NO. 101294-2

SUPREME COURT OF THE STATE OF WASHINGTON

VAN HICKS,

Appellant,

v.

KLICKITAT COUNTY SHERIFF'S OFFICE; and STATE OF WASHINGTON, DEPARTMENT OF SOCIAL & HEALTH SERVICES; and SHIRLEY DeARMOND,

Respondents.

Court of Appeals Case No. 55014-8-II
Consolidated with 55554-9-II and 55654-5-II

RESPONDENT KLICKITAT COUNTY SHERIFF'S OFFICE'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Petitioner has sought to disrupt well-settled law at the trial court, before this Court on a motion for direct review, before the Court of Appeals, and now this Court, on the narrow cause of action for negligent investigation. *See Hicks v. Klickitat Cnty Sheriff's Office,* No. 55014-8-II, slip op. at 7-11 (Wash. Aug. 16, 2022). For nearly two decades, the Washington Supreme Court has made clear that the implied cause of action for negligent investigations under RCW 26.44.050 is limited to those cases that result in a "harmful placement decision" contemplated by the statute. *See, e.g. M.W. v. Dep't of Soc. & Health Servs.,* 149 Wn.2d 589, 591, 70 P.3d 954 (2003); *Roberson v. Perez*, 156 Wn.2d 33, 46-47, 123 P.3d 844 (2005); *McCarthy v. Clark County*, 193 Wn. App. 314, 376 P.3d 1127 (2016); *see also, Tyner v. Dep't of Soc. & Health Servs.,* 141 Wn.2d 68, 86, 1 P.3d 1148 (2000). Crucially, Petitioner's Petition for Review is silent as to *McCarthy*, which specifically addresses the key issue in this case: the implication of a no contact order issued by a criminal court directed at specific criminal charges. The Clark County Superior Court adhered to these decisions and their progeny when it

granted summary judgment dismissal of appellant Van Hicks's claims against the Klickitat County Sheriff's Office (KCSO), because there was no evidence of a harmful placement decision. Petitioner sought and was denied direct review by this Court with respect to the trial court's orders.[1]

Now, Petitioner seeks review of the Court of Appeals decision affirming the trial court's order. Even though the trial court's order and Division II's decision are supported by controlling precedent, Petitioner seeks to relitigate the same arguments made to the trial court to create the appearance of a conflict between the controlling case *M.W. v. DSHS,* 149 Wn.2d 589, and the cases it overruled. Further, Petitioner's reliance on *dicta* in *Desmet v. State, by and through, Dep't of Soc. & Health Services,* 2022 WL 3270004, 514 P.3d 1217 (2022), is unavailing. *Desmet* addressed the Department's immunity under RCW 4.24.595(2) and does not apply in the subject case.

[1] Petitioner initially sought and was denied direct review. Washington Supreme Court Cause No. 98799-8, Oct. 23, 2020 Ruling Transferring Motion for Discretionary Review.

Petitioner's assertion that Division II and trial court departed from, are inconsistent, or conflict with decisions by this Court are disingenuous. The relief Petitioner truly seeks is that this Court reconsider its long-standing precedent established in *M.W. v. DSHS,* 149 Wn.2d 589, and its progeny, and in effect, the overturning of *McCarthy*, 193 Wn. App. 314. No such conflict or inconsistency that could justify review exists. Nor does this case involve an issue of substantial public interest.

Simply, Petitioner cannot overcome the fact that the "harmful placement decision" requirement in a negligent investigation claim is strictly applied. *See Roberson*, 156 Wn.2d at 46-47; *Wrigley v. State*, 195 Wn.2d 65, 76, 455 P.3d 1138 (2020). The trial court and Division II appropriately applied this Court's prior decisions to find that no harmful placement decision was made in this case as required to support a negligent investigation claim. The law is well-settled in Washington, as the trial court and Division II recognized.

Given the above, Division II's decision was correct, and KCSO respectfully requests that Mr. Hicks' Petition for Review be denied.

II. IDENTITY OF RESPONDENT

The Klickitat County Sheriff's Office (KCSO) is the Respondent in this case and one of the defendants in the Clark County Superior Court case below.

III. DECISION

The KCSO asks the Court to deny review of the Court of Appeals decision in this case, attached to the Petitioner's brief as Appendix A.

IV. COUNTERSTATEMENT OF ISSUE

Should review be denied where the trial court and Division II, Court of Appeals upheld this Court's holdings in *M.W.*, *Roberson,* and their progeny; and where the damages complained of stem from the independent, intervening and superseding actions of a prosecutor?

V. COUNTERSTATEMENT OF THE CASE

A. Initial Investigation

On December 27, 2012, KCSO received a written report from the White Salmon Office of Child Protective Services ("CPS"). CP 1077-1078, 1280. A counselor, Loraine Madian, called CPS at 8:31 a.m. that day to report possible abuse by

Petitioner of his four-year old son, F.H. CP 1280. The report indicated that Chelsey Moss, Petitioner's ex-wife, had reported possible abuse by Petitioner of their son, F.H., via a phone call later that same day. *Id.* Moss reported that F.H. had told her that Petitioner rubs his own penis and it gets stiff. *Id.* Moss took F.H. and his seven-year-old sister, P.H., to a counselor. *Id.* Moss reported that F.H. had made similar statements to the counselor, Ms. Madian. *Id.* Ms. Moss and Ms. Madian then made a joint report to the White Salmon CPS office. *Id.*

That same day, KCSO Sergeant Erik Anderson contacted the CPS social worker assigned to the case, Shirley DeArmond. CP 1079, 1280. Sgt. Anderson and Ms. DeArmond agreed to investigate the matter together and decided to go to Moss's residence. CP 1280. Sgt. Anderson and Ms. DeArmond discussed the allegations with Moss without the children present. Interviews were arranged with the children on December 31, 2012. CP 1281.

Ms. DeArmond led the interviews, while Sgt. Anderson mostly observed. *Id.* Moss interviewed each child individually, while Moss was in another room with the other child. *Id.* Sgt.

Anderson audio-recorded both interviews. *Id.* P.H. was interviewed first and made no statements indicating that she had experienced or witnessed any kind of abuse. *Id.*; CP 1297-1332. Next, Ms. DeArmond and Sgt. Anderson interviewed F.H. CP 1281, 1335-1380. F.H. made multiple disclosures confirming that the Petitioner had inappropriately touched him several times. CP 1336-1345.

B. Petitioner's Arrest and the Independent Decisions of the Klickitat County Prosecutor's Office.

Based on the interviews, Sgt. Anderson determined that there was probable cause to believe that Petitioner had committed child molestation in the first degree. CP 1282. Petitioner ultimately turned himself in and was booked for child molestation in the first degree. CP 1284. The case was then forwarded to the prosecuting attorney's office. *Id.* Sgt. Anderson completed a "probable cause sheet," stating the facts supporting probable cause for Petitioner's arrest for child molestation in the first degree under RCW 9A.44.083. CP 1288-1290.

The Klickitat County Prosecutor's Office has independent charging authority for criminal charges. *See, e.g.* RCW 9.94A *et*

seq. Upon the prosecutor's review of the materials from the KCSO, Petitioner was charged with child molestation in the first degree on January 2, 2013. CP 1115. Protection orders were entered restraining Petitioner from having contact with Moss, F.H. and P.H. CP 1121-1124, 1129-1130. These no-contact orders were ordered as a result of motions by the prosecutor's office. *Id*., CP 1142-1147.

In July 2013, Petitioner appealed the CPS findings. CP 1155-1164. On July 30, 2013, CPS notified Petitioner that its previous findings regarding the child abuse negligence were being changed to unfounded. CP 1169. KCSO, the prosecutor's office, and Sgt. Anderson were not involved or contacted during the course of the CPS appeal. CP 1135-1136, 1165-1166. With CPS's finding, the prosecutor knew that there would be extreme challenges winning the case at trial. CP 1133-1134. On September 3, 2013, on motion of the prosecutor's office, the charges against Petitioner were dismissed due to evidentiary issues brought about by the revised finding. CP 1133-1134, 1171-1172. Given the revised finding, the prosecutor was furious when

the case was dismissed and that her office had no input in the review of the CPS charges. CP 1149-1151.

Petitioner was able to reunite with his children shortly after the criminal charges were dismissed. During the entirety of the protection order, the children resided with their mother in the family home. CP 1105-1106, 1384, 1387, 1391-1392, 1394.

C. Procedural History.

Petitioner filed this lawsuit bringing claims against KCSO for negligent investigation, general negligence, and negligent infliction of emotional distress. CP 51-58; 65-73. KCSO moved for summary judgment on all claims. CP 1035-1061. After a hearing, the trial court entered an order dismissing all claims against KCSO. CP 659-666. Petitioner timely moved for reconsideration which was denied. CR 1216. KCSO moved for and was granted final judgment. CP 1196-1198; 1219-1221. Petitioner sought and was denied direct review from this Court. CP 1232-1254. Division II of the Court of Appeals properly affirmed the trial court's summary judgment order dismissing

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Petitioner's negligent investigation claim against KCSO.[2] For the reasons set forth below, this Court should deny review.

VI. AUTHORITY AND ARGUMENT[3]

Petitioner seeks review under RAP 13.4(b)(1), (2), and (4). Petitioner fails to establish that the Court of Appeals decision conflicts with either this Court or a published Court of Appeals decision. Further, this petition does not involve an issue of substantial public interest.

A. The Court of Appeals Adhered to this Court's Longstanding Precedent in Narrowly Applying the Implied Cause of Action for Negligent Investigation and the Requirement of a "Harmful Placement Decision."

Petitioner's assertion that the Court of Appeals departed from this Court's precedent is disingenuous and ignores longstanding precedent. The only "radical revision" at issue herein is Petitioner's misinterpretation of the law and Division

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[2] Petitioner and Respondent DSHS and DeArmond sought discretionary review of the trial court's dismissal of the negligent investigation claim and denial of summary judgment as to the negligent retention claim. All appeals were consolidated under 55014-8-II.

[3] KCSO substantively joins in the State Respondents' Answer to Petition for Review.

II's decision. Petition for Review at 10. The law in Washington is clear: a negligent investigation claim is available only when law enforcement or DSHS conducts an incomplete or biased investigation that "resulted in a harmful placement decision." *M.W.*, 149 Wn.2d at 602. Petitioner ignores the holdings of *M.W.* and *Lewis v. Whatcom County,* 136 Wn. App. 450, 454, 149 P.3d 686 (2006), to argue, indirectly, that a harmful placement decision is not required for a to prove a negligent investigation claim under RCW 26.44.050. *See generally,* Petition for Review.

Petitioner argues that the *Hicks* Court misunderstood what constitutes a harmful placement under Washington law, seeking an expansion of the narrow, implied cause of action for negligent investigation. Petitioner's argument runs contrary to all controlling case law applied by both the trial court and Division II: "A negligent investigation claim is available only when law enforcement or DSHS conducts an incomplete or biased investigation *that 'resulted in a harmful placement decision*.'" *McCarthy,* 193 Wn. App. at 329, (quoting *M.W.*, 149 Wn.2d at 601); *Hicks,* slip op. at 9. "A harmful placement decision includes 'removing a child from a nonabusive home, placing a

child in an abusive home, or letting a child remain in an abusive home.'" *McCarthy*, 193 Wn. App. at 329 (quoting *M.W.*, 149 Wn.2d at 602); *Hicks*, slip op. at 9. To prevail on a negligent investigation claim, "the claimant must prove that the allegedly faulty investigation was the proximate cause of the harmful placement." *See Petcu v. State*, 121 Wn. App. 36, 56, 86 P.3d 1234 (2004).

Petitioner cannot overcome the fact that the "harmful placement decision" requirement is strictly applied. *Hicks*, slip op. at 9; *see Roberson*, 156 Wn.2d at 46-47 (rejecting a "constructive placement" argument and holding no harmful placement decision occurred when parents voluntarily sent child to live with grandparents during abuse investigation); *see also*, *Wrigley*, 195 Wn.2d at 76 (a negligent investigation claim is a "narrow exception"). The Court of Appeals correctly concluded that Petitioner failed to meet his burden. *Hicks*, slip op. at 7-11.

Further, what Petitioner represents to this Court as a "misunderstanding of what constitutes a harmful placement decision" Petition for Review at 12, wholly ignores the precedent at the heart of both the trial court and Division II's rulings.

Conspicuous for its absence in Petitioner's brief is any discussion of *McCarthy,* which Division II specifically addressed. *See Hicks,* slip op. Petitioner cannot point to a single case in which a negligent investigation claim survived where the children remained in the family home with their biological, non-abusive, mother as the custodial parent. *See Hicks,* slip op. at 9. *McCarthy*, 193 Wn. App. 314, is directly applicable, as recognized in the Court of Appeal's decision, *see Hicks*, slip op., because unlike the cases relied on by Petitioner, it specifically involves a no-contact order entered in a criminal case and directed at a specific criminal charge, as occurred here. This case does not involve a dependency hearing where DSHS explicitly requested a placement decision, whereas *Tyner* and *Petcu* did, and shelter care hearings occurred. *Tyner,* 141 Wn.2d at 74; *Petcu,* 121 Wn. App. at 46.

Further, Petitioner misrepresents this Court's holding in *Desmet v. State, et al.* relying solely on *dicta.* Petition at 11-17. As this Court recognized in *Desmet*: "The sole question before us is whether RCW 4.24.595(2) grants the Department immunity for its post-placement conduct that the parents cannot pursue their

claims of negligent investigation…at trial." *Desmet,* 514 P.3d 1217, 1221, 2022 WL 3270004 (2022). The statute at the heart of *Desmet,* RCW 4.24.595, does not apply in this case, and was not addressed by either the trial court or Division II. Petitioner's reliance on *Bender v. City of Seattle,* 99 Wn.2d 582, 664 P.2d 491 (1983), Petition at 14, is also misplaced. As addressed *supra,* the KCSO did not seek, suggest, or recommend a no contact order in Petitioner's criminal proceeding, nor did KCSO withhold, misrepresent, or conceal material information or evidence.

Neither *Desmet* nor *Bender* have any application to the subject case. Vitally, *Desmet* does not overturn the requirement of a harmful placement decision to establish a negligent investigation claim, which is where this Petitioner's claim fails as a matter of law. *See Desmet,* 514 P.3d at 1223-1226; *Hicks* at 9-11. And *Bender* did not involve a negligent investigation claim, but an action for false arrest or imprisonment. 99 Wn.2d 582.

Unable to establish a harmful placement decision, Petitioner uses *Desmet* to suggest that the trial court and Division II erred in following precedent. In essence, Petitioner again asks this Court to overturn its prior rulings, particularly the holding in

M.W., as well as the Court's denial of review in *McCarthy.* Simply, Petitioner's claim fails under *McCarthy,* as both the trial court and Division II recognized, which the Petition for Review fails to address at all.

Like the arguments asserted in *McCarthy,* the arguments asserted by Petitioner ignore the fact that he seeks an expansion of the implied statutory cause of action under RCW 26.44.050. "There is no indication in the limited case law in this area that a no-contact order issued in criminal proceedings that is not designed to address the parent-child relationship and the child's residence can trigger liability under RCW 26.44.050." *McCarthy*, 193 Wn. App. at 333.

In *McCarthy*, the Court of Appeals considered a matter of first impression, where the district court had issued a no-contact order pursuant to criminal proceedings against the plaintiff who was charged with domestic violence. *Id.* The Court of Appeals distinguished the facts in *McCarthy* from those in two prior cases involving removing a child from a non-abusive home, in which the higher courts assumed that a harmful placement decision had

occurred. *Id.*, *citing Tyner*, 141 Wn.2d at 89; *Petcu*, 121 Wn. App. at 61.

Both cases specifically involved dependency proceedings to determine whether to maintain the parent-child relationship and where the children should live. *Tyner*, 141 Wn.2d at 74; *Petcu*, 121 Wn. App. at 48. In both cases, DSHS explicitly requested a placement decision from the court. *Tyner*, 141 Wn.2d at 74, 1 P.3d 1148; *Petcu*, 121 Wn. App. at 46. And in both cases, the trial court conducted shelter care hearings to address residency issues. *Tyner*, 141 Wn.2d at 74; *Petcu*, 121 Wn. App. at 46.

Considering these distinguishable cases, the *McCarthy* Court held that there was no harmful placement decision, because the court's no-contact orders were issued as a result of a criminal charge, not a dependency petition; because the order arose from the district court's arraignment because it was designed to address the criminal charges and not the parent-child relationship; because Clark County did not request any placement decision; and because the district court did not conduct a shelter care hearing or any similar hearing to address residency issues. *McCarthy*, 193 Wn. App. 314.

The facts before this Court, again, are analogous to *McCarthy.* Here, Division II correctly affirmed dismissal of Petitioner's negligent investigation claim as under *McCarthy.* Petitioner was charged with a class A felony. The children were placed with their mother.[4] The Superior Court issued the no-contact orders as a result of that criminal charge and the subsequent criminal proceedings against plaintiff. The no-contact orders were not used as a result of a dependency petition to address the parent-child relationship, neither the KCSO nor DSHS requested a placement decision, and the Superior Court did not conduct any shelter care hearing or any similar hearing to address residency issues. A harmful placement decision for the purposes of RCW 26.44.050 negligent investigation liability does not include a no-contact order as a result of and made in the process of a criminal prosecution. As Division II recognized, what occurred in Petitioner's case did not constitute "harmful placement decisions." *Hicks,* slip op. at 11. Indeed, the Court noted that the no-contact orders directly stemmed from his

[4] The children have only lived with their mother or father throughout the course of their lives. CP 1391-1392.

specific criminal charge and "were not the results of a dependency petition or any proceeding regarding residency issues." *Id.* at 10-11. Again, the Court's decision was focused on the relevant proceeding, here a felony criminal charge. *Id.*

There are no conflicting interpretations of Division II's decision or precedent. Petitioner has failed to establish that Division II's decision is in conflict of either a decision of this Court or a published decision of the Court of Appeals. Review of the negligent investigation claim is not warranted under RAP 13.4(b)(1)-(2) or (4).

B. Division II Did Not Reach Issues of Causation and Such Arguments Are Not Grounds for Review.

Though Division II did not reach the issue of causation, Petitioner continues to rely on such arguments throughout his Petition. *Hicks,* slip op. at 7-11, n.8; Petition at 12-16. These arguments are emblematic of Petitioner's fundamental misunderstanding of Division II's decision, the duty under RCW 26.44.050, and the controlling cases discussed herein. Because the *Hicks* Court did not reach the issues of proximate or superseding cause, *see* slip op. at 7-11 n. 8, Petitioner's arguments

related to these issues cannot be grounds for review. Petition at 12-16.

Even if the Court reached causation issues, Petitioner fails to address the fact that probable cause existed for his arrest and the independent acts of the prosecutor broke the chain of causation. KCSO was not involved in the Prosecutor's decision to seek a no-contact order in this case. And even if Petitioner was able to establish a harmful placement decision, the claim fails because the no-contact order was sought by an independent authority, the prosecutor's office, thus breaking the chain of causation. *Campbell v. ITE Imperial Corp.*, 107 Wn.2d 807, 813, 733 P.2d 969 (1987) (if a new, independent intervening act breaks the chain of causation, it supersedes the defendant's original act and is no longer the proximate cause of the injury). As held in *McCarthy*, and affirmed in the Division II decision, *M.E. et al. v. Tacoma*, 15 Wn. App.2d 21, 471 P.3d 950 (2020),[5] "[t]o prevail on a negligent investigation claim, the claimant must prove that the faulty investigation was a proximate cause of the harmful

[5] Review denied by this Court, 196 Wn.2d 1035, 478 P.3d 90 (2021).

placement." *McCarthy,* 193 Wn. App. at 329; *M.E.,* 15 Wn. App.2d at 33.

Prosecutors generally have absolute immunity for initiating and pursuing a criminal prosecution. *Musso–Escude v. Edwards*, 101 Wn. App. 560, 570, 4 P.3d 151 (2000). Absolute immunity means that a prosecutor is shielded from liability even when he or she engages in willful misconduct. *Id.* at 568. This immunity is warranted to protect the prosecutor's role as an advocate because any lesser immunity could impair the judicial process. *Id.* at 573. Here, the prosecutor independently sought the subject no-contact order, is immune, and breaks the chain of causation between the allegations against KCSO and the alleged harm. CP 1142-1144; 1146-1147; 1187.

Washington courts recognize quasi-judicial absolute prosecutorial immunity. *Creelman v. Svenning*, 67 Wn.2d 882, 884, 410 P.2d 606 (1966). The Court explained:

> While it is true that a prosecuting attorney acting in a matter which is clearly outside of the duties of his office is personally liable to one injured by his acts, a prosecuting attorney … is not liable for instituting prosecution, although he acted with malice and without probable cause, if the matters acted on are among those generally committed by the law to the

> control or supervision of the office and are not palpably beyond authority of the office. The doctrine of exemption of … quasi-judicial officers … is founded upon a sound public policy, not for the protection of the officers, but for the protection of the public and to insure active and independent action of the officers charged with the prosecution of crime, for the protection of life and property.

Id., quoting *Anderson v. Manley*, 181 Wn. 327, 331, 43 P.2d 39 (1935). Furthermore, the Court found that this policy also requires immunity for the state or county who would otherwise be liable for any harm under a theory of vicarious liability. *Creelman*, 67 Wn.2d at 885. Additionally, because a prosecutor's decision to file criminal charges is "intimately associated with the judicial phase of the criminal process," prosecutors are afforded absolute immunity when making those decisions. *Imbler v. Pachtman*, 424 U.S. 409, 430-31, 96 S. Ct. 984 (1976). Prosecutorial immunity is the only immunity at issue in this case, not RCW 4.24.595(2), the sole question presented in *Desmet.*

Petitioner did not bring claims for false arrest or malicious prosecution, a tacit concession that probable cause existed for his arrest. Nor does he engage in any discussion of the role of the prosecutor's office or the issue of probable cause. *See generally*,

Petition for Review. Petitioner cannot escape the fact that probable cause standard is low and was met in this case. "Probable cause requires a showing that 'the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed.'" *State v. Barron,* 170 Wn. App. 742, 750, 285 P.3d 231 (2012) (quoting *State v. Terrovona,* 105 Wn.2d 632, 643, 716 P.2d 295 (1986)). "Probable cause can arise from the report of a crime victim or witness, at least in the absence of circumstances tending to show the report is unreliable." *State v. King,* 89 Wn. App. 612, 624, 949 P.2d 856 (1998).

Whether probable cause exists depends on the totality of the circumstances within the officer's knowledge at the time of arrest. *Barron,* 170 Wn. App. at 750. The test is reasonableness, "considering the time, place, and circumstances, and the officer's special expertise in identifying criminal behavior." *McBride v. Walla Walla County*, 95 Wn. App. 38, 38, 975 P.2d 1029 (1999). *State v. Chesley*, 158 Wn. App. 36, 41, 239 P.3d 1160 (2010) (probable cause is not knowledge of evidence sufficient to

establish guilt beyond a reasonable doubt but is "reasonable grounds for suspicion coupled with evidence of circumstances to convince a cautious or disinterested person that the accused is guilty") (citation omitted).

Washington courts have consistently applied causation principles in negligent investigation claims; there is no conflict requiring review by this Court. *See Gausvik v. Abbey*, 126 Wn. App. 868, 887, 107 P.3d 98 (2005) (no causation where social worker was not involved in the decisions to arrest the father, and no information was withheld from the court when it removed the children); *Petcu*, 121 Wn. App. at 56 (father failed to prove causation where court had all material information). Washington courts have "rejected the proposition that an actionable breach of duty occurs every time the state conducts an investigation that falls below a reasonable standard of care, by for example, failing to follow investigative procedures." *Petcu*, 121 Wn. App. at 59. Rather "the claimant must prove that the allegedly faulty investigation was the proximate cause of the harmful placement decision." *Id.* at 56. As this Court did in *Gausvik*, *Petcu*, and *McCarthy*, it should deny review. *Gausvik v. Abbey*, 155 Wn.2d

1006, 120 P.3d 577 (2005) (denying review); *Petcu v. State*, 152 Wn.2d 1033, 103 P.3d 201 (2004) (denying review); *McCarthy v. County of Clark*, 186 Wn.2d 1018, 383 P.3d 1023 (2016) (denying review).

VII. CONCLUSION

Petitioner's request for direct review fails to satisfy the standards of RAP 13.4(b). The trial court granted judgment to KCSO entirely on long-established precedent of this Court and its progeny. The Court of Appeals properly affirmed. The Petition for Review should be denied.

RESPECTFULLY SUBMITTED this 7th day of November, 2022.

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CERTIFICATE OF COMPLIANCE

I, Megan M. Coluccio, certify that this brief contains 4,170 words, excluding words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, and signature blocks.

DATED this 7th day of November, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2022, I electronically filed the foregoing via the Washington State Appellate Courts' Web Portal which will send notification of the filing to the following:

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