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Case No. 37149-2-III

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

GILBERTO CANTU, a single person,
Appellant,

v.

ADAMS COUNTY, et al.,
Respondent.

Appeal From An Order Of The Adams County Superior Court
Case No. 17-2-00259-7

APPELLANT REPLY BRIEF

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TABLE OF CONTENTS

Table of Authorities	ii
I. Appellant's Reply	1
II. Argument	1
III. Conclusion	3

TABLE OF AUTHORITIES

State Cases

<u>Beltran-Serrano v. City of Tacoma</u> 193 Wn.2d 537, 551, 442 P.3d 608, 615 (2019).....	2
<u>Chambers-Castanes v. King County</u> 100 Wn.2d 275, 669 P.2d 451 (1983).....	2
<u>Fleming v. Smith</u> 64 Wn.2d 181, 185, 390 P.2d 990 (1964).....	3
<u>Kok v. Tacoma School District No. 10</u> 179 Wn. App. 10, 17, 317 P.3d 481 (2013).....	3
<u>Mason v. Bitton</u> 85 Wn.2d 321, 534 P.2d 1360 (1975).....	2
<u>Washburn v. City of Federal Way</u> 178 Wn.2d 732, 310 P.3d 1275 (2013).....	2

Statutes

RCW 10.99.070	1
RCW 4.96.010	1, 2, 3

Court Rules

CR 56(c).....	3
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I. APPELLANT'S REPLY

The defense argued in Superior Court on September 30, 2019 that police have statutory immunity in making arrests based upon RCW 10.99.070 (Transcript of Proceedings 9/30/2019, p. 7). The Defense maintained police are immunized from liability "to protect society. That immunity applies here." The defense argued there was "common law police immunity."

In making the summary judgment ruling the Court granted summary judgment with the statement "Mr. Phelps, I saved you a lot of time and trouble. No Adams County jury is gonna bring you back a verdict after they see that video." The Court clearly applied an incorrect standard based upon his view of what an Adams County jury would do.

II. ARGUMENT

Defendant argues that the law enforcement officer avoids common law negligence because he was making an arrest. The defense maintains that "common law has immunized law enforcement personnel from liability." (Brief of Respondent p.9). The defendants do not address RCW 4.96.010 (1) which reads:

" All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to

perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.”

Claims of negligent law enforcement are not novel and Washington Courts have long recognized the potential for tort liability based upon negligent performance of law enforcement activity. Police agencies have been held liable for negligent service of a protection order. Washburn v. City of Federal Way, 178 Wn.2d 732, 310 P.3d 1275 (2013). In Chambers-Castanes v. King County, 100 Wn.2d 275, 669 P.2d 451 (1983) negligent failure to respond with police assistance in a timely manner. Police have been sued for negligent police vehicle chase. Mason v. Bitton, 85 Wn.2d 321, 534 P.2d 1360 (1975).

Contrary to the defense position that the police are immune from negligence in performing police activities. The Washington Supreme Court in Beltran-Serrano v. City of Tacoma, 193 Wn.2d 537, 551, 442 P.3d 608, 615 (2019) held that a city owes a duty to refrain from causing foreseeable harm in law enforcement interactions with individuals. Where the duty is grounded in common law between the officers and the individual it is properly pled. In Beltran-Serrano case Id. 193 Wn.2d 537, 543-544, 442 P.3d 611 (2019) the Court took notice that action at common

law are consistent with RCW 4.96.010 . In the Beltran-Serrano case Id. 193 Wn.2d 537, 543-544, 442 P.3d 611 (2019) the Court took notice that negligence actions at common law are consistent with RCW 4.96.010.

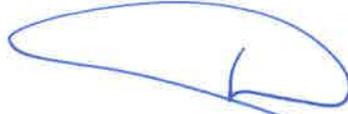
III. CONCLUSION

The defendant has attempted to complicate and avoid the issue which is that there are factual disputes “all facts are to be viewed in the light most favorable to the non-moving party.” Kok v. Tacoma School District No. 10, 179 Wn. App. 10, 17, 317 P.3d 481 (2013). At summary judgment the court must find there is “no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” CR 56(c).

In looking at the record before the court, summary judgment was improperly granted by the Adams County Superior Court. The trial court is not permitted to weigh the evidence or resolve any material fact issues in ruling on a motion for summary judgment. Fleming v. Smith, 64 Wn.2d 181, 185, 390 P.2d 990 (1964). Here the trial court applied the incorrect standard interpreting the facts including the definition of a motor vehicle in the light most favorable to the moving party, the defense.

The Plaintiff respectfully ask that the Adams County Superior Court’s grant of summary Judgment be reversed, and the matter be remanded to Superior Court for trial on the merits.

Respectfully submitted this 11th day of June, 2020.



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PROOF OF SERVICE

I, Sarah Thomas, declare as follows:

That I am over the age of eighteen (18) years, not a party to this action and make this declaration upon personal knowledge. I am employed as a Paralegal at Phelps & Associates, P.S., and in that role I caused to be served a true and correct copy of the Brief of Appellant to the following individuals in the manner indicated below, with costs prepaid:

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Respectfully submitted this 11th day of June, 2020.



Sarah Thomas, Paralegal

PHELPS & ASSOCIATES, P.S.

June 11, 2020 - 9:22 AM

Transmittal Information

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