.)

B. STATEMENT OF THE CASE

Petitioner seeks review under RAP 13.4(b)(1), (2) and (4) and also under RAP 2.5(a)(3). Petitioner did not seek review under RAP 13.4(b)(3).

This case involves allegations against prosecutors and judges based upon Petitioner's conviction after being cited for driving infractions during April 2011 in Grant County.

April 22, 2011 – Petitioner was cited by a Washington State Trooper on Interstate 90 after he sped away from the trooper for eight miles while the trooper was attempting to get him to stop. Petitioner's speeding ticket was dismissed in Grant County District Court. He was convicted for failing to stop. The superior court later dismissed the failure to stop conviction without prejudice.

March 25, 2013 – In federal district court, Petitioner sued Trooper Timothy Kron and various Grant County Defendants for violation of his civil rights, malicious prosecution and negligence in connection with his arrest and prosecution for speeding and failure to stop.

July 3, 2013 – Grant County prosecutors re-filed the charge for failure to stop which resulted in Petitioner's conviction.

December 10, 2013 – The federal district court dismissed Petitioner's federal lawsuit on summary judgment. *Corrigan v. Kron,* 2013 WL 6478335 (E.D. Wash. 2013) (Rice, J.) (CP 138-172.)

February 24, 2014 – The Ninth Circuit Court of Appeals dismissed an appeal filed by Petitioner. The order stated: "Because the appeal is so insubstantial as to not warrant further review, it

shall not be permitted to proceed." (Leavy, Tashima and Graber, JJ.) (CP 174.)

September 15, 2016 – Petitioner sued Trooper Kron and various Grant County Defendants in Kittitas County Superior Court No. 16-2-00254-7. (CP 19-29.)

March 22, 2017 – After Petitioner's lawsuit was removed to federal district court, the Grant County Defendants filed a motion to dismiss under Rule 12(b)(6). (CP 234-245.)

August 7, 2017 – The federal district court dismissed Petitioner's lawsuit against the Grant County Defendants under Rule 12(b)(6) with leave to file an amended complaint. (Mendoza, J.) (CP 303-315.)

September 7, 2017 – Petitioner filed an Amended Complaint in federal district court. (CP 316-331.)

October 25, 2017 – The Grant County Defendants filed a motion to dismiss in federal district court under Rule 12(b)(6). (CP 332-335.)

November 21, 2017 – The federal district court granted Petitioner's motion to remand to state court. (CP 342-44.) (Mendoza, J.) The action was remanded to Kittitas County Superior Court No. 16-2-00254-7.

March 26, 2018 – The Grant County Defendants filed a motion to stay discovery pending the Grant County Defendants' motion to dismiss. (**Appendix 1** to this Answer.) Attached to the motion were **Exhibit A** (Order Granting Defendants' Motion for Summary Judgment filed on December 10, 2013 in federal district court), **Exhibit B** (Order dismissing Petitioner's appeal to the Ninth Circuit Court of Appeals filed on February 24, 2014), **Exhibit C** (Order Dismissing Complaint with Leave to File Amended Complaint filed on August 7, 2017 in federal district court) and **Exhibit D** (Petitioner's Amended Complaint filed on September 7, 2017 in federal district court).

March 26, 2018 – Counsel for the Grant County Defendants filed a declaration in support of the Grant County Defendants' motion to stay discovery. (**Appendix 2** to this Answer.) Counsel stated in part:

> As will be shown in the motion to dismiss, immunity, the statute of limitations and probable cause as evidenced by the conviction upheld on appeal, will likely be the end of the suit at bar. There are currently discovery requests by Plaintiff that are pending. The nearest date we could get for the motion for summary judgment is June 18th, 2018. . . . The summary judgment materials will follow in the next day or so from the date of this filing, and will be in the court file prior to the motion for the stay.

(Paragraphing omitted.)

April 2, 2018 – The trial court entered an order granting the Grant County Defendants' motion to stay discovery "dependent upon converting summary judgment to motion for dismissal pursuant to CR 12(b)(6)." (Federspiel, J.) (**Appendix 3** to this Answer.) The order also stated:

> And, if at the hearing evidence outside the pleadings is admitted that, in the opinion of the Court, the Motion under CR 12(b)(6) is converted to a CR 56 motion for Summary Judgment then the Court may lift the stay and take up the defendants' Motion(s) for relief from discovery at that time.

April 4, 2018 – The Grant County Defendants filed a motion for summary judgment. (**Appendix 4** to this Answer.)

April 4, 2018 – Counsel for the Grant County Defendants filed the Declaration of Brian A. Christensen in support of the Grant County Defendants' Motion for Summary Judgment. (**Appendix 5** to this Answer.) Counsel stated in part:

> 3. The orders and exhibits filed in the Motion to Stay Discovery are true and accurate copies of the originals and are incorporated in the instant motion by reference.

The four documents consisted of the documents identified above under the date of March 26, 2018.

April 23, 2018 – The Grant County Defendants filed a Motion for Dismissal Pursuant to CR 12(b)(6). (**Appendix 6** to this Answer.)

By way of background only, and *not for any substantive purposes,* the Grant County Defendants' motion to dismiss under Rule 12(b)(6) referred to Exhibits A-C. (**Appendix 6** to this Answer at 2-3.) The trial court would have been allowed to take judicial notice of these public records which were all filed in federal courts. *See, e.g., Reinschmidt v. Zillow,* 2014 WL 5343668, *2 (W.D. Wash. 2014) (when considering a motion under Rule 12(b)(6) the district court properly took judicial notice of certain documents under Fed.R.Evid. 201, providing that courts may take judicial notice of a fact that "is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot be questioned"). *See also* ER 201(b):

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and readily determination by resort to sources whose accuracy cannot reasonably be questioned.

May 2, 2018 – Petitioner filed his opposition to the Grant County Defendants' Motion to Dismiss under Rule 12(b)(6). (CP 355-362.)

July 11, 2018 – Petitioner's lawsuit against the Grant County Defendants was dismissed pursuant to CR 12(b)(6) by Hon. Richard Bartheld, visiting judge, in Kittitas County Superior Court Cause No. 16-2-00254-7. (**Appendix 7** to this Answer.) The trial court's order stated:

> [A]fter reviewing Defendants' Motion for Dismissal Pursuant to CR 12(b)(6) and Plaintiff's Amended Complaint; AFTER hearing argument of Plaintiff and Defendants' Counsel, and determining that **there is no grounds for relief in the Amended Complaint,** the Court being fully advised in the premises:
>
> NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz's motion for dismissal pursuant to CR 12(6)(6) is hereby GRANTED and this complaint, and all of the claims set forth therein, brought against said Defendants shall and the same are DISMISSED with prejudice.

(Emphasis added.) **The trial court made it clear that dismissal was entered based upon the allegations of the Amended Complaint and did not suggest that dismissal was based upon**

anything that was not included in the Amended Complaint. The trial court stated on the record:

> I have reviewed the pleadings that have been sent to me on this particular matter. **I have also gone back and reviewed by way of background the order granting or staying the discovery that was signed by Judge Federspiel, and I have also taken a look at the rulings in both of the Federal action.**
>
> **. . .**
>
> Well, this is a matter coming before the Court today on a motion to dismiss under CR 11, which basically alleges in this case that the plaintiff does fails to state a claim upon which relief can be granted. Under the analysis by the Court, I must presume all of the facts alleged in the plaintiff's Complaint are true and I can also consider hypothetical facts that may support his claims, but it must appear beyond doubt that the plaintiff can prove those facts consistent with the Complaint that would entitle him to relief. Also, the Court must take a look at plaintiff's claims and determine if they are legally sufficient or if they are legally compensable claims in this case.
>
> . . .
>
> The issue that comes before this Court is whether or not the plaintiff has stated claims upon which relief can be granted as a matter of law. I do note that there was a motion to stay discovery pending the motion to dismiss. Judge Federspiel, by order dated April 2, 2018, indicted that discovery would be stayed so long as the Court was able to rule on the CR 12 motion without resorting to a CR (unintelligible), and when additional facts remain to be supplemented, the Court can convert a CR 12 motion to a CR 56 summary judgment motion if necessary. **The Court finds in this case that there has not been a**

> **supplementation of facts in this case, that this matter was actually properly brought before this Court on a CR 12 motion.**

(VRP 3, 12-13, 14-15.) (Emphasis added.)

November 26, 2019 -- The Court of Appeals stated in passing: "Because the trial court considered matters outside Corrigan's amended complaint, we review the trial court's order under CR 56." (Court of Appeals opinion at 5.) The Court of Appeals did not identify any matters outside of the amended complaint that were relied upon by the trial court. The statement made in passing by the Court of Appeals is not supported by any wording in the trial court's order of dismissal. The trial court had absolute discretion to view but not consider the extraneous material before entering the order of dismissal.

Malicious Prosecution -- The Court of Appeals noted that a plaintiff asserting malicious prosecution must show that the proceedings terminated on the merits in favor of the plaintiff. (*Id.* at 6.) The Court of Appeals stated: "Here, Corrigan was reconvicted of failure to stop. He cannot demonstrate that the proceedings terminated on the merits in his favor."[1] (*Id.*)

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[1] The Amended Complaint stated that Petitioner was convicted after a re-trial. (Amended Complaint ¶¶ 3, 45, 49.)

Abuse of Process and Negligence: Statute of Limitations – The Court of Appeals noted that claims for abuse of process and negligence must be brought within three years of when the cause of action accrued. (*Id.*) The Court of Appeals stated:

> Here, Corrigan's claims for abuse of process and negligence centered around Grant County's and its employees' decision to refile criminal charges against him. If refiling the charges was wrongful, this was when Corrigan had a right to apply for judicial relief. The criminal charges were refiled on July 3, 2013. Corrigan's September 15, 2016 original complaint was, therefore, outside the three-year limitation period. Even if his amended complaint related back to the filing of his original complaint, it was too late.
>
> Corrigan argues that his September 2016 complaint was timely because he was *convicted* in November 2013. But being convicted of a crime is not an element of abuse of process or negligence, and is thus irrelevant to when he had a right to apply for judicial relief. We conclude that his conviction date is not when his abuse of process and negligence claims began to accrue.

(*Id.* at 6-7.)[2] (Emphasis in original.)

Judicial Immunity – The Court of Appeals noted that judicial immunity applies when judges act in a judicial capacity and with color of jurisdiction. (*Id.* at 7.) The Court of Appeals stated:

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[2] The Amended Complaint stated that the charges were re-filed on July 3, 2013. (Amended complaint ¶ 45.) The Amended Complaint stated that Petitioner was found guilty on Nov. 12, 2013. (*Id.* ¶ 49.)

> Here, Corrigan's claims against the various judges all occurred while they were acting within their judicial capacity. Therefore, judicial immunity extends to their actions, and Corrigan's claims fail.

(*Id.*) The Amended Complaint made no allegation that any prosecutor or judge acted outside their official duties.

December 16, 2019 – Petitioner filed a motion for reconsideration with the Court of Appeals. (**Appendix 8** to this Answer.) Petitioner primarily argued that the Court of Appeals abused its discretion and committed fraud on the court by not remanding to the trial court for proper treatment of a Rule 56 motion.

December 31, 2019 – The Court of Appeals denied Petitioner's motion for reconsideration. (A-10 to Petition for Review.)

C. SUMMARY OF THE ARGUMENT

The Petition for Review does not meet the criteria of RAP 13.4(b) or RAP 2.5(a)(3). **The trial court did not rely upon any evidence outside of Petitioner's Amended Complaint to reach the conclusion – as a matter of law – that Petitioner's Amended Complaint did not state a claim upon which relief can be granted.** The trial court did not convert the Grant County Defendants' motion to dismiss under Rule 12(b)(6) to a motion for

summary judgment under Rule 56. Even if the trial court relied on evidence outside of Petitioner's Amended Complaint, which is denied, reversal is not required because the dismissal was justified without reference to matters outside of Petitioner's Amended Complaint. The extraneous material consisted of only (1) a federal district court order granting a motion for summary judgment under Rule 56 brought by Trooper Timothy Kron and Trooper Cameron Iverson and a summary judgment motion brought by Grant County, Scott Ponozzo (former Grant County Undersheriff) and Douglas R. Mitchell (former Grant County Deputy Prosecuting Attorney) filed on December 10, 2013, (2) a Ninth Circuit Court of Appeals order dismissing Petitioner's appeal filed on February 24, 2014, (3) a federal district court order granting Grant County's and various Grant County employees' (prosecutors, judges and law enforcement officers) motion to dismiss under Rule 12(b)(6) with leave to amend filed on August 7, 2017 and (4) Petitioner's Amended Complaint filed in federal district court on September 7, 2017.

D. ARGUMENT

THE PETITION DOES NOT MEET THE CRITERIA OF RAP 13.4(b) or RAP 2.5(a)(3).

1. The decision is not in conflict with a decision of the Supreme Court – RAP 13.4(b)(1).

Petitioner alleges that review should be accepted on the ground that the Court of Appeals did not have authority to *sue sponte* convert a Rule 12(b)(6) motion to a Rule 56 motion. (Petition for Review at 7.)

CR 12(c) provides:

> If, on a motion for judgment on the pleadings are presented and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present **all material made pertinent to such a motion** by rule 56.

(Emphasis added.)

The trial court specifically stated that dismissal was based upon the allegations set forth in Petitioner's Amended Complaint. There is no suggestion that the trial court relied upon any extraneous material in coming to the decision to dismiss under Rule 12(b)(6). In fact, it is quite the opposite. Petitioner quoted the trial court:

> The Court finds in this case that there has not been a supplementation of the facts in this case, that this matter was actually properly brought before this Court of a CR 12 motion.

(Petition at 3, *quoting* VRP at 14-15.) Petitioner's own Petition for Review establishes that the trial court did not rely upon the limited extraneous material.

If the trial court thought a motion for summary judgment was being heard, which was clearly not the case, Petitioner cannot point to any discovery or additional material that he possibly could have presented to the trial court to defeat a motion for summary judgment. The trial court made rulings as a matter of law based upon the allegations set forth in Petitioner's Amended Complaint. The dismissal was proper without reference to the limited extra-pleading material attached to the declaration of counsel for the Grant County Defendants.

Fed.R.Civ.P. 12(d) employs language substantially similar to CR 12 (c). *Compare* Fed.R.Civ.P. 12(d) ("All parties must be given reasonable opportunity to present all material that is pertinent to the motion") *with* CR 12(c) ("all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56"). It can be error for a trial court to rely on facts outside the complaint in granting a Rule 12(b)(6) motion to dismiss. However, such a procedural error "would not require reversal if the dismissal can be justified without reference to matters outside of

the complaint." *Ryder Energy Distribution Corp. v. Merrill Lynch Commod., Inc.,* 748 F.2d 774, 779 (2d Cir. 1984).

> As the language of the rule suggests, federal **courts have complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion** and rely on it, thereby converting the motion, or to reject it or simply not consider it. . . . [W]hen it is scanty, incomplete, or inconclusive, the district court probably will reject it.

5C A. Miller, M. Kane and A. Spencer, Fed. Prac. & Proc. Civ. § 1366 (3d ed. 2010 – updated August 2019). (Emphasis added.) *See also Puget Sound Surgical Ctr., PS v. Aetna Life Ins. Co.,* 2018 WL 4852625, *3 (W.D. Wash. 2018) (*quoting with approval* § 1366 of Fed. Prac. & Proc. and declining to consider other evidence in deciding a Rule 12(b)(6) motion to avoid converting it to a Rule 56 motion).

Petitioner cited a federal case – *Bartlett v. Dep't of the Treasury (I.R.S.),* 749 F.3d 1 (1st Cir. 2014) -- that totally undermines his argument. In *Bartlett,* plaintiff suggested that the district court's dismissal under Rule 12(b)(6) "was more akin to summary judgment than to dismiss for failure to state a claim." 749 F.3d at 12. After quoting Fed.R.Civ.P. 12(d) that "parties must be given a reasonable

opportunity to present all the material that is pertinent to the motion," the circuit court stated at 12:

> Here, the district court did not formally convert the IRS's motion to dismiss into a motion for summary judgment despite the fact that the motion was accompanied by other materials. The district court's failure to convert the motion, however, does not require reversal. We have made it clear that we "do[ ] not mechanistically enforce the requirement of express notice of a district court's intention to convert a Rule 12(b)(6) motion into a motion for summary judgment. [Citation omitted.] **"Instead, we treat any error in failing to give express notice as harmless when the opponent has received the affidavit and materials, and has had an opportunity to respond to them, and has not controverted their accuracy."** . . . Ms. Bartlett does not argue that she was denied an opportunity to respond, nor does she suggest that there are other affidavits or documents that she would have submitted to the district court if she had been given formal notice that the court was converting the IRS's motion to a motion for summary judgment. Consequently, **the failure by the district court to formally convert the motion to dismiss into a motion for summary judgment was harmless.**

(Emphasis added; paragraphing omitted.)

See also Schering Corp. v. Food and Drug Admin., 51 F.3d 390 (3d Cir. 1995), *cert. denied* 116 S.Ct. 274 (1995) (because the issue as to which summary judgment was granted was legal and the extrinsic material considered by the district court in converting defendant's Rule 12(b)(6) motion was not material to the legal issue, the district court's failure to give notice of the conversion was

harmless error); *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia,* 73 F.3d 1423 (7th Cir. 1996) (even if the district court inappropriately relied on matters outside the pleadings without converting a motion to dismiss into one for summary judgment and providing the litigants with notice and an opportunity to respond, dismissal may be affirmed if Rule 12(b)(6) standards are met without reference to extrinsic material); *Brown v. Zavaras,* 63 F.3d 967 (10th Cir. 1995) (the district court's failure to notify plaintiff of its decision to convert a Rule 12(b)(6) motion to a Rule 56 motion in order to consider matters outside plaintiff's complaint is harmless if dismissal can be justified under Rule 12(b)(6) without reference to the extrinsic material).

Petitioner cited three opinions by this Court. The opinions are not in conflict with the rulings in this case. In fact, one case cited by Petitioner -- *Trujillo v. Northwest Trustee Servs., Inc.,* 183 Wn.2d 820, 355 P.3d 1100 (2015) – undermines Petitioner's argument. The *Trujillo* court held: **"Dismissal is proper [for failure to state a claim under Rule 12(b)(6)] if the court concludes that plaintiff can prove no set of facts that would justify recovery."** 183 Wn.2d at 830. (Emphasis added.)

Petitioner cited three federal cases to support his argument under RAP 13.4(b)(1), (2), (4) but the cases are not availing. The cases included *Bartlett v. Dep't of the Treasury (IRS),* 749 F.3d 1 (1st Cir. 2014) (district court's failure to formally convert a motion to dismiss into a motion for summary judgment was harmless) and *Swedberg v. Marotzke,* 339 F.3d 1139 n. 6 (9th Cir. 2003) (affirming dismissal under Rule 12(b)(6) and holding that plaintiff's filing of extrinsic material did not automatically convert it into a motion for summary judgment).

2. The decision is not in conflict with a published decision of the Court of Appeals – RAP 13.4(b)(2).

Petitioner cited four published Court of Appeals opinions in his petition for review. The rulings in this case are not in conflict with any of those cases. *See Keck v. Collins,* 181 Wn.App. 67, 325 P.3d 306 (2014); *Kelley v. Pierce Cnty.,* 179 Wn.App. 566, 319 P.3d 74 (2014); *Berst v. Snohomish Cnty.,* 114 Wn.App. 245, 57 P.3d 273 (2002) and *Foisy v. Conroy,* 101 Wn.App. 36, 4 P.3d 140 (2000), *rev. denied* 142 Wn.2d 1010, 16 P.3d 1263 (2000).

3. There is not a significant question of law under the Constitution of the State of Washington or the United States – RAP 13.4(b)(3).

Petitioner did not seek review under RAP 13.4(b)(3). Even if he had done so his argument would be without merit. A trial court's discretion in whether to accept extraneous material in connection with a Rule 12(b)(6) motion to dismiss is not a significant question of law under the state or federal constitutions. Here, Petitioner admits that the trial court stated "that there has not been a supplementation of the facts in this case [and] this matter was properly brought before this Court on a CR 12 motion." (Petition at 3.) (VRP 14-15.)

4. The petition does not involve an issue of substantial public interest that should be determined by the Supreme Court – RAP 13.4(b)(4).

Petitioner's argument under RAP 13.4(b)(4) was based entirely on his claim that the Court of Appeals did not have authority to *sue sponte* convert a Rule 12(b)(6) motion into a Rule 56 motion. (Petition at 1.) Although the Court of Appeals reviewed the dismissal under summary judgment standards there is no indication that the trial court relied in any way on the limited extraneous materials or considered dismissal to be on any basis other than failure to state a claim.

5. The petition does not involve manifest error affecting a constitutional right – RAP 2.5(a)(3).

RAP 2.5(a) provides that an appellate court may refuse to review any claim of error which was not raised in the trial court but "a party may raise the following claimed error for the first time in the appellate court: . . . (3) manifest error affecting a constitutional right."

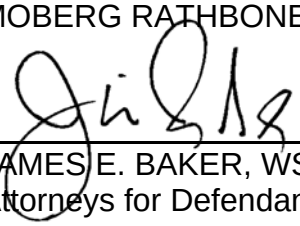
Petitioner alleges that his Fifth and Fourteenth Amendment constitutional rights were violated when the Court of Appeals *sue sponte* converted a Rule 12(b)(6) motion to a Rule 56 motion. (Petition at 9.) Petitioner simply incorporated by reference the arguments that he made in connection with his other assignments of error. (*Id.*)

E. CONCLUSION

The Court should deny the Petition for Review.

RESPECTFULLY SUBMITTED this 27th day of February, 2020.

MOBERG RATHBONE KEARNS, P.S.



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CERTIFICATE OF SERVICE

I certify that on this date I electronically filed the foregoing via JIS/ACCORDS. I further certify that I emailed a copy of this document to:

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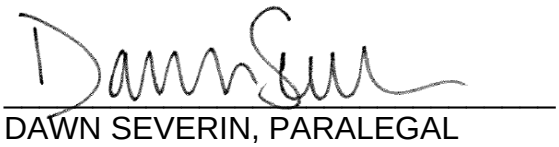
DATED this 27th day of February, 2020 at Ephrata, WA.

MOBERG RATHBONE KEARNS, P.S.



DAWN SEVERIN, PARALEGAL

APPENDIX 1

SUPERIOR COURT OF WASHINGTON
FOR KITTITAS COUNTY

JOHN L. CORRIGAN, Sr., Plaintiff, v. GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ; and TIMOTHY KRON, Defendants.	NO. 16-2-00254-7 **DEFENDANTS GRANT COUNTY, D. ANGUS LEE, PATRICK SCHAFF, JANIS WHITENER-MOBERG, BRIAN D. BARLOW, AND JOHN A. ANTOSZ'S MOTION TO STAY DISCOVERY PENDING DECISION ON MOTION TO DISMISS**

Comes now Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz, by and through their attorney of record, Brian A. Christensen, and makes the following motion to stay discovery pending the decision on Defendants' Motion to Dismiss:

I. STATEMENT OF FACTS

This case involves the third iteration of a baseless lawsuit, first filed in 2013. Plaintiff was arrested and jailed in Grant County in 2011. He contested a misdemeanor charge, lost, but

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overturned the decision on appeal to the Superior Court based upon a flaw in the charging document. The charge was then re-filed, as allowed by the decision, and Plaintiff was convicted. He appealed the conviction and lost.

In March 2013 Plaintiff brought his first suit in United States District Court, Eastern District of Washington, under cause number 13-CV-116-TOR against Grant County, Sergeant Scott Ponozzo and Deputy Prosecutor, Douglas Mitchell (defendants originally named in the present case), among others, for deprivations of rights he claimed from the arrest, incarceration and conviction.

On December 10, 2013 the United States District Court, Eastern District of Washington summarily dismissed Plaintiff's first lawsuit. (Decision attached as Exhibit A) Plaintiff appealed the Order Granting Defendants' Motions for Summary Judgment, but the Ninth Circuit Court of Appeals dismissed the appeal, writing that "Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed." (Decision attached as Exhibit B)

In September 2016, Plaintiff again filed the second suit in Kittitas County Superior Court under the above cause number against Grant County, Deputy Prosecutor Douglas Mitchell, and Sergeant Scott Ponozzo, but also added Defendants D. Angus Lee, Patrick Shaff, Ryan J. Ellersick, Janis Whitener-Moberg, Brian D. Barlow, Tom Jones, and John A. Antosz. This lawsuit was based upon the same facts as the previous lawsuit. Plaintiff brought the following claims against Defendants: Violation of civil rights including due process, right to fair trial, first amendment, fifth amendment, abuse of process, negligent training, conspiracy.

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Essentially, the same claims he made in the first lawsuit, with the first amendment claim thrown in alleging retribution because of his filing of the lawsuit.

The case was then removed to federal court.

On August 7th, 2017, the federal court granted Defendants' CR 12(b)(6) motion to dismiss, but allowed leave to amend. (Decision attached as Exhibit C) The Court wrote,

> *Plaintiff Corrigan may file an amended complaint but the Court reminds him that he must file cognizable and plausible claims.*

(Ex. C Order Dismissing, p. 12, line 16-17.)

Plaintiff then filed the current, amended complaint (Attached as Exhibit D), but it is based upon the same facts, just without reference to federal law, so it was remanded to state court. The claims at bar are essentially the same as previously filed: 1) Municipal negligence; 2) abuse of process; 3) retaliatory and malicious prosecution; 4) perfunctory Appellate Review. Plaintiff relies on the same transactional nucleus of facts here as he did in the previous case.

Plaintiff has filed discovery requests that will take time to respond to and have no bearing upon the outcome of this matter.

II. DISCUSSION

Appellate Courts review discovery orders for abuse of discretion. *Fellows v. Moynihan*, 175 Wn.2d 641, 649, 285 P.3d 864 (2012); *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 778, 819 P.2d 370 (1991). A court abuses its discretion when the decision is based on untenable grounds, is made for untenable reasons, or is manifestly unreasonable. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

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Courts have "wide discretion in controlling discovery. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). A stay of discovery, pending a dispositive motion, is proper if the stay furthers the goal of efficiency for the court and litigants. *See Id.*

In the case at bar, the weight of Defendant's motion to dismiss is overwhelming. Plaintiff's attempt to makeover the claims previously dismissed twice is meritless. The new claims are well beyond the statute of limitations, have previously been brought, or should have been, and attack the decisions and procedures involved in his criminal conviction that was already appealed and upheld. Also, judicial officers have consistently been held absolutely immune from civil suits for damages when performing judicial acts within their jurisdiction. *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967); *Forrester v. White*, 484 U.S. 219 (1988).

III. CONCLUSION

Because Plaintiff Corrigan's case is overwhelmingly weak, and a stay will not prejudice any parties, the court should allow a stay until the decision on Defendant's motion to dismiss has been made.

SUBMITTED ON March 21, 2018.

JERRY MOBERG & ASSOCIATES, P.S.

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CERTIFICATE OF SERVICE

I certify that I sent a copy of the document to which this is affixed by email and by U.S. mail, postage prepaid, to:

John L. Corrigan
51 NE Blomlie Rd
P.O. Box 1846
Belfair, WA 98528
jcorrigan25@outlook.com

I further certify that I sent a copy of the document to which this is affixed by email to:

Carl P. Warring
Assistant Attorney General for the State of Washington
CarlW@ATG.WA.GOV

DATED March 21, 2018 at Ephrata, Washington.

RHiannon Fronsman

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EXHIBIT A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

JOHN L. CORRIGAN,

Plaintiff,

v.

WSP OFFICER TIMOTHY KRON, WSP OFFICER CAMERON IVERSON, CORRECTIONS FACILITY SERGEANT SCOTT PONOZZO, GRANT COUNTY DEPUTY PROSECUTOR DOUGLAS R. MITCHELL, and GRANT COUNTY,

Defendants.

NO: 13-CV-0116-TOR

ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

BEFORE THE COURT are Defendants Washington State Patrol Troopers Timothy Kron and Cameron Iverson's Motion for Summary Judgment (ECF No. 33), and Defendants Grant County, Scott Ponozzo, and Douglas R. Mitchell's Motion for Summary Judgment (ECF No. 38). This matter was submitted for

consideration without oral argument. The Court has reviewed the briefing and the record and files herein, and is fully informed.

BACKGROUND

Plaintiff John L. Corrigan ("Corrigan") brought this suit against two Washington State Patrol Troopers, Grant County, the Grant County prosecutor, a Corrections Facility Sergeant, and the Chief Justice of the Washington State Supreme Court[1] based on an incident arising out of a speeding infraction. ECF No. 1. The Troopers, Grant County, the prosecutor, and the sergeant move for summary judgment in the motions now before the Court. They argue, *inter alia*, that probable cause bars Corrigan's unlawful search and seizure and malicious prosecution claims, that the force the Troopers' used was reasonable, that the individual defendants had qualified immunity, and that Corrigan has stated no facts giving rise to Grant County's liability.

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[1] Chief Justice Madsen was terminated from the caption of this case when the Court granted her Rule 12(b) Motion to Dismiss. ECF No. 32.

FACTS[2]

In April 2011,[3] John L. Corrigan was driving westbound on Interstate-90 in Grant County, Washington. ECF No. 1 at 4; ECF No. 33 at 4. Corrigan's vehicle approached Trooper Kron's unmarked police vehicle from the rear. ECF No. 33 at 4; ECF No. 36-1 at 3. Kron reports activating his rear radar, clocking Corrigan's approaching speed at 82 miles per hour. ECF No. 33 at 4; ECF No. 36-1 at 3.[4] Corrigan passed Kron's vehicle in the left lane, and slowed to 70 miles per hour. ECF No. 33 at 4. Kron claims that it appeared that Corrigan recognized him as a police officer, but Corrigan claims this is inadmissible as a conclusion. ECF No.

[2] These facts were gleaned from Plaintiff's complaint and the parties' statements of fact and response (ECF Nos. 1, 33, 38 and 40) and appended exhibits, and are considered true for purposes of the instant motions.

[3] Corrigan's Complaint claims that the date was April 11, 2011, while the Trooper's motion for summary judgment and supporting exhibits reflect the date as April 22, 2011. *See* ECF No. 1 at 4; ECF No. 33 at 4; ECF No. 36-1 at 2, 3.

[4] Corrigan disputes that Trooper Kron activated his radar and that Corrigan's vehicle was traveling at 82 miles per hour. ECF No. 40 at 3. However, Corrigan provides no admissible evidence in support of his dispute of the Troopers' sworn statement and supporting documentation.

33 at 4; ECF No. 40 at 3. Kron pulled into the lane behind Corrigan, activating his emergency lights. ECF No. 33 at 4. Corrigan moved into the right lane, continuing to drive at 70 miles per hour. *Id.* Kron reports having motioned Corrigan to pull over; Corrigan disputes this, but provides no evidentiary basis or explanation for this dispute. ECF No. 33 at 4. Kron also reports that Corrigan waved his hands in the air at him. *Id.* Kron had both his emergency lights and siren activated. ECF No. 33 at 5. Though Corrigan disputes this, Kron claims to have pulled up next to Corrigan's car, rolled down his passenger window and waved at Corrigan to pull over; Corrigan continued at 70 miles per hour. ECF No. 33 at 5.

Kron followed Corrigan's vehicle for approximately eight miles, at which time Trooper Iverson's marked patrol vehicle, with emergency lights and siren activated, caught up to them. ECF No. 33 at 5. After Iverson pulled his vehicle between Kron's and Corrigan's vehicles, Corrigan continued a short distance and pulled into the Wild Horses Monument lookout area. *Id.* Kron approached Corrigan's vehicle, asked him to step out, and placed him in handcuffs. *Id.*

After a short exchange, Corrigan was placed in the back seat of Kron's patrol vehicle. ECF No. 33 at 6; ECF No. 1 at 4. At some point, Corrigan was Mirandized. ECF No. 33 at 6; ECF No. 40 at 4. During the encounter, Corrigan said, "I have been stopped in California by individuals claiming to be police

officers that had lights and sirens but were not police officers." ECF No. 40 at 4. He further said "do what you need to do." ECF No. 33 at 6.

Corrigan states that he had to lay across the back seat of the trooper's vehicle because it would have been too painful to sit upright, and that he was wedged in the back seat and unable to move his feet. ECF No. 1 at 4-5. During this time, the troopers looked into Corrigan's vehicle's glove box and took out his vehicle registration. ECF No. 1 at 4-5. Corrigan's person was searched. ECF No. 1 at 5. Kron spoke with Deputy Prosecutor Mitchell several times. ECF No. 1 at 5.[5] At the scene, Kron asked whether Corrigan wanted a second set of handcuffs, which Corrigan believed meant that he would be made more uncomfortable, so he refused. ECF No. 33 at 6; ECF No. 40 at 5.

Kron took Corrigan to the Grant County Corrections Facility, while Iverson impounded Corrigan's vehicle. ECF No. 1 at 5; ECF No. 33 at 6. During the trip, Kron again asked Corrigan if he would like another set of handcuffs, this time making clear to Corrigan that he meant that he would add a second set of handcuffs to extend the existing pair in order to make Corrigan more comfortable; this time, Corrigan asked for a second set. ECF No. 33 at 7; ECF No. 1 at 5 ("Officer Kron then kindly added another pair of handcuffs which relieved—slightly—the pressure of the one set of handcuffs."). Corrigan stated that the second set of

[5] No party has enlightened the Court as to what these conversations concerned.

handcuffs did not much improve his comfort. ECF No. 41. However, he did not complain of any pain. ECF No. 33 at 7.

When they arrived at the corrections facility, Kron turned Corrigan over to Grant County Deputy Sheriff Sergeant Ponozzo. ECF No. 1 at 5. Ponozzo booked, fingerprinted, and photographed Corrigan, and Corrigan learned that he had been cited for speeding and failure to stop for a police officer and give information. ECF No. 1 at 5-6. Plaintiff was released on his own recognizance around 10 a.m. the following day. ECF No. 1 at 6.

Corrigan's speeding citation was dismissed when Officer Kron failed to show up for trial. ECF No. 1 at 6. Corrigan was convicted at trial for failure to stop, but the conviction was later overturned by the superior court and dismissed without prejudice. ECF No. 1 at 6. After a second jury trial, Corrigan was convicted again on November 12, 2013, for failure to stop in violation of RCW § 46.61.022.

In his complaint, Corrigan alleges that the defendants acted under color of state law to deprive him of "constitutionally protected rights under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States and the Washington State constitution including, but not limited to: a) the right to be free from unreasonable searches and seizures; b) the right not to be deprived of liberty without due process of law; d) the right to be free from excessive use of force by

persons acting under color of state law; and e) the right to be free from false arrest and false imprisonment." ECF No. 1 at 7. He contends that Defendants Kron, Iverson, Mitchell, and Ponozzo "acted under color of state law and conducted an unauthorized, warrantless illegal search and seizure of Plaintiff. *Id.* at 8. Corrigan also alleges that Defendants Kron, Iverson, Mitchell and Ponozzo "conspired under color of state law" to deprive Plaintiff of constitutionally protected rights. ECF No. 1 at 8. He further alleges malicious prosecution against Kron only. ECF No. 1 at 9. Corrigan further claims that Defendants Grant County, Ponozzo, and Mitchell, deprived Corrigan of his constitutional rights when they "implicitly or explicitly adopted and implemented careless and reckless policies, customs, or practices, including, among other things: a) denial to Plaintiff of a fair and impartial trial; b) abuse of the judicial and post-judicial process; c) failure to supervise and provide adequate training to Grant County personnel—especially judges, prosecutors, and Deputy Sheriffs." ECF No. 1 at 10.

DISCUSSION

Defendants Washington State Patrol Troopers Timothy Kron and Cameron Iverson ("Troopers") move for summary judgment against Plaintiff on grounds that (1) Corrigan's conviction is conclusive evidence of probable cause, barring his Fourth, Fifth, and Fourteenth Amendment claims and his malicious prosecution claim; (2) the Troopers had reasonable suspicion and probable cause to stop

Corrigan for speeding and to arrest him for failing to stop; (3) his excessive force claim fails because the force used was objectively reasonable; and (4) the Troopers are entitled to qualified immunity. ECF No. 33 at 1-2. In a separate motion, Defendants Grant County, Sergeant Scott Ponozzo, and Deputy Prosecutor Scott Mitchell (collectively, "County Defendants") move for summary judgment on all of Corrigan's claims against them on the grounds that (1) Mitchell is entitled to absolute immunity; (2) Ponozzo is entitled to qualified immunity; (3) there is no evidence giving rise to liability for Grant County; and (4) there is no evidence of a conspiracy to deprive plaintiff of his civil rights. ECF No. 38.

1. Legal Standard

The Court may grant summary judgment in favor of a moving party who demonstrates "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In ruling on a motion for summary judgment, the court must only consider admissible evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The party moving for summary judgment bears the initial burden of showing the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to identify "specific facts" showing there is a genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). "The mere existence of a scintilla

of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252. For purposes of summary judgment, a fact is "material" if it might affect the outcome of the suit under the governing law. *Id.* at 248. Further, a material fact is "genuine" only where the evidence is such that a reasonable jury could find in favor of the non-moving party. *Id.* The Court views the facts, and all rational inferences therefrom, in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

Mere disagreement, or the bald assertion that a genuine issue of material fact exists, no longer precludes the use of summary judgment. *See California Architectural Bldg. Prods., Inc., v. Franciscan Ceramics, Inc.,* 818 F.2d 1466, 1468 (9th Cir. 1987); *Galen v. County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). Furthermore, conclusory or speculative testimony is insufficient to raise a genuine issue of fact to defeat summary judgment. *Anheuser-Busch, Inc. v. Natural Beverage Distributors,* 60 F.3d 337, 345 (9th Cir. 1995).

A cause of action pursuant to 42 U.S.C. § 1983 may be maintained "against any person acting under the color of law who deprives another 'of any rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Southern Cal. Gas Co., v. City of Santa Ana,* 336 F.3d 885, 887 (9th Cir. 2003) (citing 42 U.S.C. § 1983). Corrigan's pro se complaint alleges constitutional

violations including unlawful arrest, use of excessive force, and violation of due process rights. It also alleges state law claims, including malicious prosecution, false arrest, and false imprisonment. The Court considers each issue in turn.

2. Whether Probable Cause Bars Corrigan's claims of unlawful arrest and malicious prosecution

a. Warrantless Arrest and Search

In "Count I" of his complaint, titled "Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983," Corrigan argues that Defendants Kron, Iverson, Mitchell and Ponozzo deprived Corrigan of "certain constitutionally protected rights under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States and the Washington State Constitution including, but not limited to...the right to be free from unreasonable searches and seizures." ECF Nol. 1 at 7. The Troopers counter that Corrigan's arrest is lawful because Corrigan's subsequent conviction for the crime of arrest proves that they had probable cause, Corrigan's subsequent conviction bars a finding of unlawful arrest because of the *Heck* doctrine, and because arrest for a minor crime does not offend the Fourth Amendment.

"Arrest by police officers without probable cause violates the Fourth Amendment's guarantee of security from unreasonable searches and seizures, giving rise to a claim for false arrest under § 1983." *Caballero v. City of Concord,*

956 F.2d 204, 206 (9th Cir. 1992). "An officer has probable cause to make a warrantless arrest when the facts and circumstances within his knowledge are sufficient for a reasonably prudent person to believe that the suspect has committed a crime." *Rosenbaum v. Washoe County,* 663 F.3d 1071, 1076 (9th Cir. 2011). "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States,* 338 U.S. 160, 175 (1949).

Under Washington law, "Any person who wilfully fails to stop when requested or signaled to do so by a person reasonably identifiable as a law enforcement officer or to comply with RCW 46.61.021(3), is guilty of a misdemeanor." RCW § 46.61.022.

First, the Court notes that the Fourth Amendment does not prohibit warrantless arrest for even very minor crimes as long as the arrest is supported by probable cause. Corrigan appears to repeatedly argue that failing to stop for a police officer is not an offense for which he may be arrested *under state law*, even though he concedes it is a crime as opposed to a civil infraction. ECF No. 40 at 16, 17 (citing RCW 10.31.100 and *State v. Reding*, 119 Wash.2d 685 (1992)). Irrespective of Plaintiff's argument, section 1983 only applies to violations of Constitutional rights, not state statutes. *See Ove v. Gwinn*, 264 F.3d 817, 824 (9th

Cir. 2001) ("To the extent that the violation of a state law amounts to the deprivation of a state-created interest that reaches beyond that guaranteed by the federal Constitution, Section 1983 offers no redress.")[6]. *See also Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.") and *Virginia v. Moore*, 553 U.S. 164, 176 (2008) ("We conclude that warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution, and that while States are free to regulate such arrests however they desire, state restrictions do not alter the Fourth Amendment's protections.").

The Supreme Court's decision in *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), forecloses Corrigan's claim. In *Atwater*, an officer stopped a woman driving her truck with her children. None of them were wearing their seatbelts, in

[6] The Washington Constitution is not enforced through a section 1983 action, nor does Corrigan argue that it provides any greater protection than the Fourth Amendment, for which the Court could exercise supplemental jurisdiction. Even if a state cause of action remained in this case, the Court declines to exercise supplemental jurisdiction without a federal cause of action.

violation of Texas law. When Atwater could not produce her insurance papers or license, the officer handcuffed her and took her to the local police station, where booking officers had her remove her shoes, jewelry, and eyeglasses, and empty her pockets. Officers took Atwater's "mug shot" and placed her, alone, in a jail cell for about one hour, after which she was taken before a magistrate and released on $310 bond. Atwater was charged with driving without her seatbelt fastened, failing to secure her children in seatbelts, driving without a license, and failing to provide proof of insurance. She ultimately pleaded no contest to the misdemeanor seatbelt offenses and paid a $50 fine; the other charges were dismissed. The Supreme Court held "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Id.* at 354. Thus, warrantless arrests for even minor crimes, if they are supported by probable cause, do not offend the Fourth Amendment.

Here, viewing the facts in the light most favorable to Corrigan, a reasonably prudent person would believe that Corrigan had committed the misdemeanor of failing to stop for a police officer. Undisputed evidence indicates that Kron was "reasonably identifiable as a law enforcement officer" to Corrigan. *See* RCW § 46.61.022. Corrigan does not dispute that he passed Kron, or that Kron's emergency lights were activated, or that Kron followed Corrigan's vehicle closely.

See ECF No. 33 at 4-5; ECF No. 40 at 2-3. Corrigan even notes in his declaration that he at first suspected Kron's car was an unmarked police vehicle. ECF No. 41 at 2. Thus, Kron reasonably believed that he had clearly identified himself as an officer and that Corrigan was ignoring him. Thus, a "reasonably prudent person" could "believe that the suspect has committed a crime" which would justify the arrest under the Constitution.

Nor does the Court find that Corrigan's contention that he was "not going 82 mph and Kron did not activate his radar" bars a finding of probable cause. *See* ECF No. 40 at 3. Corrigan may argue that Kron's probable cause to arrest him for failure to stop is undermined by Kron's lack of reasonable suspicion to pull him over in the first place, based on Corrigan's dispute of his speed. *See* ECF No. 40 at 3. However, as Defendants point out in their reply memorandum (ECF No. 45 at 5), Corrigan offers only a conclusory denial of the Troopers' facts, citing no reason or evidence in support. Under the summary judgment standard, a "bald assertion that a genuine issue of material fact exists" is insufficient to preclude summary judgment. *See California Architectural,* 818 F.2d at 1468. Even if the Court accepts Corrigan's "bald assertion" that he was not traveling at a rate of 82 miles per hour, Corrigan does not dispute that Kron's vehicle was going 70 miles per hour and that Corrigan overtook Kron's vehicle, which is evidence that Corrigan was in fact exceeding the posted speed limit. *See* ECF No. 33 at 4; ECF No. 40 at

3. Thus, the undisputed evidence indicates that Corrigan was speeding and that Kron therefore had reasonable suspicion or probable cause to pull him over.

Further bolstering the Court's finding of probable cause is Corrigan's ultimate conviction of the crime for which he was arrested: failure to stop for a police officer. The Troopers contend that this conviction is conclusive of probable cause. ECF No. 33 at 10-11. The proposition the Troopers set forth is correct. *See Bergstralh v. Lowe*, 504 F.2d 1276, 1277-1279 (9th Cir. 1974) (a conviction conclusively establishes that the arrest was made with probable cause, unless the conviction was obtained by fraud, perjury or other corrupt means) (citing Restatement of Torts § 667(1) (1938)). Here, Corrigan's ultimate conviction under RCW § 46.61.022 for failure to obey an officer gives rise to a presumption that the arrest was made with probable cause.

In their reply, the Troopers also argue that because of his conviction, Corrigan's § 1983 action is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).[7] In *Heck v. Humphrey*, the Supreme Court held that a constitutional challenge to a conviction or sentence is not cognizable under § 1983 "unless and until" the

[7] Charges were refiled and the case was retried after the original case against Corrigan was dismissed without prejudice on appeal.

conviction or sentence has been invalidated. 512 U.S. at 486–87, 489. Specifically, the Court ruled:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

512 U.S. at 486–87 (internal citation and footnote omitted). Thus, under *Heck*, a court must dismiss a § 1983 claim which, if successful, "would necessarily imply the invalidity" of the plaintiff's underlying conviction or sentence. *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997). "In evaluating whether claims are barred by *Heck,* an important touchstone is whether a § 1983 plaintiff could prevail only by negating 'an element of the offense of which he has been convicted.'" *Cunningham v. Gates*, 312 F.3d 1148, 1153-54 (9th Cir. 2002) (quoting *Heck*, 512 U.S. at 487 n. 6) (finding plaintiff's claims barred under *Heck* where complaint disputed several factual issues the state jury had already resolved against him).

Here, Corrigan was convicted in Grant County District Court of failure to obey an officer in violation of RCW § 46.61.022, the very violation forming the basis for the contested warrantless arrest. Presumably, the factfinder determined that Kron was "reasonably identifiable as a law enforcement officer," a

requirement of the statute. Corrigan does not dispute that he passed Kron, or that Kron's emergency lights were activated, or that Kron followed him closely. If the factfinder found that Corrigan violated the statute, it is reasonable that Kron too, could come to that conclusion. Thus, Corrigan's claim that his warrantless arrest was unsupported by probable cause is also barred by his subsequent criminal conviction under *Heck*.

i. Searches

Because the Troopers had probable cause to arrest Corrigan, his arrest was lawful and the Troopers' search of Corrigan's person incident to arrest does not give rise to a Fourth Amendment violation. The "search-incident-to-arrest doctrine" permits "a police officer who makes a lawful arrest [to] conduct a warrantless search of the arrestee's person and the area 'within his immediate control.' " *Davis v. United States*, 131 S.Ct. 2419, 2424 (2011) (citing *Chimel v. California*, 395 U.S. 752, 763 (1969)). The fact of a lawful arrest, standing alone, authorizes a search. *Maryland v. King*, 133 S.Ct. 1958, 1971 (2013) (citation omitted).

Nor was any inventory search of Corrigan's vehicle incident to impoundment unlawful. In Washington, "[a] vehicle may lawfully be impounded if authorized by statute or ordinance. 'In the absence of statute or ordinance, there must be reasonable cause for the impoundment.' " *State v. Bales,* 15 Wash. App.

834, 835 (1976) (quoting *State v. Singleton,* 9 Wash. App. 327, 511 P.2d 1396, 1399 (1973)). An officer may "take custody of a vehicle, at his or her discretion" if it is "unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety." RCW § 46.55.113(2)(b); *see also United States v. Jensen*, 425 F.3d 698, 706 (9th Cir. 2005) ("Once the arrest was made, the doctrine allowed law enforcement officers to seize and remove any vehicle which may impede traffic, threaten public safety, or be subject to vandalism."). Additionally, "[p]olice officers may conduct a good faith inventory search following a lawful impoundment without first obtaining a search warrant." *Bales,* 15 Wash. App. at 835 (citations omitted); *see South Dakota v. Opperman*, 428 U.S. 364 (1976). Corrigan does not dispute that he did not respond when the Troopers asked him if there was someone to collect his vehicle. ECF No. 33 at 6; *see* ECF No. 40 at 2-5. Nor does Corrigan dispute the propriety of the inventory search of his automobile. Thus, Iverson's impoundment of the car was lawful, and any inventory search incident to impoundment is also lawful.

b. False Arrest and False Imprisonment

Corrigan also generally alleges false arrest and false imprisonment in his complaint. ECF No. 1 at 7. The existence of probable cause is a complete defense to a state action for false arrest or false imprisonment. *See McBride v. Walla Walla County,* 95 Wash. App. 33, 38 (1999). Under Washington law, "[p]robable cause

exists where the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a *man of reasonable caution* in a belief that an offense has been or is being committed." *Rodriguez v. City of Moses Lake*, 158 Wash. App. 724, 729 (2010) (internal quotations omitted) (emphasis in original). "It is a reasonableness test, considering the time, place, and circumstances, and the officer's special expertise in identifying criminal behavior." *McBride,* 95 Wash.App. at 38. The state and federal probable cause standards are similar. *See Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (The standard for arrest is probable cause, defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense.') (citation omitted).

For the aforementioned reasons, the Court finds that the Troopers had probable cause—under either test—to arrest Corrigan for failure to stop. Thus, the claims of false arrest and false imprisonment are likewise barred.

c. Malicious Prosecution

Corrigan alleges malicious prosecution only against Kron. ECF No. 1 at 9. To succeed on a claim of malicious prosecution under Washington law, Plaintiff must establish the following elements:

> (1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the

> institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution.

Clark v. Baines, 150 Wash. 2d 905, 911 (2004) (citing *Hanson v. City of Snohomish*, 121 Wash.2d 552, 558 (1993)). Here, Corrigan fails to meet the fourth element, "that the proceedings terminated on the merits in favor of the plaintiff," because Corrigan was convicted for failure to stop in violation of RCW § 46.61.022 . As such, Corrigan's cause of action for malicious prosecution fails.

3. Whether Troopers' Use of Force Was Reasonable, Barring Excessive Force Claims

Corrigan's complaint makes a conclusory allegation that Kron, Iverson, Mitchell, and Ponozzo used excessive force. ECF No. 1 at 8. However, Corrigan has identified no material facts that could give rise to an excessive force claim against Mitchell or Ponozzo. The complaint mentions no physical contact between Mitchell and Corrigan; Ponozzo's contact with Corrigan, per Corrigan's complaint and declaration appears to be limited to booking, fingerprinting, photographing and giving corrections apparel to Corrigan. *See* ECF No. 1 at 4-7. Thus, the Court examines the excessive force claim only against Kron and Iverson, who argue that any force applied against Corrigan was objectively reasonable, and therefore not excessive. ECF No. 33 at 16.

The Ninth Circuit analyzes claims of excessive force by a police officer under the Fourth Amendment reasonableness standard described in *Graham v. Connor,* 490 U.S. 386 (1989). *Coles v. Eagle,* 704 F.3d 624, 627 (9th Cir. 2012). "[T]he 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham,* 490 U.S. at 397. Moreover, "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," and must allow "for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396–97.

Determining whether an officer's force was excessive or reasonable "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Id.* at 396 (internal quotations omitted). In weighing the governmental interests at stake under *Graham,* a court should consider several factors, including: (1) the severity of the crime, (2) whether the suspect poses an immediate threat to the safety of the officers and others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. *Id.* at 396; *see also*

Mattos v. Agarano, 661 F.3d 433, 441 (9th Cir. 2011) (explaining that the most important factor is whether the suspect poses an immediate threat to the safety of the officers or others). These factors are not exclusive. *Franklin v. Foxworth*, 31 F.3d 873, 876 (9th Cir. 1994). Because claims of excessive force often involve disputed factual contentions and competing inferences to be drawn therefrom, the Ninth Circuit has cautioned that summary judgment in excessive force cases "should be granted sparingly." *Lolli v. Cnty. of Orange*, 351 F.3d 410, 415–16 (9th Cir. 2003).

Liberally construing Corrigan's pro se complaint, the Court concludes that Corrigan's excessive force claim can only plausibly come from his contention that the handcuffs were applied too tightly.[8] The Ninth Circuit has held that *tight* handcuffing can constitute excessive force; the question is usually fact-specific and is likely to turn on the credibility of witnesses. *LaLonde v. Cnty. of Riverside*, 204 F.3d 947, 960 (9th Cir. 2000) (holding that question of excessive force was for the jury where plaintiff was tightly handcuffed and officers refused to loosen the handcuffs when he complained). However, the Ninth Circuit has also made it clear that "defendants [in excessive force cases] can still win on summary judgment if

[8] Corrigan does not appear to dispute the use of handcuffs, other than as a seizure related to his warrantless arrest claim.

the district court concludes after resolving all facts in favor of the plaintiff, that the officer's use of force was objectively reasonable under the circumstances." *Alexander v. County of Los Angeles,* 64 F.3d 1315, 1322 (9th Cir. 1995) (finding that, though a close case, it could not be said as a matter of law that officers' actions were reasonable where plaintiff asked repeatedly to have handcuffs removed or loosened, his hands swelled and turned blue, and his handcuffs were readjusted only after he had been cuffed for 35-40 minutes).

Given the totality of circumstances, including the context of the arrest, the Court concludes that there is no genuine issue of fact that anything more than a reasonable level of force was used. *See Jackson v. City of Bremerton,* 268 F.3d 646, 650, 653 (9th Cir. 2001) (affirming excessive-force summary judgment in favor of police officers even though the plaintiff's finger was fractured and permanently damaged). Corrigan does not dispute that he did not complain of pain to the officers while being transported. ECF No. 33 at 7. He did not ask for the handcuffs to be removed. Officer Kron offered twice to extend the handcuffs to make them more comfortable, an offer Corrigan accepted when he finally understood it. *See* ECF No. 33 at 7; ECF No. 40 at 5. Corrigan does not dispute that he made no complaint of injury while undergoing an inmate medical assessment at Grant County Corrections. *Id.* He had no visible signs of injury. *Id.* Corrigan simply did not manifest the type of injury or complaints that give rise to

an excessive force case for tight handcuffing. There is no evidence that would permit a fact-finder to conclude that the officers applied an unreasonable amount of force under the circumstances.

Alternatively, even if some degree of force used in tightly handcuffing Corrigan was deemed to be excessive, a reasonable officer could have thought the force used was needed, entitling the officers to qualified immunity. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *Saucier v. Katz*, 533 U.S. 194, 202 (2001). See further discussion below.

4. Whether Individual Defendants Are Entitled to Immunity

a. Whether Deputy Prosecutor Mitchell is Entitled to Absolute Immunity

Defendants contend that the only action against Deputy Prosecutor Mitchell alleged in the complaint is that he conferred by telephone with a law enforcement officer at the scene of an arrest. *See* ECF No. 1 at 5. They argue that the prosecutor is *absolutely* immune from claims arising from the performance of traditional functions of an advocate, including conferring with law enforcement. The Court, however, disagrees.

A prosecutor is entitled to absolute immunity from a civil action for damages when he or she performs a function that is "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman,* 424 U.S. 409, 430

(1976). However, advising the police in the investigative phase of a criminal case is not so "intimately associated with the judicial phase of the criminal process" as to qualify for absolute immunity. *Burns v. Reed*, 500 U.S. 478, 493 (1991) (quoting *Imbler*, 424 U.S. at 430) (holding that absolute immunity does not extend to the prosecutorial function of giving legal advice to the police). Immunity determinations rest on "the nature of the function performed, not the identity of the actor who performed it." *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997) (citations omitted); *Mishler v. Clift*, 191 F.3d 998, 1002 (9th Cir. 1999). The party asserting immunity bears the burden to show that such protection is justified. *See Burns*, 500 U.S. at 486 (1991).

Here, the activity detailed in the complaint (and in Corrigan's response to the County's motion for summary judgment) is that Mitchell was on the telephone with Kron during Corrigan's detention. Presumably, as in *Burns*, Mitchell was advising the officer—a function that the Supreme Court has held to be outside the protection of absolute immunity. Thus, Mitchell is not entitled to absolute immunity for advising Officer Kron via telephone.

b. Whether the Troopers, Ponozzo, and Mitchell are entitled to qualified immunity

The Troopers, Sergeant Ponozzo, and Deputy Prosecutor Scott Mitchell have also moved for summary judgment on grounds that they are entitled to

qualified immunity. ECF No. 33 at 19; ECF No. 38 at 6, 7. Qualified immunity shields government actors from civil damages unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan,* 555 U.S. 223, 231 (2009). In evaluating a state actor's assertion of qualified immunity, a court must determine (1) whether the facts, viewed in the light most favorable to the plaintiff, show that the defendant's conduct violated a constitutional right; and (2) whether the right was clearly established at the time of the alleged violation such that a reasonable person in the defendant's position would have understood that his actions violated that right. *Saucier v. Katz,* 533 U.S. 194, 201–02 (2001) (receded from in *Pearson,* 555 U.S. 223 (holding that while *Saucier*'s two step sequence for resolving government official's qualified immunity claims is often appropriate, courts may exercise their sound discretion in deciding which of the two prongs should be addressed first)). If the answer to either inquiry is "no," then the defendant is entitled to qualified immunity and may not be held personally liable for his or her conduct. *Glenn v. Washington Cnty.,* 673 F.3d 864, 870 (9th Cir. 2011). "If the law did not put the officer on notice that his conduct would be *clearly unlawful,* summary judgment based on qualified immunity is appropriate." *Saucier,* 533 U.S. at 202 (emphasis added).

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i. Troopers Kron and Iverson

As the Court has already found above, Corrigan's claims of warrantless arrest and excessive force in violation of the Fourth Amendment lack foundation. However, even if some degree of force used in tightly handcuffing Corrigan was deemed excessive, a reasonable officer could have thought the force used was needed, entitling the troopers to qualified immunity. *Pearson*, 555 U.S. at 231; *Saucier*, 533 U.S. at 202. Corrigan has not shown that the use of handcuffs in the manner deployed violated a clearly established constitutional right. *See Pearson*, 555 U.S. at 231. A reasonable trooper could properly believe that the use of this minimal level of force would not violate a clearly established constitutional right. *See Jackson*, 268 F.3d at 653 n. 5; *see also Malley v. Briggs*, 475 U.S. 335, 341 (1986) (stating that qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law").

ii. Deputy Prosecutor Mitchell

As a preliminary matter, it is unclear what right Corrigan contends is violated by Mitchell's communications with Kron. Although Mitchell is not entitled to absolute immunity for presumably advising Trooper Kron, he does receive qualified immunity for engaging in that role. Corrigan had already been stopped and taken into custody when Kron communicated with Mitchell. Thus, Mitchell could have advised Kron as to what course of action to take, such as

advising Kron to complete the arrest by taking Corrigan to jail. The Court has already found that a reasonable person could believe there was probable cause to arrest Corrigan and that the officers used reasonable force in doing so.

Accordingly, the Court finds that there are no facts or law in this case which would put Mitchell on notice that his actions were "clearly unlawful," and thus, he is entitled to qualified immunity.

iii. Sergeant Ponozzo

Here, Corrigan has suggested no facts indicating that Sergeant Ponozzo deprived him of any specific right, such as by using excessive force.[9] Insofar as Corrigan suggests that Ponozzo is complicit in his allegedly unlawful arrest, Corrigan also fails to establish facts indicating that Ponozzo was involved in violating his right to be free from arrests unsupported by probable cause. In a similar case, the Ninth Circuit held that an officer had qualified immunity where he assumed custody of a suspect from officers who said they had seen the suspect running from an abandoned police vehicle. *Choi v. Gaston*, 220 F.3d 1010, 1012 (9th Cir. 2000). The Ninth Circuit noted that it was not objectively unreasonable

[9] Corrigan alleges that Ponozzo "booked, fingerprinted, and photograph Plaintiff," and that Ponozzo "joined in the acts complained of when Plaintiff was booked into the Grant County Corrections Facility." ECF No. 1 at 5-7.

for the officer to believe there was probable cause to arrest the suspect, though the information was inaccurate. *Id.* Likewise, here Corrigan's complaint alleges only that Ponozzo booked, fingerprinted, and photographed him at the Grant County Corrections Facility. *See* ECF No. 1 at 5-6. As in *Choi*, Corrigan alleges no facts indicating that Ponozzo would have any reason to believe that the arrest was not supported by probable cause—which in fact it was (see discussion above).

Moreover, the Fourth Amendment allows police to take certain routine "administrative steps incident to arrest— i.e., . . . book[ing], photograph[ing], and fingerprint[ing]." *Maryland v. King*, 133 S.Ct. 1958, 1977 (2013) (citation omitted).

Accordingly, the Court finds that there are no facts or law in this case which would put Ponozzo on notice that his actions were "clearly unlawful," and thus, he is entitled to qualified immunity.

5. Whether Corrigan has alleged any question of fact as to Grant County's liability

Corrigan's complaint alleges that the county adopted reckless policies and practices, including denial of a fair trial, abuse of judicial process, and failure to supervise Grant County personnel. ECF No. 1 at 10. Grant County counters that Corrigan presents no evidence giving rise to its liability. "Local governing bodies...can be sued directly under § 1983 for monetary, declaratory, or injunctive

relief where...the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978). "[L]ocal governments... may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." *Id.* at 690-91. However, "a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Id.* at 691.

The Court notes that the troopers who arrested Corrigan were employees of the Washington State Patrol. The Washington State Patrol is an agency of the State of Washington, not Grant County. *See* RCW § 43.43.010. States and state agencies are not susceptible to suits under 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State Police,* 491 U.S. 58, 71 (1989) (holding neither a State nor its officials acting in their official capacities are "persons" under § 1983); *Maldonado v. Harris,* 370, F.3d 945, 951 (9th Cir. 2004) (state agency not amenable to suit under § 1983). Thus, Corrigan's claim fails insofar as it relates to Grant County's responsibility to train its employees about the right to be free from excessive force,

as Corrigan's excessive force and warrantless arrest claims relate only to the State Troopers.

Insofar as Corrigan's claims against Grant County relate to "denial to Plaintiff of a fair and impartial trial" and "abuse of the judicial and post-judicial process," ECF No. 1 at 10, Grant County argues that 1) there are no factual allegations as to how these deprivations were accomplished, and 2) the County is not liable because the municipal court's authority was based in state, not municipal, law. ECF No. 38 at 12.

Corrigan's complaint fails to detail any infractions on the part of Grant County that would give rise to a constitutional violation. In his response to the County's motion for summary judgment, Corrigan claims "there could be county policies and other discovery where evidence would show that Grant County had duties to perform or not – thereby resulting in deprivations of Corrigan's constitution rights." ECF No. 42 at 13.

Construed liberally, Corrigan's complaint and declaration may implicate his right to receive adequate medical care while in the custody of the County based on his claim that his cell was overcrowded, he had to sleep on a thin mattress on the cold floor, and he was given some but not all of his medications. ECF No. 43 at 6. Because Corrigan had not been convicted of a crime, but had only been arrested, his rights derive from the due process clause rather than the Eighth Amendment's

protection against cruel and unusual punishment. *Bell v. Wolfish,* 441 U.S. 520, 535 (1979); *Frost v. Agnos,* 152 F.3d 1124, 1128 (9th Cir. 1998); *Carnell v. Grimm,* 74 F.3d 977, 979 (9th Cir. 1996). With regard to medical needs, the due process clause imposes, at a minimum, the same duty the Eighth Amendment imposes: "persons in custody ha[ve] the established right to not have officials remain deliberately indifferent to their serious medical needs." *Carnell,* 74 F.3d at 979. Under the Eighth Amendment's standard of deliberate indifference, a person is liable for denying a prisoner needed medical care only if the person "knows of and disregards an excessive risk to inmate health and safety." *Farmer v. Brennan,* 511 U.S. 825, 837 (1994). In order to know of the excessive risk, it is not enough that the person merely "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, [ ] he must also draw that inference." *Id.* If a person should have been aware of the risk, but was not, then the person has not violated the Eighth Amendment, no matter how severe the risk. *Jeffers v. Gomez,* 267 F.3d 895, 914 (9th Cir. 2001).

Here, Corrigan has not alleged facts—in his complaint or his declaration in response to Defendants' motion for summary judgment—indicating that there was an "excessive risk" to his health and safety, let alone that any representative of Grant County knew about it. Thus, such a claim is simply not sustainable.

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Nor has Corrigan alleged facts sufficient to find Grant County liable for any violations of Corrigan's rights in the courts. First, his complaint identifies no policy or practice that deprived him of his constitutional rights as required for liability to attach under *Monell*. Even if the court had deprived him of his rights via a policy or practice, the next question is whether under state law the acts in question were performed under the municipality's or the state's authority. *Eggar v. City of Livingston*, 40 F.3d 312, 314 (9th Cir. 1994). District courts in Washington are governed by state law. *See* RCW 3.30.080; RCW 2.04.190. Insofar as his declaration alleges improper judicial or court action, it relates to the administration of the courts under state law.

Moreover, Corrigan is far from pleading an adequate cause of action for Constitutional violations based upon a county policy. He does not allege there is a policy---"there could be county policies . . . resulting in deprivations of Corrigan's constitution rights", ECF No. 42 at 13, ---let alone identify particularly the constitutional violation he suffered. Even bare assertions or conclusory allegations of a policy, without pleading factual content, are insufficient to "unlock the doors of discovery." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). So it is of no moment that Corrigan complains he has been deprived of discovery.

For the foregoing reasons, the Court finds that Corrigan has failed to allege, let alone identify sufficient factual matter in order to defeat summary judgment.

6. Whether Corrigan Has Established a Conspiracy Claim

To prove a § 1983 civil conspiracy claim, Corrigan must establish 1) that the Defendants agreed to deprive Corrigan of a constitutional right, 2) an overt act in furtherance of the conspiracy, and 3) a constitutional violation. *See Gilbrook v. City of Westminster,* 177 F.3d 839, 856–57 (9th Cir. 1999).

As discussed extensively above, no constitutional violation took place, barring a finding of conspiracy. Even if a constitutional violation had taken place, Corrigan has alleged no facts indicating any agreement between the defendants to deprive Corrigan of a constitutional right. Just like the allegations of an illegal conspiracy in *Twombly*, Corrigan's conclusory allegations here are not entitled to be assumed true. *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 554-55 (2007).

For these reasons, the Court finds that Plaintiff has established no genuine issue of material fact on his conspiracy claim. Accordingly, the Court grants Defendants' motion for summary judgment on this issue.

CONCLUSION

For the above described reasons, the Court grants summary judgment on both motions with respect to all claims and all defendants.

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IT IS HEREBY ORDERED:

1. Defendants Washington State Patrol Troopers Timothy Kron and Cameron Iverson's Motion for Summary Judgment (ECF No. 33) is **GRANTED.**

2. Defendants Grant County, Scott Ponozzo, and Douglas R. Mitchell's Motion for Summary Judgment (ECF No. 38) is **GRANTED.**

The District Court Executive is hereby directed to enter this Order and provide copies to counsel, enter Judgment for the Defendants, and CLOSE the file.

DATED December 10, 2013.

Thomas O. Rice

THOMAS O. RICE
United States District Judge

EXHIBIT B

FILED

FEB 24 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: JOHN LOUIS CORRIGAN, Sr., Respondent.	No. 09-80020 DC# CV-13-116-TOR Eastern Washington (Spokane) ORDER

Before: LEAVY, TASHIMA, and GRABER, Circuit Judges.

This court has reviewed the notice of appeal and accompanying documents filed January 6, 2014, in the above-referenced district court docket pursuant to the pre-filing review order entered in this docket. Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed. *See In re Thomas*, 508 F.3d 1225 (9th Cir. 2007).

This order, served on the district court for the Eastern District of Washington, shall constitute the mandate of this court.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions regarding this order shall be filed or entertained.

SVG/Pro Se

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN L. CORRIGAN, SR.,

Plaintiff,

v.

GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK D. SCHAFF; RYAN J. ELLERSICK; DOUGLAS R. MITCHELL; JANIS M. WHITENER-MOBERG; BRIAN D. BARLOW; TIMOTHY KRON; TOM JONES; SCOTT PONOZZO; JOHN A. ANTOSZ,

Defendants.

No. 1:16-cv-03175-SMJ

ORDER DISMISSING COMPLAINT WITH LEAVE TO FILE AMENDED COMPLAINT

I. INTRODUCTION

Before the Court, without oral argument, is Defendants Grant County, D. Angus Lee, Patrick D. Schaff, Ryan J. Ellersick, Douglass R. Mitchell, Janis M. Whitener-Moberg, Brian D. Barlow, Tom Jones, Scott Ponozzo, and John A. Antosz's (collectively "Defendants") Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6), ECF No. 22. Through this motion Defendants seek an order finding that there is no legal basis for any of Plaintiff John L. Corrigan's

claims and ask the Court to dismiss the case as a matter of law. ECF No. 22 at 2. Corrigan opposes the motion and asks for leave from the Court to amend his complaint. *See generally* ECF No. 26. Having reviewed the pleadings and the file in this matter, the Court is fully informed and for the reasons detailed below, grants Defendants' motion with leave to amend.

II. BACKGROUND

The facts regarding Corrigan's initial arrest and subsequent night in jail in April 2011 which underlie this suit have been discussed elsewhere and need not be repeated here. *See* ECF No. 30; ECF No. 1-1 at 11–15; ECF No. 22 at 2–3; ECF No. 13-cv-0116-TOR.

Two legal actions followed Corrigan's arrest and jailing—a civil case over his speeding ticket and a criminal case involving Corrigan's refusal to stop for police. ECF No. 1-1 at 13. The speeding ticket was dismissed but Corrigan was convicted for failing to stop for police. *Id.* On appeal, the conviction was overturned and the court dismissed the action without prejudice. *Id.* at 13–14. The criminal action eventually made its way back to state District Court. ECF No. 1-1 at 14.

Grant County prosecutors refiled a criminal complaint against Corrigan in July 2013. ECF No. 1-1 at 14. Corrigan's complaint in state court—the one removed to this Court—does not identify the state charges against him in July

2013, *id.*, but it is clear from the context that the charges related to Corrigan's failure to stop for police in April 2011. Corrigan also alleges that he filed motions regarding discovery, change of venue, bill of particulars radio tapes, and 911 calls before Judge Barlow. ECF No. 1-1 at 14. All motions were denied except the one concerning the bill of particulars. *Id.* Corrigan also filed a *Knapstad* motion and alleges that the trial judge denied jury instructions regarding the definitions of "willful" and "knowingly." ECF No. 1-1 at 14. Following a trial, Corrigan was found guilty. ECF No. 1-1 at 14.

Corrigan appealed his conviction to the Washington State Superior Court which upheld his conviction. ECF No. 1-1 at 14. On appeal to the Washington State Court of Appeals and the State Supreme Court, Corrigan's conviction was affirmed. *Id.* at 15. Corrigan also appealed to the United States Supreme Court but the Supreme Court denied his request for appeal. ECF No. 1-1 at 15.

Corrigan also filed a case in federal court in March 2013 concerning some, though not all, of the same underlying facts as alleged here. *See* ECF No. 2:13-cv-0116-TOR. On December 10, 2013, Chief Judge Rice granted defendants' motion for summary judgment in that action and closed Corrigan's case. ECF No. 47 of 2:13-cv-0116-TOR.

After Corrigan filed the present suit, Defendants removed the case to this Court on October 4, 2016. ECF No. 1. Corrigan asserts several causes of action:

(1) violation of his federal constitutional rights to due process and fair trial pursuant to 42 U.S.C. § 1983; (2) alleged violations of his First Amendment rights pursuant to 42 U.S.C. § 1983; (3) a claim for alleged denial of due process under the Fifth and Fourteenth Amendments and the Washington State Constitution, Article 1, section 22; (4) "abuse of process"; (5) negligent hiring, supervision, and training; and (6) spoliation of evidence. ECF No. 1-1 at 15–18. Corrigan seeks economic and non-economic damages, punitive damages, injunctive relief, a judgment stating that he was denied due process and his right to a fair trial, and actual costs and expenses. ECF No. 1-1 at 18.

In a separate order, this Court granted Defendant Timothy Kron's motion for summary judgment, finding that res judicata forecloses Corrigan's claims against Kron. ECF No. 30.

III. LEGAL STANDARD

A claim may be dismissed pursuant to Rule 12(b)(6) either for lack of a cognizable legal theory or failure to allege sufficient facts to support a cognizable legal theory. *Taylor v. Yee*, 780 F.3d 928, 935 (9th Cir. 2015). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v.*

Twombly, 550 U.S. 544, 570 (2007). A claim is plausible on its face when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

IV. DISCUSSION

Corrigan asserts claims against four types of defendants: (1) law enforcement officers; (2) judges; (3) prosecuting attorneys; and (4) a municipal corporation. ECF No. 1-1 at 9–10. The Court considers Corrigan's damages claims against each type of defendant first before addressing his claim for injunctive relief.

A. Corrigan's remaining claims against law enforcement officers are untimely and must be dismissed.

The Court has already granted Kron's summary judgment motion requesting that all claims against him be dismissed. ECF No. 30. Accordingly, the Court only addresses Corrigan's claims against Tom Jones and Scott Ponozzo.

Corrigan alleges that Ponozzo violated 42 U.S.C. § 1983 by "failing to take [him] before a magistrate for a mandatory probable cause hearing as soon as possible after custodial arrest." ECF No. 1-1 at 15. He asserts an "abuse of

process" claim against Jones and Ponozzo. ECF No. 1-1 at 16. Lastly, Corrigan alleges two distinct but related claims against Jones. Corrigan asserts that Jones "failed to exercise reasonable care in the training of [his] employees" and that he intentionally did not train, supervise, instruct, or implement policies and procedures which resulted in violations of Corrigan's rights to a fair trial and due process. ECF No. 1-1 at 15–16.

As to Corrigan's claim regarding Ponozzo's alleged failure to take him before a magistrate in a timely manner, Defendants assert, and Corrigan does not contest, that the applicable statute of limitation applies to this claim. ECF No. 22 at 8; ECF No. 26 at 14. Since the applicable statute of limitations is three years, the complained of event occurred in April 2011, and Corrigan agrees that the statute of limitations applies, the Court dismisses this claim. *See Southwick v. Seattle Police Officer John Doe Nos. 1–5*, 186 P.3d 1089, 1092 (Wash. Ct. App. 2008) ("Since there is no statute of limitations for claims under 42 U.S.C. § 1983, the appropriate limitation period for a § 1983 action is the forum state's statute of limitations for personal injury cases, which in Washington is three years.")

Similarly, Corrigan's "abuse of process" claim against Jones and Ponozzo alleges that they denied him "a mandatory probable cause hearing." ECF No. 1-1 at 16. This allegation concerns events that transpired in April 2011 after Corrigan was arrested. Corrigan does not contest that the statute of limitations applies here

as well. ECF No. 26 at 14. Accordingly, this claim against Jones and Ponozzo is also brought well past the applicable statute of limitations and is dismissed.

Finally, as to Corrigan's claim against Jones regarding alleged negligent training and intentional failure to train, supervise, instruct, or implement adequate policies and procedures, ECF No. 1-1 at 15–16, the statute of limitations also applies. The only allegations in the complaint regarding actions undertaken by sheriff's officers, and thus implicating their training, pertain to the events of April 2011. Accordingly, the statute of limitations also applies to these claims, Corrigan does not contest its application, and the Court dismisses these claims against Jones as well.

B. Corrigan's claims against the judicial-officer defendants must be dismissed.

Corrigan asserts claims against three judges—John A. Antosz, Brian D. Barlow, and Janis M. Whitener-Moberg. Corrigan alleges that these judicial officers engaged in a conspiracy with prosecutors to deny him a fair trial and due process in violation of the Fifth and Fourteenth Amendments and the Washington State Constitution, Article I, section 22. ECF No. 1-1 at 17. In support of this claim, Corrigan asserts, in relevant part:

> The conduct of the Grant County District Judge Barlow, Grant County District Judge Whitener-Moberg, Grant County Superior Court Judge Antosz, and Deputy Prosecutor Schaff prevented Corrigan from receiving due process and a fair trial. The actions by these defendants constituted conspiracy to unlawfully deprive

> Corrigan a fair trial including but not limited to: 1) Judge Barlow denied a legitimate and justified Motion for Change of Venue, violated court rules in quashing subpoenas that prevented Corrigan from getting needed discovery, and unreasonably and unlawfully denied Corrigan police vehicle discovery; 2) Judge Whitener-Moberg should not have presided over this action due to the appearance of bias and prejudice, her failure to include 'willful' and 'knowingly' jury instructions, and failing to allow Corrigan's theory of the case; 3) Judge Antosz's Memorandum Opinion does not justify his conclusions given the support provided for each issue – especially for lack of jury instructions for 'willful' and 'knowingly;' Deputy Prosecutor Schaff relating to prosecutorial misconduct – outrageous interference with Corrigan's discovery attempts, improper interference with jury instructions, and preventing Corrigan from presenting his theory of the case to the jury. Also, the 'crime' was unconstitutionally vague. As a direct and proximate result Corrigan sustained economic and non-economic damages in amounts to be proven at trial.

ECF No. 1-1 at 17.

The Supreme Court has held that a plaintiff suing under § 1983 seeking damages for an allegedly unconstitutional or otherwise harmful conviction or imprisonment "must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck v. Humphrey*, 512 477, 486–87 (1994). If a plaintiff does not prove such invalidation, a claim for damages under § 1983 in such circumstances is not cognizable. *Id.* at 487.

Moreover, it is well established that judges "[a]s a class . . . have long enjoyed a comparatively sweeping form of immunity." *Forrester v. White*, 484

U.S. 219, 225 (1988). In *Forrester*, the Court explained judicial immunity and stated that "[w]hen applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial." *Id.* at 227. It further explained that any difficulty in applying immunity to judges arises when the complained of conduct concerns acts that happen to be performed by judges, rather than "truly judicial acts." *Id.*

Here, Corrigan admits that all his appeals regarding his criminal conviction were unsuccessful. ECF No. 1-1 at 14–15. Moreover, Corrigan objects to decisions the judges named above made in his case regarding motions and other matters concerning his case, which undeniably are judicial acts. Accordingly, his claims against the judicial officer defendants are not cognizable and must be dismissed.

C. Corrigan's claims against the named prosecutor defendants must be dismissed because immunity applies to the defendants regarding some claims and other claims do not plead sufficient facts to make them plausible.

Corrigan asserts several causes of action against D. Angus Lee, Patrick Schaff, Ryan J. Ellersick, and Douglas Mitchell, all Grant County prosecutors. The claims include: (1) violation of Corrigan's due process rights and right to a fair trial, which deprived him of liberty and property, and resulted from a decision not to train, supervise, instruct, or implement policies and procedures; (2)

violation of Corrigan's First Amendment rights when Mitchell advised Kron on the phone during Corrigan's initial arrest and when the prosecutor's office reinstated an overturned conviction allegedly in response to Corrigan's lawsuit against Grant County; (3) abuse of process by recharging Corrigan for failure to stop in retaliation for his § 1983 lawsuit; (4) negligent training; (5) Schaff's alleged conspiracy through his actions related to trial; and (6) Lee and Schaff's alleged spoliation of evidence because they did not prevent the destruction of material evidence. ECF No. 1-1 at 15–18.

It is well established that prosecutors are "fully protected by absolute immunity when performing the traditional functions of an advocate." *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997). As to claims 2, 3, and 5, immediately above, the alleged conduct falls within prosecutors' traditional advocate roles, meaning that the prosecutor defendants are immune from suit on these claims. Regarding claims 1, 4, and 6, detailed above, Corrigan's complaint alleges no facts from which the Court could infer that his claims are plausible. Accordingly, the Court dismisses all claims against the prosecutor defendants as well.

D. Claims against Grant County are also dismissed.

"Municipalities may be held liable under § 1983 only for acts for which the municipality itself is actually responsible, that is, acts which the municipality has officially sanctioned or ordered." *Eggar v. City of Livingston*, 40 F.3d 312, 314

(9th Cir. 1994) (citation and quotation marks omitted). Corrigan conclusively alleges that Grant County, its Sheriffs and Prosecutors' offices, and these offices' respective heads made such decisions. ECF No. 1-1 at 15–18. Yet, he alleges no facts from which the Court could infer that his allegations that such official sanctions or orders were made are plausible. Accordingly, the claims against Grant County, and its Prosecutor and Sheriff's offices, are dismissed.

E. Corrigan's claims for injunctive relief are similarly dismissed.

Corrigan requests that the Court provide "injunctive relief against the defendants, ordering them to correct the illegal or otherwise inappropriate policies and procedures identified above." ECF No. 1-1 at 18. As detailed above, the Court cannot infer from the complaint a plausible claim that would merit injunctive relief.

Moreover, in order for Corrigan to warrant injunctive relief he would have to show that there is an inadequate remedy at law and that serious risk of irreparable harm would result if injunctive relief is not granted. *Pulliam v. Allen*, 466 U.S. 522, 537–38 (1984) (explaining that the requirements for obtaining equitable relief against any defendant are "a showing of an inadequate remedy at law and of a serious risk of irreparable harm.") (citation omitted).

Here, Corrigan has had his claims heard by several courts, on appeal and in state and federal court. Accordingly, a remedy at law is and has been available which means that injunctive relief is currently inappropriate.

V. CONCLUSION

For the reasons detailed above, the Court grants Defendants' motion to dismiss. However, the Court will afford Corrigan leave to amend his complaint. The Court urges Corrigan to read this decision carefully so that he understands why the instant complaint has been dismissed and files only cognizable and plausible claims, if any.

Accordingly, **IT IS HEREBY ORDERED**:

1. Defendants Grant County, D. Angus Lee, Patrick D. Schaff, Ryan J. Ellersick, Douglass R. Mitchell, Janis M. Whitener-Moberg, Brian D. Barlow, Tom Jones, Scott Ponozzo, and John A. Antosz's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6), **ECF No. 22**, is **GRANTED**.
2. Plaintiff Corrigan may file an amended complaint but the Court reminds him that he must file cognizable and plausible claims. Corrigan must file his amended complaint, should he choose to do so, **no later than September 8, 2017**.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel and pro se Plaintiff.

DATED this 7th day of August 2017.

SALVADOR MENDOZA, JR.
United States District Judge

EXHIBIT D

HONORABLE SALVADOR MENDOZA, JR

John L. Corrigan, Sr.
Pro Se
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN L. CORRIGAN, Sr., Plaintiff, v. GRANT COUNTY, a municipal Corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ; and TIMOTHY KRON; Defendants.	NO. 16-CV-03175 **AMENDED COMPLAINT**

PRELIMINARY STATEMENT

1. This is a civil rights action concerning the extraordinary misconduct of a WSP Trooper, members of the Grant County Prosecutors' Office and three Judges of Grant County.

2. This action alleges Washington State Law and Washington State Constitutional violations relating to: Retaliatory Prosecution; Malicious Prosecution; Prosecutorial Misconduct; Abuse of the Process; Denial of Due Process and Right to a Fair Trial; and in the Denial of Due Process and Right to a Fair Trial - Conspiracy.

3. Corrigan was stopped for speeding which lead to charges of speeding and failure to stop for an unmarked police vehicle – leading still to custodial arrest, a night in jail, two trials (1. civil – speeding; and 2. criminal – failure to stop), a successful appeal, a Federal Section 1983 action, a subsequent criminal re-trial, a conviction, fine, and an additional 4 days in jail.

4. In direct retaliation for Corrigan filing a §1983 Civil Rights Action, the Prosecutor's Office successfully retried plaintiff for failure to stop for a police officer.

5. Mr. Corrigan now brings this action in order to seek redress for the violations of his State Law and State Constitutional Rights and the significant damages he suffered relating to: Retaliatory Prosecution; Malicious Prosecution; Prosecutorial Misconduct; Abuse of the Process; Denial of Due Process and Right to a Fair Trial; and in the Denial of Due Process and Right to a Fair Trial - Conspiracy.

PARTIES

6. Plaintiff John L. Corrigan, Sr, is and was at all times relevant to this Complaint a resident of the State of Washington, residing in King and Mason Counties.

7. Defendant Grant County is organized into various governmental units, the two pertinent units herein being the Grant County Prosecutor's Office, and the Grant County Court Department. Any action alleged herein by those two entities and any person employed or elected to serve with those two entities is alleged to have been an action of Grant County.

8. D. Angus Lee was at all times relevant to this Complaint employed as the Grant County Prosecuting Attorney. He is sued in his individual capacity.

9. Patrick Schaff was at all times relevant to this Complaint employed as a Grant County Deputy Prosecuting Attorney. He is sued in his individual capacity.

10. Janis Whitener-Moberg was at all times relevant to this Complaint an elected Grant County District Court Judge. She is sued in her individual capacity for declaratory relief but not for damages - as judges cannot be sued for damages.

11. Brian D. Barlow was at all times relevant to this Complaint employed/elected as a Grant County Commissioner or District Court Judge. He

is sued in his individual capacity for declaratory relief but not for damages - as judges cannot be sued for damages.

12. John M. Antosz was at all times relevant to this Complaint was an elected Grant County Superior Court Judge. He is sued in his individual capacity for declaratory relief but not for damages - as judges cannot be sued for damages.

13. Timothy Kron was at all times relevant to this Complaint employed as a Washington State Patrol Trooper. He is sued in his individual capacity.

ADMINISTRATIVE EXHAUSTION AND COLOR OF LAW

14. More than 60 days prior to the filing and service of this Complaint, Plaintiff filed a notice of claim with Grant County in accordance with RCW 4.96.020. Plaintiff has fully complied with the tort claim presentation statute with respect to all of Plaintiff's state law claims.

15. At all times relevant to Plaintiff's state law and constitutional claims, individual defendants acted within the scope and authority of their employment with Grant County or Washington State (Trooper Kron), and all defendant acts described in this Complaint were under color of state laws and the Washington State Constitution.

JURISDICTION & VENUE

16. Jurisdiction: This court does not have subject matter jurisdiction over the claims asserted herein and personal jurisdiction over the parties. Originally, this court had jurisdiction under U.S.C. 42 § 1983 on defendants' removal from the Superior Court of Washington for Kittitas County. However, on Amended Complaint Federal Jurisdiction is no longer applicable as the Federal Actions have been stricken in favor of Washington State laws and constitution.

17. Venue: Venue is proper in Superior Court of Washington for Kittitas County under RCW 36.01.050 – Venue of actions by or against counties – if properly removed back to state court.

FACTS

18. On April 22, 2011, around 1:30 pm on a crisp, clear, sunny day, Corrigan was driving westbound on Interstate-90 in Grant County, Washington from Spokane, Washington to Seattle, Washington.

19. A few miles past George, Washington, Corrigan's vehicle slowly approached Trooper Kron's completely unmarked police vehicle from the rear. Corrigan passed Kron's completely unmarked police vehicle in the left lane – at or around 70 miles per hour.

20. Kron pulled into the left lane behind Corrigan while activating his emergency lights and siren. Corrigan moved into the right lane, continuing to drive at 70 miles per hour.

21. Kron followed Corrigan's vehicle for approximately eight miles, at which time Trooper Iverson's completely marked patrol vehicle, with emergency lights and siren activated, caught up to them.

22. Corrigan immediately stopped by pulling over into the Wild Horses Monument lookout area.

23. Kron approached Corrigan's vehicle and asked him why he did not stop. Corrigan mentioned something about not all vehicles with lights and siren are police vehicles.

24. Kron told Corrigan to step out of the car where Kron immediately arrested Corrigan by placing him in handcuffs attached behind the back of Corrigan.

25. After a short exchange, Corrigan was splayed on his stomach in the back seat of Kron's patrol vehicle wedged into the foot well and basically unable to move with the door shut.

26. Kron looked, then reached into Corrigan's vehicle glove box and took out his vehicle registration which Kron then used to contact his office and inquire about Corrigan.

27. At various times, both Kron and Iverson attempted to interrogate Corrigan while Corrigan with splayed in the back seat of Kron's patrol vehicle with very little success.

28. After the initial placement of Corrigan in the police vehicle, Corrigan was brought out of the vehicle at least two but possibly three times (1 – a search for weapons; and 2 - to give Corrigan Miranda warnings and to get Corrigan's car keys).

29. One time while returning Corrigan to the police vehicle and after Corrigan wiggled into the back seat on his stomach and was wedged into the back seat, the officers had to gently twist Corrigan's foot to get the door closed.

30. Kron spent some time placing/receiving calls on his cell phone to Deputy Prosecutor Mitchell – then acting as Kron's supervisor.

31. Corrigan was subjected to these actions during the 30-40 minutes after the initial stop.

32. Kron drove Corrigan for 30-40 minutes to the Grant County Corrections Facility stopping once to take Corrigan out of the police vehicle where Kron slightly but humanely adjusted Corrigan's handcuffs.

33. Iverson impounded Corrigan's vehicle.

34. Corrigan was turned over to Sergeant Ponozzo of the Grant County Deputy Sheriff's Department when Kron and Corrigan arrived at the Grant County Corrections Facility.

35. Ponozzo booked, fingerprinted, and photographed Corrigan and told Corrigan that he had been cited for speeding and failure to stop for a police officer and give information.

36. Corrigan spent the night in jail. He was released on his own recognizance around 10 a.m. the following day.

37. On Monday Corrigan was arraigned.

38. At the civil trial, Corrigan's speeding citation was dismissed when Kron failed to show up.

39. Corrigan was never given a probable cause hearing as required by CrRLJ 3.2.1 Procedure Following Warrantless Arrest.

40. Corrigan was convicted at criminal trial for failure to stop for a police officer.

41. Corrigan appealed and the superior court overturned the conviction on October 12, 2012. At that time the court sought additional information as to whether the conviction was to be dismissed with or without prejudice. On October 15, 2012, the superior court dismissed without prejudice

42. On January 11, 2013, the superior court remanded to the District Court.

43. On February 11, 2013, the superior court - by certified copy – transmitted the Mandate to District Court.

44. Corrigan filed a federal 42 U.S.C. Section 1983 action March 25, 2013.

45. The state refiled their criminal complaint against Corrigan on July 3, 2013 with arraignment taking place July 18, 2014.

46. Corrigan motions heard by Judge Barlow on September 4, 2013 for: 1) WSP Radio Tapes and 911 calls – stricken as Corrigan was advised to try to get those on his own; 2) Video/Telephonic conferencing – Denied; 3) Change of Venue – Denied; and 4) Bill of Particulars – Granted.

47. WSP Radio Tapes and 911 Calls later found to have been destroyed by state. Pictures of police vehicle could not be taken as Kron now had a new police vehicle. Corrigan permitted to take photos of similar vehicle but was prohibited from taking photos of back seat because of Federal suit against the county.

48. Knapstad Motion for court before trial November 12, 2013. "Willful" and "knowingly" discussed. Confusing issues about what could and could not be presented at trial.

49. At trial Judge did not include jury instruction definitions of "willful" or "knowingly." Corrigan was again found guilty on November 12, 2013.

50. Corrigan again appealed to the Superior Court and on May 15, 2014, Judge Antosz denied Corrigan's appeal.

51. Corrigan appealed to the Washington State Court of Appeals and the Washington State Supreme Court – both affirmed.

52. Corrigan appealed to the U.S. Supreme Court and Cert was denied.

CAUSES OF ACTION

The conduct alleged above is realleged and adopted in the following paragraphs by reference.

53. ***Municipal Negligence***. Grant County through the Grant County Prosecutor's Office (Lee and Schaff), and the Grant County Courts Department (Judges Barlow, Whitener-Moberg, and Antosz) made intentional and volitional decisions to not train, supervise, instruct, or implement policies and procedures as more specifically identified above that resulted in the violation of Corrigan's Constitutionally protected rights of due process and fair trial (Washington Constitution article 1. §§ 3 and 22), and deprived him of his liberty and property. As a direct and proximate result Corrigan has sustained economic and non-economic damages in amounts to be proven at trial. Above defendants further demonstrated a reckless or intentional disregard for Corrigan's state

constitutional rights and as such are liable for punitive damages. As a direct and proximate result Corrigan sustained economic and non-economic damages in amounts to be proven at trial.

54. ***Abuse Of Process.*** After the reversal of Corrigan's wrongful conviction, Grant County, the Grant County Prosecutor's Office, and Prosecutor Lee made the decision to again charge Corrigan with violations of the Criminal Code. In so doing, they failed to adopt and follow policies and procedures to protect against abuse of the process. They failed to adopt and follow policies and procedures necessary as even the most basic prosecutorial minimums to ensure that charges are not wrongly filed. The gestalt of the conduct and the circumstances of the prosecution of Corrigan (timing being an important factor) make it more likely than not that his prosecution a second time was in retaliation for Corrigan's filing a Federal 42 U.S.C. § 1983 action against Grant County and some of its officials making it publicly known that he was pursuing civil remedies arising out of the misconduct alleged above that preceded his original prosecution and conviction. A consideration of the facts and premises of his investigation and prosecution make it inescapable that if he had not made it known that he intended on pursuing civil remedies for the misconduct that preceded his first wrongful conviction, that he would not have been prosecuted a second time.

55. ***Fair Trial.*** Fair trial claims fall into two categories: due process (Washington Constitution article 1. § 3) and claims under the "appearance of fairness doctrine." The appearance of fairness doctrine provides greater protection. It permits litigants to make fair trial claims based on violations of the Code of Judicial Conduct (Code), regardless of whether those claims implicate due process. Denial of a fair trial claims related to actions taken by Judicial Officers contrary to the Code, Prosecutor Lee and Deputy Prosecutor Schaff contrary to Rules of Professional Conduct 3.8 & 8.4 resulting in prosecutorial misconduct, and Officer Kron's perjury including but not limited to:

a) Denial of a legitimate change of venue motion based on: 1) prejudice and bias of county in which a 42 U.S.C. § 1983 action relating to the first trial was previously initiated by Corrigan; and 2) bias and prejudice of Judge Whitener-Moberg whose brother-in-law owned the firm that was representing the county in Corrigan's suit[1] - in addition to the bias and prejudice as an official in the county;

[1] Later it was determined that Judge Whitener-Moberg's spouse also worked as an attorney at that law firm.

b) Discovery violations that prevented Corrigan from gathering necessary evidence of his claims relating to documents, pictures, and recordings – including unlawfully quashing subpoenas;[2]

c) The Grant County Prosecutor's Office, Prosecutor Lee and Deputy Prosecutor Schaff engaged in or did not prevent the destruction of material evidence as alleged above including access to police tapes and other communications between Kron, Trooper Iverson, and Deputy Prosecutor Mitchell. ;

d) Preventing Corrigan from presenting his "theory of the case" by limiting his presentation of the contemporaneous police action to the prosecutor's "theory of the case;"

e) Perjury relating to Kron's testimony at the second trial;

f) Failure to establish probable cause through CrRLJ 3.2.1;

g) Failure to provide critical, appropriate and necessary jury instructions relating to "willfulness" and "knowingly;'

These and other actions taken by the judicial officers and the prosecutor's office[3] represent a conspiracy to deprive Corrigan of a fair and impartial trial;

[2] Totally outrageous violation of the discovery rules by the prosecutor's office.
[3] Not Kron.

56. ***Retaliatory and Malicious Prosecution.*** Washington Constitution article 1. § 5 – Freedom of Speech prohibits the government from retaliating or taking adverse action against persons for protected speech. Officer Kron arrested Corrigan making false statements to justify his unlawful actions. It was unlawful activity on the part of Officer Kron who had no probable cause to arrest Corrigan. As a direct and proximate result Corrigan sustained economic and non-economic damages in amounts to be proven at trial.

57. ***Perfunctory Appellate Review.*** Judge Antosz's Memorandum Opinion does not justify his conclusions given the support provided for each issue – especially for lack of jury instructions for "willful" and "knowingly;" Deputy Prosecutor Schaff relating to prosecutorial misconduct - outrageous interference with Corrigan's discovery attempts, improper interference with jury instructions, and preventing Corrigan from presenting his theory of the case to the jury. Also, the "crime" was unconstitutional as vague. As a direct and proximate result Corrigan sustained economic and non-economic damages in amounts to be proven at trial.

REQUEST FOR RELIEF

58. For judgment against the defendants,[4] joint and severally in amounts to be proven at trial for Corrigan's economic and non-economic damages.

59. For judgment against the defendants that Corrigan was denied due process and the right to a fair and impartial trial.

60. For punitive damages.

61. For Corrigan's actual costs and expenses.

62. For injunctive relief against the defendants, ordering them to correct the illegal or otherwise inappropriate policies and procedures identified above.

DATED this 7th day of September 2017.

s/ John L. Corrigan
JOHN L. CORRIGAN
51 NE Blomlie Rd / Box 1846
Belfair, WA 98528
Phone: 253.350.0790
Email: jcorrigan25@outlook.com

[4] Except those not subject to money damages.

CERTIFICATE OF SERVICE

I hereby certify that I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system and served on counsel via the CM/ECF system:

Brian A. Christensen	bchristensen@jmlawps.com
Carl Warring	CarlW@atg.wa.gov

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 7th day of September, 2017.

s/ John L. Corrigan, Sr.
JOHN L. CORRIGAN
Pro Se
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Belfair, WA 98528
253.350.0790 – Telephone
jcorrigan25@outlook.com

APPENDIX 2

SUPERIOR COURT OF WASHINGTON
FOR KITTITAS COUNTY

JOHN L. CORRIGAN, Sr., Plaintiff, v. GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ; and TIMOTHY KRON, Defendants.	NO. 16-2-00254-7 **DECLARATION OF BRIAN A. CHRISTENSEN IN SUPPORT OF DEFENDANTS' MOTION TO STAY DISCOVERY**

I, Brian A. Christensen certify (or declare) under penalty of perjury under the laws of the State of Washington that the following statements are true and correct:

1. I am the attorney for Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz in the above entitled matter. I have personal knowledge of the matters contained in this declaration and am competent to testify.
2. Defendants Lee and Schaff were Grant County Prosecutors, and Defendants Whitener-Moberg, Barlow and Antosz are judges in Grant County.

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3. This lawsuit is the third edition of a lawsuit that has been twice dismissed, and is based upon facts stemming from a criminal action that was appealed and upheld.

4. As will be shown in the motion to dismiss, immunity, the statute of limitations and probable cause, as evidenced by the conviction upheld upon appeal, will likely be the end of the suit at bar.

5. There are currently discovery requests by Plaintiff that are pending. The nearest date we could get for the motion for summary judgment is June 18th, 2018.

6. I ask the court to enter an order staying discovery at this time to prevent the time and effort needed to answer the discovery requests.

7. The summary judgment materials will follow in the next day or so from the date of this filing, and will be in the court file prior to the motion for the stay.

Executed at Ephrata, Washington on March 21, 2018.

JERRY MOBERG & ASSOCIATES, P.S.

Brian A. Christensen, WSBA No. 24682
Attorney for Defendants Grant County, D. Angus Lee; Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz

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CERTIFICATE OF SERVICE

I certify that I sent a copy of the document to which this is affixed by email and by U.S. mail, postage prepaid, to:

John L. Corrigan
51 NE Blomlie Rd
P.O. Box 1846
Belfair, WA 98528
jcorrigan25@outlook.com

I further certify that I sent a copy of the document to which this is affixed by email to:

Carl P. Warring
Assistant Attorney General for the State of Washington
CarlW@ATG.WA.GOV

DATED March 21, 2018 at Ephrata, Washington.

Rhiannon Fronsman

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APPENDIX 3

FILED

18 APR -2 AM 10: 32

KITTITAS COUNTY
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON
FOR KITTITAS COUNTY

JOHN L. CORRIGAN, Sr., Plaintiff, v. GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ; and TIMOTHY KRON, Defendants.	NO. 16-2-00254-7 **ORDER GRANTING DEFENDANTS GRANT COUNTY, D. ANGUS LEE, PATRICK SCHAFF, JANIS WHITENER-MOBERG, BRIAN D. BARLOW, AND JOHN A. ANTOSZ'S MOTION TO STAY DISCOVERY PENDING DECISION ON MOTION TO DISMISS** Contingent upon Amending motion to 12(b)(6) from Summary Judgment

THIS MATTER came before the above-titled Court on Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz's motion to stay discovery pending the decision on Defendants' Motion to Dismiss, the Court having reviewed the files and records herein, heard argument from Plaintiff and Defendants' Counsel and being fully advised in the premises; NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A.

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Antosz's motion to stay discovery pending the decision on Defendants' Motion to Dismiss is hereby GRANTED. - Defendant upon converting Summary Judgment to motion for dismissal pursuant CR 12(b)(6)

SO ORDERED on April 2, 2018.

JUDGE OF THE SUPERIOR COURT

Presented By:

JERRY MOBERG & ASSOCIATES, P.S.

Brian A. Christensen, WSBA No. 24682
Attorney for Defendants Grant County, D. Angus Lee; Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz

And, if at the hearing evidence outside the ~~pleadings~~ pleadings is admitted such that, in the opinion of the Court, the Motion under CR 12(b)(6) is converted to a CR 56 Motion for Summary Judgment then the Court may lift the stay and take up the Defendants' Motion(s) for relief from discovery at that time.

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APPENDIX 4

SUPERIOR COURT OF WASHINGTON
FOR KITTITAS COUNTY

JOHN L. CORRIGAN, Sr., Plaintiff, v. GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ; and TIMOTHY KRON, Defendants.	NO. 16-2-00254-7 **DEFENDANTS GRANT COUNTY, D. ANGUS LEE, PATRICK SCHAFF, JANIS WHITENER-MOBERG, BRIAN D. BARLOW, AND JOHN A. ANTOSZ'S MOTION FOR SUMMARY JUDGMENT**

Comes now the DEFENDANTS, GRANT COUNTY, D. ANGUS LEE, PATRICK SCHAFF, JANIS WHITENER-MOBERG, BRIAN D. BARLOW AND JOHN A. ANTOSZ , by and through their attorney of record, Brian A. Christensen, and makes the following Motion for Summary Judgment:

I. RELIEF REQUESTED

The moving party asks the court to dismiss the claims made by plaintiff with prejudice.

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II. STATEMENT OF FACTS

Plaintiff alleges several causes of action against judges and prosecutors, all of whom are immune. The facts alleged in Plaintiff's complaint demonstrate that Plaintiff is not entitled to relief and the matter should be dismissed.

This case involves allegations involving events that began in 2011 with the arrest of Plaintiff, a conviction, appeal, new trial, conviction and an appeal that upheld the conviction. (Pltf. Compl. Paragraphs 18, 50-52)

In March 2013, Plaintiff brought his first suit in United States District Court, Eastern District of Washington, under cause number 13-CV-116-TOR against Grant County, Sergeant Scott Ponozzo and Deputy Prosecutor, Douglas Mitchell (defendants originally named in the present case), among others, for deprivations of rights he claimed from the arrest, incarceration and conviction.

On December 10, 2013 the United States District Court, Eastern District of Washington summarily dismissed Plaintiff's first lawsuit. (Decision attached as Exhibit A to motion for stay of discovery) Plaintiff appealed the Order Granting Defendants' Motions for Summary Judgment, but the Ninth Circuit Court of Appeals dismissed the appeal, writing that "Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed." (Decision attached as Exhibit B to motion for stay of discovery)

In September 2016, Plaintiff again filed the second suit in Kittitas County Superior Court under the above cause number against Grant County, Deputy Prosecutor Douglas Mitchell, and Sergeant Scott Ponozzo, but also added Defendants D. Angus Lee, Patrick Shaff, Ryan J. Ellersick, Janis Whitener-Moberg, Brian D. Barlow, Tom Jones, and John A. Antosz. This lawsuit was based upon the same facts as the previous lawsuit. Plaintiff brought the

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following claims against Defendants: Violation of civil rights including due process, right to fair trial, first amendment, fifth amendment, abuse of process, negligent training, conspiracy. Essentially, the same claims he made in the first lawsuit, with the first amendment claim thrown in alleging retribution because of his filing of the lawsuit.

The case was then removed to federal court.

On August 7th, 2017, the federal court granted Defendants' CR 12(b)(6) motion to dismiss, but allowed leave to amend. (Decision attached as Exhibit C) The Court wrote,

> *Plaintiff Corrigan may file an amended complaint but the Court reminds him that he must file cognizable and plausible claims.*

(Ex. C Order Dismissing, p. 12, line 16-17; attached in Motion for Stay of Discovery.)

Plaintiff then filed the current, amended complaint, but it is based upon the same facts, just without reference to federal law, so it was remanded to state court. The claims at bar are essentially the same as previously filed: 1) Municipal negligence; 2) abuse of process; 3) retaliatory and malicious prosecution; 4) Lack of a Fair trial; 5) perfunctory Appellate Review. Plaintiff relies on the same transactional nucleus of facts here as he did in the previous case.

III. AUTHORITY

a. Standard of review.

Civil rule 56 allows a party to seek summary judgment of a matter and the judgment should be entered forthwith if the evidence cited demonstrates that there is no material issue of fact and the moving party is entitled to judgment as a matter of law. If the moving party satisfies its burden, the nonmoving party must present evidence that demonstrates that material facts are in dispute. *Baldwin v. Sisters of Providence in Washington, Inc.*, 112 Wn.2d 127, 769 P.2d 298 (1989). If the nonmoving party fails to make a showing sufficient to establish the

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existence of an element essential to his case the trial court should grant the motion. *Hines v. Data Line Sys.* 114 Wn.2d 127, 787 P.2d 8 (1990). Broad generalizations and vague conclusions are not sufficient to defeat a motion for summary judgment, the non-moving party must come forward with specific facts. *Niece v. Elmview Group Home*, 79 Wn.App. 660, 668, 904 P.2d 784 (Div. 3, 1995).

The nonmoving party may not rely on speculation, argumentative assertions that unresolved factual issues remain, or on affidavits considered at face value. After the moving party submits adequate affidavits, the nonmoving party must set forth specific facts that sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact. *Meyer v. University of Washington,* 105 Wn.2d 847, 852, 719 P.2d 98 (1986).

b. Mr. Corrigan's Municipal Negligence claim fails and should be dismissed.

To establish a common law negligence claim, a party must establish four elements: (1) the existence of a duty ...; (2) breach of that duty; (3) resulting injury; and (4) proximate cause between the breach and the injury. *Hutchins v. 1001 Fourth Ave. Assocs.,* 116 Wn.2d 217, 220, 802 P.2d 1360 (1991). Plaintiff alleges that the County should be held liable due to the acts of judges and prosecutors. He does not allege what legal duties were owed to him and how they were violated. He makes a series of vague references and argumentative assertions that his rights were violated but alleges nothing material.

It is well established that a prosecutor who acts within the scope of his or her duties in initiating and pursuing a criminal prosecution is absolutely immune from liability. *Imbler v. Pachtman,* 424 U.S. 409, 427, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). Prosecutors are immune from section 1983 federal claims as well as state common law claims. *Imbler v.*

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Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128. In *Tanner v. City of Fed. Way*, 100 Wn. App. 1, 6, 997 P.2d 932, 935 (2000), the City and a City prosecutor were sued. The court held that "the City shares Wohl's absolute immunity from Tanner's state tort claims. *Id.* citing *Kentucky v. Graham,* 473 U.S. 159, 167–68, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985).

Plaintiff cannot show that the prosecutors here are not entitled to immunity. As for the judges, they are absolutely immune as well. *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967); *Forrester v. White,* 484 U.S. 219 (1988).

There is no basis for the municipality to held negligent and the claim should be dismissed.

c. The Abuse of Process claim lacks material elements and should be dismissed.

The abuse of process claim, according to the complaint, is based upon the fact that Grant County refiled criminal charges against Mr. Corrigan after the Superior Court overturned his first conviction. The claim has no merit and could be dismissed on the basis of a couple grounds.

To establish the tort of abuse of process, a claimant must prove (1) an ulterior purpose to accomplish an object not within the proper scope of the process, (2) an act not proper in the regular prosecution of proceedings, and (3) harm proximately caused by the abuse of process. *Bellevue Farm Owners Ass'n v. Stevens*, 198 Wn. App. 464, 477, 394 P.3d 1018, 1024 (2017). Actions for abuse of process also are not favored in Washington. *Batten v. Abrams,* 28 Wn.App. 737, 745–46, 626 P.2d 984, review denied, 95 Wash.2d 1033 (1981).

"The mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process." *Fite v. Lee,* 11 Wn.App. 21, 27–28, 521 P.2d 964, 97 A.L.R.3d 678, review denied, 84 Wn.2d 1005 (1974). Why the case was refiled is not the issue. Mr.

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Corrigan complains that the criminal charge was refiled in retribution, however, the, "why," it was filed is not important.

> *An ulterior motive or a bad intention in using the process is not alone sufficient, the bad intent must have culminated in the abuse, for it is the latter which is the gist of the action. An action for abuse of process cannot be maintained where the process was employed to perform no other function than that intended by law. Thus the mere issuance of process is not actionable as an abuse of process; there must be use of the process, and that use must of itself be without the scope of the process, and hence improper. Or stated another way, the test as to whether there is an abuse of process is whether the process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be compelled to do. [citations omitted]*
> *It is clear from these cases that regularity or irregularity of the initial process is irrelevant. The tort goes to use of the process once it has been issued for an end for which it was not designed. Thus, there must be an act after filing suit using legal process empowered by that suit to accomplish an end not within the purview of the suit.*

Batten v. Abrams, 28 Wn. App. 737, 745–49, 626 P.2d 984, 988–91 (1981). Plaintiff's claim should be dismissed. He make no allegations as to what occurred after the case was refiled that was not proper in the course of proceedings.

Furthermore, the charge was refiled in July of 2013, more than three years prior to the original complaint in this matter being filed. (See discussion below)

d. The "Fair trial" claim is not a proper cause of action,[1] and is based upon the actions of immune parties.

Mr. Corrigan claims that the actions of the judges and prosecutors deprived him of a fair trial, based upon the Washington State Constitution. In paragraph 55 of the amended complaint, Mr. Corrigan provides a list of decisions made during the trial that he did not agree with. As he admits, however, he appealed the trial and lost.

[1] This claim is more akin to appeal issues after a trial, not necessarily a civil cause of action.

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Judicial officers have consistently been held absolutely immune from civil suits for damages when performing judicial acts within their jurisdiction. *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967); *Forrester v. White,* 484 U.S. 219 (1988). Prosecutors are likewise absolutely immune from suits for damages arising from the performance of traditional functions of an advocate. *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997); *Imbler v.Pachtman*, 424 U.S. 409, 424-425 (1976). Nothing is alleged that would overcome that immunity. Mr. Corrigan's blanket statements that actions were wrongful does not explain what the actual wrongful actions were and why they might be wrongful.

Futhermore, Washington courts have consistently rejected invitations to establish a cause of action for damages based upon state constitutional violations without the aid of augmentative legislation. *Blinka v. Wash. State Bar Ass'n,* 109 Wn.App. 575, 591, 36 P.3d 1094 (2001) (quoting *Svs. Amusement, Inc. v. State,* 7 Wn.App. 516, 517, 500 P.2d 1253 (1972)); *see also Reid v. Pierce County,* 136 Wn.2d 195, 213–14, 136 Wn.2d 195, 961 P.2d 333 (1998) Mr. Corrigan cites the state constitution as a basis of this claim but provides no mention of what legislation he might be relying upon. The claim should be dismissed.

e. The Retaliatory/malicious prosecution claim is made outside the statute of limitations, and is completely without merit.

Charges were refiled against Mr. Corrigan after his initial conviction was overturned. He claims that this act was retaliatory and malicious. First of all, Prosecutors are absolutely immune from suits for damages arising from the performance of traditional functions of an advocate. *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997); *Imbler v.Pachtman*, 424 U.S. 409, 424-425 (1976). Nothing is alleged that would overcome that immunity. The justification alleged in the complaint, paragraph 56, is that the arresting officer made untrue statements to justify the arrest.

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The arrest, as stated in the complaint, took place in 2011. The statute of limitations had passed when this complaint was filed in September of 2016.

Furthermore, In order to maintain an action for malicious prosecution, a plaintiff must prove that: (1) the defendant instituted or continued the alleged malicious prosecution; (2) a lack of probable cause for the institution or continuation of the prosecution; (3) the proceedings were instituted or continued through malice; (4) the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) the plaintiff suffered injury or damage as a result of the prosecution. *Hanson v. City of Snohomish,* 121 Wn.2d 552, 558, 852 P.2d 295 (1993). The proceedings were not terminated on the merits for Mr. Corrigan so he cannot prove element four.

Also, Officer Kron is not a proper defendant in the current action[2] and was not an agent or employee of Grant County. The claim has no merit.

f. The Perfunctory review claim is baseless and Judge Antosz is entitled to absolute immunity.

As has been stated, judicial officers have consistently been held absolutely immune from civil suits for damages when performing judicial acts within their jurisdiction. *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967); *Forrester v. White,* 484 U.S. 219 (1988). Mr. Corrigan complains that Judge Antosz decision was faulty. While the Defense is not certain that this is an actual cause of action, there is no question that a judge is immune from civil liability for making a ruling. There is nothing alleged that could overcome immunity and the claim should be dismissed.

[2] Officer Kron was dismissed by order of the Federal Judge in a separate ruling with prejudice and was not part of the order allowing an amendment.

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g. Statute of limitations

In additional to immunity and other issues raised above with plaintiff's claims, the statute of limitations would bar much of it. The original complaint was filed on September 15th of 2016. The statute of limitations for the various claims are three years. (RCW 4.16.080, which includes injuries to persons, including negligence, abuse of process, malicious prosecution, civil rights violations, etc... See, *Nave v. Seattle*, 68 Wn.2d 721 (1966).) Under RCW 4.96.020, an extra sixty days can be added pursuant to the notice of claim tolling statute, therefore, arguably, claims concerning events transpiring prior to July 15th, 2013 should be excluded due to the statute of limitations.

According to plaintiff, the criminal charges were refiled against him on July 3rd of 2013. (Amended Complaint para 45)

IV. CONCLUSION

To the extent Plaintiff is alleging wrongdoing based upon events prior to July 15th, 2013, they should be excluded as violative of the statute of limitations. Plaintiff has not alleged anything that could overcome the strong immunity afforded judges and prosecutors when acting in their official capacities and the case should be dismissed.

SUBMITTED ON March 30, 2018.

JERRY MOBERG & ASSOCIATES, P.S.

Brian A. Christensen, WSBA No. 24682
Attorney for Defendants Grant County, D. Angus Lee; Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz

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CERTIFICATE OF SERVICE

I certify that I sent a copy of the document to which this is affixed by email and by U.S. mail, postage prepaid, to:

John L. Corrigan
51 NE Blomlie Rd
P.O. Box 1846
Belfair, WA 98528
jcorrigan25@outlook.com

I further certify that I sent a copy of the document to which this is affixed by email to:

Carl P. Warring
Assistant Attorney General for the State of Washington
CarlW@ATG.WA.GOV

DATED March 30, 2018 at Ephrata, Washington.

Rhiannon Fronsman

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APPENDIX 5

FILED

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KITTITAS COUNTY
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON
FOR KITTITAS COUNTY

JOHN L. CORRIGAN, Sr., Plaintiff, v. GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ; and TIMOTHY KRON, Defendants.	NO. 16-2-00254-7 **DECLARATION BRIAN A. CHRISTENSEN IN SUPPORT OF DEFENDANTS GRANT COUNTY, D. ANGUS LEE, PATRICK SCHAFF, JANIS WHITENER-MOBERG, BRIAN D. BARLOW, AND JOHN A. ANTOSZ'S MOTION FOR SUMMARY JUDGMENT**

I, BRIAN A. CHRISTENSEN, certify (or declare) under penalty of perjury under the laws of the State of Washington that the following statements are true and correct:

1. I am the attorney of for Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz. I have personal knowledge of the matters contained herein and am competent to testify.
2. The facts and law cited in the memorandum are true to the best of my knowledge.

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3. The orders and exhibits filed in the Motion to Stay Discovery are true and accurate copies of the originals and are incorporated in the instant motion by reference.

Executed at Ephrata, Washington on March 30, 2018.

JERRY MOBERG & ASSOCIATES, P.S.

BRIAN A. CHRISTENSEN, WSBA NO. 24682

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DATED March 30, 2018 at Ephrata, Washington.

Rhiannon Fronsman

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APPENDIX 6

SUPERIOR COURT OF WASHINGTON
FOR KITTITAS COUNTY

JOHN L. CORRIGAN, Sr., Plaintiff, v. GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ; and TIMOTHY KRON, Defendants.	NO. 16-2-00254-7 **DEFENDANTS GRANT COUNTY, D. ANGUS LEE, PATRICK SCHAFF, JANIS WHITENER-MOBERG, BRIAN D. BARLOW, AND JOHN A. ANTOSZ'S MOTION FOR DISMISSAL PURSUANT TO CR 12(b)(6)**

Comes now DEFENDANTS, GRANT COUNTY, D. ANGUS LEE, PATRICK SCHAFF, JANIS WHITENER-MOBERG, BRIAN D. BARLOW AND JOHN A. ANTOSZ , by and through their attorney of record, Brian A. Christensen, and makes the following Motion for Dismissal pursuant to CR 12 (b)(6). This motion is based upon the files and records herein and the Declaration of Brian Christensen filed on April 4, 2018.

I. RELIEF REQUESTED

The moving party asks the court to dismiss the claims made by Plaintiff with prejudice.

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II. STATEMENT OF FACTS

Background. This case involves allegations involving events that began in 2011 with the arrest of Plaintiff, a conviction, appeal, new trial, conviction and an appeal that upheld the conviction. (Pltf. Compl. Paragraphs 18, 50-52)

In March 2013, Plaintiff brought his first suit in United States District Court, Eastern District of Washington, under cause number 13-CV-116-TOR against Grant County, Sergeant Scott Ponozzo and Deputy Prosecutor, Douglas Mitchell (defendants originally named in the present case), among others, for deprivations of rights he claimed from the arrest, incarceration and conviction.

On December 10, 2013 the United States District Court, Eastern District of Washington summarily dismissed Plaintiff's first lawsuit. (Decision attached as Exhibit A to motion for stay of discovery) Plaintiff appealed the Order Granting Defendants' Motions for Summary Judgment, but the Ninth Circuit Court of Appeals dismissed the appeal, writing that "Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed." (Decision attached as Exhibit B to motion for stay of discovery)

In September 2016, Plaintiff again filed the second suit in Kittitas County Superior Court under the above cause number against Grant County, Deputy Prosecutor Douglas Mitchell, and Sergeant Scott Ponozzo, but also added Defendants D. Angus Lee, Patrick Shaff, Ryan J. Ellersick, Janis Whitener-Moberg, Brian D. Barlow, Tom Jones, and John A. Antosz. This lawsuit was based upon the same facts as the previous lawsuit. Plaintiff brought the following claims against Defendants: Violation of civil rights including due process, right to fair trial, first amendment, fifth amendment, abuse of process, negligent training, conspiracy.

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Essentially, the same claims he made in the first lawsuit, with the first amendment claim thrown in alleging retribution because of his filing of the lawsuit.

The case was then removed to federal court.

On August 7th, 2017, the federal court granted Defendants' CR 12(b)(6) motion to dismiss, but allowed leave to amend. (Decision attached as Exhibit C) The Court wrote,

> *Plaintiff Corrigan may file an amended complaint but the Court reminds him that he must file cognizable and plausible claims.*

(Ex. C Order Dismissing, p. 12, line 16-17; attached in Motion for Stay of Discovery.)

Current allegations. Plaintiff then filed the current, amended complaint, but it is based upon the same facts, just without reference to federal law, so it was remanded to state court. The claims at bar are essentially the same as previously filed: 1) Municipal negligence; 2) abuse of process; 3) retaliatory and malicious prosecution; 4) Lack of a Fair trial; 5) perfunctory Appellate Review. The Amended Complaint does not state a cause of action that could lead to relief. The complaint alleges that the prosecutors and judges involved in the criminal process, that was appealed and upheld, somehow acted wrongfully. Nothing alleged overcomes the strong immunities in place or the statute of limitations.

III. AUTHORITY

a. Standard of review.

Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove "any set of facts which would justify recovery." *Id.* (citing *Hoffer v. State,* 110 Wn.2d 415, 420, 755 P.2d 781 (1988)). The court presumes all facts alleged in the plaintiff's complaint are true and may consider hypothetical facts supporting the plaintiff's claims. *Id.* A motion to dismiss is granted " 'sparingly and with care' " and, as a practical matter,

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" 'only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.' " *Hoffer,* 110 Wn.2d at 420, 755 P.2d 781 (internal quotation marks omitted) (quoting *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984)) and (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 604 (1969).

b. Mr. Corrigan's Municipal Negligence claim fails and should be dismissed.

To establish a common law negligence claim, a party must establish four elements: (1) the existence of a duty ...; (2) breach of that duty; (3) resulting injury; and (4) proximate cause between the breach and the injury. *Hutchins v. 1001 Fourth Ave. Assocs.,* 116 Wn.2d 217, 220, 802 P.2d 1360 (1991). Plaintiff alleges that the County should be held liable due to the acts of judges and prosecutors. He does not allege what legal duties were owed to him and how they were violated. He makes a series of vague references and argumentative assertions that his rights were violated but alleges nothing material. The Complaint alleges that he Prosecutors re-filed charges against him after he filed a civil suit. Filing charges is clearly within the scope of their duties.

It is well established that a prosecutor who acts within the scope of his or her duties in initiating and pursuing a criminal prosecution is absolutely immune from liability. *Imbler v. Pachtman,* 424 U.S. 409, 427, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). Prosecutors are immune from section 1983 federal claims as well as state common law claims. *Imbler v. Pachtman,* 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128. In *Tanner v. City of Fed. Way*, 100 Wn. App. 1, 6, 997 P.2d 932, 935 (2000), the City and a City prosecutor were sued. The court held that "the City shares Wohl's absolute immunity from Tanner's state tort claims. *Id.* citing *Kentucky v. Graham,* 473 U.S. 159, 167–68, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985).

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Plaintiff's allegations do not suggest any facts apart from prosecutors acting in their official capacity. As for the judges, they are absolutely immune as well. *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967); *Forrester v. White,* 484 U.S. 219 (1988).

There is no basis for the municipality to be held negligent and the claim should be dismissed.

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The abuse of process claim, according to the complaint, is based upon the fact that Grant County refiled criminal charges against Mr. Corrigan after the Superior Court overturned his first conviction. The claim has no merit and could be dismissed on the basis of a couple grounds.

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Furthermore, the charge was refiled in July of 2013, more than three years prior to the original complaint in this matter being filed. (See discussion below)

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Mr. Corrigan claims that the actions of the judges and prosecutors deprived him of a fair trial, based upon the Washington State Constitution. In paragraph 55 of the amended complaint, Mr. Corrigan provides a list of decisions made during the trial that he did not agree with. As he admits, however, he appealed the trial and lost.

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Charges were refiled against Mr. Corrigan after his initial conviction was overturned. He claims that this act was retaliatory and malicious. First of all, Prosecutors are absolutely immune from suits for damages arising from the performance of traditional functions of an advocate. *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997); *Imbler v.Pachtman*, 424 U.S. 409, 424-425 (1976). Nothing is alleged that would overcome that immunity. The justification alleged in the complaint, paragraph 56, is that the arresting officer made untrue statements to justify the arrest.

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[2] Officer Kron was dismissed by order of the Federal Judge in a separate ruling with prejudice and was not part of the order allowing an amendment.

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g. Statute of limitations

In additional to immunity and other issues raised above with plaintiff's claims, the statute of limitations would bar much of it. The original complaint was filed on September 15th of 2016. The statute of limitations for the various claims are three years. (RCW 4.16.080, which includes injuries to persons, including negligence, abuse of process, malicious prosecution, civil rights violations, etc... See, *Nave v. Seattle*, 68 Wn.2d 721 (1966).) Under RCW 4.96.020, an extra sixty days can be added pursuant to the notice of claim tolling statute, therefore, arguably, claims concerning events transpiring prior to July 15th, 2013 should be excluded due to the statute of limitations.

According to plaintiff, the criminal charges were refiled against him on July 3rd of 2013. (Amended Complaint para 45)

IV. CONCLUSION

To the extent Plaintiff is alleging wrongdoing based upon events prior to July 15th, 2013, they should be excluded as violative of the statute of limitations. Plaintiff has not alleged anything that could overcome the strong immunity afforded judges and prosecutors when acting in their official capacities and the case should be dismissed.

SUBMITTED ON April 18, 2018.

JERRY MOBERG & ASSOCIATES, P.S.

Brian A. Christensen, WSBA No. 24682
Attorney for Defendants Grant County, D. Angus Lee; Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz

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CERTIFICATE OF SERVICE

I certify that I sent a copy of the document to which this is affixed by email and by U.S. mail, postage prepaid, to:

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I further certify that I sent a copy of the document to which this is affixed by email to:

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FriedaZ@ATG.WA.GOV

DATED April 19, 2018 at Ephrata, Washington.

Rhiannon Fronsman

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APPENDIX 7

SUPERIOR COURT OF WASHINGTON
FOR KITTITAS COUNTY

JOHN L. CORRIGAN, Sr., Plaintiff, v. GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ; and TIMOTHY KRON, Defendants.	NO. 16-2-00254-7 **ORDER GRANTING DEFENDANTS GRANT COUNTY, D. ANGUS LEE, PATRICK SCHAFF, JANIS WHITENER-MOBERG, BRIAN D. BARLOW, AND JOHN A. ANTOSZ'S MOTION FOR DISMISSAL PURSUANT TO CR 12(b)(6)**

THIS MATTER came before the above-titled Court on Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz's Motion for Dismissal pursuant to CR 12(b)(6), the Court being fully apprised, and after reviewing Defendants' Motion For Dismissal Pursuant to CR 12(b)(6) and Plaintiff's Amended Complaint; AFTER hearing the argument of Plaintiff and Defendants' Counsel, and determining that there is no grounds for relief in the Amended Complaint, the Court being fully advised in the premises,

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz's motion for dismissal pursuant to CR 12(b)(6) is hereby GRANTED and this complaint, and all of the claims set forth therein, brought against said Defendants shall be and the same are DISMISSED with prejudice.

SO ORDERED on ~~June~~ July 11, 2018.

HONORABLE RICHARD BARTHELD, Visiting Judge
YAKIMA COUNTY SUPERIOR COURT

Presented By:

JERRY MOBERG & ASSOCIATES, P.S.

Brian A. Christensen, WSBA No. 24682
Attorney for Defendants Grant County,
D. Angus Lee; Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz

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APPENDIX 8

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

John L. Corrigan, Sr.,

Appellant,

V.

GRANT COUNTY, A Municipal Corporation; D. Angus Lee; Patrick Schaff; Janis Whitener-Moberg; Brian D. Barlow; John A. Antosz, and Timothy Kron,
Respondents.

No. 36244-2-III

Appellant's Motion For Reconsideration

COMES NOW, John L. Corrigan, Sr., Appellant pro se, pursuant to RAP 12.4(c) and respectfully requests this Court reconsider its Unpublished Opinion filed November 26, 2019 in the above entitled cause. Basically, this Court mistakenly converted the trial court's CR 12(b)(6) order into a CR 56 order and granted summary judgment.

This Court abused its discretion and committed fraud on the court by not remanding to the trial court for proper treatment of a CR 56 motion.

This Court abused its discretion by claiming Kron was improperly served and therefore was exempt from the lawsuit.

This Court abused its discretion in converting from a CR 12(b)(6) motion to dismiss to a CR 56 summary judgment motion.

This Court is violating Appellant's Sixth Amendment right to a fair trial under the U.S. Constitution and his Fifth Amendment right to due process under the U.S. Constitution– both through the Fourteenth Amendment to the U.S. Constitution.

ARGUMENT

A. This Court Abused Its Discretion And Committed Fraud On The Court By Not Remanding To The Trial Court For Proper Treatment Of A CR 56 Motion.

INTRODUCTION

This Court was required to remand due to the fact that Appellant was denied discovery and the only legitimate way of opposing a summary judgment motion is through discovery. The trial court had a mandatory, not discretionary, duty to convert the motion to dismiss if matters outside the pleading are presented to and not excluded by the trial court. The trial court's actions are reversible error and this Court abused its discretion by not remanding to the trial court.

Further, this Court's insistence on pushing the summary judgment through the appellate court without Appellant discovery – is a fraud on the court.[1]

> Early summary judgment motions (those filed at the time the lawsuit is commenced or otherwise before, or during, discovery) are clearly permitted, unless foreclosed by local rules or scheduling orders. Such early filings, though consistent with some prior case law, seem at odds with the ***Supreme Court's admonition in 1986 that summary judgment should be granted only after the nonmoving party had an "adequate time for discovery."*** [Citations omitted] [Emphasis added]

Federal Civil Rules Handbook 2019 (Handbook), © Thomson Reuters/West 2019, pp. 1131-1132

[1] In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

ANALYSIS

CONVERSION

> Both motions to dismiss and motions for judgment on the pleadings are pleadings-based attacks. Rule 12(d) respects this essential attribute by requiring that such motions be re-cast into summary judgment requests when materials outside the pleadings are examined, thereby ensuring that the distinct policies of pleadings challenges (i.e., testing the pleaded allegations) and factual challenges (i.e., testing the existence of supporting evidence) are honored.
>
> When, while considering a Rule 12(b)(6) or 12(c) motion, a court is presented with materials outside the pleadings, and does not exclude them, the court is obligated to "convert" the pleadings challenge into a summary judgment motion. ***To do so, the court must give all parties notice of the conversion and an opportunity to both be heard and to present further materials in support of their positions on the motion.*** Following conversion, and upon a proper request by the parties, the court typically ensures that the parties have a reasonable opportunity for discovery prior to ruling on the converted motion. ***(Ordinarily, conversion (and the consideration of extrinsic materials) is not appropriate when discovery has not yet occurred.)*** The court then proceeds to evaluate the motion as a request for summary judgment under Rule 56.
>
> Although this conversion procedure is mandatory, not discretionary, …
>
> The required notice of conversion may be either actual or constructive. …
>
> Because they are unlikely to appreciate the consequence of a conversion to summary judgment procedures, *pro se* litigants will ordinarily be entitled to notice of that conversion and its meaning. [Citations omitted] [Emphasis added]

Handbook, Rule 12(d) – Presenting Matters Outside the Pleadings, pp. 480-483. See also, WA Civil Rules, Rule 12(b) ("… the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.")

- Conversion by the trial court is mandatory;
- There was no opportunity to be heard;
- There was no opportunity to present further materials in support of summary judgment;
- Appellant was never given the opportunity for discovery;
- No notice of the actual conversion was provided; and
- Appellant, as a *pro se,* was not afforded special notice of the conversion or its meaning.

The trial court had a mandatory duty to convert the Rule 12(b)(6) motion to a rule 56 motion for summary judgment if, as this Court claims, that materials outside the pleadings were presented. The trial court's actions are reversible error and this Court abused its discretion by not remanding to the trial court for full consideration under Rule 56.

B. This Court Abused Its Discretion And Committed Fraud On The Court By Claiming Defendant Kron Was Improperly Served And Therefore Was Exempt From The Lawsuit.

ANALYSIS

> Although Trooper Kron was no longer a party to that action, Corrigan informally e-mailed Trooper Kron the amended complaint instead of formally serving him.

Unpublished Opinion, p. 3. This is disingenuous. Trooper Kron's motion for summary judgment was granted – that does not mean that he was no longer a party to that action. Options were still available to Corrigan like his amended complaint or appeals to a higher court.

Also, Corrigan did not "informally" e-mail Trooper Kron the amended complaint instead of formally serving him. Trooper Kron's amended complaint was "formally" served to his counsel, Carl Warring, through the US District Court, Eastern District of Washington using the CM/ECF system.

This is a ludicrous and frivolous issue presented by Defendant Kron. This Court by giving it credence is committing a fraud on the court.

Finally, it is not up to this Court to weigh the evidence or find the facts.

> In ruling on a motion for summary judgment, ***the court will never weigh the evidence or find the facts***. Instead, the court's role under Rule 56 is narrowly limited to assessing the threshold issue of whether a genuine dispute exists as to material facts requiring a trial. Thus, ***the evidence of the non-moving party will be believed as true, all evidence will be construed in the light most favorable to the non-moving party, and all doubts and reasonable inferences will be drawn in the non-moving party's favor.*** [Citation omitted] [Emphasis added]

Handbook, pp. 1124-1125. This Court can assess the issue of whether or not Trooper Kron was properly served. However, this Court is improperly weighing the evidence and finding the facts in the moving party's favor. This is an abuse of discretion.

C. This Court Abused Its Discretion In Converting From A CR 12(B)(6) Motion To Dismiss To A CR 56 Summary Judgment Motion.

ANALYSIS

1. Trial Court Was Limited To A Motion To Dismiss.

A trial court hearing was conducted in which it was determined that Respondents' motion for summary judgment and motion to stay discovery could not both be granted. That is, summary judgment would be considered but only upon a denial of the stay of discovery, and vice versa. Respondents' opted for a stay of discovery only on their assurance that they would seek a motion to dismiss under CR 12(b)(6). Converting the motion to dismiss into one of summary judgment by this Court was a violation of the stay of discovery condition established by the trial court. Verbatim Report of Proceedings from an Audio File (Verbatim Report), June 18, 2018, p. 14-15.

Further, the trial court judge specifically stated that "there has not been a supplementation of facts in this case, that this matter was actually properly brought before this Court on a CR 12 motion." Id., at 15.

2. This Court Did Not Establish Justification For Conversion.

This Court alleges that "because the trial court considered matters outside the pleadings, we review the trial court's order as if it were a CR 56 order granting summary judgment. Applying that standard, we affirm." Unpublished Opinion, p. 1. This Court cannot "affirm" the trial court's

summary judgment motion – because the motion was never properly before the trial court. The trial court and all party's were all responding to a motion to dismiss.

However, this Court did not identify what matters outside the pleadings were considered as required by RAP 9.12.

> On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered. Documents or other evidence called to the attention of the trial court but not designated in the order shall be made a part of the record by supplemental order of the trial court or by stipulation of counsel.

RAP 9.12 Special Rule for Order on Summary Judgment.

This Court is claiming that the trial court considered matters outside the pleadings, when the trial court is claiming that "there has not been a supplementation of facts in this case."

> The issue that comes before this Court is whether or not the plaintiff has stated claims upon which relief can be granted as a matter of law. I do note that there was a motion to stay discovery pending the motion to dismiss. Judge Federspiel, by order dated April 2, 2018, indicated that discovery would be stayed so long as the Court was able to rule on the CR 12 motion without resorting to a CR (unintelligible) [CR 56], and when additional facts remain to be supplemented, the Court can convert a CR 12 motion to a CR 56 summary judgment if necessary. ***The Court finds in this case that there has not been a supplementation of facts in this case***, that this matter was actually properly brought before this Court on a CR 12 motion.

Verbatim Report, pp. 14-15.

3. RAP 9.12 Special Rule for Order on Summary Judgment.

In order to properly support this Court's summary judgment motion, this Court is required to satisfy RAP 9.12 even if it has to certify by supplemental certificate and indicate precise matters considered in ruling on motion.

> Appeal should not have been dismissed for appellants' failure to have trial judge specifically designate documents he considered in ruling on motion for summary judgment, ***but trial court should have been directed to certify by supplemental certificate and indicate precise matters considered in ruling on motion.*** Millikan v. Board of Directors of Everett School Dist. No. 2, 92 Wash. 2d 213, 595 P.2d 533 (1979). [Emphasis added]

2A Wash. Prac., Rules Practice RAP 9.12 (8th Ed.), Washington Practice Series TM August 2018 Update.

Also, in order to properly evaluate RAP 9.12 requirements this Court must recognize the exceptions to the "Conversion" requirements.

> Various exceptions to the conversion procedure have been recognized. First, no conversion is required when the court considers exhibits attached to the complaint (unless their authenticity is questioned); documents that the complaint incorporates by reference or are otherwise integral to the claim (provided they are undisputed); information subject to judicial notice; matters of public record (including orders and other materials in the record of the case); and concessions by plaintiffs made in their response to the motion. ...
>
> Second, no conversion is usually required if only a portion of a document is attached as an exhibit to the complaint, and the moving party submits remaining portions with the motion.
>
> Third, a party may waive any objection to a failure to properly convert by failing to timely contest it.
>
> Fourth, even if not waived, a failure to properly convert may be deemed harmless if the non-moving party had an adequate opportunity to respond and was not otherwise prejudiced. [Citations omitted]

Handbook, pp. 482-483.

D. This Court Is Violalting Appellant''s Sixth Amendment Right To A Fair Trial Under The U.S. Constitution And His Fifth Amendment Right To Due Process Under The U.S. Consttitution – Both Through The Fourteenth Amendment To The U.S. Constitution.

ANALYSIS

Based on the foregoing actions by this Court relating to violations of CR 12(b)(6) and CR 56, Appellant is denied a fair trial and a right to due process under the Fifth and Sixth Amendments to the U.S. Constitution applicable to the states under the Fourteenth Amendment.

CONCLUSION

Based on the foregoing actions by this Court, this Court should remand to the trial court for a proper CR 56 summary judgment disposition; that is – "disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56." See CR 12(b).

DATED this 16th day of December, 2019.

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CERTIFICATE OF SERVICE

I certify that on the 16sth day of December, 2019, I caused a true and correct copy of the Appellant's Motion for Reconsideration to be served electronically by Appellate Court's Portal for Respondents:

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APPENDIX 9

PARTIAL LIST OF COURT ACTIONS INVOLVING

***PRO SE* LITIGANT JOHN LOUIS CORRIGAN, SR.**

2000 - DATE

1. *Corrigan v. Grant County,* 2019 WL 6324071 (Wn.App. 2019) – The action at issue.

2. *Corrigan v. United States,* ___ U.S. ___, 138 S.Ct. 669 (2018) – Denying petition for writ of certiorari.

3. *Corrigan v. Washington,* ___ U.S. ___, 136 S.Ct. 1500 (2016) – Denying petition for writ of certiorari.

4. *Corrigan v. Kron,* 574 U.S. 820 (2014) – Denying petition for writ of certiorari.

5. *Corrigan v. Kron,* 2013 WL 6478335 (E.D. Wash. 2013) – Dismissing complaint on summary judgment.

6. *Corrigan v. Pflanz,* 571 U.S. 827 (2013) – Denying petition for writ of certiorari.

7. *Corrigan v. Kron,* 2013 WL 5442176 (2013) – Denying petition for writ of certiorari.

8. *Corrigan v. Pflanz,* 2011 WL 939229 (9th Cir. 2011) – Affirming dismissal of two consolidated appeals.

9. *Corrigan v. Dale,* 2010 WL 4269509 (9th Cir. 2010) – Affirming dismissal of complaint.

10. *In re Corrigan,* 562 U.S. 826 (2010) – Denying petition for writ of mandamus.

11. *In re Corrigan,* 558 U.S. 813 (2009) – Denying petition for writ of mandamus.

12. *Corrigan v. Pflanz,* 2009 WL 10674234 (E.D. Wash. 2009) – Granting in part Defendant's motion for Rule 11 sanctions.

13. *Corrigan v. Dale,* 2009 WL 1418113 (E.D. Wash. 2009) – Denying motion for reconsideration.

14. *Corrigan v. Pflanz,* 2009 WL 1065126 (E.D. Wash. 2009) – Denying motion for reconsideration.

15. *Corrigan v. Pflanz,* 2009 WL 10670879 (E.D. Wash. 2009) – Granting Defendant's motion to dismiss and imposing a future-filing bar.

16. *Corrigan v. Dale,* 2009 WL 972236 (E.D. Wash. 2009) – Dismissing complaint on summary judgment and denying motion for recusal.

17. *Corrigan v. Pflanz,* 2009 WL 537543 (E.D. Wash. 2009) – Denying motion for change of venue and denying motion for recusal.

18. *Corrigan v. Jenks,* 2009 WL 117882 (9th Cir. 2009) – Affirming dismissal of complaint for failure to pay sanctions and affirming denial of motion for recusal.

19. *Corrigan v. Dale,* 2008 WL 4999236 (E.D. Wash. 2008) – Denying motion to void judgment.

20. *Corrigan v. Dale,* 2008 WL 1746056 (E.D. Wash. 2008) – Dismissing complaint on summary judgment.

21. *Corrigan v. Unknown King County Deputy,* 552 U.S. 1257 (2008) – Denying petition for writ of certiorari.

22. *Corrigan v. Kline,* 552 U.S. 991 (2007) – Denying petition for writ of certiorari.

23. *Corrigan v. United States,* 552 U.S. 892 (2007) – Denying petition for writ of certiorari.

24. *Corrigan v. Visa USA,* 2007 WL 2491466 (9th Cir. 2007) – Affirming dismissal of complaint.

25. *Corrigan v. King County Deputy,* 2007 WL 2101677 (9th Cir. 2007) – Affirming imposition of Rule 11 sanctions.

26. *Corrigan v. Kline,* 2007 WL 1493192 (9th Cir. 2007) – Affirming dismissal of complaint alleging civil rights violation for traffic citation.

27. *Corrigan v. Jenks,* 2007 WL 1521514 (W.D. Wash. 2007) – Denying motion to remove Judge Pechman.

28. *Corrigan v. Unknown King County Deputy,* 2006 WL 3249135 (W.D. Wash. 2006) – Dismissing complaint on summary judgment.

29. *Corrigan v. Unknown King County Deputy,* 2006 WL 3091210 (W.D. Wash. 2006) – Imposing sanctions of $10,000.

30. *Corrigan v. Unknown King County Deputy,* 2006 WL 2222331 (W.D. Wash. 2006) – Dismissing complaint on summary judgment and imposing Rule 11 sanctions.

31. *Corrigan v. Kline,* 2006 WL 2038059 (W.D. Wash. 2006) – Dismissing complaint on summary judgment.

32. *Corrigan v. County of Adams,* 2006 WL 1455657 (E.D. Wash. 2006) – Denying habeas corpus petition.

33. *Corrigan v. Visa, U.S.A.,* 2006 WL 8454909 (W.D. Wash. 2006) – Denying defendant's motion for award of attorney fees and costs.

34. *Corrigan v. Dale,* 2006 WL 83342 (9th Cir. 2006) – Affirming dismissal of complaint on summary judgment.

35. *Corrigan v. Visa, U.S.A.,* 2006 WL 44329 (W.D. Wash. 2006) – Dismissing complaint under Rule 12(b)(6).

36. *Corrigan v. Washington,* 544 U.S. 1034 (2005) – Denying petition for writ of certiorari.

37. *Corrigan v. Washington,* 543 U.S. 1050 (2005) – Denying petition for writ of certiorari.

38. *Corrigan v. Dollar,* 543 U.S. 959 (2005) – Denying petition for writ of certiorari.

39. *Corrigan v. Germany,* 2002 WL 1766315 (9th Cir. 2002) – Affirming dismissal of complaint on summary judgment.

40. *Corrigan v. Imaginics, Inc.,* 534 U.S. 1020 (2001) – Denying petition for writ of certiorari.

41. *Corrigan v. Imaginics, Inc.,* 143 Wn.2d 1010, 21 P.3d 290 (2001) – Denying petition for review.

42. *Corrigan v. Employment Sec. Dep't of State of Wash.,* 141 Wn.2d 1022, 10 P.3d 405 (2000) – Denying petition for review.

43. *Corrigan v. Imaginetics, Inc.,* 2000 WL 194656 (Wn.App. 2000) – Affirming dismissal of complaint on summary judgment.

44. *Corrigan v. Employ. Sec. Dep't of State of Wash.,* 2000 WL 194675 (Wn.App. 2000) – Affirming denial of unemployment benefits.

###

MOBERG RATHBONE KEARNS

February 27, 2020 - 4:45 PM

Transmittal Information

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Appellate Court Case Title:	John L. Corrigan Sr. v. Grant County, et al
Superior Court Case Number:	16-2-00254-7

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