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NO. 97583-3

**SUPREME COURT OF THE
STATE OF WASHINGTON**

KATHLEEN MANCINI, Petitioner

v.

CITY OF TACOMA, ET AL., Respondent

**AMICI CURIAE
WASHINGTON STATE ASSOCIATION OF COUNTIES,
WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE
CHIEFS, AND WASHINGTON STATE ASSOCIATION OF
MUNICIPAL ATTORNEYS**

GREG ZEMPEL
Kittitas County
Prosecuting Attorney

MARY E. ROBNETT
Pierce County
Prosecuting Attorney

CITY ATTORNEY'S
OFFICE
VANCOUVER,
WASH.

By
DOUGLAS R.
MITCHELL
Deputy Prosecuting
Attorney
WSBA 22877

By
DANIEL R.
HAMILTON
Deputy Prosecuting
Attorney
WSBA 14658

By
DANIEL G. LLOYD
Assistant City
Attorney
WSBA 34221

205 W 5th Ave
Suite 213
Ellensburg, WA
98926-2887
PH: (509) 962-7520

955 Tacoma Ave
Suite 301
Tacoma, WA 98402
PH: (253) 798-7746

PO Box 1995
Vancouver, WA
98668-1995
PH: (360) 487-8500

*Attorney for WSAC &
WASPC*

*Attorney for WSAC &
WASPC*

Attorney for WSAMA

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I. INTRODUCTION

Amici Curiae Washington State Association of Counties, Washington Association of Sheriffs and Police Chiefs, and Washington State Association of Municipal Attorneys, believe the Court of Appeals' decision in this action concerning the execution of a lawful warrant reflected well settled precedent and public policy. In contrast, the position on appeal taken by Petitioner Kathleen Mancini and her amici would overturn long established Washington and Federal law contrary to *stare decisis*, fundamentally harm the public interest and impose unprecedented and unworkable burdens on law enforcement when executing a warrant.

II. INTEREST OF AMICI CURIAE

The identity and interest of these Amici Curiae, as required by RAP 10.3(e), are set forth in detail in their motion for leave to submit this brief.

III. ARGUMENT

Mancini asserts the Court of Appeals erred because it should have held the Tacoma Police Department was negligent in: 1) its investigation prior to entering her apartment under a valid search warrant; and 2) failing to release her immediately after its entry. *See e.g.* P's Supp. Br. 19-20. Because the decision to continue Mancini's detention after entry was an intentional act and the jury rejected that claim, CP 526-28, these Amici address only her claim of police negligence prior to entering the apartment.

A. CONSTITUTIONAL LAW REJECTS NEGLIGENCE TEST

Mancini's argument mistakenly alleges: "If Tacoma police had serendipitously found that Mancini had committed a different crime, the exclusionary rule would have vindicated her rights in a criminal case," and that this supposed "incongruity in the law should not stand" because "government liability for negligence here would encourage constitutional policing." P's Supp. Br. 5, 13-15. In fact, binding constitutional precedent contains no such incongruity and for good reason rejects any negligence test.

On well-established public policy grounds and for logical consistency in guiding both law enforcement and the judiciary, the standard for lawful entry *is* – and must *remain* -- the same for both criminal and civil matters.

1. Warrant Issued on Probable Cause is the Test for a Lawful Entry

Under the Fourth Amendment, an intrusion onto property to conduct a search is lawful where it is authorized by a court issued warrant based "upon probable cause." *See* U.S. Const. amend. IV. Likewise, the test for a lawful intrusion into property under Article I §7 of our State Constitution is "whether a search has 'authority of law' -- in other words, a warrant." *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 306, 178 P.3d 995 (2008). Probable cause for such a warrant exists where there are "facts sufficient to allow a reasonable person to conclude there is a probability

that the defendant is involved in criminal activity and evidence of that activity will be found at the place to be searched.” *State v. Ross*, 141 Wn.2d 304, 315, 4 P.3d 130 (2000). “It is only the *probability* of criminal activity and not a *prima facie* showing of it which govern the standard of probable cause.” *See State v. Seagull*, 95 Wn.2d 898, 906-907, 632 P.2d 44 (1981).

Here, it is undisputed that on January 4, 2011, the Pierce County Superior Court issued a valid controlled substance warrant for Kathleen Mancini’s residence. *See* Exhibit 103 (Complaint for Search Warrant, Apt. B-1); Exhibit 104 (Search Warrant, Apt. B-1). The warrant was based upon information provided by a reliable, proven confidential informant (CI) who had seen evidence consistent with drug dealing (i.e. methamphetamine, scales and packaging material in the suspect’s apartment), who had told police that the suspect did not have anything in his name and his mother rented the apartment for him, and whose information had been vetted by police. *Id. See also* RP 48:15-24 (prior use of CI); RP 42:10-22 (information from CI); RP 57:6- 18 (timing of information and warrant); RP 252:10 – RP 254:23 (information from CI). Mancini has made no showing these submissions failed to support “probable cause” for the warrant.

A “search warrant is invalid only if the warrant affiant *recklessly or intentionally* makes material misstatements or omissions” and thus “only material falsehoods or omissions made *recklessly or intentionally* will in-

validate a search warrant.” *State v. Chenoweth*, 160 Wn.2d 454, 478-9, 158 P.3d 595 (2007) (emphasis added). Mancini has made no showing that any officer “recklessly or intentionally ma[de] material misstatements or omissions.” Thus, the police entry at issue was lawful as a matter of law. Indeed, such appears was the finding of the jury which was specifically and properly instructed that to succeed on that issue Plaintiff had to prove the warrant was obtained by “knowingly withhold[ing] material information or misrepresent[ing] the facts in order to obtain the warrant.” CP 519 (Inst. # 16), 527 (jury verdict finding no invasion of privacy). *See also* Tacoma Resp. to Pet. for Disc. Rev. at 13-19; Tacoma Supp. Br. 14-17.

2. Negligence Has Been Rejected As a Challenge to a Search Warrant

This Court’s precedent, and that of the United States Supreme Court, clearly hold that a negligence standard is not appropriate in determining a search warrant’s validity. In *State v. Seagull*, this Court quoted and followed the principle stated in *Franks v. Delaware*, 438 U.S. 154, 177 (1978) that “[a]llegations of *negligence* or innocent mistake are *insufficient*” to invalidate a search warrant. *See* 95 Wn.2d at 908 (*citing also United States v. Carmichael*, 489 F.2d 983, 989 (7th Cir. 1973) (“If an agent reasonably believes facts which on their face indicate that a crime has probably been committed, then *even if mistaken*, he has probable cause to believe that a crime has been committed.”) (emphasis added); *State v.*

Goodlow, 11 Wn. App. 533, 523 P.2d 1204 (1974) (evidence that “an undisclosed informant to the affiant police officer was false or materially inaccurate” was properly disallowed because an “affidavit need only establish probable cause” since it “is only the *probability* of criminal activity ... which represents the standard of probable cause.”) (*citing State v. Patterson*, 83 Wn.2d 49, 55, 515 P.2d 496 (1973)). *See also Chenoweth*, 160 Wn.2d at 473 (holding “*Franks* rationale for adopting a *recklessness* standard applies as well to our statutory requirements for a search warrant as to the warrant clause.”)

As this Court later explained, the reason for this rule is that a “negligence standard goes too far in requiring police to assure the accuracy of the information presented and is inconsistent with the concept of probable cause, which requires not certainty but only sufficient facts and circumstances to justify a reasonable belief that evidence of criminal activity will be found.” *Chenoweth*, 160 Wn.2d at 475–76. As a practical matter, a negligence standard for a search “poses a catch–22 situation for police: requiring police to thoroughly investigate the accuracy of an affidavit, a feat impossible to do without a warrant.” *Id.* at 476 (*citing State v. Glenn*, 251 Conn. 567, 576, 740 A.2d 856 (1999)). Indeed, “a negligence standard would threaten to turn the exception into the rule, shifting focus from whether the magistrate could reasonably find probable cause based on

facts known at the time to whether the police conducted a *reasonably thorough investigation* before applying for a search warrant.” *Id.* at 476–77 (emphasis added). This “[s]hifting focus from the reasonableness of the magistrate's probable cause determination to the *reasonableness of the affiant's investigation* would *permit an end run around* the deliberately differential standard of review that a reviewing court applies to search warrants.” *Id.* at 476 (emphasis added).

The proposed negligence standard is unnecessary since “an independent magistrate provides constitutionally adequate protection from negligent or inadvertent errors.” *Id.* at 471-72. As this Court recognized:

Warrants may be and frequently are sought by police officers *under conditions of the utmost urgency with little time or opportunity* for consultation with counsel. Supporting documents may have been hurriedly drafted by laymen while in the *crucial phase of an investigation under the urgent necessity of obtaining the evidence before it is removed or destroyed*. Thus, in order to *preserve the evidence from imminent destruction, or obviate an impending crime, or to prevent further criminal activity, circumstances may demand that the application for a search warrant be presented* to a judicial officer at late and unusual hours without counsel or prior consultation with counsel. The constitutional provisions against unlawful searches and seizures are not designed to discourage police and investigative officers from seeking the assessment of independent judicial officers, nor to compel the police to take counsel with them at all stages of their investigations. Rather, it is the design of the constitutions to encourage investigating officers to seek the intervention of judicial officers, to require whenever and wherever it is reasonably feasible that the existence or want of probable cause to enter and search a householder's domicile be decided *prima facie* by a judicial officer and not by officers of the executive branch.... In essence, if in the

considered judgment of the judicial officer there has been made an adequate showing under oath of circumstances going beyond suspicion and mere personal belief that criminal acts have taken place and that evidence thereof will be found in the premises to be searched, the warrant should be held good.

State v. Patterson, 83 Wn.2d 49, 57-58, 515 P.2d 496 (1973). Thus, this Court has expressly held the negligence standard is “unworkable” in the context of a search authorized by a warrant because it is “inherently inconsistent with the concept of probable cause and the warrant process.”

Chenoweth, 160 Wn.2d at 475 (citations omitted).

Mancini therefore is clearly mistaken: there is no “incongruity in the law” between criminal procedure and tort law because – for legal, practical and policy reasons -- *both* reject any relevance as to whether police investigations meet a negligence standard of care.

B. NO BREACH OF A COMMON LAW DUTY IS SHOWN

1. Negligent Investigation Claim is Not Recognized at Common Law

Mancini next argues the “threshold question” in this appeal is whether her negligence claim is “based on an independent common law duty that applies equally to a private person or corporation” because “[i]f a ‘comparable’ or ‘analogous’ situation in the private sphere would result in a tort duty, then a duty arises for the government entity too.” Pet’s Supp. Br. 11. However, for many of the same reasons noted above in the constitutional context, precedent is clear there also is no independent duty under the

common law to investigate in *either* the governmental *or* private sphere and that “negligent investigation” is not a cause of action recognized by Washington common law. *See e.g., Ducote v. Dep’t of Soc. & Health Servs.*, 167 Wn.2d 697, 702, 222 P.3d 785 (2009) (“claims [for negligent investigation ... do not exist under common law in Washington”); *M.W. v. Dep’t of Soc. & Health Servs.*, 149 Wn.2d 589, 601, 70 P.3d 954 (2003) (same); *Rodriguez v. Perez*, 99 Wn. App. 439, 434, 994 P.2d 874 (2000) (same); *Pettis v. State*, 98 Wn. App. 553, 558, 990 P.2d 453 (1999) (same); *Bounchanh v. WA State Health Care Auth.*, 2019 WL 6052405, at *5 (W.D. Wash. 2019)(claims “for negligent investigation, are also fatally flawed because that is not a viable cause of action.”)

This is so in the governmental context since such claims would “impair vigorous prosecution and have a chilling effect upon law enforcement.” *Dever v. Fowler*, 63 Wn. App. 35, 45, 816 P.2d 1237 (1991), *rev. denied*, 118 Wn.2d 1028 (1992); *see also Stansfield v. Douglas Cty.*, 107 Wn.App. 1, 12–13, 27 P.3d 205 (2001); *Corbally v. Kennewick Sch. Dist.*, 94 Wn. App. 736, 740, 973 P.2d 1074 (1999). Since the “public has a vital stake in the active investigation and prosecution of crime,” courts recognize:

Police officers and other investigative agents must make quick and important decisions *as to the course an investigation shall take*. Their judgment will not always be right; but to assure continued vigorous police work, those charged with that duty should not be liable for mere negligence.

Smith v. State, 324 N.W.2d 299, 301 (Iowa 1982)(*cited in Dever*, 63 Wn.App. at 45)(emphasis added). Imposing a duty to investigate:

... would be completely open-ended as to priority, duration and intensity. Would it entail ignoring other calls for a domestic violence response, ignoring other reported crimes, ignoring response to a report of an injury traffic accident? How long does such duty continue? Merely to state such obvious practical problems is to demonstrate the extraordinary difficulty that would follow in attempting to implement any such mandatory duty

Donaldson v. City of Seattle, 65 Wn.App. 661, 671–72, 831 P.2d 1098 (1992), opinion corrected (July 1, 1992).

This absence of a common law cause of action for negligent investigation equally applies to the private sphere. Recognizing that in our state there is no “cause of action for negligent investigation in the context of an allegedly defective prosecutorial investigation of an arson,” precedent also holds “that tort liability for negligent investigation is *equally inappropriate*” in the private context. *See Lambert v. Morehouse*, 68 Wn. App. 500, 505, 843 P.2d 1116 (1993) (no negligent investigation claim available in private employment action) (*citing Dever, supra*)(emphasis added). *See also e.g. Russ v. State Employees Fed. Credit Union*, 298 A.D.2d 791, 750 N.Y.S.2d 658 (N.Y. App. Div. 2002) (Credit union which reported suspected theft to police could not be held liable to subsequently acquitted suspect because

negligent investigation is not actionable claim); *Bui v. St. Paul Mercury Ins. Co.*, 981 F.2d 209, 210 (5th Cir. 1993) (action for insurance company “negligently investigat[ing] their claim” was dismissed because it “was not a party to the contract and, ... owed no duty to [plaintiffs] under Texas law.”) In that local governments can only be “liable... *to the same extent* as if they were a private person or corporation,” RCW 4.96.010 (emphasis added), and because a negligent investigation suit is not available against private corporations, even under Mancini’s theory the absence of a common law negligent investigation claim in the private sphere precludes any common law negligent investigation suit in the governmental sphere.

To this end, noticeably absent from Mancini’s, WSAJ’s and the ACLU’s briefing is any discussion of *stare decisis*, which mandates adherence to precedent unless the prior decision “‘has been shown to be incorrect and harmful,’” or “‘the legal underpinnings of our precedent have changed or disappeared altogether.’” *Deggs v. Asbestos Corp.*, 186 Wn.2d 716, 730, 381 P.3d 32 (2016) (quoting *W.G. Clark Constr. Co. v. P. NW Reg’l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014)). *Deggs* is instructive on the high burden borne by those who seek to upend precedent. At issue there was whether the Court should abandon three decisions that barred wrongful death

claims from proceeding “if the statute of limitations on the underlying injury had run before the decedent died.” *Id.* at 724. The Court acknowledged the petitioners’ “fairly persuasive argument that [the Court’s] precedents were incorrect at the time they were announced,” but refused to overrule them because the petitioner there did “not show[] that they [we]re harmful.” *Id.* at 728. The Court pointed to “the legislature’s lack of response” as “add[ing] weight to the conclusion that [the prior decisions] have not been harmful,” even if the prior cases were incorrectly decided. *Id.* at 729. That same rationale applies here. This Court has long rejected a generalized duty to investigate under the common law. *E.g., Ducote*, 167 Wn.2d at 702. That line of authority, which recognizes an actionable duty of care only in the “limited” context of RCW 26.44.050, bases its reasoning on the *absence* of a common law duty. *M.W.*, 149 Wn.2d at 601. Recognizing a common law duty to investigate here demands a showing that this Court’s past precedent rejecting such a duty is both “incorrect and harmful,” a showing neither Mancini nor her supporting *amici* has attempted. *Deggs*, 186 Wn.2d at 730. This Court should decline Mancini’s invitation to abandon its long settled precedent.

2. Absence of Recognized Action Not Avoided by Recharacterizing it

To avoid the fact her suit alleges a cause of action rejected by our

state's overwhelming precedent, Mancini attempts to characterize her claim for the investigation prior to entry of her apartment as simply coming under general negligence principles. Thus, she argues police should be liable for an alleged negligent investigation because under common law there can be liability where one chooses to take an "affirmative act" and fails to perform it reasonably. *See* Pet. For Disc. Rev. 8-9. She likewise argues her claim for negligence prior to police executing the search warrant is proper because under *Brutsche v. City of Kent*, 164 Wn.2d 664, 679, 193 P.3d 110 (2008) and Restatement (Second) of Torts § 214 cmt. a, the "privilege to enter land may be unreasonably exercised ... by any negligence in the *manner in which the privilege is exercised.*" *See P's Supp. Br.* 16 (emphasis added).¹

First, however, Mancini's claim was not for an alleged *affirmative unreasonable act* taken *while police entered* pursuant to a warrant, nor for "*the manner in which the privilege [was] exercised*" under the

¹ Mancini summarily makes a convoluted argument that, though *Brutsche* did not find negligence: a) it did address trespass; b) in doing so it approved of Restatement (Second) of Torts § 214; c) comment "a" to § 214(1) states "[a] privilege to enter land may be unreasonably exercised ... by any negligence in the manner in which the privilege is exercised," *id.*, cmt. a; and d) a negligence claim is functionally identical "to a trespass claim under § 214(1) based on negligence." Pet.'s Supp. Br. 16-17 (citing Restatement (Second) of Torts § 497). However, Mancini neither pleaded nor argued a trespass claim to the jury. CP 4-8; Tacoma's Reply Br. 12-18. Further, a plaintiff "may not use a cause of action for negligence to circumvent the stricter requirements of" an intentional tort claim. *See Rengo v. Cobane*, 2013 WL 3294300, at *5 (W.D. Wash. 2013). *See also Eastwood v. Cascade Broadcasting Co.*, 106 Wn.2d 466, 469-474, 722 P. 2d 1295 (1986) ("Where a given set of facts gives rise to a defamation cause of action, it cannot be recharacterized as a false light invasion of privacy cause of action")

warrant. Rather, she plead and tried her case on the claim that police were liable in negligence for *not taking* the *affirmative act* of *investigating* more *before* they exercised the privilege to enter as authorized by the warrant. *See* CP 2-8; Tacoma’s Reply 12-18 (record citations).

Second, police are not liable *even when they do take negligent affirmative acts* if they do so pursuant to a statutory duty that is owed to all and not owed to a specific individual.² *See e.g. Stansfield*, 107 Wn. App. at 13 (affirming dismissal of claim that state “was negligent in *carrying out its statutory duties*” because “liability may not be imposed on the State for the *negligent conduct* of a public official unless the duty breached is owed to a particular individual rather than to the public as a whole”)(emphasis added). Further, in *Brutsche* this Court actually holds a claim for damages resulting from “law enforcement officers using [force] to gain entry” into a home pursuant to a warrant *does not to state a negligence claim* “because the actions of the officers in breaching the doors on [plaintiff’s] property were *intentional, not accidental* ...” 164 Wn.2d at 679 (explaining why this Court “decline[d] to address the negligence claim.”)(emphasis added). *See also*

² RCW 35.22.280 provides in pertinent part: “Any city of the first class shall have power:...(35) To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city.”)

Torre v. City of Renton, 164 F. Supp.3d 1275, 1285 (W.D. Wash. 2016)(holding that *Brutsche* did not support a negligence suit for entry under a warrant but “held that a plaintiff may not bring a negligence claim against police officers for damage” resulting from a lawful entry because “according to the Supreme Court of Washington, courts should treat claims like Plaintiff’s as trespass claims and not as negligence claims.”)

Third, none of the policies advanced by rejecting claims for negligent investigation disappear if the investigation is characterized instead by using terms relating to broad general principles of negligence. Indeed, it “would distort the balance between society and the individual if we were to allow plaintiffs to bypass the threshold requirement” for intentional torts by “bringing a cause of action for *negligent*” acts instead because it still “would have a chilling effect on police investigation and would give rise to potentially unlimited liability for any type of police activity.” *Keates v. City of Vancouver*, 73 Wn. App. 257, 269, 869 P.2d 88, 94 (1994) (citing *Dever*, 63 Wn. App. at 44–45) (emphasis added)). Thus, in *Stansfield*, 107 Wn. App. at 12–13, a plaintiff’s claim “that a distinction exists between *negligent investigation* and the allegations that the State Lab was negligent in carrying out its statutory duties” was rejected because there is “no

authority for this proposition.” *See also Schulz v. State*, ___ Wn.App. 2d ___, 2020 WL 1268991, at *7 (2020) (in suit alleging “DNR was negligent in its efforts to suppress” fires “the public duty doctrine applies” so dismissal was required, and a “plaintiff cannot avoid that result by alleging that such action was taken in DNR’s capacity as a landowner”); *Boose v. City of Rochester*, 71 A.D.2d 59, 62, 421 N.Y.S.2d 740, 744 (N.Y. App. Div. 1979) (“the jury in this trial was asked to decide in essence, whether the police had been negligent in their preparation of plaintiff’s assault case” and “Plaintiff may not recover under broad general principles of negligence, ... but must proceed by way of the traditional remedies of false arrest and imprisonment”)(cited with approval by *Keates*, 73 Wn. App. at 267).

3. Mancini’s Reliance on Irrelevant Selected Cases is Misplaced

Though Mancini admits “this Court has not expressly recognized a duty of reasonable care in these circumstances,” she asserts *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 442 P.3d 608 (2019), *Bender v. City of Seattle*, 99 Wn.2d 582, 664 P.2d 492 (1983), and *Turngren v. King County*, 104 Wn.2d 293, 705 P.2d 258 (1985), somehow “suggest that police have a duty of reasonable care leading up to the act of breaking down the door to a private home.” P’s Supp. Br. 15-16. However, she does not explain how this is so, and an examination of those cases prove otherwise.

In passing, Mancini cites *Beltran*'s statement that "the City owes a duty to refrain from causing foreseeable harm *in the course of law enforcement interactions* with individuals." See P's Supp. Br. 15 (quoting 193 Wn.2d at 552)(emphasis added). However, *Beltran* did not announce a duty of care before "breaking down the door to a private home" under a search warrant, but concerned an attempt that went awry to assist a mentally ill homeless man on the street. More importantly, here the act alleged to be negligent did not occur "*in the course of law enforcement interactions*" with plaintiff as in *Beltran*, but concerns an investigation long *prior* to any *interaction* with Mancini. CP 2-8. The facts underlying the analysis in *Beltran* were those assumed to be true for the purpose of reviewing a dismissal on summary judgment. See *Beltran*, 193 Wn.2d at 537, 540. The facts here are those developed after a full trial, and the jury did in fact reject all of the intentional tort claims that were actually based on the interaction with Ms. Mancini. CP 526-529. Moreover, the Court went to great lengths to ensure its holding was consistent with "well-established negligence principles." *Beltran*, 193 Wn.2d at 540. This is not something Mancini can do, as her argument would upend decades of precedent rejecting negligent investigation as a common law tort. See *supra*.

As to *Bender*, Mancini alleges it held "municipalities are not *immune* from liability for *civil claims* based on a careless police investigation." P's

Supp. Br. 16 (emphasis added). However, even she admits the only “civil claims” alleged in *Bender* were the intentional torts of “malicious prosecution, false arrest, libel and slander” – not a breach of a “duty of reasonable care.” *Id.* Further, the rejection of “immunity” for *intentional torts* has no relevance to the well settled rejection of *negligent investigation* as a cognizable cause of action. Indeed, as later noted in *Dever v. Fowler*, 63 Wn. App. at 44–45, the “argument that *Bender* created a cause of action for *negligent investigation* is meritless” because *Bender* simply “overruled portions of two Court of Appeals decisions that *extended the doctrine of discretionary governmental immunity to public officers performing their duties.*” (citing 99 Wn.2d at 589–90)(emphasis added).

Finally, as to *Turngren*, Mancini asserts it “rejected a local government’s proposed rule that only an intentional tort – malicious prosecution – is available when the police execute a search warrant that *lacks probable cause.*” P’s Supp. Br. 16. However, *Turngren* actually found error instead because the lower court erroneously “combin[ed] the Turngrens’ *false arrest and imprisonment cause of action* into a *single malicious prosecution cause of action*” and improperly “required petitioners to show malice in order to prevail on the former two claims.” 104 Wn.2d at 303 (emphasis added). *Turngren* had nothing to do with an alleged negligent investigation, or alleged duty of

reasonable care, leading up to the execution of a valid search warrant.

The absence of a case supporting Mancini's negligence action is confirmed by her reliance instead on the above inapplicable decisions.

C. NO EXCEPTION TO PUBLIC DUTY DOCTRINE IS SHOWN

Mancini argues that if "the court determines that the plaintiff relies on a specialized public duty distinct from a common law duty" it must "use the 'focusing tool' of the public duty doctrine to determine whether the plaintiff's claim is cognizable." P's Supp. Br. 11-12.

To the contrary, the Courts already have used this "focusing tool" to repeatedly hold that a claim of negligent investigation is not cognizable under the Public Duty Doctrine. *See e.g. Honcoop v. State*, 111 Wn.2d 182, 188, 759 P.2d 1188 (1988) (no liability for failure to discover cattle were infected by disease where no exception to public duty doctrine is shown); *Donohoe v. State*, 135 Wn. App. 824, 852, 142 P.3d 654 (2006) ("a claim for negligent investigation does not exist under common law" and where the case "does not fall within any exception to the public duty doctrine a plaintiff "has no actionable claim under either the common law or statute"); *Pettis*, 98 Wn. App. at 558, 563 ("claim for negligent investigation does not exist under the common law of Washington" because of "the chilling effect such claims would have on investigations" and "[n]one of the[] criteria [for

an exception to the public duty doctrine] are satisfied.”).

Mancini not only fails to allege a common law duty but also makes no attempt to show any exception to the public duty doctrine applies so as to come within a *specialized public duty distinct from a common law duty*. See generally P’s Supp. Br.; Pet. For Disc. Rev.; Resp.’s Br. Accordingly, the Court of Appeals’ unanimous decision properly held her “cause of action is not cognizable,” correctly reversed the trial court, and instructed it to “enter judgment in favor of the city.” See *Mancini v. City of Tacoma*, 8 Wn.App.2d 1066, 2019 WL 2092698, *review granted*, 194 Wn.2d 1009 (2019).

IV. CONCLUSION

Ms. Mancini has gone to extreme lengths to assert a position that does not stand up to scrutiny. She has asserted positions of law that simply cannot be reconciled with clear statements of law from this and other courts. She has made assertions of fact that are not supported by and cannot be reconciled with the verdict of the jury. The incentives to do so are readily apparent. Not every alleged injury has a remedy in a negligence suit. Our courts and others have drawn a line as the point at which the interests of the individual and society must be balanced in such circumstances. Ms. Mancini would radically shift this point, to the general detriment of all of society.

The Court of Appeals was correct in the decision at issue in this case, and this Court should affirm all aspects of that Court's decision.

DATED this 27th day of March, 2020.

GREG ZEMPEL
Kittitas County Prosecuting Attorney

MARY E. ROBNETT
Pierce County Prosecuting Attorney

s/ DOUGLAS R. MITCHELL
DOUGLAS R. MITCHELL
WSBA #22877
Deputy Prosecuting Attorney
205 W 5th Ave, Suite 213
Ellensburg, WA 98926-2887
PH: (509) 962-7520
doug.mitchell@co.kittitas.wa.us

s/ DANIEL R. HAMILTON
DANIEL R. HAMILTON
WSBA #14658
Deputy Prosecuting Attorney
955 Tacoma Ave
Suite 301
Tacoma, WA 98402
PH: (253) 798-7746
dan.hamilton@piercecountywa.gov

Attorneys for Amici Washington
State Association of Counties, et
al. (*WSAC & WASPC*)

Attorneys for Amici Washington
State Association of Counties, et al.
(*WSAC & WASPC*)

CITY ATTORNEY'S OFFICE
VANCOUVER, WASH.

s/ Daniel G. Lloyd
Daniel G. Lloyd, WSBA #34221
Assistant City Attorney
PO Box 1995
Vancouver, WA 98668
(360) 487-8500
dan.lloyd@cityofvancouver.us

Attorney for Amicus Curiae
Wash. St. Ass'n of Municipal
Attorneys (*WSAMA*)

CERTIFICATE OF SERVICE

On March 27, 2020, I hereby certify that I electronically filed the foregoing AMICI CURIAE WASHINGTON STATE ASSOCIATION OF COUNTIES, WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS, AND WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS with the Clerk of the Court, which will send notification of such filing to the following:

Lori S. Haskell: haskell@haskellforjustice.com
Gary Manca: gary@tal-fitzlaw.com
Attorneys for Petitioner Kathleen Mancini

Jean P. Homan: jhoman@cityoftacoma.org
Attorney for Respondent City of Tacoma

Valerie Davis McOmie: valeriemcomie@gmail.com
Daniel Edward Huntington: danhuntington@richter-wimberly.com
Attorneys for Amicus Curiae WA State Association for Justice Foundation

Nancy Lynn Talner: talner@aclu-wa.org
Antoinette M. Davis: tdavis@aclu-wa.org
Attorneys for Amicus Curiae American Civil Liberties Union of WA Foundation

William H. Block: wblock@msn.com
Jose Dino Vasquez: dvasquez@karrtuttle.com
Attorneys for Amicus Curiae ACLU -WA Cooperating Attorney

Pamela Beth Loginsky: pamloginsky@waprosecutors.org
Ryan J. Lukson: Ryan.Lukson@co.benton.wa.us
Attorney for Amicus Curiae WA Association of Prosecuting Attorneys

s/ JEANINE L. LANTZ
JEANINE L. LANTZ
Legal Assistant
Pierce County Prosecutor's Office
Civil Division, Suite 301
955 Tacoma Avenue South
Tacoma, WA 98402-2160
Ph: 253-798-6083 / Fax: 253-798-6713

PIERCE COUNTY PROSECUTING ATTORNEY CIVIL DIVISION

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- tdavis@aclu-wa.org
- valeriemcomie@gmail.com
- wblock@msn.com

Comments:

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Sender Name: Jeanine Lantz - Email: jeanine.lantz@piercecountywa.gov

Filing on Behalf of: Daniel Ray Hamilton - Email: dhamilt@co.pierce.wa.us (Alternate Email: pcpatvecf@piercecountywa.gov)

Address:
955 Tacoma Ave S Ste 301

Tacoma, WA, 98402-2160

Phone: (253) 798-6732

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