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NO. 97583-3

SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals, Division I, No. 77531-6-I

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KATHLEEN MANCINI,

Petitioner

v.

CITY OF TACOMA,

Respondent

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CITY OF TACOMA'S SUPPLEMENTAL BRIEF

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**APPENDIX**

## I. Statement of the Case

This case stems from the issuance and execution of a search warrant on plaintiff Kathleen Mancini's apartment<sup>1</sup>. Acting on information provided by a confidential, reliable informant, Tacoma Police Department's Special Investigation Division developed probable cause to believe that Kathleen Mancini's apartment was the home of a methamphetamine dealer. Exhibit 103 (Complaint for Search Warrant, Apt. B-1); Exhibit 104 (Search Warrant, Apt. B-1). Police obtained a search warrant for Mancini's apartment, but upon execution, determined that Mancini's residence was not connected with the methamphetamine dealer<sup>2</sup>. RP 235.

Plaintiff commenced the instant action against the City of Tacoma, asserting numerous tort claims. CP 1. All of plaintiff's claims were dismissed<sup>3</sup> and she

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<sup>1</sup> A more detailed factual history, with citations to the record, can be found in the City's opening brief, filed with Division I in No. 77531-6-1.

<sup>2</sup> Throughout this litigation, plaintiff has repeatedly asserted that the police "hit the wrong door." This statement is misleading and implies that the officers served a search warrant on a location other than the location for which it was issued. That is not the case. The Pierce County Superior Court issued a search warrant for Kathleen Mancini's residence and the police executed the warrant on the residence for which it was issued. When plaintiff asserts that the officers "hit the wrong door," what she means is that the officers obtained and executed a search warrant on a residence that was *ultimately determined to be unconnected to the criminal activity under investigation*.

<sup>3</sup> Plaintiff's claims for negligent training and supervision were dismissed pursuant to CR 12(c), as were plaintiff's claims under Article I, §§ 1, 3, and 7 of the Washington State Constitution. CP 48. The City moved for summary judgment on plaintiff's negligence claim, a discrimination claim under RCW 49.60.030, and state tort claims of assault and battery, false imprisonment, defamation, invasion of privacy, and outrage claims. CP 201 (Motion for Summary Judgment). On summary judgment, plaintiff abandoned her RCW 49.60 claim. CP 257. The trial court granted the City's motion and all remaining claims were dismissed on summary judgment. CP 254.

appealed the grant of summary judgment to Division I. Mancini v. City of Tacoma, 188 Wn. App. 1006, 2015 Wash. App. LEXIS 1196 \*, 2019 WL 3562229 (Wash. Ct. App., May 13, 2015)( Mancini I). In Mancini I, Division I affirmed dismissal of plaintiff’s defamation and outrage claims, but reversed summary judgment on plaintiff’s negligence, assault and battery, false imprisonment and invasion of privacy claims. Id. These claims proceeded to trial before a jury in the King County Superior Court. See CP 530 (Trial List of Exhibits); CP 535 (Witness Record). The jury found for the defendant on plaintiff’s claims for invasion of privacy, false imprisonment, and assault and battery<sup>4</sup>, and found for plaintiff on her negligence claim. CP 526.

The City appealed the jury verdict for plaintiff on her negligence claim to Division I, arguing that plaintiff’s negligence claim at trial was based on alleged deficiencies in the police investigation leading up to the issuance of the warrant. Following a careful examination of the record, Division I agreed, holding that “[t]he evidence of negligence adduced by Mancini at trial was directed at establishing negligence during the evidence gathering portion of the police investigation, prior to the service of the warrant to search Mancini’s apartment.” Mancini v. City of Tacoma, 8 Wn. App. 2d 1066, 2019 Wash. App. LEXIS 1231 \*, 2019 WL 2092698 (Wash. Ct. App., May 13, 2019)(Mancini II). Because Washington does not

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<sup>4</sup> Plaintiff did not appeal the jury’s verdict for the City on her intentional tort claims.

recognize a common law cause of action for negligent investigation against law enforcement, Mancini had failed to state a claim upon which relief could be granted. Mancini II, at \*14.

The trial record supports Division I's holding.

Throughout the trial, plaintiff's position was consistently that the City was negligent because officers did not do an adequate investigation before obtaining the search warrant from the superior court. For example, in opening statement, plaintiff's counsel told the jury that "we expect [the police] to do due diligence when carrying out their duties" and that the police should not "cut corners." RP 4:23; RP 5:16-18. Counsel also told the jury in opening that the police got plaintiff's apartment by mistake because they did not do a controlled buy or surveillance in this case. RP 7-8. In her questioning of the case agent in charge of the investigation, plaintiff again emphasized the officer's failure to conduct surveillance or do a controlled buy prior to obtaining the warrant. RP 49:6 to 50:9. See also RP 216:16-25; RP 221:23 – 222:8. Similarly, plaintiff's retained expert testified that the officers should have undertaken different and additional investigatory steps – namely, additional surveillance and a controlled buy. RP 201:6-18.

In closing argument, plaintiff made her negligence claim explicit, and it was clear that the negligence claim was based on the alleged inadequacies of the investigation leading up to the issuance of the search warrant:

Let's back up and look at what they did and didn't do because there's been testimony from the police involved in this raid that they did surveillance on 95 percent of their cases. 95 percent. They didn't do it in this case. ...

*They don't do any surveillance. Their idea of an investigation is to put someone who is on drugs -- and you will see in the affidavit the -- and I'm going to show a portion to you in a moment, and you'll have it in the exhibits that go back into the exhibit room with you, how well-versed this woman was in the drug trade. You don't get that well-versed in the drug trade unless you are, yourself, involved in drugs. So that's who they relied upon.*

(emphasis added) RP 727:1-22.

*Because their idea of an investigation in this case, before they took a battering ram and broke down the door of an innocent citizen who has never done anything illegal, who has never been in any kind of legal trouble in her life, their idea of an investigation was to put this woman in a van and drive her through the parking lot of a complex that had four identical buildings. And she just points to -- she just points to an apartment and says, "That's it."*

*And that was pretty much the extent of their investigation because, ladies and gentlemen, I will posit to you that you do not have one shred of evidence that they did anything else, not one, because there's nothing in the incident report.*

(emphasis added) RP 728:7-19. See also RP 736:14 – 737:1. In fact, plaintiff's PowerPoint presentation, using during closing argument, expressly stated that the negligence claim was "Negligence in Obtaining the Warrant." See CP 564 and 569, in Appendix.

Further, as correctly noted by Division I, "Mancini's argument in response to the City's motion for judgment as a matter of law on her negligence claim makes it plain that her claim, as tried, had become one

concerning negligence in the evidence gathering aspects of the investigation.” Mancini II, at \*12.

There was virtually no police work done here. They put a drug informant in a car, drove her by four identical buildings and said, “Point out which one is where you saw the drugs.” *That was the extent of the investigation.*

...

What is negligence on the part of the officer? *The officer admitted that he does surveillance in 95 percent of his cases, and he did none here. They did not attempt a controlled buy. They didn't do anything, and they haven't shown us that they've done anything.*

And it certainly is a question that gets to the jury, and the plaintiff has sustained her burden of proof with Chief Stamper's testimony that this should never happen, and that there are many, many ways to have seen to it that it didn't. *And he went through where else you could have surveilled.* And, sure, Your Honor has seen the picture I have of the parking lot and the entry to the stairs and the parking lot that go down to Ms. Mancini's apartment. *If there had been drug activity and they had surveilled that parking lot at all, they would have at least gotten the right building, and they didn't.*

(emphasis added by court) Id. at \*12-13. See also RP 488 – 489.

In addressing plaintiff's negligence claim, Division I properly defined the controlling analysis: “The focus must be on the duty alleged to have been breached. Where that duty was to ‘investigate better,’ ... a negligence claim has become a negligent investigation claim.” Mancini II, at \*11 n. 9. Thus, in light of the evidence adduced at trial and the arguments presented by plaintiff's counsel, Division I correctly found that plaintiff's theory of liability was that the officers were negligent in how they conducted the narcotics investigation before obtaining and

executing the search warrant<sup>5</sup>. This claim, as crafted by the plaintiff, is not cognizable in Washington.

## **II. Issues Presented for Review**

In her petition for review, plaintiff sought review on the following issues<sup>6</sup>:

1. What is the proper analytical framework for determining whether a police officer was under a tort-law duty of reasonable care in a case involving police action directed at a specific individual or their home?
2. Do law-enforcement officers in Washington owe a tort-law duty to the individual resident of a private home to exercise reasonable care ensuring that, before breaking and entering into that home, the individual is not engaged in criminal activity in their home or housing evidence of a crime there?
3. Do law-enforcement officers in Washington owe a tort-law duty to the individual resident of a private home, when executing a search warrant, to release that resident from handcuffs when the officers know or, in the exercise of reasonable care, should know that the

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<sup>5</sup> In her briefing to Division I in Mancini II, plaintiff argued that the jury's verdict of negligence could be based on any number of actions by the police, and provided the court with the list of possible conduct that could support the negligence claim. See Brief of Respondent, No. 77531-6-1, p. 41. A careful examination of this list, however, demonstrates that the conduct identified is either part of the investigatory process (failure to timely act on CI's tip; failure to conduct surveillance; failure to conduct a controlled buy; failing to vet information provided by CI; failing to observe cardinal rule of relying on CI; failing to verify whether Mancini and Logstrom were connected in any way; and failing to alert King County of the operation) or is conduct that served as the basis for plaintiff's intentional tort claims (failing to stop warrant service "immediately" (invasion of privacy); forcing Mancini to the ground (assault & battery); failing to halt protective sweep (invasion of privacy); forcing Mancini to stand outside (false arrest; invasion of privacy); handcuffing Mancini (assault & battery); keeping Mancini in handcuffs after knowing they were in the wrong apartment (false arrest); and failing to provide Mancini "aid" after shattering her door (invasion of privacy)). Division I correctly held that "any evidence of police wrongdoing occurring during and after entry to the apartment was material to Mancini's intentional tort claims, not the negligence claim." Mancini II, at \*9 n.7.

<sup>6</sup> It is the City's position that the correct formulation of the issue is: Did Division I err by deciding that plaintiff's negligence claim, as presented at trial, was a negligent investigation claim, and thus not cognizable, where the alleged negligent acts were the police's failure to make a controlled buy and to conduct surveillance prior to obtaining a controlled substance warrant for Mancini's home?

warrant mistakenly identified the home as the site of criminal activity?

Each issue is addressed in turn.

### **III. Analysis**

- A. Division I identified and applied the proper analytical framework for analyzing plaintiff's negligence claim in this case.

*Issue #1: What is the proper analytical framework for determining whether a police officer was under a tort-law duty of reasonable care in a case involving police action directed at a specific individual or their home?*

This issue, as framed, is too vague to be meaningful. The potentially applicable frameworks for determining whether law enforcement owes a tort duty of reasonable care depends on the specific facts and circumstances of the case, and those standards are already well established in Washington law. See, e.g., Washburn v. City of Federal Way, 178 Wn.2d 732, 310 P.3d 1275 (2013) (legislative intent exception to the public duty doctrine and the Restatement (Second) of Torts §302B duty to protect plaintiff from the criminal acts of a third person); Robb v. City of Seattle, 176 Wn.2d 427, 295 P.3d 212 (2013) (Restatement (Second) of Torts §302B duty to protect plaintiff from the criminal acts of a third person); Munich v. Skagit Emergency Commc'ns Ctr., 175 Wn.2d 871, 288 P.3d 328 (2012)(public duty doctrine and the special relationship exception to the doctrine); Mason v. Bitton, 85 Wn.2d 321, 534 P.2d 1360

(1975)(statutorily imposed duty to operate emergency vehicles with reasonable care for the safety of others).

In her petition review, the thrust of plaintiff’s argument in support of this issue was plaintiff’s assertion that Division I’s opinion in Mancini II is contrary to this Court’s recent decision in Beltran-Serrano, 193 Wn.2d 537, 442 P.3d 608 (2019). Specifically, plaintiff argues that Beltran-Serrano establishes “a duty of reasonable care to avoid creating unreasonable risks of harm to persons and property” and that “this duty applies to police officers who choose to affirmatively direct their official acts at an individual.” Petition for Review, p. 8-9. Plaintiff appears to believe that this Court’s analysis in Beltran-Serrano completely revolutionized tort law in Washington. Rather, Beltran-Serrano focused on the narrow issue of whether a police officer has a duty to exercise reasonable care to avoid unreasonably escalating an encounter to the use of deadly force. Beltran-Serrano, 193 Wn.2d at 540. Further, the duty at issue in Beltran-Serrano arose because of the direct interaction between the officer and the plaintiff<sup>7</sup>, an element wholly absent in the instant case:

*Beltran-Serrano’s negligence claims arise out of Officer Volk’s direct interaction with him*, not the breach of a generalized public duty. The City therefore owed Beltran-Serrano a duty in tort to exercise reasonable care. Recognizing such a duty does not open the door to potential tort liability for a city’s statutorily imposed obligation to provide police services, enforce the law, and keep the peace. These statutory duties have always been, and will continue to

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<sup>7</sup> “Directing” an investigation at a person is very different from the “direct interaction” between officer and citizen cited by this Court in Beltran-Serrano.

be, nonactionable duties owed to the public at large. *In this case, however, the specific tort duty owed to Beltran-Serrano arises from Officer Volk's affirmative interaction with him.* The public duty doctrine does not apply to prevent the City from being found liable in tort.

(emphasis added) Beltran-Serrano, 193 Wn.2d at 551-52. As outlined above, plaintiff's negligence claim was based on the evidence gathering aspects of the criminal investigation *prior* to the officer obtaining a warrant. It is undisputed that the officers had no interaction with Mancini during this time period and in fact, the officers' first contact with plaintiff occurred when the warrant was executed.

In short, Beltran-Serrano does not provide the proper analytical framework for analyzing whether plaintiff presented an actionable negligence claim at trial, in light of the theory of liability she pursued<sup>8</sup>. See Mancini II, at \*11 (“With all this being said, it is apparent that a negligent investigation claim must encompass, at minimum, assertions of negligence occurring during the authorized evidence gathering aspects of police work.”). Instead, Division I focused on the duty allegedly breached (the duty to “investigate better”) and then properly applied long-standing, and controlling, precedent.

Washington courts have repeatedly and consistently held that there is no common law cause of action for negligent investigation against the police in this

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<sup>8</sup> Moreover, this Court's analysis in Beltran-Serrano affirms that when officers are acting in furtherance of a city's statutorily imposed duty to “provide police services, enforce the law and keep the peace,” no duty actionable in tort is imposed. “These statutory duties have always been, and will continue to be, nonactionable duties owed to the public at large.” Beltran-Serrano, 193 Wn.2d at 551-52.

state. See, e.g., M.W. v. Dept. of Social and Health Services, 149 Wn.2d 589, 601, 70 P.3d 954 (2003) (“Our courts have not recognized a general tort claim for negligent investigation.”); Laymon v. Department of Natural Resources, 99 Wn. App. 518, 530, 994 P.2d 232 (2000) (“A claim of negligent investigation will not lie against police officers.”); Rodriguez v. Perez, 99 Wn. App. 439, 434, 994 P.2d 874 (2000) (“Thus, in general, a claim for negligent investigation does not exist under the common law because there is no duty owed to a particular class of persons.”); Corbally v. Kennewick School District, 94 Wn. App. 736, 740, 973 P.2d 1074 (1999) (“In general, a claim for negligent investigation is not cognizable under Washington law.”); Fondren v. Klickitat County, 79 Wn. App. 850, 862, 905 P.2d 928 (1995) (“A claim for negligent investigation is not cognizable under Washington law.”); Donaldson v. City of Seattle, 65 Wn. App. 661, 671, 831 P.2d 1098 (1992) (“Washington does not recognize the tort of negligent investigation.”). See also Wrigley v. Dep’t of Soc. & Health Services, 2020 Wash. LEXIS 72 (Wash., Jan. 23, 2020)(noting that a claim for negligent investigation under former RCW 26.44.050 is a “narrow exception” to the rule that Washington does not recognize a general tort claim of negligent investigation.).

Further, while Mancini II is the first case to expressly articulate a specific definition of negligent investigation (negligence in the “authorized evidence gathering aspects of a criminal investigation”), this definition is not novel and is in

accord with how other courts have implicitly defined the claim<sup>9</sup>. See, e.g., Donaldson v. Seattle, 65 Wn. App. 661, 671-72, 831 P.2d 1098 (1992), rev. denied, 120 Wn.2d 1031 (1993)(discussing possible scope and type of follow up investigation of alleged domestic violence where police did not have a mandatory duty to arrest at the time of the 911 response); Dever v. Fowler, 63 Wn. App. 35, 39, 816 P.2d 1237 (1991), rev. denied, 118 Wn.2d 1028 (1992)(negligent investigation claim based on the alleged failure to conduct thorough or proper interviews, failure to interview certain individuals who possessed exculpatory information, and failure to investigate what other persons knew and when they knew it).

Moreover, this rule does not leave plaintiffs without a remedy. Turngren v. King County, 104 Wn.2d 293, 705 P.2d 258 (1985), and Bender v. Seattle, 99 Wn.2d 582, 664 P.2d 492 (1983)<sup>10</sup>, are perfect examples of circumstances where allegedly wrongful conduct by the police can give rise to tort claims for false arrest, malicious prosecution, assault or battery. But a plaintiff cannot pursue a negligence claim based on the investigatory steps taken by police to gather evidence of criminal

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<sup>9</sup> The definition articulated by Division I is also in accord with the definition of “investigate” and “investigatory powers”, as stated in Black’s Law Dictionary (5<sup>th</sup> Ed. 1979). “Investigate” means “[t]o follow up step by step by patient inquiry or observation; to trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry.” “Investigatory powers” are defined as “[a]uthority conferred on governmental agencies to inspect and compel disclosure of facts germane to the investigation.”

<sup>10</sup> Neither Bender nor Turngren involved a claim of negligence. In both cases, all of the tort claims asserted against the defendants were intentional torts.

activity. For very sound policy reasons, Washington does not recognize such a claim.

B. This Court has already stated that the negligence standard is “unworkable” in this context, as it is inherently inconsistent with the concept of probable cause and with the warrant process.

*Issue # 2: Do law-enforcement officers in Washington owe a tort-law duty to the individual resident of a private home to exercise reasonable care ensuring that, before breaking and entering into that home, the individual is not engaged in criminal activity in their home or house evidence of a crime there?*

As a preliminary matter, plaintiff’s formulation of the issue is disingenuous and implies that the police were committing a criminal act when they entered Mancini’s residence. To the contrary, given the existence of a valid search warrant, the police’s entry into Mancini’s residence was privileged and lawful. Brutsche v. City of Kent, 164 Wn.2d 664, 193 P.3d 110 (2008). The issue, when properly formulated, suggests that police have a duty, actionable in negligence, to ensure that the residence for which the warrant is issued is actually the situs of the criminal activity. This very argument has already been addressed – and rejected - by this Court in State v. Chenoweth, 160 Wn.2d 454, 158 P.3d 595 (2007). In Chenoweth, this Court made clear that a negligence duty of reasonable care is irreconcilable with the warrant process:

But what makes a negligence standard “unworkable” is that it is inherently inconsistent with the concept of probable cause and with the warrant process.

A tolerance for factual inaccuracy is inherent to the concept of probable cause. Probable cause may be based on hearsay, a confidential informant's tip, and other unscrutinized evidence that would be inadmissible at trial. *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. In evaluating whether probable cause supports the search warrant, the focus is on what was known at the time the warrant issued, not what was learned afterward. *The fact that the affiant's information later turns out to be inaccurate or even false is of no consequence if the affiant had reason to believe those facts were true.* Probable cause requires more than suspicion or conjecture, but it does not require certainty.

(emphasis added; internal citations omitted) State v. Chenoweth, 160 Wn.2d at 475-76. See also State v. Seagull, 95 Wn.2d 898, 908, 632 P.2d 44 (1981)(allegations of negligence or innocent mistake insufficient to void a warrant; “This is wholly logical. The Fourth Amendment does not proscribe ‘inaccurate’ searches, only ‘unreasonable’ ones.”).

The Chenoweth court’s analysis is directly on point with the claim asserted by plaintiff in this case. This Court’s analysis in Chenoweth left no doubt that the negligence standard of care does not apply an officer’s investigation leading to the development of probable cause to support a search warrant.

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- C. A tort claim for false arrest/false imprisonment is the appropriate remedy for persons unreasonably detained during service of a search warrant, and the jury resolved plaintiff's false arrest claim in the City's favor.

*Issue #3: Do law-enforcement officers in Washington owe a tort-law duty to the individual resident of a private home, when executing a search warrant, to release that resident from handcuffs when the officers know or, in the exercise of reasonable care, should know that the warrant mistakenly identified the home as the site of criminal activity?*

By framing this issue as she has, plaintiff is suggesting that Washington law should recognize a negligence claim for detaining a subject for an unreasonable period of time during the service of a search warrant. In essence, plaintiff is asking this Court to impose a new duty on law enforcement, one that is not warranted in light of existing law. Washington already provides persons who are detained unreasonably during the service of a warrant with a remedy, and that remedy is a tort claim for false arrest/false imprisonment.

“The gist of an action for false arrest or false imprisonment is the unlawful violation of a person’s right of personal liberty or the restraint of that person *without legal authority*.” (emphasis added.) Turngren v. King County, 104 Wn.2d 293, 303, 705 P.2d 258 (1985). In cases involving an allegation of false arrest where the officers acted pursuant to a search warrant, the plaintiff must demonstrate that the warrant is invalid. Id. at 304. To do so, the plaintiff must establish that the officer swearing out the affidavit in support of the warrant deliberately conveyed false information to the issuing court in order to obtain the warrant. Id. Moreover, “a

warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted. Michigan v. Summers, 452 U.S. 692, 704-05, 101 S. Ct. 2587, 69 L. Ed. 2d 340 (1981). “Whether an otherwise valid search or seizure was carried out in an unreasonable manner is determined under an *objective test*, on the basis of the facts and circumstances confronting the officers.” (emphasis added) Franklin v. Foxworth, 31 F.3d 873, 875 (9th Cir. 1994). “A detention conducted in connection with a search may be unreasonable if it is unnecessarily . . . prolonged, or if it involves an undue invasion of privacy.” Id. at 876. See also Seaman v. Karr, 114 Wn. App. 665, 681-82, 59 P.3d 701 (2002)(plaintiff established that detention during execution of warrant was unreasonable and without legal authority where plaintiffs were detained in handcuffs longer than necessary to establish they had any knowledge of or connection with the shooting under investigation). Thus, when a person is detained during the service of a search warrant, and that detention is unreasonably prolonged – as evaluated under an *objective* standard – that person is being restrained without legal authority. This, in Washington, already gives rise to a claim for false arrest. Accord Turngren v. King County, 104 Wn.2d 293, 705 P.2d 258 (1985); Bender v. Seattle, 99 Wn.2d 582, 664 P.2d 492 (1983).

Further, the jury has already resolved – in the City’s favor - any question of the City’s potential liability for detaining Ms. Mancini during the warrant service. CP 526. In reaching its verdict on the intentional torts and in light of the instructions

given to the jury, the jury necessarily found that the warrant was supported by probable cause; that the officers' did not exceed the scope of the warrant; and that the officers acted with lawful authority in the execution of the warrant.

On plaintiff's false imprisonment claim, the jury was instructed on the proper legal standard - that a false imprisonment occurs when police deprive a person of their liberty or otherwise restrain the person without lawful authority. CP 515 (Instruction No. 12). See Bender v. Seattle, 99 Wn.2d 582, 591, 664 P.2d 492 (1983). The jury was also instructed that officers may detain a resident of a house when executing a valid search warrant, and that the detention in conjunction with the warrant may be unreasonable if unnecessarily prolonged or if it involves an undue invasion of privacy. CP 518 (Instruction No. 15). See Michigan v. Summers, 452 U.S. 692, 101 S. Ct. 2587, 69 L.Ed.2d 340 (1981); Franklin v. Foxworth, 31 F.3d 873 (9th Cir. 1994). The jury was instructed on the standard for probable cause and on the standard for overcoming the warrant's presumption of validity. CP 519 (Instruction No. 16); CP 520 (Instruction No. 17). See Bender, 99 Wn.2d at 591-92. Finally, the jury was instructed that if they found that there was probable cause to support the warrant, but also found that the officers exceeded the scope of the warrant, they should find for the plaintiff on her claims. CP 521 (Instruction 18). See also RP 649:24 – 652:15 (court's discussion of Instruction No. 18).

Since the jury resolved the disputed question of fact (whether the officers continued to detain plaintiff after knowing they were in the wrong apartment) in the

City's favor, the jury necessarily concluded both that the warrant was supported by probable cause and that the officers had not exceeded the scope of their authority under the warrant<sup>11</sup>. Consequently, the jury concluded that the officers had lawful authority during the entire time they restrained Ms. Mancini. Under these facts, there can be no claim for false arrest.

#### **IV. Conclusion**

As outlined herein, Division I correctly identified and applied the correct legal standard to plaintiff's negligence claim, as that claim was presented at trial. Division I correctly focused on the duty alleged to have been breached, and following a careful examination of the trial court record, including the arguments advanced by plaintiff in opposition to the City's motion for a directed verdict, Division I concluded that the duty alleged to have been breached was a duty to "investigate better." It has long been the law in Washington that common law negligent investigation claims are not cognizable against law enforcement.

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<sup>11</sup> Similarly, on plaintiff's assault and battery claim, the jury as instructed that the City would be liable for assault and battery if unnecessary violence or excessive force was used in accomplishing plaintiff's detention during the service of the warrant, and that "[t]he degree of force must be reasonable given the totality of circumstances...judged objectively from the information available at the time from the perspective of a reasonable officer on the scene." CP 517 (Instruction No. 14). Plaintiff's expert testified that the tactics used by the officers in executing the warrant were appropriate and that no unnecessary force had been used. RP 174:24 – 175:23. In light of the instruction and Mr. Stamper's testimony, in finding for the City on the assault and battery claim, the jury therefore necessarily concluded that the officers did not use excessive force while serving the warrant and while detaining plaintiff, and that their conduct was objectively reasonable.

Consequently, Division I correctly held that at trial, plaintiff had failed to state a negligence claim upon which relief could be granted.

Moreover, as this Court made clear in Chenoweth, application of a negligence standard to the search warrant process is inconsistent with that process and with the objective probable cause standard. When obtaining a warrant, officers may rely upon hearsay and upon information provided by confidential informants, even when the information provided by the informants is later found to be wrong. “A tolerance for factual inaccuracy is inherent to the concept of probable cause.” Chenoweth, 160 Wn.2d at 475. And contrary to plaintiff’s suggestion, officers are not required to ensure that evidence of criminal activity will be found; probable cause requires only a reasonable belief of criminal activity, which the officers had in this case.

Finally, plaintiff had a full and fair opportunity to pursue the appropriate tort remedies in this case. Plaintiff brought claims for invasion of privacy, assault and battery, and false arrest. She had an opportunity to present both evidence and argument to the jury on these claims, and applying well established Washington law, the jury resolved these claims in the City’s favor.

Division I’s opinion is well reasoned, well supported, and correctly decided under deeply-rooted Washington law. Therefore, the City respectfully asks that this Court affirm the opinion.

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# Appendix

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE  
COUNTY OF KING

Kathleen Mancini

Plaintiff,

vs.

City of Tacoma

Defendant.

NO. 12-2-17651-5 SEA

Plaintiff's Powerpoint for Closing Statements

# Four Causes of Action: Harms

1. Negligence In Obtaining Warrant
2. Invasion of Privacy
3. False Imprisonment
4. Assault & Battery

# Elements of Harms

Negligence In Obtaining Warrant

Tacoma Police Cut Corners and It Stripped  
Kathleen Mancini of Her Sense of Safety

# TACOMA CITY ATTORNEYS OFFICE

February 03, 2020 - 3:24 PM

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