

FILED

OCT 08 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 291651

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION III

JASON YOUKER

Appellant

v.

DOUGLAS COUNTY, a municipal corporation, LISA WHITE, a
single woman, and WILLIAM BLACK and JANE DOE BLACK, a
marital community

Respondents

APPEAL FROM THE SUPERIOR COURT
FOR DOUGLAS COUNTY
JUDGE JOHN M. ANTOSZ

RESPONDENTS' BRIEF

Stanley A. Bastian
Jeffers, Danielson, Sonn &
Aylward, P.S.
Attorneys at Law
P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685
Counsel for Respondents

FILED

OCT 08 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 291651

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION III

JASON YOUKER

Appellant

v.

DOUGLAS COUNTY, a municipal corporation, LISA WHITE, a
single woman, and WILLIAM BLACK and JANE DOE BLACK, a
marital community

Respondents

APPEAL FROM THE SUPERIOR COURT
FOR DOUGLAS COUNTY
JUDGE JOHN M. ANTOSZ

RESPONDENTS' BRIEF

Stanley A. Bastian
Jeffers, Danielson, Sonn &
Aylward, P.S.
Attorneys at Law
P.O. Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685
Counsel for Respondents

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	RESTATEMENT OF THE ISSUES	1
III.	STATEMENT OF THE CASE.....	2
	A. Summary of the facts.....	2
	B. Procedural History.	5
IV.	LEGAL ARGUMENT	6
	A. The Douglas County defendants had probable cause to arrest and prosecute Jason Youker for possession of a firearm.	6
	B. The state and federal criminal charges against Jason Youker were not dismissed because of a lack of probable cause.	7
	C. There is no evidence of malice on the part of the Douglas County defendants.	8
	D. The prosecutorial and judicial determinations that probable cause existed broke the chain of legal causation thereby absolving the Douglas County defendants of liability.	10
	E. The trial court properly transferred venue from Chelan County to Douglas County	13
V.	CONCLUSION	15

TABLE OF AUTHORITIES

CASES

<u>Aydelotte vs. Audette,</u> 110 Wash.2d 249, 750 P.2d 1276(1988)	14
<u>Bender v. City of Seattle,</u> 99 Wn.2d 582, 591, 664 P.2d 492 (1983)	6, 7, 9, 10
<u>Bishop v. Miche,</u> 137 Wn.2d 518, 532, 973 P.2d 465 (1999)	11
<u>Cossel vs. Skagit County,</u> 119 Wash.2d 434, 834 P.2d 609(1992)	14
<u>Hanson v. City of Snohomish,</u> 121 Wn.2d 552, 563, 852 P.2d 295 (1993)	6, 9
<u>Peterson v. State,</u> 100 Wn.2d 421, 435, 671 P.2d 230 (1983)	10
<u>Schooley v. Pinch’s Deli Market, Inc.,</u> 134 Wn.2d 468, 477, 951 P.2d 749 (1998)	10, 11
<u>Shoop vs. Kittitas County,</u> 149 Wash.2d 29, 65 P.3d 1194(2003)	14
<u>State v. Gluck,</u> 83 Wn.2d 424, 426-427, 518 P.2d 703 (1974)	7
<u>State v. Grande,</u> 164 Wn.2d 135, 141, 187 P.3d 248 (2008)	6
<u>Tyner v. DSHS,</u> 141 Wn.2d 68, 86, 1 P.3d 1148 (2000)	12
<u>Young vs. Clark,</u> 149 Wash.2d 130, 65 P.3d 1192(2003)	14

STATUTES

RCW 36.01.050	14
RCW 4.12.020	13, 14, 15

I. INTRODUCTION

This case involves a dispute between Jason Youker, the appellant, and JoAnn Youker, his ex-wife. Mr. Youker is a convicted felon and he is not allowed to possess guns. JoAnn Youker accused Mr. Youker of keeping a rifle under the bed in the family home that they shared together with her children. This accusation led to both state and federal criminal charges, all of which were eventually dismissed. In this lawsuit, Mr. Youker is attempting to blame the Douglas County defendants for his legal troubles. He has the wrong target. Instead, his legal efforts should be directed against his ex-wife.

II. RESTATEMENT OF THE ISSUES

A. The Douglas County defendants had probable cause to arrest and prosecute Jason Youker for possession of a firearm.

B. The state and federal criminal charges against Jason Youker were not dismissed because of a lack of probable cause.

C. There is no evidence of malice on the part of the Douglas County defendants.

D. The prosecutorial and judicial determinations that probable cause existed broke the chain of legal causation thereby

absolving the Douglas County defendants of liability.

E. The trial court properly transferred venue from Chelan County to Douglas County.

III. STATEMENT OF THE CASE

A. Summary of the facts.

It all began on April 20, 2007, when JoAnn Youker was arrested by Douglas County Deputy William Black on an arrest warrant for failure to appear and failure to pay fines. CP 46, 48, 73. Deputy Lisa White also became involved because JoAnn Youker made allegations that her husband, Jason Youker, kept a rifle under the bed at their house in East Wenatchee. CP 73, 77. She further advised the Deputies that the family shared this house with her two children and they had lived there for approximately five months. CP 48, 74. This allegation regarding possession of a firearm was evidence of a crime because Jason Youker was a convicted felon and he was not allowed to possess guns of any type. CP 74. JoAnn Youker offered to show the rifle to Deputy White and Deputy Black. CP 73. Deputy White then confirmed that Jason Youker was a convicted felon. CP 74. Ms. Youker gave the

Deputies written voluntary permission to search the residence. CP 74, 77.

Deputy White and Deputy Black went to the house with JoAnn Youker and entered the house with her written permission. CP 74, 77, 78. They verified that she lived there because they found mail addressed to her and clothing which she owned. CP 74. They also eventually obtained statements from the two teenagers who also lived at the house. CP 75. Both teenagers told the Deputies that Mr. Youker kept a rifle in the home. CP 62, 63, 75. The Deputies found a rifle under the bed, exactly where Ms. Youker claimed it was stored. CP 74.

On April 21, 2007, a Notice of Arrest and Probable Cause Statement was signed by Deputy Lisa White, providing notice of the arrest of Jason Youker for the crime of Unlawful Possession of a Firearm in the 1st Degree (after conviction of a serious offense). CP 52. This document was given to the jail and Mr. Youker was booked into custody. CP 85.

On April 23, 2007, the Douglas County Superior Court entered an Order on Preliminary Appearance and found that probable cause existed for the arrest of Jason Youker based upon the evidence provided to the Court, which included the Notice of

Arrest and Probable Cause Statement signed by Deputy White.
CP 50, 87.

The Douglas County Prosecutors' Office then filed criminal charges against Mr. Youker. CP 84, 90. This decision was based on all of the materials provided by the Douglas County Sheriff's Office, which included all witness statements (including some statements from the Youker teenagers who lived in the home of Jason and JoAnn Youker), law enforcement reports, and criminal history information regarding Mr. Youker. CP 84-86. The Information was filed with the Court, charging Youker with Unlawful Possession of a Firearm in the 1st Degree. CP 90-91.

On May 14, 2007, the Court issued a bench warrant for the arrest of Jason Youker, because he had twice failed to appear at his arraignment. He failed to appear in court on both May 7, 2007 and May 14, 2007. CP 85.

On May 9, 2007, the Douglas County Prosecutors' Office received a request from an agent for the Federal Bureau of Alcohol, Tobacco and Firearms (ATF), for copies of all reports and records regarding Mr. Youker. This information was promptly provided to the ATF. CP 86.

On or about August 6, 2007, at the request of the Douglas County Prosecutors Office, the Douglas County Superior Court dismissed the criminal charges filed against Youker without prejudice because Youker had been indicted federally on the same charges. CP 86.

The federal charges were also eventually dismissed because the federal prosecutor obtained exculpatory evidence which suggested that the firearm and ammunition may not have belonged to Jason Youker. CP 06-110.

B. Procedural History.

This lawsuit was originally filed in the Chelan County Superior Court, but venue was properly transferred to Douglas County. CP 31, 35. In his complaint, Jason Youker alleged malicious prosecution, invasion of privacy, false arrest, and false imprisonment. CP 35-41. He sued Douglas County and the two deputy sheriffs involved in the investigation, Lisa White and William Black. CP 35. He did not sue his ex-wife.

The Douglas County Superior Court granted the motion for summary judgment filed by the Douglas County defendants. CP 246-248. Jason Youker then filed this appeal. CP 278.

IV. LEGAL ARGUMENT

A. The Douglas County defendants had probable cause to arrest and prosecute Jason Youker for possession of a firearm.

The existence of probable cause creates a complete defense to Jason Youker's tort claims against the Douglas County defendants. Hanson v. City of Snohomish, 121 Wn.2d 552, 563, 852 P.2d 295 (1993) ("probable cause is a complete defense to an action for malicious prosecution"); Bender v. City of Seattle, 99 Wn.2d 582, 591, 664 P.2d 492 (1983) ("The gist of an action for false arrest or false imprisonment is the unlawful violation of a person's right of personal liberty or the restraint of that person without legal authority"); State v. Grande, 164 Wn.2d 135, 141, 187 P.3d 248 (2008) (The Fourth Amendment gives an individual "the right to privacy, meaning that person has the right to be left alone by police unless there is probable cause...").

Courts apply an objective standard in determining whether probable cause exists for arrest and prosecution:

Probable 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.

State v. Gluck, 83 Wn.2d 424, 426-427, 518 P.2d 703 (1974);

Bender, 99 Wn.2d at 597.

In this case, the charges against Jason Youker were initiated upon the facts and evidence properly gathered during a criminal investigation by Deputy White and Deputy Black. This investigation was sufficient to prompt the Prosecutors' Office to determine that probable cause existed to justify a criminal prosecution. Additionally, probable cause was found by the Court at least twice; first at the preliminary appearance, and subsequently when an arrest warrant was issued after Jason Youker failed to appear at his arraignments.

B. The state and federal criminal charges against Jason Youker were not dismissed because of a lack of probable cause.

The state and federal criminal charges against Jason Youker were dismissed because the federal authorities filed charges against him. The State did not dismiss the charges and then refer the case to the federal authorities. Rather, the State dismissed the charges without prejudice because the United States had already indicted Youker. CP 86.

The United States subsequently dismissed the federal

criminal charges because of newly discovered exculpatory evidence, not because of a probable cause issue. The Assistant United States Attorney assigned to the trial for the Youker case clearly indicated that the decision to dismiss the federal charges was not based upon the existence of the no-contact orders or a pending motion to suppress evidence. CP 106-110. In fact, after the motion to suppress evidence had been filed the United States proceeded to obtain a Superseding Indictment that amended the charges against Youker to formally allege his four prior convictions for either a serious drug offense or a crime of violence. Also, the existence of the no contact order was known to the U.S. Attorneys' Office.

The no-contact order was not the basis for dismissal of either the state charges or the federal charges. Probable cause to proceed with the charges against Youker was found regardless of the no-contact order:

C. There is no evidence of malice on the part of the Douglas County defendants.

Malicious prosecution claims are disfavored and require proof of the following elements:

- (1) The prosecution was instituted or continued by the defendant;

- (2) The prosecution lacked probable cause;
- (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, 121 Wn.2d at 558; Bender, 99 Wn.2d at 593.

In Bender, the court held that malice and the lack of probable cause are the key elements to a claim for malicious prosecution. In discussing the malice element, the Bender court stated as follows:

The requirement that malice be shown as part of the plaintiff's case in an action for malicious prosecution may be satisfied by proving that the prosecution complained of was undertaken from improper or wrongful motives or in reckless disregard of the rights of the plaintiff. Impropriety of motive may be established in cases of this sort by proof that the defendant instituted the criminal proceedings against the plaintiff: (1) without believing him to be guilty, or (2) primarily because of hostility or ill will toward him, or (3) for the purpose of obtaining a private advantage against him.

Bender, 99 Wn.2d at 594 (citations omitted; emphasis in original).

In the case at bar, there are absolutely no facts which indicate that the Jason Youker prosecution was undertaken with improper or wrongful motives or in reckless disregard of his civil rights. The claim for malicious prosecution was therefore properly dismissed by the trial court.

D. The prosecutorial and judicial determinations that probable cause existed broke the chain of legal causation thereby absolving the Douglas County defendants of liability.

As a matter of law, public policy, and common sense, the independent exercise of judicial power breaks the chain of legal causation. The entry of judicial orders by the Douglas County Superior Court, which determined that probable cause to arrest Jason Youker existed, were superseding intervening causes precluding any liability on the part of the Douglas County defendants for such investigations.

There are two elements to proximate causation: “cause in fact” and “legal causation.” Schooley v. Pinch’s Deli Market, Inc., 134 Wn.2d 468, 477, 951 P.2d 749 (1998); Peterson v. State, 100 Wn.2d 421, 435, 671 P.2d 230 (1983). These two elements are clearly explained as follows:

"Cause in fact" refers to the actual, "but for," cause of the injury, i.e., "but for" the defendant's actions the plaintiff would not be injured. ... Establishing cause in fact involves a determination of what actually occurred and is generally left to the jury. ... Unlike factual causation, which is based on a physical connection between an act and an injury, legal cause is grounded in policy determinations as to how far the consequences of a defendant's acts should extend. Thus, where the facts are not in dispute, legal causation is for the court to decide as a matter of law.

The focus in the legal causation analysis is whether, as a matter of policy, the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability. A determination of legal liability will depend upon 'mixed considerations of logic, common sense, justice, policy, and precedent.'

Schooley, 134 Wn.2d at 479 (citations omitted).

Using this analysis, Washington courts have developed the general rule that after disclosure of all material information, judicial action precludes the existence of legal causation for negligent investigations. In essence, the court action or order serves as a superseding intervening cause. Bishop v. Miche, 137 Wn.2d 518, 532, 973 P.2d 465 (1999).

So long as all material information gathered by the investigation is disclosed to the court, liability will not reach back to the investigator. Tyner v. DSHS, 141 Wn.2d 68, 86, 1 P.3d 1148 (2000). The Tyner court specifically stated:

We hold that a judge's no contact order will act as superseding intervening cause, precluding liability of the State for negligent investigation, only if all material information has been presented to the court and reasonable minds could not differ as to this question.

Tyner, 141 Wn.2d at 88.

This general rule is based on sound public policy and common sense. There is no logical justification for imposing civil liability on law enforcement officers when the judges and prosecutors are protected by absolute immunity. Stated another way, the connection between Jason Youker's injury and the actions of the defendants is broken by the independent judicial action which is protected by absolute judicial immunity. However, this does not mean that the chain of legal causation is broken for every investigation which is converted into a judicial proceeding. Instead, the rule applies only when the police provide all material information to the court.

In the case at bar, there was no genuine dispute of material fact on this issue. Deputy White and Deputy Black made a full and complete disclosure of all material information to the courts. The information represented all of the evidence that they gathered during their investigation. They left nothing out. The information provided was sufficient for the court to find probable cause – and there is no reason to second guess that decision in this lawsuit.

The judicial orders thereby act as superseding intervening causes precluding liability on the part of the Douglas County defendants for the arrest and prosecution of the appellant.

E. The trial court properly transferred venue from Chelan County to Douglas County.

Youker's argument regarding venue ignores the fact that he sued both the County and two deputies. The fact that he sued Deputy Black and Deputy White triggers RCW 4.12.020 which mandates venue in Douglas County because that is the county of their employment.

The Chelan County Superior Court properly granted the Douglas County defendants' motion to change venue. Venue in Chelan County would have been appropriate only if Douglas County was the only defendant. However, Youker chose to include

two Douglas County deputies as named defendants and, therefore, the issue of venue was no longer governed by RCW 36.01.050. Instead, it was governed by RCW 4.12.020.

This issue has been reviewed by the courts in Washington several times and the courts have consistently ruled that lawsuits against public officers must be brought in the county in which the cause arose, not an adjoining county. Aydelotte vs. Audette, 110 Wash.2d 249, 750 P.2d 1276(1988); Shoop vs. Kittitas County, 149 Wash.2d 29, 65 P.3d 1194(2003); Cossel vs. Skagit County, 119 Wash.2d 434, 834 P.2d 609(1992); Young vs. Clark, 149 Wash.2d 130, 65 P.3d 1192(2003).

The only judicial controversy regarding this issue has been whether the statute is a matter of jurisdiction or venue, but that issue was resolved by Young vs. Clark, 149 Wash.2d at 130 (RCW 4.12.020 relates only to venue). However, the courts in Washington have never been confused about the plain meaning of the statute itself and have consistently ruled that lawsuits against public officers must be filed in the county where the action arose, not the adjoining county. In this case, the property county was Douglas County, not Chelan County.

V. CONCLUSION

The trial court properly granted the motion for summary judgment filed by the Douglas County defendants. There were no genuine issues of material fact and the trial court correctly determined that probable cause existed to prosecute Jason Youker. Additionally, the independent exercise of judicial power broke the chain of legal causation thereby absolving the Douglas County defendants of liability for the arrest and prosecution of Jason Youker.

Finally, the Chelan County Superior Court correctly determined that RCW 4.12.020 applied and venue was properly transferred to the Douglas County Superior Court.

This Court should affirm the trial court and dismiss this appeal.

RESPECTFULLY SUBMITTED this ^{6th} day of October, 2010.

JEFFERS, DANIELSON, SONN
& AYLWARD, P.S.

By 

Stanley A. Bastian, WSBA #13415
Attorneys for Respondents

P.O. Box 1688
Wenatchee, WA 98807
(509) 662-3685