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STATE OF WASHINGTON
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No. 1026765
SUPREME COURT
OF THE STATE OF WASHINGTON

TERESA ROGERSON,

Petitioner,

v.

CITY OF SEATTLE, a municipal corporation,

Respondent,

and

STATE OF WASHINGTON,

Defendant.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This Court should deny Petitioner Rogerson's request for discretionary review because Washington appellate courts have repeatedly and consistently declined to create a cause of action for negligent *investigation* within the context of law enforcement. To hold otherwise would "impair vigorous prosecution and have a chilling effect on law enforcement" and interfere with law enforcement's "broad discretion to allocate limited resources among the competing demands." *Dever v. Fowler*, 63 Wn. App. 35, 45, 816 P.2d 1237 (1991); and *Donaldson v. City of Seattle*, 65 Wn. App. 661, 672, 831 P.2d 1098 (1992). Division One followed over 30 years of consistent appellate decisions in holding that there is no cognizable claim for negligent investigation.

Accordingly, there are no conflicts among the Divisions or with this Court. This case presents no question of "overriding state importance" that merits resolution through discretionary

review. Division I correctly affirmed dismissal of this claim. This Court should deny review.

In this personal injury case, Petitioner Teresa Rogerson sued the City of Seattle in 2021, alleging that the City owed and breached common law duties to her in 2007, when the Seattle Police Department ("SPD") responded to her report of a sexual assault. The gravamen of her negligence theory is that the City failed to timely submit her sexual assault kit ("SAK") for testing to obtain and attempt to match the perpetrator's DNA. The City ultimately did test the SAK, resulting in the conviction of her assailant.

SPD did not test Rogerson's kit sooner because she stopped cooperating in the criminal investigation. Detectives in the Sexual Assault Unit will not investigate an alleged rape incident until the victim is interviewed because the victim's cooperation is imperative in the investigation and criminal prosecution. When a victim refuses to cooperate, the case is "inactivated." If a victim later decides to cooperate and

participate in an initial interview, then the file is "activated" and the investigation moves forward.

Here, Rogerson skipped her scheduled interview with the SPD detective in 2007; did not respond to his calls and letter asking to reschedule the interview; and did not provide anyone at SPD with her updated contact information. For eleven years, she never inquired about the status of the criminal case or the SAK or communicated with SPD in any way.

SPD stored her kit from 2007 until 2016, when it began testing all previously collected kits in response to new legislation. In 2018, the test results matched the perpetrator—a career criminal negligently supervised by the Department of Corrections. SPD contacted Rogerson; she cooperated with the initial interview; and after an initial mistrial, the perpetrator was convicted in 2020 of second-degree rape.

Rogerson sued the State for negligent supervision of the perpetrator at the time he assaulted her. The State settled for $1.5 million. She also sued the City for negligent investigation. The

City moved for summary judgment on multiple theories, including Rogerson's failure to prove an exception to the public duty doctrine; the lack of a cognizable duty for a negligent investigation; the absence of SPD misfeasance; and if ever actionable, her claims were time-barred, and the discovery rule exception did not apply. The trial court granted summary judgment to the City on grounds that the City owed no duty to test her SAK therefore her claims were not actionable; Division I affirmed solely on the basis that there is no cognizable claim in Washington for negligent law enforcement investigation.

II. IDENTITY OF RESPONDENT

The Respondent is City of Seattle.

III. RESTATEMENT OF ISSUES PRESENTED BY ROGERSON'S PETITION

Under the facts of this case:

1. Should this Court deny discretionary review because Washington decisional law has consistently held for over 30 years that there is no cognizable cause of action for negligent police investigation, particularly—as

here—in the context of neither a special relationship duty nor affirmative law enforcement misfeasance?

2. Should this Court deny discretionary review because this case presents no issue of "substantial public interest" since there is no duty to submit a Sexual Assault Kit to a testing laboratory?

IV. RESTATEMENT OF THE CASE

A. Rogerson was sexually assaulted.

When she was assaulted, Rogerson was unhoused and residing at Angeline Women's Shelter in Seattle. CP 131, 205. On March 14, 2007, she left Angeline's to take a walk and use drugs. CP 143. While she was downtown, a white Cadillac pulled up onto the sidewalk; the passenger got out, forced her into the car and raped her at least twice during the abduction, once in a wooded area and again in the car. CP 202, 207-08. Rogerson recalls that a prison identification card dropped out of the rapist's clothing; she picked it up and saw the name, "John Lay." CP 200-01.

Rogerson returned to Angeline's the next morning and reported the rape to her caseworker, who called 911. CP 148.

SPD Officer Kurt Alstrin responded and spoke with Rogerson in a private room. According to Rogerson, the officer asked her to "tell him what happened, and [she] did," and asked if she "wanted" to go to the hospital, "which [she] absolutely wanted to go to the hospital." CP 149-51.

Officer Alstrin transported Rogerson to Harborview Medical Center in his patrol car and gave her a business card and case number. CP 250. The officer told her a detective would contact her and requested her contact information. CP 155-56. Rogerson testified that she provided her son's address, CP 163-167, and that she (or the caseworker) provided Angeline's "landline" to the officer. CP 131; 133; 155-56; CP 172-73.

At Harborview, Rogerson voluntarily consented to an exam conducted by medical providers to complete a Sexual Assault Kit ("SAK"). In addition to providing physical and biological evidence needed for a prosecution, a victim may also be treated for physical injuries, sexually transmitted disease, and pregnancy. CP 591. She described the experience as

traumatizing. After the examination, Rogerson returned to Angeline's where she lived until moving into her own apartment in October 2007. CP 131-32.

B. SPD inactivated the case because Rogerson stopped cooperating with the investigation.

The Seattle officers consistently testified that regardless of whether and/or when the SAK is tested, the victim—who is the "foundation" of a criminal case—must participate in the initial interview and the investigation if the subsequent criminal prosecution is to be successful. CP 257-59; CP 800. SPD inactivates an investigation when a victim does not cooperate, but investigations can be reactivated if a victim later chooses to cooperate again. CP 257, 259-60, 274-77, and 284-287.

Rogerson testified at her deposition in this civil case that she was contacted by and communicated with an SPD detective in the days after the assault. She claims she received two messages from a detective posted to Angeline's message board, asking that she call him back. She testified that she returned the messages and left voicemails for him. CP 168-74.

Rogerson's description of exchanging voicemails is consistent with Det. Ishimitsu's report, reflecting two messages exchanged on March 19 and 20, in which Rogerson committed to an initial interview with him, set for March 28. CP 253; and CP 266-67.

> 3-20-07 at 0718 hours: Rogerson called and left a message. She said that she is taking care of her medical issues and going through counseling. She would like to schedule an appointment for an interview on Monday.

CP 267.

Consistent with Rogerson's testimony, Det. Ishimitsu's report reflects that he left Rogerson another message that same day, and Rogerson called back:

> 3-20-07 at 0848 hours: I left a message on Rogerson's voice mail letting her know that Monday will be fine, but to call me back to set a time. Rogerson later called back and the interview was set for 1330 hours on 03-28-07."

CP 266-67. Det. Ishimitsu's report is excerpted below for the Court's convenience:

2 03-19-07 at 1130 hours: I attempted to contact Rogerson for an interview. I left a message for her to call.

3 03-19-07 at 1145 hours: I requested a copy of Rogerson's medical records from HMC Sexual Assault Center.

4 03-20-07 at 0718 hours: Rogerson called and left a message. She said that she is taking care of her medical issues and going through counseling. She would like to schedule an appointment for an interview on Monday.

5 03-20-07 at 0848 hours: I left a message on Rogerson's voice mail letting her know that Monday will be fine, but to call me back to set a time. Rogerson later called back and the interview was set for 1330 hours on 03-28-07.

6 03-28-07 at 1430 hours: Rogerson did not show up for the scheduled interview.

7 04-03-07 at 1655 hours: I left a message on Rogerson's voice mail to call me in regards to rescheduling the interview.

8 04-10-07 at 0930 hours: I prepared and sent Rogerson a follow up letter.

9 04-16-07 at 0900 hours: This case was inactivated. No cooperation from Rogerson to come in for an interview.

CP 267; *accord* CP 253, 266-67.

Consistent with Det. Ishimitsu's report, Rogerson testified that she called the detective back and "set a time" for an interview. CP 175. After this call, she informed her healthcare providers that she was "working with a detective," CP 186, and was "going to talk to a detective on the 28th." CP 186. However, Rogerson failed to appear for the interview. She testified at her civil deposition that she "didn't feel a need to go to this interview or to even remember this interview even being scheduled." CP 182.

After Rogerson failed to attend the scheduled initial interview, Det. Ishimitsu "left a message on Rogerson's

voicemail to call [him] in regards to scheduling the interview." CP 267; CP 178. Rogerson does not remember getting his message, but does not deny that she got it; indeed Rogerson testified that it was her practice to check Angeline's message board daily. CP 179-80.

On April 10, 2007, the detective mailed a follow-up letter to the address Rogerson provided to SPD (her son's) encouraging her communication. CP 255-56; 267; and 269. Rogerson states she did not receive the letter, but also acknowledges that she never asked her son whether he received it. CP 180.

Det. Ishimitsu's report reflects no further contact from Rogerson after March 20, 2007. CP 266-67. On April 16, 2007, he inactivated the file, citing: "no cooperation from Rogerson to come in for an interview." CP 267.

It is undisputed that between Det. Ishimitsu's March 20, 2007 phone call with her and Det. Martinell's March 8, 2018 contact with her (when the DNA matched the perpetrator), Rogerson took no action to follow up on the status of her case or

SAK. She did not reschedule the missed interview, CP 187-88, or advise SPD of her change of address and phone number when she moved from Angeline's in October 2007. CP 132. She testified, "I didn't do anything because I figured they would contact me if they had evidence or if they had information or if they had a DNA hit, I thought they would contact me." CP 191; *see also* CP 159-60; CP 177; and CP 189. Rogerson admits that SPD did not tell her to skip the interview or that she should wait to be notified. CP 192.

C. SPD tested Rogerson's SAK after Washington passed the Victims of Sexual Assault Act.

Rogerson's SAK was stored after the case was inactivated in 2007. In 2015, the Washington legislature passed the Victims of Sexual Assault Act, requiring that all newly collected kits be submitted to the Washington State Patrol crime lab for testing within 30 days (subject to some parameters). *See* RCW 5.70.040; *see also* HB 1068, 2015 c 247 Sec. 1.

The State later added a requirement that untested, stored kits must be tested by October 2019. *See* RCW 5.70.050; *see also*

HB 1166, 2019 c 93 Sec. 7. Each statute expressly states that it does <u>not</u> create a private right of action. *See* RCW 5.70.040(6); 5.70.050(6). The City submitted Rogerson's kit for testing on June 21, 2016. CP 972.

SPD learned on March 6, 2018, that DNA from Rogerson's kit matched that of the assailant she identified by name in 2007: John Lay. Det. Martinell located a phone number and called Rogerson two days later; this time Rogerson showed up, participated in the initial interview, and cooperated in Lay's prosecution. CP 272-73. After an initial mistrial, he was convicted of second-degree rape.

Rogerson's brief omits the foregoing facts and declines to address the necessity of a victim's cooperation throughout a criminal investigation.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Washington does not recognize a common law duty for law enforcement officers to investigate crime.

With two exceptions inapplicable here (arising in DSHS child abuse[1] and contractual employment investigations)[2], "Washington common law does not recognize a claim for negligent investigation because of the potential chilling effect such claims would have on investigations." *Janaszak v. State*, 173 Wn. App. 703, 725, 297 P.3d 723 (2013) (citing *Ducote v. Dep't of Soc. & Health Servs.*, 167 Wn.2d 697, 702, 222 P.3d 785 (2009)).

This Court should deny review because there are no conflicts among the appellate divisions or with this Court. Second, a substantial change in Washington's 33-year history of not recognizing a negligent law enforcement investigation claim

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[1] *See M.W. v. Dep't of Social & Health Servs.*, 149 Wn.2d 589, 595, 601, 70 P.3d 954 (2003).
[2] *Lambert v. Morehouse*, 68 Wn. App. 500, 843 P.2d 1116 (1993).

would "impair vigorous prosecution and have a chilling effect on law enforcement" and interfere with law enforcement's "broad discretion to allocate limited resources among the competing demands." *Dever*, 63 Wn. App. at 45 and *Donaldson*, 65 Wn. at 671-72 (explaining the "obvious practical problems" in declining to create a cause of action for negligent investigation). The foregoing rationale and judicial recognition of the "obvious practical problems" are consistently applied throughout the United States.[3]

Washington courts have repeatedly declined to recognize a claim for negligent investigation against law enforcement officials. *See Laymon v. Dep't. of Nat. Res.*, 99 Wn. App. 518,

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[3] *See, e.g*., Alaska (*Waskey v. Municipality of Anchorage*, 909 P.2d 342 (Alaska 1996); Arizona (*Landeros v. City of Tucson*, 831 P.2d 850 (Ariz. App. Div. 2 1992)); California (*Johnson v. City of Pacifica*, 84 Cal. Rptr. 246, 249 (1970)); Florida (*Wilson v. O'Neal*, 118 So. 2d 101, 105 (Fla. App. 1960)); Idaho (*Wimer v. State*, 841 P.2d 453, 455 (Idaho Ct. App. 1992)); Iowa (*Smith v. State*, 324 N.W.2d 299, 302 (Iowa 1982)); New York (*Boose v. Rochester*, 421 N.Y.S.2d 740, 744 (N.Y. App. Div. 1979)); Pennsylvania (*Agresta v. Gillespie*, 631 A.2d 772 (1993)); and Wisconsin (*Bromund v. Holt*, 129 N.W.2d 149, 153-54 (1964)).

530, 994 P.2d 232 (2000); *Fondren v. Klickitat Cnty.*, 79 Wn. App. 850, 862-63, 905 P.2d 928 (1995). *See also Mancini v. City of Tacoma*, 196 Wn.2d 864, 878 n.7, 479 P.3d 656 (2021) (collecting cases and stating "[t]o be sure, the Court of Appeals has repeatedly denied recovery for negligent police investigation.").

Given over 30 years of established precedent and public policy—and the fact that Rogerson alleges omissions or no-duty nonfeasance—discretionary review should be denied.

B. Application of the public duty doctrine bars Rogerson's negligence claim.

In conducting a *de novo* review of the summary judgment dismissal, the Court of Appeals straightforwardly affirmed dismissal solely on well-established precedent that Washington does not recognize a cause of action for negligent investigation. *Rogerson v. City of Seattle*, No. 84646-9, slip op. at 7-9 (Ct. App. Nov. 27, 2023). Thus, it was unnecessary for Division One to address the application of the public duty doctrine, its exceptions, or any other theory advanced by the

City to support dismissal (including the statute of limitations, judicial estoppel, and proximate cause). Nevertheless, Rogerson contends that Division One's basic analysis purportedly creates a "conflict" with the public duty doctrine and its exceptions, and/or creates "*de facto* immunity" contrary to the Legislature's waiver of immunity. PR at 10, 14-18. These contentions are incorrect. There are no conflicts among the divisions or with this Court's decisions.

First, sovereign immunity denies *all liability*. *J.B. Dev. Co., v. King Cnty.*, 100 Wn.2d 299, 303, 669 P.2d 468 (1983) (overruled on other grounds by *Meany v. Dodd*, 111 Wn.2d 174, 179-80, 759 P.2d 455 (1988)). In contrast, the public duty doctrine uniquely "recognizes the existence of a tort, authorizes the filing of a claim against a [government entity] and also recognizes applicable liability subject to some limitations." *Id*.

"To establish a duty in tort against a governmental entity, a plaintiff must show that the duty breached was owed to an individual and was not merely a general obligation owed to the

public." *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 549, 442 P.3d 608 (2019). The public duty doctrine serves as a focusing tool to determine whether a defendant government owes "a duty to a 'nebulous public' or a particular individual." *Munich v. Skagit Emergency Commc'ns Ctr.*, 175 Wn.2d 871, 878, 288 P.3d 328 (2012) (quoting *Osborn v. Mason Cnty.*, 157 Wn.2d 18, 27, 134 P.3 197 (2006)).

In *Norg v. City of Seattle*, 200 Wn.2d 749, 756-57, 522 P.3d 580 (2023), this Court stated that the doctrine ensures that a government entity bears liability to the same extent as if it was a private person or corporation: "To be held liable in accordance with these statutes, a governmental entity must engage in tortious conduct that is "'analogous, in some degree at least, to the chargeable misconduct and liability of a private person or corporation.'" *Id.* (quoting *Munich v. Skagit Emergency Commc'ns Ctr.,* 175 Wn.2d 871, 887, 288 P.3d 328 (2012) (Chambers, J., concurring) (quoting *Evangelical United*

Brethren Church v. State, 67 Wn.2d 246, 253, 407 P.2d 440 (1965)).

Here, Rogerson acknowledges that the government is "answerable in tort just as if it were a private person or corporation." PR at 11. But she submits no evidence of an "analogous" private person or corporation that would be subject to liability for declining to further investigate a criminal allegation after a victim refuses to cooperate. That should end the analysis. The public duty doctrine clearly applies.

This Court stated that "[i]f the duty is based on a statute and owed to the public generally, then the public duty doctrine applies and we must determine whether there are any applicable exceptions." *Norg*, 200 Wn.2d at 759. In responding to Rogerson's report of assault and gathering SAK evidence, the City was undertaking a duty to all, acting under a generally applicable statute empowering Seattle to "provide for the punishment of all disorderly conduct [.]" *See* RCW 35.22.280(34) and (35) (providing specific powers to first class

city to enact and enforce criminal laws); Seattle City Charter, Article VI (listing the police chief's powers, duties, and responsibilities); *Chambers-Castanes v. King Cnty.*, 100 Wn.2d 275, 284, 669 P.2d 451 (1983) (describing statutory duty to provide police protection as a duty owed to the public at large, not individuals).

Under *Norg*'s analysis "[i]f the duty is based on a statute and owed to the public generally, then the public duty doctrine applies and we must determine whether there are any applicable exceptions." *Norg*, 200 Wn.2d at 759. Here, the public duty doctrine applies as a matter of law, but Division One affirmed the trial court's dismissal on alternative grounds. The appellate court's prerogative does not inherently create any decisional "conflict" in Washington as Rogerson erroneously contends.

C. No "special relationship" exists as an exception to the public duty doctrine or otherwise.

Rogerson concedes that she must establish an exception to the public duty doctrine if her claim is to proceed. PR at 15. She contends that the "special relationship" exception applies.

Id. at 17. However, she confusingly conflates inapplicable custodial, supervisory, and entrustment theories (not raised in the trial court, *see* CP 364-37) to support a special relationship exception. PR at 17-18.

First, Rogerson did not raise the issue of a common law duty arising out of a protective, custodial, or entrustment relationships in briefing or oral argument before the trial court. She raised it for the first time in her opening brief. *See* Opening Br. at 39-41; *see also* PR 17-19. Because "the appellate court will consider only evidence and issues called to the attention of the trial court," RAP 9.12, this Court should decline to consider these alleged duties in its determination of granting or denying review.

Rogerson urges this Court to grant review to recognize a special-relationship duty under RESTATEMENT (SECOND) OF TORTS § 315, providing an exception to the general rule of non-liability for non-feasance, wherein the existence of a special relationship may give rise to a duty to protect a plaintiff from

harm caused by third person. *See* PR at 11; *see generally, Robb v. City of Seattle*, 176 Wn.2d 427, 433, 295 P.3d 212 (2013). But there is no admissible evidence in the record that supports her contention that she was in a protective; custodial; or entrustment relationship with SPD or a third-party. The exception does not apply. *See Barlow v. State*, No. 101045-1, 2024 Wash. LEXIS 1, at *11 (Sup. Ct. Jan. 4, 2024) (rejecting argument for special relationship protective duty arising under RESTATEMENT (SECOND) OF TORTS § 315 in the context of a university and student, noting that such relationship requires "traits of dependence and control").

Second, the "special relationship" exception to the public duty doctrine does not apply. The exception is a "narrow one" and arises only if "(1) there is direct contact or privity between the public official and the injured plaintiff which sets the latter apart from the general public, and (2) there are express assurances given by a public official, which (3) gives rise to justifiable reliance on the part of the plaintiff." *Taylor v.*

Stevens Cnty., 111 Wn.2d 159, 166, 759 P.2d 447 (1988) (citations omitted). "For the government to be bound the plaintiffs must rely upon the assurance to their detriment." *Babcock v. Mason Cnty. Fire Dist.*, 144 Wn.2d 774, 787, 30 P.3d 1261 (2001).

The City does not dispute that direct contact occurred, however, responding to a crime report does not provide a victim "special designation within the Defendant City's police department." CP 53-54. Members of the public at large, such as Rogerson, report crimes daily, but that does not set her apart from the general public, nor create an undefined "special designation." She cites no case supporting this proposition. This Court has held to the contrary. *See Chambers-Castanes*, 100 Wn.2d at 284 (describing statutory duty to provide police protection as a duty owed to the public at large, not individuals).

Third, Rogerson argues that she relied on a Detective's express assurances that the kit would be tested promptly. CP 54. Even if the detectives had expressly assured Rogerson that

the kit would be tested, she fails to establish that she detrimentally relied on the assurance. She testified that even without the "promise" of prompt testing, she would not have done anything differently. *See* CP 193-94 (Q: "So had that conversation not occurred, had he not said, we'll test your rape kit, what would you have done differently? A: I wouldn't have done anything differently.") As in *Cummins v. Lewis Cnty.*, 156 Wn.2d 844, 854-55, 133 P.3d 458 (2006), Rogerson did not rely on assurances to her detriment, thus as a matter of law the special relationship exception did not apply.

D. SPD engaged in no affirmative conduct that triggered a duty to test the kit.

Rogerson alleges government liability for what SPD *should have done*, despite her failure to participate in the initial interview upon which a subsequent investigation is based. The allegations include failing to (1) submit the kit for DNA testing in 2007; (2) upload the DNA profile of Lay from the kit; (3) create a photo montage; (4) contact the suspect; and (5) contact the suspect's probation officer. CP 53. Rogerson also alleges

these investigative omissions caused her emotional distress. CP 56 (alleging negligent infliction of emotional distress arising out of alleged investigation failures). These are all no-duty acts of nonfeasance and are not actionable.

Conversely, the affirmative acts of "responding" to her report and "driving" did not increase the risk of harm to Rogerson. Such acts are not misfeasance, nor the cause of her injury. Accepting her theory for the sake of argument proves its flaw: if the affirmative act of driving her to the hospital increased the risk of harm, that would imply a duty to refrain from driving Rogerson to the hospital. Rogerson alleges that the injury-causing breach was the failure to test the SAK, not SPD's driving.

Similarly, the supposedly "affirmative act" of responding to a crime report is insufficient to give rise to a duty. If this was enough, then the officers who responded to the scene in *Robb* would have been deemed to have undertaken the requisite affirmative acts simply by responding to the scene. *See Robb*,

176 Wn.2d at 438 (officers who responded to scene where individuals were reported to have shotguns did not "create a new risk" when they stopped and interacted with suspect and then failed to pick up nearby shotgun shells). Rogerson is both conflating and misapplying the law.

E. The City had no duty to submit a SAK for testing under statute or common law.

In 2007, the City had no duty to submit Rogerson's SAK for testing to the State Patrol crime laboratory. *See Ravenscroft v. Wash. Water Power Co*., 87 Wn. App. 402, 415, 942 P.2d 991 (1997), *aff'd in part, rev'd in part*, 136 Wn.2d 911, 969 P.2d 75 (1998) (holding that for a failure to enforce claim, the plaintiff must show a statutory duty to take corrective action). In 2015, Washington's Legislature enacted RCW 5.70.040, requiring testing of all newly collected kits within 30 days, and later required testing of all stored, untested kits by October, 2019. RCW 5.70.050. The legislation is explicit and unambiguous that *no private right of action* arises. *See* RCW 5.70.040(6) and .050(6) ("Nothing in this section may be

construed to create a private right of action or claim on the part of any individual, entity, or agency against any law enforcement agency or any contractor of any law enforcement agency."). The City complied. Discretionary review should be denied.

F. There is no duty to use reasonable care to avoid inflicting emotional distress.

Rogerson's contention that the City owed a duty to use reasonable care to avoid inflicting emotional distress (1) lacks legal and factual support; and (2) applies to no RAP 13.4(b) criteria. PR at 19. She analogizes her case to *Garnett v. City of Bellevue*, 59 Wn. App. 281, 796 P.2d 782 (1990), in which the Court of Appeals considered whether the public duty doctrine required reversal of a jury verdict for plaintiffs who demonstrated that a police officer verbally abused them.

Garnett was limited to whether the public duty doctrine applied. *Id*. at 287 ("We hold that the public duty doctrine is inapplicable to the facts of this case and, therefore, cannot be used to prevent liability in this situation.").

VI. CONCLUSION

Because this case does not conflict with a published decision of the Court of Appeals or with this Court's decisions, and presents no issue of substantial public interest, discretionary review should be denied.

This document contains 4,353 [must be less than 5,000] words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 25th day of January, 2024.

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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, I declare under penalty of perjury and the laws of the State of Washington that on the below date, I delivered a true and correct copy of the foregoing via the method indicated below to the following parties:

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I declare under penalty of perjury that the foregoing is true and correct.

DATED at Seattle, Washington on January 25, 2024.

/s/ Susan L. Klotz
Susan L. Klotz
Legal Assistant

FLOYD PFLUEGER & RINGER PS

January 25, 2024 - 1:54 PM

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