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No. 95062-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON,

CESAR BELTRAN-SERRANO, an incapacitated person, individually,
and BIANCA BELTRAN as guardian *ad litem* of the person and estate of
CESAR BELTRAN-SERRANO,

Appellants,

v.

CITY OF TACOMA, a political subdivision of
the State of Washington,

Respondent.

BRIEF OF AMICI
WASHINGTON CITIES INSURANCE AUTHORITY, AND
WASHINGTON COUNTIES RISK POOL

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I. IDENTITY AND INTEREST OF AMICI

The Washington Cities Insurance Association (WCIA), is a municipal organization of public entities that joined together to provide liability and property financial protection to its members. Formed in 1981, with nine members as the first liability risk pool in Washington State, it has provided over 35 years' experience in comprehensive Risk Pool Coverages, Claims Administration, Financial Stability, and Risk Management Services. WCIA has grown to over 150 members. The Washington Counties Risk Pool (WCRP) is an association "Created by Counties for Counties" in 1988, to provide to member counties programs of joint self-insurance, joint purchasing of insurance and joint contracting for or hiring of personnel to provide risk management, claims handling and administrative services. The Pool presently consists of 26 of Washington's 39 counties. Altogether, its members employ approximately 12,500 employees. Combined, these two entities have over 175 police agencies in their pool. The issue of expanding liability for their members is of keen interest to them.

II. SUMMARY OF ARGUMENT

Amici urge this Court to reject Plaintiffs' request and affirm the Superior Court grant of summary judgment. Plaintiffs wish to fashion a wholly new cause of action for "negligent police shootings." Such a request

is conceptually flawed and without factual support, even if the law were to be changed. It is not supported by Washington law (all opinions on the issue are to the contrary), nor is it supported by out of jurisdiction cases.

Intent and negligence are regarded as mutually exclusive grounds for liability. As the saying goes, there is no such thing as a negligent battery.

1 DOBBS, LAW OF TORTS § 26 at 51 (2001) (quoted in *District of Columbia v. Chinn*, 839 A.2d 701, 706 (Ct. App. D.C. 2003)).

III. LEGAL ANALYSIS

The Court must be guided by Plaintiffs' specific assertions. They seek the creation of a new cause of action for *negligent intentional shooting*. "The Trial Court Erred in Failing to Discern a Negligence-Based Duty Not to Unreasonably Employ Deadly Force." *Brief Apts.*, at 14. And, "Beltran-Serrano asks this Court to confirm that a municipality employing a law enforcement officer and the officer owe a traditional negligence duty of care to a person with whom the officer interacts not to unreasonably employ deadly force." *Br. Apts.*, at 1.

Likewise, Plaintiffs' *Amended Complaint* asserts a single cause of action: "NEGLIGENCE – ASSAULT & BATTERY." CP 77 at ¶ 19. The *Complaint's* supporting allegation is the definition of a non-sequitur: "Defendant owes a duty to refrain from negligently engaging in harmful or offensive contact with a person, resulting from an act intended to cause the

plaintiff to suffer such harm or apprehension that such contact is imminent.”
Id. at ¶ 20. Under basic common law rules, proximate cause principles, and even their own out-of-state case law, Plaintiffs’ request is without merit.

Factually, Plaintiffs can point to no independent act of negligence that is distinct from the intentional shooting. This explains why Plaintiffs attempt to disguise the missing negligence element under the rubric of the “totality of the circumstances” leading up to the shooting -- none of the “circumstances” were negligent. An officer owes no tort duty to an at-risk person on a busy street to refrain from asking them questions about their behavior or safety; following them across the street, or not waiting for a second officer.

Thus, Plaintiffs do not possess the *facts* to assert their meritless legal claim. Even if this Court were inclined to consider creating a new tort, it should leave that task for another day. This case does not provide the factual vehicle to do so.

A. Basic Common Law Principles.

1. Intentional Acts Are Part of a “Wholly Different Legal Realm” Than Are Negligent Acts.

Plaintiffs’ conceptual misadventure seeks to amalgamate non-tortious pre-shooting investigative conduct with a final volitional act, with its denouement being the new tort of “negligent use of deadly force.” *Br.*

Apts., at 14. This request is inconsistent with basic tort law principles.

“[I]ntentional torts are part of a wholly different legal realm and are inapposite to the determination of fault...” *Price v. Kitsap Transit*, 125 Wn.2d 456, 464, 886 P.2d 556, 560 (1994) (citation omitted). *See also, St. Michelle v. Robinson*, 52 Wn. App. 309, 315–16, 759 P.2d 467 (1988) (“the abuse was an intentional act, and the resulting emotional distress was also intentionally inflicted as a matter of law. Therefore, St. Michelle cannot state a cause of action for the negligent infliction of emotional distress.”).

Here, it makes little sense to combine several acts which, in and of themselves were not negligent (approaching subject, attempting to speak to him following him across street, not waiting for backup), and then claim that these non-tortious acts caused a *volitional* act.

Significantly if this theory were to be accepted, the finder of fact would consider the comparative fault of the victim, and the fault other entities, including perhaps non-parties such as mental health providers who failed in the decedent’s mental health care. RCW 4.22.070.

2. Public Policy Discourages Creating Liability for Police Officers Based on Their *Investigatory* Actions.

Plaintiffs list several (non-tortious) investigatory actions by Officer Volk, *Br. Apts.*, at 2-3; *Reply Br.* at 3, 6-7, then complain that police investigatory actions are not actionable. However, this has been, and

remains, the policy of this state as announced by this Court and the Legislature. “Our judiciary also has a policy of discouraging these kinds of lawsuits [challenging investigatory tactics].”¹ “Recognizing this tendency [“that lawsuits against police officers tend to obstruct justice”], our Legislature has attempted to discourage lawsuits by enacting RCW 4.24.350, which allows law enforcement officers to counterclaim against those who institute malicious prosecution actions against them.” *Id.* at 267.

There has been no subsequent policy development to suggest that an officer, commendably engaging in her “community caretaking function,” *Reply Br.*, at 3, becomes liable for these actions.

3. State Law Qualified Immunity Only Applies to the Individual Employee.

Plaintiffs have only sued the employer, City of Tacoma. Their plain purpose is to avoid Officer Volk’s state law immunity by way of a pleading artifice. “[T]he grant of qualified personal immunity to parole officers does not apply with equal force to the State.” *Savage v. State*, 127 Wn.2d 434, 446, 899 P.2d 1270 (1995). *Contra*, *Creelman v. Svenning*, 67 Wn.2d 882, 885, 410 P.2d 606 (1966) (“The public policy which requires immunity for the prosecuting attorney, also requires immunity for both the state and the

¹ *Keates v. City of Vancouver*, 73 Wn. App. 257, 268, 869 P.2d 88, *rev. den.*, 124 Wn.2d 1026 (1994) (citing *Hanson v. City of Snohomish*, 121 Wn.2d 552, 852 P.2d 295 (1993); *and, Peasley v. Puget Sound Tug & Barge Co.*, 13 Wn.2d 485, 125 P.2d 681 (1942)).

county”).

Additionally, while Plaintiffs claim this immunity to be “robust,” the affirmative defense granted to individual police officers in some cases can be of small comfort. *See, Staats v. Brown*, 139 Wn.2d 757, 991 P.2d 615 (2000) (“An officer is entitled to state law qualified immunity where the officer (1) carries out a statutory duty, (2) according to procedures dictated to him by statute and superiors, and (3) acts reasonably.”). When the test for “immunity” is the same as the standard of the underlying tort (reasonableness), but adds two additional elements that the officer must prove, such protection might rightly be deemed “a gift box which contains sticks and ashes.”²

B. Washington Law Does Not Support Plaintiffs’ Theories.

1. The Cases Resolving This Issue Under Washington Law Are All Adverse to Plaintiffs’ Position.

As detailed in the parties’ briefing, the Washington federal courts – interpreting Washington common law -- have had no difficulty in rejecting Plaintiffs’ arguments, and have held that “plaintiffs may not base claims of negligence on alleged intentional actions, such as excessive force.” *See, e.g., Roufa v. Constantine*, 2017 WL 120601, at *11 (W.D. Wash. 2017);

² With apologies to Justice Guy. *Taggart v. State*, 118 Wn.2d 195, 236, 822 P.2d 243 (1992) (Guy, J., concurring in part, dissenting in part) (addressing an even “broader” immunity for parole officers, which does not include element 3 above).

Weitzman v. City of Seattle, 2016 WL 852749, at *7 (W.D. Wash.), *appeal dismissed* (2016); *Vargas Ramirez v. United States*, 93 F. Supp. 3d 1207, 1236 (W.D. Wash. 2015); *Lawson v. City of Seattle*, 2014 WL 1593350, at *13 (W.D. Wash. 2014); *Willard v. City of Everett*, 2013 U.S. Dist. LEXIS 126409 at *5 (W.D. Wash. 2013); *Nix v. Bauer*, 2007 WL 686506, at *4 (W.D. Wash. 2007); and, *Rengo v. Cobane*, 2013 WL 3294300, at *2 (W.D. Wash. 2013). Florida law is the same:

“An assault and battery is not negligence for such action is intentional, while negligence connotes an unintentional act.” Hence, we come to the inescapable conclusion that it is not possible to have a cause of action for “negligent” use of excessive force because there is no such thing as the “negligent” commission of an “intentional” tort.

City of Miami v. Sanders, 672 So. 2d 46, 47–48 (Fla. Dist. Ct. App. 1996).

2. Pre-Shooting Investigatory and Community Caretaking Actions Are Not Actionable.

Plaintiffs list a number of pre-shooting actions that they admit were performed under the “community caretaking function.” *Br. Apts.*, at 14; *Reply Br.*, at 3, 23. These are not tortious acts. These actions would fall under the category of non-criminal investigatory acts that we as a society want, and expect, our police officers to perform. Given the large populations of mentally ill and/or at risk persons on the streets, officers are expected to and must be given the latitude to make non-criminal contact with these individuals to inquire into their health and safety. Officers routinely enter

cars containing unresponsive persons, crawl through windows to check on missing grandparents, and approach people on the street who are in distress. Creating liability for these actions, because something goes wrong later, would influence officers to avoid these acts and being second guessed because after-the-fact it is argued that they could have done something differently when an unpredictable person refuses to pull their hands out of their sweatshirt, flashes a presumed weapon, runs towards them, or away from them into traffic.

This is not a result we want. “The community caretaking function exception recognizes that a person may encounter police officers in situations involving not only emergency aid, but also involving a routine check on health and safety. *** Considering the public's interest in having police officers perform community caretaking functions, ‘police officers must be able to approach citizens and permissively inquire as to whether they will answer questions.’ ” *State v. Kinzy*, 141 Wn.2d 373, 387–88, 5 P.3d 668 (2000) (citation omitted) (emphasis in original).

Officer Volk was not only *expected* to perform these actions, this Court and our courts of appeal have repeatedly held that such actions are not tortious. Negligent investigation claims “do not exist under common law in Washington.” *Ducote v. State, Dep't of Soc. & Health Servs.*, 167 Wn.2d 697, 702, 222 P.3d 785 (2009). “In general, a claim for negligent

investigation does not exist under the common law of Washington. That rule recognizes the chilling effect such claims would have on investigations.” *Pettis v. State*, 98 Wash.App. 553, 558, 990 P.2d 453 (1999). *See also, Dever v. Fowler*, 63 Wash.App. 35, 45, 816 P.2d 1237 (1991) (noting chilling effect of recognizing a cause of action for negligent investigation by police in arson case), *review denied*, 118 Wash.2d 1028 (1992); *Donaldson v. City of Seattle*, 65 Wn.App. 661, 671, 831 P.2d 1098 (1992) (no recognized tort of negligent investigation when police officers have no statutory duty to conduct follow-up investigations).

Officer Volk’s pre-shooting actions are non-tortious. As such, they could not be the proximate cause of any harm.

3. Plaintiffs Cannot Establish Proximate Cause.

A fundamental element that Plaintiffs cannot prove is whether non-tortious and non-volitional acts, that precede a volitional act, can be the proximate cause of the volitional act. Plaintiffs’ theory is not that the negligent act caused the harm, but rather that the negligent act caused *the volitional act* that then caused the harm. This is too attenuated.

An axiomatic principle of tort law is that *tortious conduct* must be the proximate cause of an injury. Non-actionable behavior does not create liability, no matter how much it might be criticized. Because Officer Volk’s pre-shooting conduct is not even alleged to have been independently

negligent, there can be no proximate cause.

One of Plaintiff's theories is that Officer Volk followed Mr. Beltran-Serrano across the street. "After determining the man did not understand her, and before Gutierrez arrived, Volk moved closer to him and interrogated him in English. The man became scared, confused, and attempted to get away from her." *Br. Apt.*, at 3. Excessive force suits often involve the allegation that an officer came too close to the subject, which caused some response necessitating the need for force. But attempting to communicate with someone who *may* not be a fluent English speaker is hardly negligence, nor can it be the proximate cause of an injury. (Beltran-Serrano shook his head "no" when asked -- in English -- whether he understood English. *Id.*) Whether or not she possessed probable cause to arrest, Officer Volk was fully entitled to follow an individual who might be committing a crime or in mental distress. Additionally, Plaintiffs' bizarre legal position would preclude officers from contacting criminal suspects when they claim to be "scared and confused."

4. Plaintiffs' Out-of-Jurisdiction Authority Does Not Support Their Position: *There is No Distinct Act of Negligence.*

Even assuming the existence of the new tort of "negligent use of intentional force," Plaintiffs do not possess the facts to support such a cause of action. They can point to no distinct act of pre-shooting negligence that

their out of state cases require.

Plaintiffs' cited cases do not support their position, and actually undermines it. The District of Columbia court has held that "negligence and battery claims, in order to go to the jury, must be separate and distinct from each other, even though related, and each of the two counts must be supported by the necessary evidence." *District of Columbia v. Chinn*, 839 A.2d 701, 707 (Ct. App. D.C. 2003). *Chinn* expressly stated that cases like Plaintiffs' are meritless:

There are cases where the plaintiff does not allege or prove a distinct negligence ground. Such claims will fail because the plaintiff does not articulate elements of a negligent action and may not bootstrap from the battery proof alone, as *one may not commit a negligent assault*.

Id., at 710-11 (citations omitted) (emphasis supplied).

The court continued, stating each of its prior cases "involves alternate scenarios in at least one of which a distinct act of negligence" existed. *Chinn*, 839 A.2d, at 711. The *Chinn* court dismissed the plaintiff's complaint for the same reason this Court should reject Plaintiffs' theory:

Chinn's complaint alleged that the defendants committed negligence by violating D.C. Code § 4-176 in using "unnecessary and wanton severity while arresting Plaintiff" and they "breached their duty as they were negligent in their excessive use of force" and "knowingly and maliciously acted in manner that would cause injury to Plaintiff's person." These allegations, like those in *Maddox*, *Sabir*, and *Tinker*, neither establish a claim separate and distinct from the alleged battery, nor demonstrate the essential elements of a negligence claim.

The allegations do not reflect negligence, but rather an intentional tort with a conclusory allegation of negligence.

Id. at 711. The other cited D.C. cases are likewise inapposite, as there was a distinct negligent act. *See, e.g., D.C. v. Downs*, 357 A.2d 857, 860 (D.C. 1976) (“The jury answered that Ramirez did not assault Downs in the sense of deliberately shooting him, but that he did act negligently”).

Prior D.C. cases are to the same effect:

Appellant's complaint described an injury received as a consequence of excessive force alleged to have been exercised by the arresting officers. There is no dispute that the physical contact was intentional, and such intentional contact constitutes battery. *[The allegations in the plaintiff's] amended complaint specify no negligent act, and fail to characterize the breach of duty which might have resulted in negligence liability.*

Maddox v. Bano, 422 A.2d 763, 764 (D.C. 1980) (emphasis supplied).

Florida law contains the same requirement. “[A] separate negligence claim based upon a distinct act of negligence may be brought against a police officer in conjunction with a claim for excessive use of force. Nevertheless, the negligence component must pertain to something other than the actual application of force during the course of the arrest.” *Sanders*, 672 So.2d at 48.

Plaintiffs also cite an Arizona court of appeals case that allowed a negligence claim to proceed. *Ryan v. Napier*, 406 P.3d 330, 334 (Ariz. Ct. App. 2017). However, the Arizona Supreme Court recently reversed this

holding. *Ryan v. Napier*, 425 P.3d 230 (Ariz. Aug. 23, 2018) (“We therefore disagree with the trial court that negligent use of intentionally inflicted force is a cognizable claim.”). This Court rejected the California line of cases cited by Plaintiffs’ here, and adopted the D.C. Court’s analysis in *Chinn*, *supra*.

In *LaBauve v. State*, 618 So. 2d 1187, 1190 (La. Ct. App. 1993), *writ denied*, 624 So. 2d 1235 (La. 1993). As with *Downs*, *supra*, there was a specific finding that the officer did not act intentionally, thus a distinct act of negligence existed. “The trial court did not find Trooper Pellerin intentionally hurt Mr. LaBauve.” *Id.*

Federal law supports this conclusion as well. The significant holding of the U.S. Supreme Court’s *Mendez v. Los Angeles*³ opinion for our purposes is its insistence upon a principled proximate cause analysis. The Court rejected the Court of Appeals’ reasoning because it was too “murky.” *There must be a tortious act that causes the harm; non-tortious pre-shooting conduct cannot create liability.* The Court required there to be a precursor actionable tort (there a constitutional violation⁴) that caused the

³ *County of Los Angeles, Calif. v. Mendez*, 137 S. Ct. 1539, 198 L. Ed. 2d 52 (2017), *vacating and remanding*, *Mendez v. Cty. of Los Angeles*, 815 F.3d 1178 (9th Cir. 2016).

⁴ “Overlaid on the law governing §1983 are common law tort principles. Thus, for a prisoner to succeed on a *constitutional tort claim*, in addition to the specific elements of his §1983 claim ... he must also establish duty, breach of duty, causation, and damages.” *Valladares v. Hubbard*, 2011 WL 1456167, at *2, *report and recommendation adopted*, 2011 WL 1429609 (C.D. Cal. 2011) (emphasis supplied).

ultimate harm:

The court reasoned that when officers make a “startling entry” by “barg[ing] into” a home “unannounced,” it is reasonably foreseeable that violence may result. But this appears to focus solely on the risks foreseeably associated with the failure to knock and announce, which could not serve as the basis for liability since the Court of Appeals concluded that the officers had qualified immunity on that claim. By contrast, the Court of Appeals did not *identify the foreseeable risks associated with the relevant constitutional violation* (the warrantless entry); nor did it explain how, on these facts, respondents' injuries were proximately caused by the warrantless entry. In other words, the Court of Appeals' proximate cause analysis, like the provocation rule, conflated distinct Fourth Amendment claims and required only a murky causal link between the warrantless entry and the injuries attributed to it.

137 S. Ct. at 1549 (citations omitted) (emphasis supplied).⁵ On remand, the Ninth Circuit revisited the facts and found a causal connection between a precursor violation of the Fourth Amendment (the illegal entry) and the shooting.⁶

Here, nothing Officer Volk did prior to the shooting could be, or is

⁵ For purposes of Section 1983, courts employ basic tort law proximate cause principles. “The Supreme Court has emphasized that §1983 “should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.” *Malley v. Briggs*, 475 U.S. 335, 344 n. 7, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986) (quoting *Monroe v. Pape*, 365 U.S. 167, 187, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961)). “Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct,” and the analysis is designed to “preclude liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity.” *Paroline v. United States*, — U.S. —, 134 S.Ct. 1710, 1719 (2014) (citations omitted).” *Mendez*, 815 F.3d at 1194.

⁶ *Mendez v. Cty. of Los Angeles*, 2018 WL 3595921, *5 (9th Cir. 2018), *on remand from Cty. of Los Angeles, Calif. v. Mendez*, 137 S. Ct. 1539, 198 L. Ed. 2d 52 (2017), *vacating and remanding, Mendez v. Cty. of Los Angeles*, 815 F.3d 1178 (9th Cir. 2016).

even alleged to be, tortious. (Plaintiffs claim that Officer Volk had no probable cause to arrest the subject, but she never arrested him.) Plaintiffs simply compile a list non-actionable violations of police procedure and claim they “caused” a volitional tort. *Mendez*, using the same essential principles of proximate cause that apply here, clearly rejected that position.

5. The California *Hayes* Decision Never Reached the Question of Duty.

Plaintiffs rely heavily on a California Supreme Court opinion. There, the Ninth Circuit certified a question to the California Supreme Court, but the state court so significantly altered it as to render its conclusion of little use for our purposes. The federal court was concerned with the *existence of a duty*. The state court refused to answer it, instead substituting its own very different question:

The Ninth Circuit's phrasing of the issue focuses in isolation on events that preceded the shooting of Shane (“preparing, approaching, and performing a welfare check on [a suicidal person]”), not on the shooting itself. Thus, it implicitly divides the encounter with Shane into two parts, suggesting that defendants here might have breached two separate duties [to prepare and approach the subject, and to use reasonable deadly force].

Hayes v. Cty. of San Diego, 305 P.3d 252, 256 (Cal. 2013). This is the precise question at issue in the District of Columbia, Arizona and Florida cases.

Unfortunately, the *Hayes* court failed to even discuss the question

of duty, altering the question certified to it as one of “indivisible injury.”

Here, however, the only injury plaintiff alleged is the loss of her father; she did not allege an additional injury as a result of the conduct of law enforcement personnel preceding her father's shooting. Therefore, this case involves only a single indivisible cause of action, seeking recovery for a single wrong—the shooting itself.

Id.

This allowed the California court to deftly avoid the issue of duty, which it had suggested was without basis: “The first duty would be to prepare, approach, and perform a welfare check on a suicidal person in a reasonable manner, *a duty that may or may not exist.*” *Id.* (emphasis supplied). The court clearly stated that it had not addressed this issue. “[T]his case does not raise the question of what independent duty, if any, law enforcement personnel owe with regard to their preshooting conduct, and we have no reason here to decide that question.” *Id.* Thus, *Hayes* provides no support for the proposition that such a duty exists.

6. Assault and Battery Require Specific Intent

Plaintiffs confuse the elements of the tort of battery with those of the affirmative defense of “privilege.” There is no dispute that Officer Volk committed a battery; she admits to doing so deliberately. The issue is self-defense.

Once again, basic tort principles preclude grafting negligence onto intentional torts. Assault requires a specific intent to commit the tort. The

criminal courts have dealt with this issue frequently because the statute contains no definition. “Because ‘assault’ is not defined in the statute, courts resort to the common law for definitions.” *State v. Byrd*, 125 Wn.2d 707, 712, 887 P.2d 396, 399 (1995). “[S]pecific intent is an essential element of assault in the second degree. Specific intent means intent to produce a specific result, as opposed to intent to perform the physical act that produces the result.” *State v. Burton*, 2017 WL 5195175, at *8–9 (Wash. Ct. App. 2017), *review denied*, 190 Wn.2d 1010, 414 P.3d 581 (2018).

The defense to a battery is self-defense, which is cabined to the facts surrounding the ultimate act. “A factfinder evaluates self-defense from the defendant's point of view as conditions appeared to him at the time of the act.” *State v. Allery*, 101 Wn.2d 591, 594, 682 P.2d 312 (1984).⁷

Evidence of self-defense is evaluated “from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees.” This standard incorporates both objective and subjective elements. The subjective portion requires the jury to stand in the shoes of the defendant and consider all the facts and circumstances known to him or her; the objective portion requires the jury to use this information to determine what a reasonably prudent person similarly situated would have done.

State v. Walden, 131 Wn.2d 469, 473–74, 932 P.2d 1237 (1997).

As further protection for victims of violence, the law does not accept

⁷ The scope of this inquiry can be broadened to include “the circumstances known to the slayer ... prior to the incident,” if the assailant has knowledge of the injured party’s “history of violence.” *Allery, supra* (allowing battered woman syndrome evidence as a defense).

self-defense if the assailant deliberately provokes a fight just to enable the use of deadly force. *See, Model Penal Code* § 3.04(2)(b)(i), Use of Force in Self-Protection (use of deadly force is not justifiable if “the actor, with the purpose of causing death or serious bodily injury, provoked the use of force against himself in the same encounter”); *State v. Hawkins*, 563 A.2d 745, 749 (Ct. App. Conn. 1989) (provocation exception to the right to use force in self-defense “carries with it the requirement that the actor act with the specific intent to elicit the use of physical force by another person in order to cause physical injury or death to that person by, for example, retaliating with force against that person”).⁸

IV. CONCLUSION

In sum, Plaintiffs’ request is conceptually flawed, and without a factual basis even it were supported by law. The trial court should be affirmed.

Respectfully submitted this 28th day of September 2018.

KEATING, BUCKLIN & McCORMACK,
INC., P.S.

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⁸ Of course, the Felony Defense would bar any action where the decedent “was engaged in the commission of a felony at the time of the occurrence causing the injury or death”. RCW 4.24.420.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO,

Appellants,

v.

CITY OF TACOMA, a political subdivision of the State of Washington,

Respondent.

No. 95062-8

DECLARATION OF SERVICE

I declare that I am over the age of 18 and am a legal assistant at the law office of Keating, Bucklin & McCormack, Inc. P.S. I further declare that on the below date, a true and correct copy of the foregoing was sent to the following parties of record via method indicated: E-Service/E-Mail.

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