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**FILED**

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COURT OF APPEALS

JUN 15 2020

of the

STATE OF WASHINGTON DIVISION III

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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ROY D. CHEESMAN, RUTH F. CONDE (CHEESMAN)

APPELLANTS

- v. -

,

KITTITAS COUNTY SUPERIOR COURT SPEACIAL ASSISTANT ATTY.  
GEN. CHRISTOPHER THOMAS HERION, RESPONDENTS/APPELLEE

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**REPLY BRIEF**

ROY D CHEESMAN,  
RUTH ANN F. C. (CHEESMAN)/appellants  
1708 N. Indiana dr. Ellensburg, WA. 98926

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## Appellants Reply Brief

**Appellee Respond brief Pg. 1-4** are continually allegations, accusations, Harassments and a Malicious prosecution, facts questions reserved for the jury.

RCW 4.44.090 Questions of fact for jury. (Court Case No. 19-2-00023-19 Sub#49

Exh. 1-XXII) Sub No. 49, Exhibits 1-XXII, appellee filed for summary judgment.

### **Disclosure of Exculpatory *Brady* Material**

Paragraph (d) of the rule requires a prosecutor to disclose promptly all information that the prosecutor knows, or should know, is exculpatory or mitigating. *See* La. Rules of Prof'l Conduct r. 3.8(d) (2004); ABA Stds. Relating to the Admin. of Crim. Justice–The Prosec. Function std. 3–3.11 (3d ed. 1992); *see also Brady v. Maryland*, 373 U.S. 83 (1963); *State v. Carter*, 939 So. 2d 600, 603 n.2 (La. Ct. App. 2d Cir. 2006) (commending assistant district attorney for compliance with Rule 3.8(d) by acknowledging the record indicated an absence of a valid waiver of defendant's privilege against self-incrimination). In addition, a prosecutor has a constitutional duty – although perhaps not an ethical one<sup>1</sup> – to review all files under the prosecutor's control and under the control of relevant law enforcement officers to search for exculpatory information. *See Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (holding that a prosecutor has a constitutional duty to learn of any favorable evidence known to others acting on state's behalf); *State v. Marshall*, 660 So. 2d 819, 826 (La. 1995) (holding that prosecutor has a duty to learn of any favorable evidence known to anyone acting on state's behalf, including police officers); *see also State v. Oliver*, 682 So. 2d 301, 311 (La. Ct. App. 4th Cir. 1996).

A number of criminal convictions have been reversed in Louisiana over the years as a result of the failure of prosecutors to disclose exculpatory *Brady* material. However, disciplinary actions against prosecutors are rare. *See generally* Kathleen "Cookie" Ridolfi, Tiffany M. Joslyn & Todd H. Fries, *Material Indifference: How Courts are Impeding Fair Disclosure in Criminal Cases* (N.A.C.D.L. 2014).

On July 8, 2009, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 09-454 entitled Prosecutor's Duty to Disclose Evidence and Information Favorable to the Defense. This opinion comprehensively discusses a prosecutor's duties under Model Rule 3.8.

What constitutes “exculpatory” evidence is often a matter of confusion. However, the term “exculpatory evidence” includes evidence that may reasonably be used to impeach any witness whom the state may call at trial, including the following: evidence relating to any plea bargains or promises made to such witnesses, *see In re Jordan*, 913 So. 2d 775, 781 (La. 2005) (holding that a witness’ statement to police that it was dark and she did not have her glasses when she witnessed the crime was exculpatory evidence that the prosecutor had a duty to disclose); *State v. Lindsey*, 621 So. 2d 618, 628 (La. Ct. App. 2d Cir. 1993); *State v. Williams*, 338 So. 2d 672, 677 (La. 1976); evidence relating to any prior criminal record of arrests or convictions of such witnesses, *see State v. Whitlock*, 454 So. 2d 871, 873 (La. Ct. App. 4th Cir. 1984); evidence relating to any witness statements that are inconsistent with statements made by that or other witnesses at any time, *see State v. Hunter*, 648 So. 2d 1025, 1034 (La. Ct. App. 4th Cir. 1994) (witness’ prior inconsistent statement on a material issue is exculpatory).

Furthermore, “exculpatory” evidence includes evidence that any eyewitness who participated in an identification procedure identified a person other than the accused as the perpetrator of the charged crime, *see State v. Falkins*, 356 So. 2d 415, 417 (La. 1978), or failed to identify the accused as a participant in the charged crime, *see State v. Curtis*, 384 So. 2d 396, 398 (La. 1980); *State v. Landry*, 384 So. 2d 786, 788 (La. 1980). Finally, the term “exculpatory evidence” should also include any evidence establishing that the witness hesitated or was in any way equivocal in his or her identification of accused as a participant in the charged crime.

A number of criminal convictions have been reversed in Louisiana over the years as a result of the failure of prosecutors to disclose exculpatory *Brady* information. However, disciplinary actions against prosecutors are rare. *See generally* Kathleen “Cookie” Ridolfi, Tiffany M. Joslyn & Todd H. Fries, *Material Indifference: How Courts are Impeding Fair Disclosure in Criminal Cases* (N.A.C.D.L. 2014).

It was once uncertain in Louisiana whether a prosecutor’s “ethical” obligation under Rule 3.8(d) was broader than a prosecutor’s parallel “Due Process” obligation under the Constitution. Rule 3.8(d) “requires the disclosure of evidence or information favorable to the defense without regard to the anticipated impact of the evidence or information on a trial’s outcome.” *See* ABA Formal Op. 09-454 (Jul. 8, 2009). That is, the rule arguably could require disclosure of even “immaterial” exculpatory evidence. *See id.* (citing *e.g.*, *Cone v. Bell*, 556 U.S. 449, 470 n. 15 (2009)); *see also Schultz v. Comm’n for Lawyer Discipline of the State Bar of Tx.*, SBOT Case No. D0121247202 (Dec. 17, 2015).

On October 18, 2017, the Louisiana Supreme Court resolved this unsettled question. In an opinion written by Justice Crichton, the court determined that a prosecutor's "ethical" and "constitutional" duties "are coextensive." *See In re Seastrunk*, 236 So. 3d 509, 510 (La. 2017). In so doing, the court reasoned that "under conflicting standards, prosecutors would face uncertainty as to how to proceed, as they could find themselves in compliance with the standard enumerated in *Brady*, but in potential violation of the obligation set forth in Rule 3.8(d)." *Id.* at 18. Furthermore, a broader obligation under Rule 3.8(d) would invite "the use of an ethical rule as a tactical weapon in criminal litigation." *Id.* As a result, the court dismissed the formal charges against Mr. Seastrunk.

The court's decision in *Seastrunk* was correct. Expanding Louisiana Rule 3.8(d) beyond the limits of *Brady* would have been bad policy. Although a minority of states<sup>2</sup> impose a broader "ethical" obligation to disclose exculpatory information, doing so in Louisiana would have subjected prosecutors to unwarranted discipline. Among other problems, untethering Rule 3.8(d) from *Brady* and the Louisiana Rules of Criminal Procedure<sup>3</sup> would have exposed prosecutors to discipline for simply complying with federal constitutional law and state statutory law. Disconnecting Rule 3.8(d) and *Brady* would have transformed routine discovery disputes into disciplinary actions. Imposing discipline on a prosecutor for failing to turn over information that is absolutely inconsequential would have been pointless and unfair. For that reason, the *Seastrunk* opinion correctly brings Louisiana into line with a majority of states.<sup>4</sup>

Evidence is "material" when "there is reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Turner v. United States*, 137 S.Ct. 1885, 1893 (2017) (citations omitted). "A 'reasonable probability' of a different result" is one in which the suppressed evidence "undermines confidence in the outcome of the trial." *Id.*

### **Pretrial Publicity**

On December 5, 2018, the Louisiana Supreme Court disbarred former federal prosecutor Salvador R. Perricone for inappropriate online posts relating to cases handled by his office. *See In re Perricone*, 263 So. 3d 309 (La. 2018).

From 2007 through 2012, the respondent posted a large number of anonymous comments on the website of the New Orleans Times-Picayune newspaper, nola.com, relating to high-profile prosecutions by the Office of the United States Attorney, Eastern District of Louisiana. *Id.* at 2. Among others, Perricone commented on investigations into Jefferson Parish political corruption,

prosecutions of relatives of former Congressman William Jefferson, and prosecutions of former NOPD officers involved in post-Katrina shootings on the Danziger Bridge. For example, Perricone noted that the NOPD officers in the Danziger shooting case were “GUILTY AS CHARGED” and that it would be “safer if the NOPD would leave next hurricane and let the National Guard assume all law enforcement duties.” *Id.* at 312.

The court found that Perricone’s extrajudicial statements violated Rule 3.6 and Rule 3.8(f) because they had a “substantial likelihood of materially prejudicing an adjudicative proceeding” and “heightened the public condemnation” of accused individuals. Further, the court found that his statements violated Rule 8.4(d) because they were “prejudicial to the administration of justice.” These comments caused “serious, actual harm” to two of these cases and “most profoundly, to the reputation of the USAO.” *Id.* at 316.

On the issue of sanction, Perricone argued in mitigation that his postings were caused in part by a mental disability, namely, PTSD caused by traumatic events suffered as a law enforcement officer. The court was not persuaded:

*Id.* at 318. Noting “the well-settled proposition that public officials (and prosecutors in particular) are held to a higher standard than ordinary attorneys,” the court held that the “only appropriate sanction . . . is disbarment.” Finally, the court took the opportunity to address the larger issues created by lawyer social media use and abuse: “Our decision today must send a strong message to respondent and to all the members of the bar that a lawyer’s ethical obligations are not diminished by the mask of anonymity provided by the Internet.” *Id.* at 319.

### **Michael Morton Act to Become Texas Law on September 1**

Posted on [May 17, 2013](#) by [Nancy Petro](#) | [11 Comments](#)

Texas Senate Bill 1611, known as the Michael Morton Act, has been passed by the Texas legislature, signed by the governor, and will become law on September 1. It requires that prosecutors give defense attorneys any evidence that is relevant to the defense’s case.

*Section 10.(b)* of the Act specifies what compliance is required and what sanctions will occur in the event of non-compliance with the Act. Here is the language directly from the Act:

“If the court finds that a party has failed to comply with any of the provisions of this article, the court may order and compel such party to provide the required

discovery or disclosure, grant a continuance, issue a protective order, take other appropriate action as necessary under the circumstances to accomplish the purposes of the required discovery or disclosure, or, and only if other remedial alternatives have been exhausted, prohibit the introduction of certain evidence, the calling of certain witnesses, or other relief necessary to assure justice. The court may not dismiss a charge under this subsection unless authorized or required to do so by other law.”

Prosecutors are required by law to share any evidence they collect that could help the defense. But Anderson withheld two critical facts in his prosecution of Morton: that witnesses reported seeing a man park a green van nearby and walk into the woods near the Mortons' house and that Morton's 3-year-old son specifically said Morton wasn't at the scene.

**Appellee Respond Brief Pg.5**, The Appellees lawyers never provided of any evidence tangible to the court of appeals of the Kittitas County Superior Court documents judge accusing and making allegation of the behavior of the appellants and judgments of any kind of sort of behavior that could not be challenges and sued the judge for false allegations of the charges. The record of the trial hearing with the **Judge Spark**, the judge said, “I will feel the same Mr. Cheesman if my child is taken”. (Dependency trial court case No.17-7-00003-6. sub# audio records)

**Appellee Respond Brief Pg.5**, “On January 25, 2017, Mrs. Cheesman’s attorney submitted written discovery request documents to the discovery, On February 7, 2017, DSHS provided responsive documents to the discovery request, including December 8, 2016 medical exam of L.C cp 269-70. The Medical record was possessed by the CPS for the prosecutors and concealment the evidence and

malicious filed for court dependency prosecution. The appellees never provided evidence for the court records to disprove the appellants civil complaint and files a summary judgment to further suppressed the negligence and breach of duty of the appellee concealing medical report Dec 8.2016 before accepting dependency cases.

**Appellee Respond Pg.6**, does not contain any tangible evidence that the judge is accusing Mrs. Cheesman as an incapable parent and are a RCW 4.44.090

Questions of fact for jury until now because of the none stop allegations and the appellee negligence and breach of duty that dis honor the judge of their wrong ruling and abused of justice by continually allegation by the judges and lawyers that will continue a person to file a civil complaint to rebel of the unconstitutional disregards to the job descriptions of the appellee that violate the civil rights of the appellants. 42. U.S.C. 1983., 18. U.S.C. 242.,Malicious Prosecution-Abuse of Process, RCW 9.62. (Sub#49 Exhibit XVIII Pg.1-4, 4-6)

**Appellee Respond Pg.6**, CP 256. “However, the court did find that DSHS had establish the legal requirements for proceeding towards dependency and that there was sufficient evidence to warrant placing the children out of home.” The appellee did not investigate further prior of taking the CPS complaint and concealed the evidence, the Judge making a judgment for appeal for the Jury Trial, because if the evidence of the medical of the child has not been concealed the judge will not

warrant placing the children out of home, the appellee has the medical records December 8, 2016 and concealed it to the court not to be represented to the judge.

**Appellee Respond Pg.7-9** claiming that the appellants is a Vexations litigant are harassment, a pre made judgment written by the appellee lawyer and then signature by the Kittitas Count Superior Court with ignorant of the judge not to allow the appellants civil complaint request for joint statue conference then insulted the institutions of the State of Washington by calling the Appellants and harassing the appellants of the words, Vexations allegations without a jury trial breaching and neglecting by the judge violating the due process of law and the RCW 4.44.090 Questions of fact for jury if indeed the Appellants Mr. and Mrs. Cheesman is a Vexations litigant. (Court Case No.19-2-00023-19 Sub#49, Exh, 1-XXII)

**Appellee Respond Pg.8**, “Mr. Herion followed all applicable laws, rules, policies and procedures relating to the dependency petition”. **December 8, 2016** the medical examination of the child and the police statements of the child that the child said it was an accident are not consider by the appellee for probable cause to exist to continue the dependency case trial hearings and conspired with criminal prosecutions the concealments, existence of the evidence to solicit for the Washington State attorney general dependency case evidence of “No Contact Order” to malicious prosecute the appellants and racially injured individuals. (sub#49 Exhibit XII Pg.1-4)

**Rules of Professional Conduct, RPC 3.8, SPECIAL RESPONSIBILITIES OF A PROSECUTOR.** The prosecutor in a criminal case shall: (a) (b) (c) (d) (e, 1,2,3,) (f) (g) (1,2) (a) (b) (h) (i)

**Appellee Respond IV.** Argument, that, “the Cheesman’s Continue to Rely on Unsupported Allegations”. The Appellants submit evidentiary documents, exhibits to the Kittitas County Superior Court Clerk office of all the supported allegations of the civil complain for malicious prosecution, negligence, breach of duty, violations of law, RCW,s federal rules and Bills od Rights to be show to the juror for a jury trial against the appellee but the judge would not like the appellants to continue to a discovery procedures to find the crime of the appellee and make the appellee pay for the damages or the state of Washington pay for the economic and noneconomic damages that written in the RCW 4.56.250 Claims for noneconomic damages. (Court Case No. 19-2-00023-19 Sub#49 Exhibit 1- XXII)

**Appellee Respond Brief IV.** Argument, “The Cheesman’s claims were not supported by the law or facts and were dismissed.” The appellee lawyer claims that the Cheesman’s claim were not supported by the law or facts are false and misleading statements of the appellee lawyers and the attorney general refusing to investigate and see the wrong doing of the appellee, the negligence and breach of duty of the appellee to the job descriptions and responsibility of the appellee to the

state of Washington to follow the law on discovery procedures and not to concealed, suppress medical evidence that are available during the initial investigations before filing dependency case against the appellants to the court of law to malicious prosecute the appellants while the medical examinations and the police reports that the child did not report to any of the mandated reporter that child was not hit by the appellants and the appellee lawyer continued allegations that Mrs. Cheesman has something to do being an associate to the crime against a child is a questions for the jury and not a questions of law that keep on allegation and accusing the appellants without a jury trial is a continues harassment and a violations of the 42 U.S.C. 1983.

**Appellee Respond F. Pg.18-21**, “Cheesman failed to create a Genuine Issue of Material of Facts.” The appellee lawyer filed a motion for summary judgment because they would not like to know the Genuine Issue of Material of Facts that will lead to the negligence and breach of duty of the appellee, The appellants submitted and filed exhibits and evidence but are intentional ignore, neglected by the Appellee lawyers. ( Court Case No. 19-2-00023-19 sub#49 exhibits 1-XXII)

**Appellee Respond F. Pg.20-26**, the appellee loss immunity when the prosecutors concealed and without evidence or did not investigate while claiming 19 years of experience as an attorney, dependency filed a complaint to break up a family conspiring with the criminal prosecutors to filed a no contact order for the favor of

the State of Washington attorney general dependency prosecution. (Sub#49 Ex. XII Pg.1-4 ) WASHINGTON COURTS, **Rules of Professional Conduct**. RPC 3.6, TRIAL PUBLICITY. (a) (b,1,2,3,4,5,6,7,I,ii,iii,iv) (c) (d)

**Appellee Respond V. Conclusion** “ the Cheesman’s claims were not supporter by the law of facts and this court should affirm the trial court’s dismissal of all of the Cheesman’s’ claims. The appellee lawyers has been since provided, exhibits documents and the facts and law that supporter the claims of the appellants through Constitutional Rights, Bills of Rights, RCW’s, Federal rules on conspiracy and the appellee negligence and breach of duty to the Fourth Amendment right of the appellants that was tried because of negligence and breach of duty of the appellee.

### **Supreme Court Allows Fourth Amendment Malicious-Prosecution Claim**

On March 18, 2011, police arrested Elijah Manuel based on fabricated evidence. *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 915 (2017). Fabricated evidence was the only evidence the judge relied on during the probable-cause hearing, resulting in Manuel’s pretrial detention. Manuel’s charges were dismissed May 4, 2011, after valid laboratory results revealed the fabrication. Manuel filed suit April 22, 2013.

The Supreme Court granted certiorari deciding “whether an individual’s Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment.” *Id.* at 924 (J. Alito dissenting).

Justice Kagan’s majority opinion answered affirmatively, over Justice Alito’s dissent. The majority has two parts. First, the majority held, “if the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment.” *Id.* at 919. The majority explained “legal process” covers any proceeding, including grand-

jury indictment or preliminary examination, where the proceeding lacks probable cause because it's tainted by fabricated evidence.

Second, the majority remanded for determination on the accrual date for the two-year statute of limitations after stating the governing rule, and counsels' arguments.

The majority stated, "the contours and prerequisites of a §1983 claim, including its rule of accrual, courts are to first look to common law torts" leading to the

adoption of "wholesale the rules that would apply in a suit involving the most analogous tort."

Manuel argued that his Fourth Amendment claim accrued when his charges were dismissed (May 4, 2011, less than two years before filing suit), analogizing his claim to malicious prosecution using the "favorable termination" element.

In contrast, the City analogized Manuel's circumstances to false arrest, accruing when legal process commences, thus, Manuel's claim accrued at his probable-cause hearing (March 18, 2011, more than two years' prior).

Justice Alito dissented, "None of the other common-law torts to which Manuel's claim might be compared—such as false arrest or false imprisonment—has such an accrual date . . . Therefore, if Manuel's is to go forward, it is essential that his claim be treated like malicious prosecution." *Id.* at 924–25.

Justice Alito's statement combined with counsel's arguments advance the conclusion that malicious prosecution is cognizable under the Fourth Amendment. Without allowing malicious-prosecution claims, the Fourth Amendment wouldn't extend beyond the legal process, conflicting with the majority's only explicit holding. Malicious prosecution is the only tort claim that extends the Fourth Amendment beyond the start of the legal process either argued by counsel, or considered by the justices.

In conclusion, the Fourth Amendment allows for malicious-prosecution claims. The Court ultimately remanded to consider the analogous tort claim to Manuel's Fourth Amendment claim, not whether the Fourth Amendment allows for malicious prosecution. The Court already answered the latter affirmatively.

## CONCLUSION

The appellants has been spending financially to provided copy of the evidence, exhibits and documents of the appellee negligence and breach of duty as a Special Assistant Attorney General dependency prosecutor lawyer violating the due process of law for malicious prosecutions of the appellants that continually damaging the appellant emotionally and mentally that needed to be address to the jury. (Kittitas Superior Court Case No. 19-2-00023-19 Sub#49 Exh.1-XXII)

The Supreme Court's decision in *Brady v. Maryland*, decided on this day in 1963, in which the justices unanimously declared that prosecutors have a constitutional obligation to share with criminal defendants all "exculpatory" evidence officials may have. "

A criminal defendant's due process rights were violated when he was tried without the benefit of the exculpatory evidence. Here's how Justice Douglass briefly explained it in *Brady v. Maryland*:

In a case styled *United States v. Bagley*, the Court effectively narrowed the reach of *Brady*. For a *Brady* violation to result in the reversal of a conviction the suppressed evidence now had to be both "exculpatory" and "material." The evidence is material," Justice Blackmun wrote in *Bagley*, "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." By requiring proof that the prosecution's failure to disclose evidence would have made a difference at trial there must be swift and significant punishment for prosecutors who violate the rule.

### **Disclosure of Exculpatory *Brady* Material**

Paragraph (d) of the rule requires a prosecutor to disclose promptly all information that the prosecutor knows, or should know, is exculpatory or mitigating. *See* La. Rules of Prof'l Conduct r. 3.8(d) (2004); ABA Stds. Relating to the Admin. of Crim. Justice—The Prosec. Function std. 3–3.11 (3d ed. 1992); *see also* *Brady v. Maryland*, 373 U.S. 83 (1963); *State v. Carter*, 939 So. 2d 600, 603 n.2 (La. Ct. App. 2d Cir. 2006) (commending assistant district attorney for compliance with Rule 3.8(d) by acknowledging the record indicated an absence of a valid waiver of defendant's privilege against self-incrimination). In addition, a prosecutor has a constitutional duty – although perhaps not an ethical one<sup>1</sup> – to review all files under the prosecutor's control and under the control of relevant law enforcement officers to search for exculpatory information. *See* *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (holding that a prosecutor has a constitutional duty to learn of any favorable evidence known to others acting on state's behalf); *State v.*

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From 2007 through 2012, the respondent posted a large number of anonymous comments on the website of the New Orleans Times-Picayune newspaper, nola.com, relating to high-profile prosecutions by the Office of the United States Attorney, Eastern District of Louisiana. *Id.* at 2. Among others, Perricone commented on investigations into Jefferson Parish political corruption, prosecutions of relatives of former Congressman William Jefferson, and prosecutions of former NOPD officers involved in post-Katrina shootings on the Danziger Bridge. For example, Perricone noted that the NOPD officers in the Danziger shooting case were “GUILTY AS CHARGED” and that it would be “safer if the NOPD would leave next hurricane and let the National Guard assume all law enforcement duties.” *Id.* at 312.

The court found that Perricone’s extrajudicial statements violated Rule 3.6 and Rule 3.8(f) because they had a “substantial likelihood of materially prejudicing an adjudicative proceeding” and “heightened the public condemnation” of accused individuals. Further, the court found that his statements violated Rule 8.4(d) because they were “prejudicial to the administration of justice.” These comments caused “serious, actual harm” to two of these cases and “most profoundly, to the reputation of the USAO.” *Id.* at 316.

On the issue of sanction, Perricone argued in mitigation that his postings were caused in part by a mental disability, namely, PTSD caused by traumatic events suffered as a law enforcement officer. The court was not persuaded:

*Id.* at 318. Noting “the well-settled proposition that public officials (and prosecutors in particular) are held to a higher standard than ordinary attorneys,” the court held that the “only appropriate sanction . . . is disbarment.” Finally, the court took the opportunity to address the larger issues created by lawyer social media use and abuse: “Our decision today must send a strong message to respondent and to all the members of the bar that a lawyer’s ethical obligations are not diminished by the mask of anonymity provided by the Internet.” *Id.* at 319.

### **Applicability of Louisiana Rules of Professional Conduct to Federal Prosecutors**

In the wake of the McDade Amendment of 1998, “[a]n attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that State.” *See* 28 U.S.C. § 530B(a) (1998).

### **Disciplinary Sanctions**

Absent aggravating or mitigating circumstances, the following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official: *disbarment*, when a lawyer in an official position misuses that position with the intent to obtain a significant benefit for himself or another, or with the intent to cause serious or potential injury to a party or to the integrity of the legal process; *suspension*, when such a lawyer knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process; *reprimand*, when such a lawyer negligently fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process; and, *admonition*, when such a lawyer engages in an isolated instance of negligence in not following proper procedures or rules, and causes little or no actual or potential injury to a party or to the integrity of the legal process. ABA Stds. for Imposing Lawyer Sanctions std. 5.2 (1992) (Failure to Maintain the Public Trust); *id.* stds. 5.21-5.24.

**WASHINGTON COURTS, Rules of Professional Conduct. RPC 3.6  
TRIAL PUBLICITY**

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of the person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by

the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

[Originally effective September 1, 1986; amended effective May 8, 1987; September 1, 2006.]

### Comment

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only

to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] [Washington revision] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer or LLLT , or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[Comment [7] amended effective April 14, 2015.]

[8] See Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

## **Rules of Professional Conduct. RPC 3.8, SPECIAL RESPONSIBILITIES OF A PROSECUTOR**

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense and, in connection with sentencing, disclose to the defense and to the tribunal all mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by an applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant is innocent of the offense of which the defendant was convicted the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(A) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(B) make reasonable efforts to inquire into the matter, or make reasonable efforts to cause the appropriate law enforcement agency to undertake an investigation into the matter.

(h) [Reserved.]

(i) A prosecutor's independent judgment, made in good faith, that the evidence is not of such nature as to trigger the obligations of paragraph (g) of this Rule, though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

[Originally effective September 1, 1985; amended effective September 1, 2006; December 13, 2011.]

#### Comment

[1] [Washington Revision.] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. The extent of mandated remedial action is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Competent representation of the government may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[Comment amended effective December 13, 2011.]

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals. The office of Orange County Dist. Atty. Tony Rackauckas was removed from one of its most high-profile cases: the prosecution of mass murderer Scott Dekraai. The judge said prosecutors repeatedly violated Dekraai's rights by failing to turn over evidence.

## **Michael Morton Act to Become Texas Law on September 1**

Texas Senate Bill 1611, known as the Michael Morton Act, has been passed by the Texas legislature, signed by the governor, and will become law on September 1. It requires that prosecutors give defense attorneys any evidence that is relevant to the defense's case.

*Section 10.(b)* of the Act specifies what compliance is required and what sanctions will occur in the event of non-compliance with the Act. Here is the language directly from the Act:

“If the court finds that a party has failed to comply with any of the provisions of this article, the court may order and compel such party to provide the required discovery or disclosure, grant a continuance, issue a protective order, take other appropriate action as necessary under the circumstances to accomplish the purposes of the required discovery or disclosure, or, and only if other remedial alternatives have been exhausted, prohibit the introduction of certain evidence, the calling of certain witnesses, or other relief necessary to assure justice. The court may not dismiss a charge under this subsection unless authorized or required to do so by other law.”

Prosecutors are required by law to share any evidence they collect that could help the defense. But Anderson withheld two critical facts in his prosecution of Morton: that witnesses reported seeing a man park a green van nearby and walk into the woods near the Mortons' house and that Morton's 3-year-old son specifically said Morton wasn't at the scene.

## **Supreme Court Allows Fourth Amendment Malicious-Prosecution Claim**

On March 18, 2011, police arrested Elijah Manuel based on fabricated evidence. *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 915 (2017). Fabricated evidence was the only evidence the judge relied on during the probable-cause hearing, resulting in Manuel's pretrial detention. Manuel's charges were dismissed May 4, 2011, after valid laboratory results revealed the fabrication. Manuel filed suit April 22, 2013.

The Supreme Court granted certiorari deciding “whether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment.” *Id.* at 924 (J. Alito dissenting).

Justice Kagan's majority opinion answered affirmatively, over Justice Alito's dissent. The majority has two parts. First, the majority held, “if the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment.” *Id.* at 919. The majority explained “legal process” covers any proceeding, including grand-jury indictment or preliminary examination, where the proceeding lacks probable cause because it's tainted by fabricated evidence.

Second, the majority remanded for determination on the accrual date for the two-year statute of limitations after stating the governing rule, and counsels' arguments.

The majority stated, “the contours and prerequisites of a §1983 claim, including its rule of accrual, courts are to first look to common law torts” leading to the adoption of “wholesale the rules that would apply in a suit involving the most analogous tort.” Manuel argued that his Fourth Amendment claim accrued when his charges were dismissed (May 4, 2011, less than two years before filing suit), analogizing his claim to malicious prosecution using the “favorable termination” element.

In contrast, the City analogized Manuel’s circumstances to false arrest, accruing when legal process commences, thus, Manuel’s claim accrued at his probable-cause hearing (March 18, 2011, more than two years’ prior).

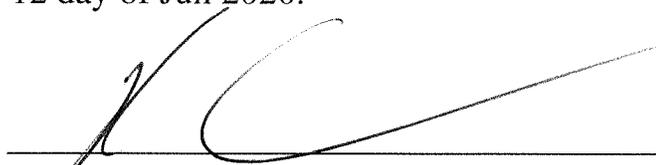
Justice Alito dissented, “None of the other common-law torts to which Manuel’s claim might be compared—such as false arrest or false imprisonment—has such an accrual date . . . Therefore, if Manuel’s is to go forward, it is essential that his claim be treated like malicious prosecution.” *Id.* at 924–25.

Justice Alito’s statement combined with counsel’s arguments advance the conclusion that malicious prosecution is cognizable under the Fourth Amendment. Without allowing malicious-prosecution claims, the Fourth Amendment wouldn’t extend beyond the legal process, conflicting with the majority’s only explicit holding. Malicious prosecution is the only tort claim that extends the Fourth Amendment beyond the start of the legal process either argued by counsel, or considered by the justices.

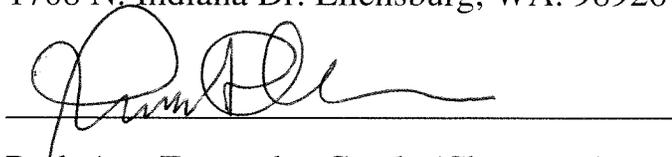
In conclusion, the Fourth Amendment allows for malicious-prosecution claims. The Court ultimately remanded to consider the analogous tort claim to Manuel’s Fourth Amendment claim, not whether the Fourth Amendment allows for malicious prosecution. The Court already answered the latter affirmatively.

Appellants demand a jury trial for negligence, breach of duty and economic and noneconomic damages perpetrator by the Special Assistant Attorney General/Appellee.

RESPECTFULLY SUBMITTED this 12 day of Jun 2020.



Roy D. Cheesman/ Pro se  
1708 N. Indiana Dr. Ellensburg, WA. 98926



Ruth Ann Fernandez Conde (Cheesman)  
1708 N. Indiana Dr. Ellensburg, WA. 98926

Proof of Service

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

US Mail Postage Prepaid:

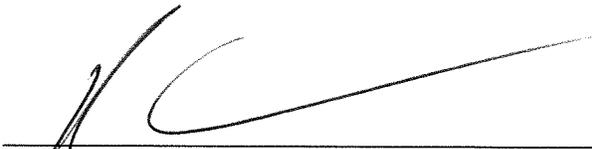
Robert W. Ferguson  
Attorney General

Jacob Brooks  
Assistant Attorney General  
WSBA No. 48720  
1116 W. Riverside,  
Spokane, WA. 99201

The Court of Appeals  
Of the State of WA.  
Division III  
500 N. Cedar St.  
Spokane, WA. 99201-1905

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 11<sup>th</sup> day of June 2020, at Ellensburg, Washington.



---

Roy D. Cheesman



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Ruth Ann Fernandez Conde (Cheesman)



\*7 Dependency\*

FILED

17 JAN 30 AM 10:07

KITTITAS COUNTY  
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF WASHINGTON  
KITTITAS COUNTY  
JUVENILE COURT

Dependency of:

PRINCESS CHEESMAN  
D.O.B.: 07/12/2011

IEHOA CHEESMAN  
D.O.B. 08/24/2002

VICTORIA CHEESMAN  
D.O.B.:09/24/1999

Case No. 17-7-00001-0

17-7-00002-8

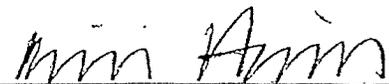
✓ 17-7-00001-0  
36

STATE'S MOTION AND AFFIDAVIT TO  
MODIFY THE SHELTER CARE ORDER  
RE: VISITATION

MOTION

COMES NOW, The Attorney General of the State of Washington, by and through the undersigned attorney, and moves the court for an order to modify Section 3.2 Visitation of the Shelter Care Hearing Order entered on January 13, 2017. This motion is based upon the record herein and upon the affidavit of the Attorney General Robert Ferguson by and through his Special Assistant Attorney General Chris Herion.

Respectfully submitted this 10 day of January 2017.

EXHIBIT X/1/BG.1  
  
Chris Herion WSBA#30417  
Special Assistant Attorney General

Entry ID: 1310398



12. This action followed.

13. Pending this action, I heard that the State of Washington had charged Mr. Cheesman with felony assault of Princess.

14. On January 13, 2017, the court entered a Shelter Care Order.

15. The court ordered that Victoria and Iehoa be placed in foster care and Princess be placed with her maternal aunt in Puyallup.

16. Under Section 3.2 Visitation, the court authorized one hour/week of supervised visitation with Victoria and Iehoa and one, four-hour supervised visit/week with Princess "provided there is no order prohibiting contact issued in the pending criminal case."

17. At the time of the Shelter Care Hearing, there was a reasonable expectation that the State of Washington would request a pre-trial no contact order for Princess at the father's arraignment on January 17, 2017.

18. Following the father's arraignment on January 17, 2017, I learned that the State of Washington had not requested a pre-trial no contact order for Princess.

19. I subsequently contacted Chief Criminal Deputy Prosecutor Jodi Hammond, she indicated that it was an oversight but advised that she would ask the court for pre-trial no contact orders at the father's next court date (omnibus).

20. On January 27, 2017, another FTDM was held at which the State advised Mr. Cheesman of its intent to obtain a pre-trial no contact order for Princess.

21. On January 29, 2017, I asked DPA Hammond about the date of the father's omnibus hearing.

22. Ms. Hammond advised that the father's omnibus hearing is currently scheduled for February 6, 2017.

23. Ms. Hammond also advised that she had charged the father with non-felony assault of his older daughter Victoria -- a fact which was unknown to myself.

24. Ms. Hammond advised that she will ask the court on February 6, 2017 to enter a pre-trial no contact orders protecting both Princess and Victoria.

AH - XII O.G.S

1 25. Therefore, the State of Washington respectfully requests that this court amend the  
2 Shelter Care Order to suspend the father's visitation with all three of his children,  
3 given the totality of the facts and circumstances.

4 DATED this 30 day of January 2017.

5  
6 Ann Ann

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EXH. XII PG. 7



# Elensburg Police Department

## Detail Incident Report

Incident# E16-11564  
 Number:  
 Incident: CPS REFFERAL  
 Observed: CPS Referral  
 When Reported: 11:02:05 12/08/16

Area:  
 Location: 1708 N INDIANA DR  
 Occurred Between: 15:00:00 12/05/16  
 And: 08:00:00 12/07/16

### ARRESTEES:

1) Name: CHEESMAN, ROY H.  
 DOB: 01/06/1970 Race/Sex: W/M Height: 5'02"  
 Weight: 130 Hair: BLK Eyes: BRO  
 Address: 1708 N INDIANA DR  
 ELLENSBURG, WA 98926  
 Home Phone: (509)968-5072 Work Phone: ()-

### VICTIMS:

1) Name: CHEESMAN, IEHOA C.  
 DOB: 08/24/2002 Race/Sex: P/M  
 Address: 1708 N INDIANA DR  
 ELLENSBURG, WA 98926  
 Home Phone: (509)962-8925 Work Phone: ()-

2) Name: CHEESMAN, VICTORIA C.  
 DOB: 09/24/1999 Race/Sex: A/F  
 Address: 1708 N INDIANA DR  
 ELLENSBURG, WA 98926  
 Home Phone: ()- Work Phone: ()-

3) Name: CHEESMAN, LORDAMEN  
 DOB: 07/12/2011 Race/Sex: P/F  
 Address: 1708 N INDIANA DR  
 ELLENSBURG, WA 98926  
 Home Phone: ()- Work Phone: ()-

### MENTIONED IN REPORT:

1) Name: GRAF, JOHN T.  
 DOB: 08/15/1970 Race/Sex: W/M  
 Address: 200 S SAMPSON ST; LINCOLN ELEM  
 ELLENSBURG, WA 98926

*Handwritten signature and date: 01/09/17*

Home Phone: (509)899-0833 Work Phone: ()-

2) Name: HOLMES, LIZBETH M. Race/Sex: W/F  
 DOB: 02/19/1964  
 Address: 2603 MILLSTONE LOOP  
 ELLENSBURG, WA 98926

Home Phone: (509)312-5030 Work Phone: (509)925-8303

3) Name: ROSS, TIA L. Race/Sex: W/F  
 DOB: 11/22/1980  
 Address: 1100 E 2ND AVE  
 ELLENSBURG, WA 98926

Home Phone: (509)925-6800 Work Phone: ()-

4) Name: WILBANKS, NANCY L. Race/Sex: /  
 DOB: \*\*/\*\*/\*\*\*\*  
 Address: 561 STRANGE RD  
 ELLENSBURG, WA 98926

Home Phone: (509)929-2520 CELL Work Phone: ()-

NARRATIVE:

Name: MARGHEIM, JENNI  
PROBABLE CAUSE AFFIDAVIT  
ELLENSBURG POLICE DEPARTMENT

CASE #: E16-11564

BOOKING CHARGES:

REFERRED CHARGES: RCW 9A.36.140 ASSAULT OF A CHILD 3RD DEGREE

CITED & RELEASED:

SUSPECT: CHEESMAN, ROY (05/18/1973)

NARRATIVE:

On December 8, 2016 I received an intake from Child Protective Services. The intake advised the school counselor at Lincoln Elementary, Nancy Wilbanks had concern for 5 year old Lordamen Cheesman. Wilbanks said Lordamen was absent from school yesterday, 12/6 and she came to school on 12/7 with a bruised right eye that was swollen and purple in color. She also said the corner of her eye was red and Lordamen had told her teacher her dad, Roy Cheesman hit her and her sister, Victoria Cheesman. The intake also said the nurse looked at Lordamen's eye and provided an ice pack. Wilbanks then met with Lordamen and at first she told Wilbanks she was watching television, fell and hit a chair. When Wilbanks asked Lordamen about what she had told her teacher, Tia Ross, Lordamen told Wilbanks her dad got mad and hit her. Lordamen told Wilbanks Roy had hit her before in the back but this was the first time in the head. She told Wilbanks it hurt and that Roy also hit Victoria in the head above her ear. The intake also

*[Handwritten signature]* XVIII PG 2

mentioned Roy has yelled at school staff, he is argumentative and "combative" with staff and they described him as escalating quickly and being unreasonable.

I contacted CPS Investigator Tabitha Snyder who said she had contacted the school about interviewing Lordamen. I detailed to Lincoln Elementary and spoke with the principal John Graf. I was informed Lordamen had been at school on Monday (12/5), was absent on Tuesday (12/6) and came to school Wednesday (12/7) with a black eye. Graf told me they called it in to CPS intake however, Lordamen went home with Roy on Wednesday night. Graf then explained when Wilbanks brought Lordamen to her office on Wednesday he asked Lordamen something to the effect of "what happened to your eye" and she told him her dad got angry and hit her. Graf said he took approximately 3 photographs of Lordamen's eye. I was also informed Roy had already contacted the school because he wanted to know who had taken photographs of Lordamen.

I also spoke with Wilbanks who said she asked Lordamen what had happened to her eye and Lordamen first said she fell off a chair but then told her Roy got angry and hit her. She had also said her sister got in trouble and hit because she brought ice to Lordamen. The school secretary Lizbeth Holmes said she is the one who answered the phone when Roy called today. She said he wanted to know who had taken photographs of his daughter and made a comment about how whoever had the photographs was "masturbating to them". Holmes said she was extremely offended by the comment and Graf took over the phone conversation. Holmes also said Roy had told her he could "discipline his child however I want, she fell off a chair". Holmes said she found the statement odd because it was one sentence.

Lordamen was then brought down to the office. I introduced myself to Lordamen and she agreed to talk to me. I immediately observed the injury to Lordamen's right eye. Her eye appeared to be bruised on her eyelid as well as underneath her eye, but the bruise was healing as it was purple, and greenish yellow. The outside corner of her eye was red and her left upper eye lid near her eye lash also appeared raised and red. I asked Lordamen if it was ok I record our conversation and she agreed. I then began the recording device and confirmed with Lordamen it was okay I record our conversation. I went over the Child Interview Protocol Guidelines. Lordamen appeared to understand the instructions however, appeared shy when it came to the practice phase. She would pause for long periods of time and then look up at me as if she had forgotten the practice question. When I would repeat the question she would answer. Lordamen promised to tell me the truth. I then attempted to do a narrative event practice with Lordamen and found she was quiet and would answer a question when asked however, did not provide a great amount of detail. I asked Lordamen if she knew why I was there to talk to her and she said no.

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I then asked Lordamen about her eye and she tried to tell me about how she "flipped a chair". I asked Lordamen questions about how she flipped the chair and her answers did not make sense. She told me she was watching television and she fell asleep and she "bumped herself". When I asked her to tell me more about that she told me Roy hit her "sister one time" and her "two times" and then her sister helped her put ice on her eye. Lordamen told me Roy got upset with her and that is when he hit her. She described it as an open hand and she said he hit her in the head, above her ear and it caused pain. She said she was crying and he was upset because he wanted her to go bed. Lordamen seemed extremely hesitant to talk to me so I asked her if someone had told her not to talk to me and after a long pause and "um" and told me "I'm not sure". I then told her that someone had told me she said Roy hit her eye and she said she "forgot".

Lordamen said she hurt her eye in the living room. She told me she was watching television and the only other person in her living room was Roy. She said Roy was "reading on the computer". Lordamen told me she was sitting on her "princess chair" and she described it as a pink chair with stripes and a bow. She told me it was a comfortable chair and she had been watching "Dragontales". I asked her what happened after the show and she said Roy got mad at her because she wasn't "careful". I asked her what she was doing that she wasn't being careful and she told me she "flipped her chair". I asked her about flipping her chair and she told me she fell asleep. I asked her to tell me about how she flipped her chair and she was unable to provide me any further details. I asked Lordamen if she could show me how to flip a chair and she said her legs were "tired".

I also questioned Lordamen about how Victoria was hit and she said Roy hit Victoria with an open hand across her head. I also asked Lordamen if she was afraid to talk to me and she paused for approximately 20 seconds and then commented no. I again asked her about what she hit her eye on and she said she hit it on the chair by the table. I asked Lordamen if she liked Roy and she said yes. I asked Lordamen if she is ever afraid of Roy and she first went to say yes then said no. I then asked her if she is sometimes afraid of Roy and she told me yes, she said she is afraid of him when he yells at her. I asked her if Roy yelled at her one time or more than one time and she said more than one time. I then confronted Lordamen and asked her if she ever told anyone Roy hit her in the eye and she said "no". She also made a comment about how she "accidentally" hurt her eye but when asked how she said she "forgot".

It should be noted CPS Investigator Snyder then asked Lordamen about "flipping her chair" and Lordamen made a comment about how Roy had gotten mad at her. Lordamen later disclosed Roy had hit her in the head while she was sitting in

*[Handwritten signature: E.A. Williams B.G.Y.]*

the chair but before the chair flipped. When I asked her how the chair flipped she said Roy "flipped her chair". When she made the statement she demonstrated with her hand and had it palm up and quickly moved her fingers up when she said Roy flipped her chair. I asked Lordamen where she was when Roy flipped her chair and she said in her bedroom.

Before I ended my statement with Lordamen I asked her if everything we talked about was the truth and she told me she didn't know. I asked her if something we talked about wasn't the truth she again paused and then said "I don't know". I told Lordamen she would not be in trouble if she told me what wasn't the truth and she paused for about 50 seconds before she said "I forget". When I asked her if there was something we talked about that wasn't the truth and she said "yes". I then asked her what she is afraid of and she said "my dad", she said he yelled at her. She did not elaborate further. I then ended our conversation and the recording device. Her statement was later attached to the case file.

I then spoke to Lordamen's teacher Tia Ross. Ross told me Lordamen was absent on Tuesday and when she showed up to school on Wednesday she noticed a bruise on her eye. When Ross asked Lordamen what happened she first told her about falling asleep in a chair and that she hit the chair. Ross said she did not ask any other further questions. In the afternoon she said she asked Lordamen again what happened to her eye and she said "my dad hit me" and also hit her sister. Ross said Lordamen told her Roy felt bad and put medicine on it. Ross said she did not ask her any other questions. Ross provided a statement about what Lordamen told her and it was later attached to the case file.

I then contacted Detective Shull who was at Ellensburg High School with Victoria and Jehoa Cheesman, see Detective Shull's supplement.

Based on the above information, my observation of Lordamen's injury and her statement Roy had hit her, the fact Lordamen told three separate teacher's Roy hit her and caused her black eye, I took Lordamen into protective custody and signed her over to CPS Investigator Snyder. I filled out the appropriate paperwork and it was placed in the case file. Also based on my conversation with Detective Shull it was decided Victoria and Jehoa would also be placed into protective custody and custody of them was transferred to CPS Investigator Snyder.

I am referring this case to the prosecutor to be reviewed for the charge of Assault of a Child 3rd degree.

Also, it should be noted I photographed Lordamen's injury and later attached the



pictures to the case file. Graf also sent me the photographs he took and they were also attached to the case file.

I declare under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

NON-DISCLOSURE NAME(S):

Files Added

Distribution:

- District Court  Superior Court
- Anti-Crime  ASPEN
- Child Protective Services (CPS)  City Attorney
- City Prosecutor  CWU Student Affairs
- Detectives  DOC
- Juvenile Probation  Juvenile Prosecutor
- Liquor Control Board  Mental Health
- Misdemeanant Probation  Prosecutor
- WSP  7 Day Board
- Records Supervisor
- Officer: \_\_\_\_\_

Date: Thu Dec 08 16:23:39 PST 2016

Officer signature: \_\_\_\_\_

Approved by: \_\_\_\_\_

Officer name: J. Margheim

Badge #: 122

LOCATION: Ellensburg, Kittitas County, Washington

SUPPLEMENTAL NARRATIVE:

Name: SHULL, RYAN B

Date: 16:56:41 12/08/16

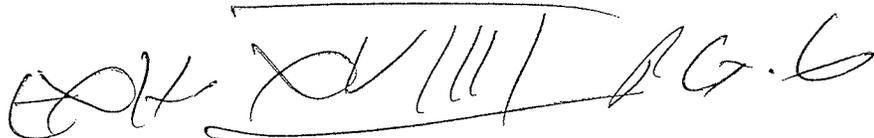
SUPPLEMENTAL REPORT

ELLENSBURG POLICE DEPARTMENT

CASE #: E16-11564

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JUN 15 2020

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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

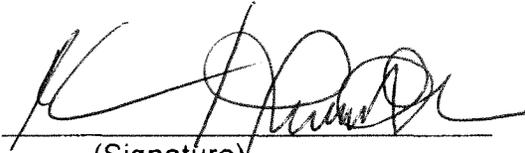
**CERTIFICATE OF SERVICE**

I certify that I mailed a copy of the foregoing Reply Brief  
to Jacob Brooks, Attorney for Appellee,  
at 1116 West Riverside Ave, Suite 100 Spokane, WA 99201 postage prepaid, on  
[date] June 11, 2020.

  
(Signature)

I certify (or declare) under penalty of perjury under the laws of the State of Washington  
that the foregoing is true and correct:

June 11, 2020 / ELLENSBURG, WA  
(Date and Place)

  
(Signature)