

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

AARON DOYLE,
Appellant/Cross-Respondent,

v.

DEREK ANGUS LEE, GRANT COUNTY PROSECUTING
ATTORNEY, A DIVISION OF GRANT COUNTY,

Cross-Appellant/Respondent.

BRIEF OF APPELLANT AARON DOYLE

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I. PREFACE

This appeal arose after the trial court granted the motion for

summary judgment of the Grant County Prosecuting Attorneys' Office ("Grant County") against Appellant, Aaron Doyle ("Doyle"). Doyle appeals the trial court's grant of summary judgment, contending there are genuine issues of material fact; the trial court failed to view all facts in a light most favorable to Doyle, the nonmoving party, on summary judgment; and, that Doyle was not afforded the opportunity to conduct any pre-trial discovery and thus was denied the right to gather and present evidence to effectively reply to Grant County's motion for summary judgment.

II. INTRODUCTION

Doyle filed suit against Grant County and its prosecuting attorney, Derek Angus Lee ("Lee"), on April 8, 2010, under the Uniform Declaratory Judgment Act (RCW Chapter 7.24, et seq.) and sought a declaratory judgment from the Kittitas County Superior Court to determine: a) a Confidential Settlement Agreement ("Agreement") filed under seal in Sierra County California was valid and should be given full faith and credit by the trial court; b) Grant County, and Lee, together with their agents and/or assigns, are also bound by both the California Superior Court Order(s) and subsequent Grant County, Washington, Superior Court Order to immediately return all documents and materials belonging to Doyle; c) Grant County and Lee, and/or their agents and assigns, be prohibited from

use, distribution, dissemination, of the materials belonging to Doyle, which had been stolen and which was the subject of the underlying suit. CP 1-6.

The gravamen of Doyle's suit was to stop the anticipated vindictive action of Lee's probable public dissemination and disclosure of, to third persons, the information contained in the sealed records, and the records themselves, that had been stolen from Doyle.

Lee claims he has an obligation under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), to disclose Doyle's personal and confidential documents to criminal defendants. Doyle contends that the documents and records in Lee's possession are not subject to disclosure under *Brady* because they were preliminary, speculative and challenged findings (*See United States v. Agurs*, 427 U.S. 97, 107, 96 S Ct 2392, 49 L.Ed.2d 342 (1976) at FN16), and because Doyle was fully released from any claims of wrongdoing pursuant to the Agreement entered into between Doyle and Sierra County.

Lee's actions have been nothing less than prosecutorial vindictiveness resulting from Doyle's participation as a material witness in a Washington State Bar Association ("WSBA")

investigation against Lee. CP 1-6; 32-35; 446-493. Doyle's testimony to the WSBA directly contradicted Lee's story. Lee simply wants to disclose the documents to discredit Doyle and label him a "*Brady cop.*" *Id.*

In considering this appeal, it is imperative that this Court understand Doyle's records were personal, confidential, and contained documents that were sealed by at least two (2) California court orders and at least two (2) Grant County Superior Court orders. CP 1. *Id.*

Lee came into possession of Doyle's personal records and documents through the course of a criminal investigation into their theft, in which Doyle was the victim. CP 446-493. Doyle's jilted **ex-girlfriend, Haley Taylor, had been charged with the theft of the records from Doyle by Lee and his office.** *Id.* Lee, previously told Doyle that he would protect him and file criminal charges against Hayley Taylor and her attorney, Brian Chase ("Chase") in order to vindicate Doyle. *Id.* Lee, after he became aware that Doyle was not supporting Lee's bid for election as the Grant County Prosecutor, and Doyle having become an adverse witness to Lee in Lee's pending WSBA complaint, intended to publicly expose Doyle's records. *Id.* Doyle contends that Lee sought to disseminate Doyle's records to discredit Doyle. Lee and his office had

previously filed theft charges involving Doyle's records against Hayley Taylor¹("Taylor"). CP 1-6; 446-493. Taylor provided the stolen records to her attorney, Chase, to secretly hold so her hands would be clean from any criminal charges. CP 434-445; 446-493; VRP 15-16. Lee contends that Doyle's stolen records that were recovered from Taylor's attorney, Chase, constituted "*Brady*" materials, which he was obligated to disclose pursuant to *Brady*. CP 289-376 . Lee also came into possession of Doyle's personal and confidential records relating to Doyle's real property, personal journal entries, and other documents that have no bearing on a *Brady* determination.

The significance of this case cannot be minimized for two (2) reasons: 1) Lee had an avowed conflict of interest in anything to do with Doyle's case and making a *Brady* determination; and, 2) Doyle is an adverse witness against Lee in a pending bar complaint. CP 116-117; 118-155.

The trial court, after having been thoroughly apprised of the underlying facts, granted Doyle's request for a preliminary injunction and enjoined the Grant County Prosecuting Attorney's Office and its employees and agents from further dissemination of

¹ Doyle contends Lee ordered his deputy prosecutor to dismiss the criminal charges against Taylor from her theft of Doyle's USB drive after he cooperated in the WSBA's investigation of Lee.

Doyle's sealed files and materials or their content on the day Doyle filed his Complaint (April 8, 2010) CP 36-38; 248-249. Judge Sparks, at the time of granting Doyle's temporary restraining order, was convinced irrevocable injury would occur to Doyle if the records were disseminated by Lee. *Id.* Furthermore, Judge Sparks found there was a substantial likelihood Doyle would prevail on the merits of his complaint. *Id.*

Preceding Grant County's motion for summary judgment, Doyle sought to continue the hearing so he could conduct and complete discovery². CP The trial court denied Doyle's motion to continue and therefore prejudiced Doyle's ability to adequately respond to Grant County's Motion for Summary Judgment. VRP 92:16-17.

The trial court granted Grant County's motion for summary judgment on July 16, 2010, and dissolved the preliminary injunction when it dismissed the case. CP 790. Doyle appealed to this Court and sought an emergency stay of the dissolution of the preliminary injunction which has been granted. CP 791.

² Doyle sought to take the deposition of Lee's deputy prosecutor, Doug Mitchell, after Mitchell apparently violated the TRO. After Lee's office was served with the TRO, Mitchell sought ex-parte relief from Grant County Superior Court Judge John Antosz to release Doyle's files. Mitchell told Judge Antosz that no TRO had been obtained in Kittitas County, despite Doyle's attempt, when in fact the TRO had been granted and Lee's office had been served. Doyle subsequently filed a bar complaint against Mitchell for his duplicitous representations to Judge Antosz that there was no TRO in effect. CP 533-636.

III. APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court erred by failing to disqualify Lee and his office before hearing the summary judgment motion.

2. The trial court erred by granting Grant County's summary judgment dismissal of Doyle's complaint.

3. The trial court erred by denying Doyle's motion to continue the summary judgment hearing to allow him to conduct discovery and adequately respond to Grant County's motion for summary judgment.

Issues Pertaining to Assignments of Error

1. **Did the trial of court err by granting summary judgment dismissal of the complaint when genuine issues of material fact exist necessitating resolution at trial? (Assignment of Error No. 1).**

2. **Did the trial court err by granting summary judgment dismissal when it determined as a matter of law that Doyle had committed misconduct by entering into a settlement agreement wherein he agreed not to return to work for Sierra County for five (5) years? (Assignment of Error No. 1).**

3. **Did the trial court err by granting summary judgment dismissal when it failed to allow Doyle to complete discovery and adequately respond to the County's motion? (Assignment of error No. 2).**

IV. APPELLANT'S STATEMENT OF THE CASE

A. The California Documents

Doyle was employed as a Deputy Sheriff-Coroner by the Sierra County Sheriff's Office from 2001 to 2007. CP 1-6; 9-31; 32-35; 434-445; 446-493. During Doyle's employment, the Sierra County Sheriff, Lee Adams, proposed to terminate Doyle's employment. *Id.* Doyle ultimately appealed the termination to the Sierra County Board of Supervisors, who overturned the Sheriff's decision to terminate Doyle. *Id.*

The Sheriff brought suit by way of a Writ of Mandamus against the Sierra County Board of Supervisors, alleging the Board did not have the authority to overturn his proposed termination of Doyle. *Id.* Doyle brought a reciprocal Writ of Mandamus against the Sheriff, alleging there was insufficient evidence to support any finding of misconduct against Doyle. *Id.* In reality, the details of either suit are not important to this appeal. What is important, however, is that both the Sierra County Sheriff's and Doyle's respective lawsuits were mutually dismissed – with prejudice. As part thereof, Doyle, and the Sheriff, and Sierra County entered into the Agreement. CP 434-445; 446-493

Most importantly, and as the principle material inducement

for both parties to the Agreement, the court files in both the Sheriff's and Doyle's lawsuits were sealed by Court orders; Doyle was completely released from any and all claims of misconduct or wrongdoing by Sierra County (*i.e.*, the allegations of misconduct were withdrawn and dismissed); and the parties mutually agreed that the terms of the settlement and the Agreement would remain confidential. *Id.* Additionally, all of the documents giving rise to the allegations against Doyle were destroyed by Sierra County pursuant to the Agreement. *Id.*

For instance, Paragraph 7 of the Agreement between Doyle and Sierra County provides:

Doyle unconditionally, irrevocably and absolutely releases and discharges the COUNTY, as well as any other present or former employees, officers, agents, attorneys, successors and assigns of the COUNTY (collectively, "Released Parties"), from all past or present claims related in any way to DOYLE's employment with the COUNTY to date and any transactions or occurrences between or with the COUNTY to date to the fullest extent permitted by law.

This release is intended to be *interpreted broadly* to apply to all transactions and occurrences between DOYLE and any Released Party, including but limited to, DOYLE's employment and employment conditions with the COUNTY, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, *arising directly or indirectly out of or in any way connected* with DOYLE's employment with the COUNTY, the disciplinary process described in this Agreement and/or the legal actions instituted by both parties as described in paragraph E and F of this Agreement (collectively "Released Claims"). *The COUNTY also*

releases, discharges DOYLE from the above described claims to the fullest extent permitted by law. (Emphasis added.) CP 193-200.

In fact, this provision of the Agreement was so significant that the settlement hinged upon the stipulation that Sierra County would destroy all records and files relating to Doyle's employment, any and all adverse employment actions or disciplinary process, and the proposed termination (of Doyle by the Sierra County Sheriff) – which are now among the records now in possession of the Grant County Prosecuting Attorney's Office and gave rise to the underlying suit.

The trial court completely disregarded the Agreement reached between Doyle and Sierra County as set forth in Paragraph 3 of the Agreement:

All documents regarding and relating to the disciplinary process, the Notices of Termination and subsequent appeals procedure shall be placed in a separate, sealed file and shall not be opened absent a court order. . .

The California Superior Court sealed all the documents related to the Sheriff's and Doyle's writ proceedings. *Id.* The order sealing the files specifically sealed all files relating to the disciplinary process. *Id.*

B. The Stolen Documents

Doyle's computer flash drive and documents were stolen

from his home sometime in December, 2008 or January, 2009. CP 1-6; 32-35; 446-493. Doyle discovered that Taylor and her attorney, Chase, were in possession of Doyle's documents and computer flash drive. *Id.* Criminal charges were filed in the Grant County District Court in June, 2009 against Taylor for the theft of Doyle's documents and materials. *Id.* Chase, who was in possession of these stolen documents and records, was under a criminal investigation. *Id.* Lee had contacted the Adams County Prosecuting Attorney, Randy Flycht, to make a possible charging decision against Chase because Lee had an avowed conflict of interest in cases involving Doyle. CP 1-6; CP 9-31.

In late 2009, Doyle announced he was intending to seek the appointment to Grant County Coroner, which had been vacated. *Id.* Lee, the Grant County Prosecuting Attorney, acting in his personal capacity as a Grant County Republican Precinct Committee Officer (PCO), summoned Doyle to meet with him at his office at the Grant County Prosecuting Attorney's Office in Ephrata under the pretext of discussing Doyle's application for appointment to Coroner by the Grant County Commissioners. *Id.*

Doyle met with Lee outside of the Grant County Prosecuting Attorney's Office pursuant to Lee's request in about November 2009. *Id.* During the course of this meeting, Lee told Doyle that

Doyle's private documents (the sealed California records) "had a way of being leaked out to the public" if Doyle continued to seek the position of Coroner. *Id.* Notwithstanding Lee's veiled threat, Doyle continued to seek the position of Grant County Coroner. Doyle was later ranked first on the Grant County republican Precinct Committee Officer's ("PCO") interview process, which was sent for consideration to the Grant County Commissioners for selection. *Id.*

Dave Matney, who ranked third during the interview process by the PCO's, but was serving under Lee as the Grant County Prosecuting Attorney's Office crime victim/witness investigator, was – ironically – selected for the Coroner's position by the Grant County Commissioners in lieu of Doyle. Lee claims he had nothing to do with this Commissioner's decision. *Weird.*

C. The Underlying Suit Against Lee

On April 2, 2010, Lee wrote Doyle's attorney, Garth Dano, and told him he was considering the release of Doyle's confidential and sealed files pursuant to his obligation pursuant *Brady v. Maryland, supra*. CP 1-6; 9-31. Doyle, having reason to believe that Lee had a significant motivation to discredit and destroy his reputation and career, and because Doyle believed Lee's dissemination of his confidential and personal materials was

imminent, Doyle brought this suit seeking declaratory judgment and temporary and permanent injunctive relief. CP 1-6. The trial court granted Doyle's preliminary injunction after reviewing Doyle's application, declaration and motion. The trial court found Doyle would suffer irreparable injury/harm if Lee was allowed to release Doyle's records and materials and that Doyle was likely to prevail on the merits of his complaint. CP 36-38; 248-249.

Professor John Strait(Prof.Strait), Doyle's expert, opined that Lee had no business involving himself or his office in any case involving Doyle after Lee acknowledged he had a conflict of interest involving Doyle. CP 118-155. Prof. Strait concluded that Lee and his office had a conflict of interest and should not be involved in any matter involving Doyle's stolen records. *Id.*

The Washington State Supreme Court has recently given substantial credence and deference to Prof. Strait's opinions in another Grant County matter. *See State v. A.N.J.*, 168 Wash.2d 91, 225 P.3d 956 (2010).

During the course of the underlying suit, Doyle sought to take the deposition of Grant County Deputy Prosecutor Douglas Mitchell ("Mitchell"). CP 387-403; 404-405; 407-410; 502-519; 695-789. Doyle also wanted to engage in other discovery and take other depositions after he deposed Mitchell. Grant County, in

response to Doyle's subpoena for Mitchell's deposition, sought to quash Doyle's deposition subpoena of Mitchell, which the trial court granted in whole – completely denying Doyle's right to depose a key witness. CP 407-410. The Court did not allow Doyle any discovery: no depositions and/or admissions were ever propounded or on file at the time the trial court granted Summary Judgment. Doyle's right to conduct pretrial discovery was eviscerated by the trial court's June 22, 2010, Order, which, in essence, precluded Doyle from taking the deposition of any of the Defendants until after the Court's ruling on defendants motion for Summary Judgment. *Id.*

Grant County then moved the trial court for Summary Judgment (CP 289-376) after Doyle moved the trial court for an order disqualifying Grant County Prosecuting Attorney for a conflict of interest. CP 520-522. The motion to disqualify was set for hearing at the same time as the scheduled Summary Judgment argument.

At the Summary Judgment hearing, Doyle's counsel orally moved the court for a continuance, asking the Court to allow Doyle to complete additional discovery and review a large amount of pleadings and materials, which had been filed just days before by Grant County. VRP 95:3-5. The trial court denied Doyle's

counsel's request for a continuance. VRP 146:7 The trial court declined to hear Doyle's Motion to Disqualify Lee and his office and heard Grant County's Motion for Summary Judgment. VRP 98:6.

At the conclusion of oral argument on Grant County's motion for Summary Judgment, the trial court granted Summary Judgment, dissolved the trial court's previously issued temporary restraining order, and dismissed the case. CP 790. Doyle timely appealed and Grant County has cross-appealed.

V. STANDARD OF REVIEW

Summary Judgment review is *de novo*. The Court of Appeals engages in the same inquiry as the trial court after considering all facts and reasonable inferences in favor of the nonmoving party (Doyle). *Michak v. Transnation Title Ins. Co.*, 148 Wash.2d 788, 794-795, 64 P.3d 22 (2003). Summary Judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to *any* material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c) (emphasis added).

VI. ARGUMENT

A. The Trial Court Should Have Disqualified The Grant

County Prosecuting Attorney's Office Before Ruling on
Summary Judgment

Doyle has set-out above the basis for his claims that Lee and his office have an avowed and direct conflict of interest, which should have disqualified Lee and the Grant County Prosecutor's Office from having anything to do with this matter.

Lee, as the elected prosecuting attorney for Grant County, had reviewed several criminal cases involving Doyle in Doyle's capacity as a police officer and a victim of a crime. Lee had personally declared a "conflict of interest" for he and his office in any charging decision arising from the underlying litigation between Doyle, Chase and Chase's client, Taylor, who had originally been charged in the theft of Doyle's personal and confidential documents that are subject to this suit. CP 118-155. Lee had, in fact, previously referred this matter to the Adams County Prosecuting Attorney to make a charging decision against Chase and Taylor declaring that he and his office had a conflict of interest. CP 116-117.

Doyle brought a motion for the trial court to have Lee and his office disqualified. CP 520-522. In support of his motion, Doyle retained leading ethics expert and professor, John Strait, to testify and opine whether Lee had a conflict of interest and should have

disqualified himself in these proceedings. CP 118-155. Prof.

Strait opined:

In my view, Mr. Lee is correct that his office has a conflict of interest under WRPC 1.7(a)(2), which prevents his office from making independent judgment charging decisions. Because Mr. Doyle is a witness in a pending Bar grievance involving Mr. Lee personally and in his capacity as Grant County elected prosecutor.

Conflicts of interest which affect the elected prosecutor are imputed under WRPC 1.10 to all members of the prosecuting attorney's office because of the elected prosecutor's control of hiring and firing. No deputy to Mr. Lee is free to exercise independent judgment which necessarily implicates witnesses adverse to Mr. Lee personally in light of Mr. Lee's ability to hire and fire his deputies and staff.

Mr. Lee was correct in declaring a conflict of interest for the following reasons:

a. Any decision which requires evaluating the credibility of Mr. Doyle when Mr. Doyle is potentially an adverse witness to Mr. Lee in the pending Bar disciplinary proceeding obviously presents an WRPC 1.7(a)(2) personal interest of Mr. Lee that would materially affect any decision making which he or his office must make involving the credibility of Mr. Doyle; and,

b. Although Mr. Lee was correct in declaring a conflict of interest with regard to the charging decisions in the *Chase* matter, Mr. Lee's proposed actions in declaring Mr. Doyle to be a "Brady police officer" and to produce the underlying stolen documents in any case in which Mr. Doyle would be called as a witness involve exactly the same WRPC 1.7(a)(2) conflict of interest. It is in Mr. Lee's personal interest to take a direct step by declaring Mr. Doyle to be a "Brady police officer." That decision would materially affect Mr. Doyle's reputation for credibility, honesty and truthfulness.

c. Mr. Doyle is potentially an adverse witness to Mr. Lee in the Bar proceedings. Obviously, Mr. Lee and Mr. Lee's

office are incapable of exercising the independent judgment necessary for such a decision on behalf of the public and in order to fulfill the constitutional obligations the prosecutor's office may have, for exactly the same reasons that the prosecutor's office has assigned the charging decision in the *Chase, et al.* matter to Adams County.

Under the Washington Rules of Professional Conduct 1.7(a)(2) and 1.10, Mr. Lee should disqualify himself from any action which relates to Mr. Doyle's credibility in any form.

It cannot be overstated that it is Doyle's position that the actions of Lee and his office have been that of prosecutorial vindictiveness. Alan Dershowitz, Professor of Law at Harvard Law School, in the Forward of *Prosecutorial Misconduct*, Third Edition, (2003), said it best:

In the age of decreasing judicial supervision over our criminal justice system, it is more important than ever to hold prosecutors to exacting standards of fairness, legality, and ethics. Despite the theoretically adversarial nature of our system, the prosecutor is among the most important arbiters of the justice...

Prosecutorial misconduct, however, is rampant. Even if one looks only at the reported cases, the quantity and variety of alleged misconduct is staggering. The reported cases constitute only a very small percentage of the actual instances of misconduct, since many defense lawyers are apt to shut their eyes to the misdeeds of their brothers and sisters at the bar. "What do you want to get another lawyer in trouble for?" I have heard that refrain so many times that the sentence completes itself after the first few words. Lawyers – even the most vigorous defense attorneys – are often inclined to place the interests of occupational camaraderie over the interests of

their clients. Many lawyers rationalize their silence in the face of outrageous prosecutorial misconduct by arguing that it is in their future clients' interests to stay on the "good sider of the prosecutor." While this may be true, the real reason for not blowing the whistle may have more to do with the future interests of the lawyer than his clients.

The actions of Lee and the Defendant, Grant County Prosecutor's Office, in seeking to discredit and destroy Doyle's career as a police officer, without affording him due process, and having him declared a *Brady* copy, is an outrageous abuse of power. Lee never intended to afford Doyle any due process rights to protect Doyle's interests. The only actuating interest Lee and the Grant County Prosecutor's Office is serving is to protect their own interests.

Doyle became an adverse witness to Lee no fault of his own. Had Lee not asked Doyle to not give special handling of a report regarding a hit and run accident involving a Grant County judge, this whole case would not have begun.

The trial court erred by granting Grant County's motion for Summary Judgment before first ruling on Doyle's motion to disqualify Lee and his office.

- B. Because genuine issues of material fact exist, the trial court erred by granting Summary Judgment dismissal.

CR 56(c) provides in part:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

An adverse party may not rest on mere allegations in its pleadings, but its response must set forth specific facts showing there is a genuine issue for trial. CR 56(e). Doyle has satisfied this prong.

All facts must be viewed in a light most favorable to the party against whom Summary Judgment is sought. *Marincovich*, at 274, *supra*. Moreover, if reasonable minds can differ, Summary Judgment is inappropriate. *Id.*

A Summary Judgment should not be used as a means to “cut litigants off from their right to a trial.” *Bernal v. American Honda Motor Co.*, 87 Wash.2d 406, 416, 553 P.2d 107, 113 (1976).

Grant County’s only argument in support of their motion for Summary Judgment is that Doyle’s declaratory relief action is moot because some of Doyle’s sealed and confidential materials have already been released. The majority of cases Grant County relied upon as leading authority on the issue of mootness are criminal cases, which cases themselves are moot and clearly distinguishable from this action.

There exists a myriad of issues of material fact which have yet to be decided in this case. For instance: should this Court remove the defendant Grant County Prosecuting Attorney's Office from any files or matters involving plaintiff as a result of Lee's confessed conflict of interest? Should this court give full faith and credit to the California Court Orders sealing the records and files in possession of the Grant County Prosecuting Attorney's Office? Should Doyle's materials, that are in the possession of the Grant County Prosecuting Attorney's Office, be returned to Doyle as Lee and his office have no legal authority to retain, possess or continue to disseminate documents which were obtained by their police agents in the course of a criminal investigation into their theft? Why did the trial court prevent Doyle from engaging in discovery prior to granting Summary Judgment? The Court must take notice of the manifest of injustice that will occur if Lee and the Grant County Prosecuting Attorney's Office is allowed to continue their unlawful dissemination of Doyle's records and materials.

Further, it is mystifying why the trial court did not even rely on Grant County's legal position in granting Summary Judgment or on the relief sought in Doyle's complaint; the trial court went on its own gratuitous explication about the legal implications of one sentence of Doyle's Agreement with Sierra County in granting

Summary Judgment. Specifically, the trial court focused on a provision of the Agreement where Doyle agreed not to apply for work with Sierra County until five (5) years from the date of the Agreement.

Washington Courts have routinely held that contracts are interpreted to give effect to each part of the instrument. *See Pub. Employees Mut. Ins. Co. v. Sellen Constr. Co., Inc.*, 48 Wash.App. 792, 796, 740 P.2d 913 (1987) The trial court ignored the mutual release provision of the Agreement which fully released Doyle and Sierra County from all claims (against each other) to the fullest extent permitted by law. **If nothing else, this issue alone created a material issue of fact warranting a trial.**

C. The trial court Also inaccurately interpreted the Agreement and the purpose behind this provision and failed to interpret the Agreement the same way it would have any other contract.

“A court's primary task in interpreting a written contract is to determine the intent of the parties.” *US. Life Credit Life Ins. Co. v. Williams*, 129 Wn.2d 565, 569, 919 P.2d 914 (1996). The case of *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990) specifically adopted the “context rule” for contractual interpretation. Under the rule, “extrinsic evidence is admissible in order to assist the court in ascertaining the intent of the parties and in

interpreting Page 10 the contract.” *US Life, supra*, at 569 citing *Berg, supra*, at 667. If relevant for determining mutual intent, extrinsic evidence may include (1) the subject matter and objective of the contract, (2) all the circumstances surrounding the making of the contract, (3) subsequent acts and conduct of the parties, and (4) the reasonableness of respective interpretations urged by the parties. *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 502, 15 P.3d 262 (2005). However, the “context rule” is not without limitations. In *Hearst*, the Washington Supreme Court took the opportunity to “further clarify [its] opinion” in *Berg*. *Hearst, supra*, at 500. The Court observed that “[s]ince *Berg*, we have explained that surrounding circumstances and other extrinsic evidence are to be used to determine the meaning of specific words and terms used and not to show an intention independent of the instrument or to vary, contradict or modify the written word.” *Id.* at 503. Washington Courts have also made it clear that language cannot be inserted into a contract under the guise of interpretation. *See, US. Life, supra*. As the *US. Life* Court explained, to hold otherwise, “would be flying in the face of the portion of [the Washington Supreme Court's] decision in *Berg* that indicates that extrinsic evidence should not be considered for the purpose of contradicting and modifying other written parts of the . . . contract.”

Id. at 570. Here, there is no need for extrinsic evidence

A trial court interprets a settlement agreement as it would any other contract. *See Riley Pleas, Inc. v. State*, 88 Wash.2d 933, 937-38, 588 P.2d 780 (1977).

The trial court should have considered only what Doyle and Sierra County wrote, giving words in a contract their ordinary, usual, and popular meaning unless the agreement as a whole clearly demonstrates a contrary intent. *Hearst*, 154 Wash.2d at 504, 115 P.3d 262. And a court reads a contract as an average person would, giving it a practical and reasonable meaning, not a strained or forced meaning that leads to absurd results as the trial court did here. *Allstate Ins. Co. v. Hammonds*, 72 Wash.App. 664, 667, 865 P.2d 560 (1994).

The trial court did nothing less than marginalize the fact that Sierra County released Doyle from all claims of wrongdoing that ultimately ended in the disciplinary process. Certainly, any reasonable inference from the Agreement which fully and completely released Doyle was not considered, in the light most favorable to Doyle, by the trial court.

Consider the trial court's statement:

[T]hrough this whole course of this business up until last night 6:45 I thought that was not *Brady* material because I thought that settlement agreement was -- I

asked Ms. Loginsky this question. There is more to it than that. I read it again. It's right in the file. I bet Mr. Mitchell knows what it is. What was the other thing that Mr. Doyle -- what was the other issue that occurred? I know. You don't get to work there. You can't work there. You didn't leave that county Sierra County. You didn't just quit. You quit and you couldn't come back for 5 years in any capacity. That's a negative finding. You got a negative situation. You left that job under a negative situation. From your perspective I didn't get to work there anymore for 5 years. They would need someone to sweep the courthouse steps. You still can't to this day. You still can't work there. *That's a negative. That's a downer. That's something that kind of answers the question for me. It has been substantiated. You agreed to that.*

VRP 140:6-25.

The Court unequivocally missed the point and did not interpret the Agreement between Doyle and Sierra County in the light most favorable to Doyle, the nonmoving party. Moreover, the trial Court completely ignored the relief sought by way of Doyle's Complaint; Doyle did not ask the Court to declare whether the materials were *Brady* – and Grant County never cross-complained asking for a judgment that the materials were *Brady*.

“The touchstone of contract interpretation is the parties' intent.” *Go2Net, Inc. v. CIHost, Inc.*, 115 Wash. App. 73 at 83-84, 60 P.3d 1245 (2003) (quoting *Tanner*, 128 Wash.2d at 674, 911 P.2d 1301)). Obviously, Sierra County intended to withdraw its allegations against Doyle – and Doyle certainly understood Sierra

County to withdraw its allegations against him – or a settlement would not have been reached. The only one who didn't see it this way was the trial Court. In fact, in order for the trial Court to interpret Sierra County's intent of the Agreement it would have had to depend on extrinsic evidence. Doyle's intent as it relates to the Agreement is a question of fact. *Anderson Hay & Grain Co., Inc. v. United Dominion*, 119 Wash. App. 249, 76 P.3d 1205 (2003) (citing *Kenney v. Read*, 100 Wash. App. 467, 474, 997 P.2d 455, 4 P.3d 862 (2000)). The trial Court ignored the fact that Doyle was completely released from any wrongdoing to the fullest extent allowed by law.

If there are two or more reasonable meanings to contract language, a question of fact is presented and summary judgment is improper. *Id.* Again, all facts and inferences must have been considered in the light most favorable to Doyle. *Id.* at 477, 997 P.2d 455.

Again, the trial Court simply ignored a material part of the Agreement between Doyle and Sierra County:

Once you realize make this analogy you know practice in the district court they used to I am not sure it's still this way. Traffic ticket if you pay -- if you pay any money to the other side to the state and they dismiss the case it's still reported to D.O.L. as a committed infraction. And your argument is but it wasn't committed. The judge dismissed it at the trial

court level. Doesn't matter. You gave them money, you gave them something. What was the whole lawsuit about? Whole lawsuit was about state wanted money and you gave it to them. State won. Of course it's committed. Okay see that analogy? Same as here. Sierra County Sheriff's Department didn't want Mr. Doyle working anymore. They fired him. Wait a minute. He appealed to the supervisors. They said, yeah, you can't fire him for that. It's too strong. Sheriff say, uh-huh, he is not working for us. Superior Court, finally, let's forget it. We'll seal it. Everybody is happy. He quits. Sheriff's happy he is not working there anymore and he is not going to be for the next 5 years. *That's an adverse finding.* VRP 141:19-15

Under these circumstances, what was in Sierra County's and Doyle's mind when the Agreement was reached between them certainly differed from the trial court's mind – and under that premise, reasonable minds obviously did differ; again, Summary Judgment was not proper.

Consider paragraph 10 of the Agreement:

[D]oyle does not admit he engaged in any improper conduct or that termination or administrative action were appropriate. *DOYLE is not resigning under the threat of termination, or to avoid termination, or as a result of any other action on the part of the COUNTY. (Emphasis added.)*

This provision of the Agreement is completely inapposite to the trial Court's conclusion that Doyle resigned from Sierra County under negative circumstances or a finding of misconduct. And more importantly, Doyle went back to work for Sierra County – until he later resigned and moved to work for the Quincy P.D.

There is simply no evidence to support the trial Court's decision that Doyle's resignation was somehow an admission of wrongdoing or somehow substantiated the allegations brought against him by Sheriff Adams – and if there was – the evidence and the Agreement certainly was not viewed in the light most favorable to Doyle. For this reason alone Summary Judgment was not appropriate.

If the trial Court is going to ignore settlement agreements, as it did here, any reason parties would have for settling a case short of a full trial is vitiated. No one would settle their cases.

Doyle was never allowed to put on any evidence as to why this provision existed in the Agreement – and more importantly, viewing the facts in the light most favorable to Doyle, the trial Court would have had no choice but to find that the Agreement cleared him of any wrongdoing. The trial Court never considered the express release of liability and wrongdoing, in addition to the provision that Doyle did not resign under threat of termination or any other adverse employment action.

In regards to the allegations against Doyle by the Sierra County Sheriff, the court stated:

[S]tate won. Of course it's committed. VRP 142:5

Again, the trial Court missed the point and relied on its own imagination.

The inference, taken in a light most favorable to Doyle, as it must, is that Sierra County withdrew all of its allegations of misconduct and cleared Doyle of any wrongdoing. *Marincovich, supra*, 114 Wn.2d at 274. A review of the Agreement between Doyle and Sierra County establishes the fact that Doyle and Sierra County mutually released each other, and more specifically, all claims against Doyle in the Sheriff's proposed discipline, were released to fullest extent permitted by law.

A genuine issue of fact exists, thus precluding Summary Judgment, when reasonable minds could reach different factual conclusions after considering the evidence.

The trial Court, even after thorough review of the Agreement, believed Doyle's stolen records, which were stolen from his ex-girlfriend, did not constitute "*Brady*" materials, and were not subject to disclosure, until the last minute:

[I] didn't think this stuff was discoverable. That's why I didn't think it was *Brady* material. Through this whole course of this business up until last night 6:45 I thought that was not *Brady* material. . . VRP 140:4-8

Again, with the Agreement and facts viewed in the light most favorable to Doyle, the Agreement explicitly states Doyle was released from all charges of misconduct and were withdrawn.

D. The trial Court erred by granting Summary Judgment dismissal when it determined as a matter of law that the

material was discoverable under “*Brady*”.

Preliminary, *challenged* and speculative information is not required to be disclosed to criminal defendants under the *Brady* doctrine. *See Agurs, supra*, at FN16. The trial Court reasoned that Doyle’s personal and confidential materials were *Brady* material and subject to disclosure. However, the trial Court erred in its interpretation of the law.

This case is exactly what the *Agurs* court had in mind when it issued its decision. Doyle was alleged to have committed misconduct by the Sierra County Sheriff. Doyle appealed and challenged the administrative findings. The Sierra County Board of Supervisors overturned the Sheriff’s decision to terminate Doyle. Doyle and the Sheriff brought independent writ petitions in the Sierra County Superior Court and continued with the process. During the course of the appeals, Sierra County withdrew its allegations and findings against Doyle in the Agreement.

There is no evidence in the record before the trial court to suggest Doyle’s termination was anything other than “proposed.” In fact, to the contrary, all of the evidence before the trial Court suggested Doyle was never terminated and merely resigned after the Sierra County Board of Supervisors overturned the Sheriff’s decision to terminate him. Grant County has failed to proffer any

evidence in the record that there was a final imposition of Doyle's "proposed termination."

Sierra County has destroyed all of their records pursuant to the Agreement. Grant County possesses only a handful of the thousands of pages of documents from Doyle's administrative appeal. They have not submitted any evidence regarding a final finding by Sierra County. They do not possess the ultimate findings or conclusions – Lee and Grant County have no evidence to support that there was any final finding of misconduct against Doyle because there is no such evidence.

Lee and Grant County now want to have this Court overturn *Agurs* and declare *all* allegations of misconduct against a public officer – whether they are exonerated or not – are exculpatory and required to be disclosed under the *Brady* doctrine. If the Court were to accept this legal position, then every unfounded or withdrawn internal or citizen complaint made against a public officer would have to be disclosed to all criminal defendants. Aside from the enormous economic burden this would have on the state, it would debilitate the criminal justice system; it would require full time investigators to review each and every public officers' personnel file for complaints, founded or not.

Certainly, the Courts did not intend for this to be the case

and the consequence in allowing the trial Court's decision to stand on this basis should give this Court pause. There is nothing exculpatory about a withdrawn, false or frivolous complaint against a police officer, as is the case here. We reiterate the point – the allegations of all misconduct and the relating disciplinary process were withdrawn against Doyle – he was released from any allegations of misconduct and was *never* terminated from his employment with Sierra County.

Again, the Court missed the point ruling that Doyle's stolen documents, which improperly made their way to the prosecutor's office, were required to be disclosed under *Brady*. If the trial Court would have ruled in the light most favorable to Doyle, and had Doyle had the opportunity to have a trial, these facts would have been well established.

E. The Trial Court Erred By Refusing To Allow Doyle To Engage In Discovery. The Trial Court's Ruling Prejudiced The Plaintiff's Ability To Adequately Respond To Summary Judgment

Pursuant to CR 56(f), the trial Court has the authority to continue or deny a motion for Summary Judgment, should it appear from the affidavits of a party opposing a motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition.

Doyle requested the Court continue Grant County's motion for Summary Judgment to allow him to complete discovery; however, the trial court essentially denied Doyle's request for a continuance when it failed to rule on his request and granted Summary Judgment. VRP 87; 1.18 (5/24/10). Doyle emphasized to the trial Court that he needed to complete discovery in order to adequately respond to Grant County's motion for Summary Judgment and explained he believed there were substantial issues of material fact that warranted a continuance. VRP 88; 1.6-12 (5/24/2010). The trial Court denied Doyle's request. VRP 92; 1.13-18 (05/24/2010).

On July 16, 2010, at the during the hearing on Grant County's motion for Summary Judgment, Doyle's counsel advised the trial court that he had just received a voluminous amount of paperwork from Grant County's attorney, Pamela Loginsky, in support of Grant County's Summary Judgment motion. Doyle's counsel informed the trial court he had not had adequate time to review or prepare a response to the documents and requested a continuance of the Summary Judgment hearing. VRP 95; 1.22 – 96; 1.7.

The standard of review of a trial Court's denial of a motion to continue Summary Judgment is reviewed for abuse of discretion.

Colwell v. Holy Family Hosp., 104 Wash. App. 606, 615, 15 P.3d 210 (2001). A trial Court abuses its discretion if it “exercised its discretion on untenable grounds or for untenable reasons,” or if the discretionary act was “manifestly unreasonable.” *Lindgren v. Lindgren*, 58 Wash. App. 588, 595, 794 P.2d 526 (1990).

There is nothing in the record to suggest the trial Court’s denial of Doyle’s request to continue the hearing on Grant County’s motion for Summary Judgment was anything but manifestly unreasonable. Doyle asserted that he had not completed discovery and was therefore unable to appropriately and fully respond to Grant County’s motion. Doyle’s one attempt at discovery was denied when Grant County sought to quash the deposition subpoena of Doug Mitchell, which was granted, and therefore prevented him from taking a deposition.

“The primary consideration in the trial court’s decision on the motion for a continuance should have been justice.” *Coggle v. Snow*, 56 Wash. App. 499, 507, 784 P.2d 554 (1990) (emphasis added). Doyle had less than 90 days from the time the complaint was filed to engage in discovery. The trial Court had a duty to give Doyle an opportunity to engage in discovery and complete the record before ruling on a case. *Id.* at 507. The only reason the trial Court gave for denying Doyle’s first motion to continue

was that Doyle's request was not "properly before it." But there is nothing in the law that holds a trial cannot grant an oral request for continuance.

The trial Court erred by refusing to allow Doyle to engage in discovery and then denying his request for a continuance of the Summary Judgment hearing.

F. Doyle's Documents and Materials are Not Subject to Disclosure

Grant County wants this Court to believe that Doyle's confidential and sealed materials that are in their possession are exculpatory under *Brady*. But what they have continued to misrepresent to the court is: (1) the original records have been sealed; (2) they have only obtained a portion of Doyle's sealed materials, and in essence, are distributing them piecemeal – those documents which only support their purpose in using their position and capacity as the Grant County Prosecuting Attorney's Office to effect revenge against Doyle for his role in the WSBA complaint proceedings against present Grant County Prosecuting Attorney Derek Lee.

Grant County has relied on the holding *Denver Policemen's Protective Assn. v. Lichenstein*, 660 F.2d 432 (1981), as persuasive precedent. However, what the defendants do not present to this

Court is the litany of California cases directly on point and persuasive to Plaintiff's argument.

The records and materials stolen from Doyle were California Court records, which had been sealed by Court Order. They were stolen from a USB flash drive – which originated in California and which contained California peace officer records held confidential and not subject to disclosure – even in criminal cases absent a showing of good cause and relevance – pursuant to California Penal Code Section 832.7.

California Penal Code Section 832.7 provides:

Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

No such statutory exemption for the protection of peace officer records exists in Colorado – if it did, it is likely the outcome of the *Lichenstein* Court would have come to a much different conclusion.

Both California statutes and case authority provides for the

confidentiality of peace officer personnel records, which fall under the *Pitchess* test (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531), not the *Lichestein* test.

The term “confidential” in Penal Code section 832.7 has independent significance and “imposes confidentiality upon peace officer personnel records and records of investigations of citizens’ complaints, with strict procedures for appropriate disclosure in civil and criminal cases....” (*Rosales v. City of Los Angeles* (2000) 82 Cal.App.4th 419, 426, 98 Cal.Rptr.2d 144, quoting *City of Richmond v. Superior Court* (1995) 32 Cal.App.4th 1430, 1440, 38 Cal.Rptr.2d 632.)

If *Brady* was controlling on whether the records protected by California Penal Code Section 832.7 or subject to disclosure, the Courts would have long ago abolished the statute. However, that has not happened. Instead, the records are confidential and sealed pending showing of good cause. Thus, even if the Grant County Prosecuting Attorney could show good cause, they could not produce the entire record because they do not have it.

Notwithstanding the Grant County’s *Brady* argument, Lee and his office continue to switch their position on the analysis of the *Agurs* case to suit their needs

In *Agurs, supra*, the Court held said, “It is not to say that the

State has an obligation to communicate preliminary, challenged, or speculative information.” *Agurs* at n 16. Lee cited this very case, and maintained this legal position, in his April 2, 2010, letter to the attorney Dano. Lee and his office have ignored this fundamental principal. Doyle and his former employer, Sierra County, reached an agreement in which they both expressly denied any wrongdoing. Moreover, the proposed termination was never imposed – it was overturned by the County’s Board of Supervisors.

As Lee argues, due process mandates that a criminal defendant be given a fair trial. *United States v. Agurs*, 427 U.S. 97, 107, 96 S Ct 2392, 49 L.Ed.2d 342 (1976). However, depriving a defendant of evidence violates due process *only* if the evidence is favorable to the defense and is material-that is, only if there is a reasonable probability that the evidence would affect the outcome of the trial. (*Emphasis added*). See *Pennsylvania v. Ritchie*, 480 U.S. 39, 57, 107 S Ct 989, 94 L.Ed.2d 40 (1987) (“[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.” (quoting *United States v. Bagley*, 473 U.S. 667, 682, 105 S Ct 3375, 87 L.Ed.2d 481 (1985) (plurality opinion))).

Again, the Grant County Prosecutor's Office has surmised they have materials which they are obligated to disclose – and they surmise they know the administrative outcome of Plaintiff's materials in their possession – but they have not taken any action to verify their position or the findings in their possession. Most importantly, given the nature of the Agreement and the fact the discipline was overturned, the Grant County Prosecuting Attorney had no obligation to turn the materials over to criminal defendants as the materials challenged and speculative, *Augurs, supra*.

G. Full Faith And Credit Applies To This Case. The Kittias County Superior Court Should Take Judicial Notice Of The California And Washington Court Orders, As Well As California Statutes, Which Provide The Materials Are Subject To Sealing And Confidential

The Full Faith and Credit Clause is codified as 28 U.S.C. 1738, and provides for the recognition of the acts of the legislature of any State of the United States. It also provides the records of judicial proceedings of any court of any such State, shall have the same full faith and credit in every court within the United States.

The Full Faith and Credit Clause, 28 U.S.C. 1738, states:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies

thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form. Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

The Full Faith and Credit Clause applies in this case. While Lee argues he and Grant County are not a party to the California judgment, and therefore, are strangers to it, their argument does not supersede the fact that California statute sealed Doyle's materials and renders them confidential.

Moreover, the whole purpose of this action is to give the defendants due process and make them a party to an already existing Court Orders issued in California and Washington. Whether Lee and his office should be bound by the California and Washington Courts Orders, and California Penal Code Section 832.7, is a triable issue of fact for the trial Court.

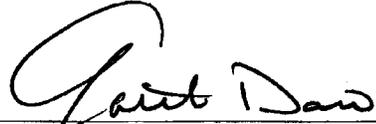
VII. CONCLUSION

Based on the foregoing, Doyle respectfully urges this Court to reverse the trial Court's Summary Judgment Dismissal of his

Complaint. Doyle asks this Court to remand the matter back to the trial Court with instructions to allow Doyle to engage in discovery, and to remand this case back to the trial Court with instructions to have the Court conduct a hearing on Doyle's Motion to Disqualify Lee and the Grant County Prosecutor's Office and for trial.

DATED this 24th day of March 2011.

Respectfully submitted,



GARTH LOUIS DANO
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2011, I served a copy of the document to which this certificate is attached upon the following individuals:

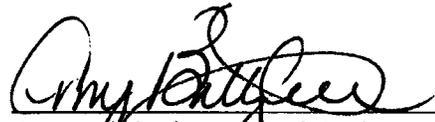
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Service was by:

_____ HAND DELIVERY
 X U.S. MAIL
_____ OVERNIGHT MAIL
_____ FAX TRANSMISSION

DATED this 11th day of March 2011.



Amy Brittingham, Legal Assistant
DANO ♦ GILBERT