SUPREME COURT NO. 89914-2

Court of Appeals No. 43304-4-II

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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GREGORY R. HART,

Respondent/Cross-Appellant,

v.

CITY OF LAKEWOOD, a municipal corporation,

Appellant/Cross-Respondent.

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CITY OF LAKEWOOD POLICE DEPARTMENT, a municipal corporation, and CITY OF LAKEWOOD PARKS DEPARTMENT, a municipal corporation,

Defendants.

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# RESPONSE TO PETITION FOR REVIEW

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## I. INTRODUCTION

Plaintiff Gregory Hart asserts three claims against defendant City of Lakewood, all of which have been dismissed. His claims arise from a May 21, 2007 incident, when Mr. Hart took a gate from the area adjoining Wards Lake Park in the City of Lakewood. Lakewood police arrested Mr. Hart for theft and malicious mischief. At his criminal trial, the jury acquitted him of malicious mischief and convicted him of theft. Mr. Hart successfully appealed, and on remand, the jury acquitted him of the theft charge. Mr. Hart the commenced this lawsuit, alleging malicious prosecution, defamation, outrage, and negligent infliction of emotional distress. The trial court dismissed Mr. Hart's malicious prosecution, outrage, and negligent infliction of emotional distress claims. The City appealed the trial court's denial of summary judgment on the defamation claim, and Mr. Hart cross-appealed the dismissal of his other claims. Division II of the Court of Appeals reversed the trial court's denial of summary judgment on the defamation claim and affirmed the trial court's dismissal of the remaining claims. Mr. Hart now seeks review.

## II. STATEMENT OF FACTS

### A. Plaintiff's Criminal Prosecution.

On May 21, 2007, Mr. Hart physically removed a City-owned gate from the area adjoining Wards Lake Park in Lakewood. (CP 171.)

Neighbors observed Mr. Hart doing this. (CP 174-175; CP 181-182.) The gate was used to block access to a road adjacent to the park. (*Id.*)

A City employee called 911 to report that Mr. Hart was damaging and dismantling the gate. (CP 174-175.) Lakewood police officers responded to the call and arrested Mr. Hart for malicious mischief and theft. (CP 170-175.) Mr. Hart admitted he took the gate, and the officers retrieved it from a shed where Mr. Hart had placed it. (CP 174-175.) A neighbor also reported that Mr. Hart had been bragging that he broke the gate himself and was planning to take it. (CP 174-175; CP 181-182.)

The City charged Mr. Hart with malicious mischief in the third degree and theft in the third degree. (CP 159.) On July 3, 2007, the City of Lakewood Municipal Court determined there was probable cause to support those charges. (CP 159). The court docket states: "DETERMINATION FOR PROBABLE CAUSE ESTABLISHED." (*Id.*) Also during the criminal proceedings, Mr. Hart filed a motion to dismiss, based in part on his assertion that the City possessed insufficient evidence of its ownership of the gate to support its prosecution. (CP 49-63.) The criminal court denied Mr. Hart's motion to dismiss and the case proceeded to trial. (CP 49-63; CP 161-63.) The jury found Mr. Hart not guilty of malicious mischief, but guilty of theft. (CP 65-66.)

Mr. Hart appealed his conviction, and the Pierce County Superior

Court found the criminal court erred in not giving a "claim of title" jury instruction. (CP 68-69.) Mr. Hart was acquitted on retrial. (CP 7, ¶ 2.24.)

**B. The Factual Basis For Plaintiff's Defamation Claim.**

Mr. Hart's defamation claim is based on an officer safety memorandum prepared by Lakewood Sergeant John Unfred. (CP 89-90; CP 203-205; March 2, 2012 RP, pp. 11-12; March 16, 2012 RP, pp. 11-14.) That memorandum read, in part, as follows:

> Subject: Officer Safety Info ...
>
> The subject is a Gregory Reuben Hart, ... . He has a lengthy history of assaultive behavior in general and hostility towards law enforcement. He has a prior arrest for pointing a handgun at a fellow motorist during a road rage incident, and assault 2nd arrest for shooting motorbike riders with steel ball bearings from a sling shot, and most recently was arrested for destroying a metal gate to the Korean Church in the 2500 blk of 88th St. ...
>
> In 2005, he was arrested in a John Op by Special Ops. ... he was armed with a handgun (he has a valid CCW) and a knife. Within an hour of his arrest, he ... proceeded to drive up and down the area we were working from until we convinced him to leave the area. Sometime later, he sent Ops a video of him confronting a John and prostitute coming out of Ward's Lake park on 88th after completing their "Transaction." On the tape, he was complaining about the lack of law enforcement focus on prostitution ... .
>
> During his arrest in May, he was taking pictures of the Officers as they contacted him and ultimately arrested him. The most recent contact was this afternoon, when Officers Weekes and Lofland were leaving the Ward's Lake park area and observed Hart flipping them off while he was taking pictures of them in their patrol car.

> The bottom line is that Mr. Hart has a strong dislike of law enforcement, ***is very aggressive and irrational***, and is known to carry weapons. He also enjoys documenting scenes with cameras. I don't know if he's trying to bait Officers into something or just paranoid, but please use caution when contacting.
> ...

(CP 78) (emphasis added). Mr. Hart's defamation claim is based solely on Sergeant Unfred's use of the phrase "***very aggressive and irrational.***" (CP 71-79; CP 80-94; CP 149-155; CP 401-416.) Mr. Hart does not dispute the criminal history outlined in that memorandum. (*Id.*)

At summary judgment, Mr. Hart presented evidence that Sergeant Unfred forwarded this memorandum to the City of Fife Police Department, and that Mr. Hart's domestic partner believes any suggestion that Mr. Hart is a danger or threat to law enforcement officers is false. (CP 362-363.) Mr. Hart did not provide the trial court with any record upon which to determine when Sergeant Unfred sent the memorandum, why Sergeant Unfred sent the memorandum, or whether Sergeant Unfred had knowledge of the alleged falsity of any of the statements made in the memorandum. Other than the memorandum itself, Mr. Hart did not create a record demonstrating what, if anything, Sergeant Unfred knew about Mr. Hart's May 21, 2007 arrest or Sergeant Unfred's intentions in sending the memorandum.

## III. PROCEDURAL HISTORY

On January 25, 2012, the City moved to dismiss all of Mr. Hart's claims. (CP 20-33.) Mr. Hart opposed the motion, but conceded he did not have a claim for negligent infliction of emotional distress. (CP 94.) The trial court granted the City's motion in part. (CP 188-189.) It dismissed Mr. Hart's malicious prosecution and intentional and/or negligent emotional distress claims as a matter of law and denied the City's motion to dismiss Mr. Hart's defamation claim. (*Id.*)

The City filed a motion for reconsideration, requesting that the court reconsider its order and dismiss Mr. Hart's defamation claim. (CP 401-411.) The trial court denied the City's motion, refusing to rule as a matter of law whether Sergeant Unfred's allegedly defamatory statements were statements of fact or opinion, and denying application of the common interest qualified privilege. (CP 417-418.)

The City appealed the order denying summary judgment of the defamation claim, and Mr. Hart cross-appealed the order dismissing his malicious prosecution and outrage claims. (CP 208; CP 425.) Division II of the Court of Appeals heard oral argument, and on January 14, 2014, that Court reversed the trial court's denial of summary judgment on the defamation claim and affirmed the trial court's dismissal of the malicious prosecution and outrage claims. (Unpublished Opinion attached to Mr.

Hart's Petition for Review.)

## IV. ARGUMENT

### A. Standard for Discretionary Review.

The Supreme Court will accept review only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). If a discretionary review request is largely devoid of argument and authority, that failure alone may justify denial of review. *See In re Detention of A.S.*, 138 Wn.2d 898, 922 n.10, 982 P.2d 1156 (1999) (Court did not consider petition for review issue where plaintiffs made no argument to support consideration of the issue); *Kadoranian v. Bellingham Police Dep't*, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992) (issue not briefed deemed waived).

With respect to his malicious prosecution claim, Mr. Hart alleges his petition involves an issue of substantial public interest because the Court of Appeals decision is somehow inconsistent with *Hanson v. City of Snohomish*, 121 Wn.2d 552, 852 P.2d 295 (1993). Mr. Hart does not articulate a basis for the Court to accept review of the decisions dismissing

his other claims. The Court should deny review of the dismissal of Mr. Hart's defamation and outrage claims on this basis alone.

## B. The Court Should Not Accept Review of Plaintiff's Malicious Prosecution Claim.

### *1. The City of Lakewood is entitled to prosecutorial immunity.*

To the extent Mr. Hart's claims are based on a prosecutor's decision to initiate or continue a prosecution against Mr. Hart, the City is entitled to prosecutorial immunity. In *Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984 (1976), the United States Supreme Court recognized the long-standing common law immunity enjoyed by prosecutors acting within the scope of their duties. *Id.* at 424 U.S. at 422-23. Washington courts recognize this same quasi-judicial absolute prosecutorial immunity. *Creelman v. Svenning*, 67 Wn.2d 882, 884, 410 P.2d 606 (1966).

> While it is true that a prosecuting attorney acting in a matter which is clearly outside of the duties of his office is personally liable to one injured by his acts, a prosecuting attorney ... is not liable for instituting prosecution, although he acted with malice and without probable cause, if the matters acted on are among those generally committed by the law to the control or supervision of the office and are not palpably beyond authority of the office. The doctrine of exemption of ... quasi-judicial officers ... is founded upon a sound public policy, not for the protection of the officers, but for the protection of the public and to insure active and independent action of the officers charged with the prosecution of crime, for the protection of life and property.

*Anderson v. Manley*, 181 Wn. 327, 331, 43 P.2d 39 (1935). The Court found this policy also requires immunity for the state or county who would otherwise be liable for any harm under a theory of vicarious liability. *Creelman*, 67 Wn.2d at 885. The Court of Appeals properly found that the City is entitled to immunity for the prosecutor's decision to initiate a prosecution against Mr. Hart, and there is nothing about this decision that is inconsistent with *Hanson*.

***2. Plaintiff's malicious prosecution claim based upon the conduct of any police officer was properly dismissed.***

To the extent Mr. Hart's malicious prosecution claim is based on the conduct of any Lakewood police officer, that claim was also properly dismissed, because the criminal court already determined probable cause.

*a. The criminal court conclusively found probable cause.*

Probable cause to initiate criminal proceedings is a ***complete defense*** to a claim of false arrest or malicious prosecution. *Hanson*, 121 Wn.2d at 558; *Peasley v. Puget Sound Tug & Barge*, 13 Wn.2d 485, 499, 125 P.2d 681 (1942); *Wood v. Kesler* 323 F.3d 872, 881 (11th Cir., 2003). Moreover, under the doctrine of collateral estoppel, a plaintiff is barred from re-litigating an issue that was previously decided. *Shoemaker v. City of Bremerton*, 107 Wn.2d 504, 507, 745 P.2d 858 (1987). The requirements for application of collateral estoppel are:

> (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

*Malland v. State Dept. of Retirement Systems*, 103 Wn.2d 484, 489, 694 P.2d 16 (1985).

On July 3, 2007, the trial court undisputedly found probable cause. Additionally, the criminal court denied Mr. Hart's motion to dismiss the claims against him on the basis that the City failed to establish ownership of the gate. With probable cause conclusively established in the criminal case, Mr. Hart's malicious prosecution claim is collaterally estopped.

*b. The City had probable cause to arrest and charge plaintiff.*

Even if Mr. Hart was not estopped from re-litigating probable cause, probable cause exists as a matter of law.

> Probable cause exists where the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed.

*State v. Graham*, 130 Wn.2d 711, 724, 927 P.2d 227 (1996); *see also*, *Bender v. Seattle*, 99 Wn.2d 582, 597, 664 P.2d 492 (1983). The probable cause standard is not a stringent one; the court must assume the truth of the evidence presented to support probable cause and does not weigh or

measure facts against potentially competing ones. *State v. McCuistion*, 147 Wn.2d 369, 382, 275 P.3d 1092 (2012).

Lakewood police officers arrested Mr. Hart for first degree theft and first degree malicious mischief. However, the exact nature of these originally suspected offenses is immaterial. "[A]n arrest supported by probable cause is not made unlawful by an officer's subjective reliance on, or verbal announcement of, an offense different from the one for which probable cause exists." *State v. Rose*, 175 Wn.2d 10, 19, 282 P.3d 1087 (2012). The City of Lakewood charged Mr. Hart with Theft in the third degree and Malicious Mischief in the third degree, and probable cause supported those final charges. "A person is guilty of theft in the third degree if he or she commits theft of property or services which ... does not exceed seven hundred fifty dollars in value." RCW 9A.56.050(1)(a). "A person is guilty of malicious mischief in the third degree if he or she ... knowingly and maliciously causes physical damage to the property of another." RCW 9A.48.090(1)(a).

It is undisputed that the Lakewood police officers received information from an individual who called 911 and reported that an individual living in the neighborhood "damaged" and "dismantled" a gate leading onto City property. It is also undisputed that Mr. Highland told Officer Richards that Mr. Hart bragged about breaking the gate, and Mr.

Hart admitted to taking the gate. Finally, it was reasonable for the officers to believe that the gate belongs to the City, because it was located on City property. These undisputed facts alone are sufficient to establish probable cause to arrest and probable cause to prosecute as a matter of law.

Of course, probable cause does not need to be based on undisputed facts. The officers and the City merely needed to come forward with reasonably trustworthy information sufficient to warrant a person of reasonable caution to believe that the offenses have been committed. Mr. Hart's contentions that he did not in fact damage the gate and that the gate does not in fact belong to the City are immaterial. Further, Mr. Hart's suggestion that the officers did not fully and truthfully communicate information to the prosecuting attorney is complete speculation. Mr. Hart's prosecution was supported by probable cause.

*c. There is no evidence of fraud, perjury, or other corrupt means.*

Under *Hanson*, a conviction does not conclusively establish the existence of probable cause for the purposes of a malicious prosecution claim if the conviction was obtained by fraud, perjury or other corrupt means. *Hanson*, 121 Wn.2d at 556. Mr. Hart alleges that this exception should apply, yet there is no evidence to support it. He relies solely on pure conjecture about why they City chose to pursue the charges against

him. Mr. Hart must do more to defeat summary judgment. CR 56(c). Further, that the prosecutor did not ultimately obtain a conviction on either charge is not dispositive. Indeed, such a rule would subject a City to malicious prosecution claims any time a criminal case results in anything short of a conviction. Regardless, the trial court conclusively found probable for the theft and malicious mischief charges on July 3, 2009, a decision that now collaterally estops Mr. Hart from re-litigating the issue.

### *3.* **Hanson v. Snohomish** ***is not inconsistent with the Court of Appeals decision in this case.***

In *Hanson*, this Court considered the issue whether a conviction, which is later reversed, establishes the existence of probable cause as a matter of law. *Hanson*, 121 Wn.2d at 554. The plaintiff, Gerald Hanson, was accused of shooting a convenience store clerk and was convicted of assault in the first degree. *Id.* Hanson appealed his conviction, and the court of appeal reversed. *Id.* at 554-55. On remand, Hanson was acquitted. *Id.* at 555. He then sued for malicious prosecution. *Id.*

The *Hanson* Court recognized that malicious prosecution actions are not favored in law, that probable cause is a complete defense to a malicious prosecution claim, and that a majority of courts and the Restatement (Second) of Torts hold that a prior conviction establishes probable cause, even if the conviction has been overturned. *Hanson*, 121

Wn.2d at 557-59. The Court also acknowledged that there is a distinction between a finding of probable cause and a finding of guilt. *Id.* at 559. "A conviction is strong evidence that there was enough of a case to persuade a jury of guilt beyond a reasonable doubt, and thus is evidence that there was, at the very least probable cause to prosecute." *Id.* at 559. The Court ultimately held "that a conviction, although later reversed, is conclusive evidence of probable cause, unless that conviction was obtained by fraud, perjury or other corrupt means, or, of course, unless the ground for reversal was absence of probable cause." *Id.* at 560.

Here, the Court of Appeals held that the City is entitled to immunity in initiating prosecution, and that it had probable cause to prosecute Mr. Hart, thus barring Mr. Hart's malicious prosecution claim. (Court of Appeals Opinion, pp. 8-9.) The Court noted that the municipal trial court found probable cause, and that the evidence in the record supports the finding of probable cause. *Id.* at 9.

Mr. Hart now inexplicably argues that the Court of Appeals' opinion in this case improperly expands the decision in *Hanson*, because the *Hanson* case does not support a holding that once the municipal court determines probable cause, no further inquiry is allowed. Mr. Hart is mistaken. The *Hanson* plaintiff argued that improprieties in identification procedures were evidence of fraud, perjury, or other corrupt practices,

which should defeat application of his prior conviction as conclusive evidence of probable cause. *Hanson*, 121 Wn.2d at at 161. The *Hanson* Court disagreed, holding that the plaintiff was barred from re-litigating whether those procedures were proper in the context of his new civil lawsuit. *Id.*

> The doctrine of collateral estoppel prevents relitigation of an issue after the party estopped has had a full and fair opportunity to present its case ... The effect of applying collateral estoppel, coupled with the rule on prior convictions, is that probable cause is established and the malicious prosecution action therefore fails.

*Id.* at 561; 564. The *Hanson* decision directly supports application of collateral estoppel to prevent re-litigation of the issue of probable cause. The Court of Appeals decision in this case is fully consistent with *Hanson.*

Further, Mr. Hart argues that this case presents the scenarios where the municipal trial court found probable cause "based upon an assumption, rather than fact." (Petition for Review, p. 10.) Mr. Hart claims that, "[o]nce the facts were revealed, probable cause no longer existed." Mr. Hart conflates a finding of probable cause with a finding of guilt. In determining probable cause, a trial court looks at the facts and circumstances within the officer's knowledge, assuming those facts to be true. Even if Mr. Hart could prove that the City did not own the gate at issue in the underlying criminal prosecution, that finding would not defeat

probable cause, nor would it defeat the application of collateral estoppel.

Mr. Hart's request to revive his malicious prosecution claim is futile. Probable cause is a complete defense to this claim. Mr. Hart is collaterally estopped from re-litigating the issue of probable cause, which the criminal court determined as a matter of law in the original criminal prosecution. Further, under *Hanson*, Mr. Hart's conviction for theft, even though it was later overturned, conclusively established probable cause for the theft prosecution. Finally, the evidence supports a finding of probable cause on the merits. The Court of Appeals decision is consistent with *Hanson*, and there is no reason for the Court to accept review in this case.

### C. The Court Should Not Accept Review of Plaintiff's Defamation Claim.

Mr. Hart did not present any authority or argument to support review of the dismissal of his defamation claim, which was properly dismissed.

#### *1. Sergeant Unfred's statements are opinion.*

"Before the truth or falsity of an allegedly defamatory statement can be assessed, a plaintiff must prove that the words constituted a statement of fact, not an opinion." *Robel v. Roundup Corp.*, 148 Wn.2d 35, 55, 59 P.3d 611 (2002). Expressions of opinion are not actionable. *Id.* To establish defamation, a plaintiff must initially prove the offensive

statement is "provably false." *Eubanks v. N. Cascades Broad.*, 115 Wn. App. 113, 120, 61 P.3d 368 (2003). Whether allegedly defamatory words were intended as a statement of fact or an expression of opinion is a threshold question of law for the court. *Robel*, 148 Wn.2d at 55.

In determining whether statements are non-actionable opinion, courts look to the totality of the circumstances and should consider "'(1) the medium and context in which the statement was published, (2) the audience to whom it was published, and (3) whether the statement implies undisclosed facts.'" *Robel*, 148 Wn.2d at 56, *citing Dunlap v. Wayne*, 105 Wn.2d 529, 539, 716 P.2d 842 (1986).

Mr. Hart claims that Sergeant Unfred's characterization of him as "very aggressive and irrational" is defamatory. The words "very," "aggressive," and "irrational" are all adjectives that necessarily convey Sergeant Unfred's opinion of Mr. Hart. They are not "provably false." The subjective, conclusory nature of these words is demonstrated when one considers the proof that would be offered at a trial on such a claim. Mr. Hart would have to present testimony to prove, by a preponderance of the evidence, that he is not aggressive or irrational. The determination of these issues will depend upon the juror's subjective ***opinions*** of Mr. Hart after hearing all the evidence.

This Court has previously ruled that words like "snitch," "squealer,"

"liar," and "idiot" were not defamatory. *Robel*, 148 Wn.2d at at 56. Similarly, in *Dunlap*, this Court concluded that a letter containing opposing counsel's statement to the plaintiff's attorney that the plaintiff had been soliciting a kickback was non-actionable opinion. *Dunlap*, 105 Wn.2d at 540-41. As in *Dunlap*, Sergeant Unfred's subjective opinion of Mr. Hart cannot be defamatory.

***2. Plaintiff cannot establish fault.***

Additionally, Mr. Hart cannot satisfy the requisite fault element of defamation. The degree of fault required by private figures alleging defamation is negligence. *Mark v. Seattle Times*, 96 Wn.2d 473, 483, 635 P.2d 1081 (1981). Mr. Hart must show that Sergeant Unfred knew, or in the exercise of reasonable care, should have known that the statement was false or would have created a false impression in some material respect. *Id.* There is no evidence to support such an allegation.

***3. The common interest qualified privilege bars plaintiff's defamation claim.***

Dismissal was also appropriate under the "common interest qualified privilege." This privilege applies "when the declarant and the recipient have a common interest in the subject matter of the communication." *Moe v. Wise*, 97 Wn. App. 950, 957-58, 989 P.2d 1148 (1999). Its purpose is to allow people to share information and learn from

associates what is being done, even if the recipient is not personally concerned with the information. *Id.* This qualified privilege is available for persons involved in the same organizations, partnerships, associations or enterprises who are communicating on matters of common interest. *Id.* at 958. "When a qualified privilege applies, a plaintiff cannot establish a prima facie case of defamation ***unless*** the plaintiff can show by clear and convincing evidence the declarant had knowledge of the statement's falsity ***and*** he or she ***recklessly disregarded*** this knowledge." *Woody v. Stapp*, 146 Wn. App. 16, 21, 189 P.3d 807 (2008) (emphasis added).

Officer Unfred's communications are protected by the common interest qualified privilege, which applies to police officers making statements or communications in the performance of their official duties. *Bender*, 99 Wn.2d at 600-01. Therefore, Mr. Hart's defamation claim fails, because there is no evidence in the record upon which a reasonable juror could conclude that Sergeant Unfred (1) knew his statement was false and (2) recklessly disregarded this knowledge. The only evidence in the record bearing on Mr. Hart's defamation claim is a copy of Sergeant Unfred's safety memorandum and Ms. Kilponen's testimony that it was sent to the City of Fife Police Department. There is no evidence to support Mr. Hart's self-serving allegation that Sergeant Unfred was being untruthful.

Moreover, public policy supports application of the common interest

qualified privilege. The ability to exchange information about members of the public is not only central to effective law enforcement, but is an integral component of securing officer safety. Law enforcement officers cannot be subject to civil liability when they coordinate in good faith to protect themselves and the public. Officer Unfred's communications fall squarely within the ambit of this privilege. The Court should not accept review of this issue.

**D. The Court Should Not Accept Review of Plaintiff's Outrage Claim.**

Mr. Hart also fails to present any authority or argument to support review of the dismissal of his outrage claim, which was properly dismissed. To recover for intentional infliction of emotional distress (outrage), a plaintiff prove: "(1) extreme and outrageous conduct; (2) intentional or reckless inflection of emotional distress; and (3) actual severe emotional distress on the part of the plaintiff." *Snyder v. Medical Service Corporation of Eastern Washington*, 145 Wn.2d 233, 242, 35 P.3d 1158 (2001) (internal citations omitted). Liability exists when the conduct in question is "so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Grimsby v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291 (1975); *Restatement of Torts*, § 46 (1965).

Mr. Hart must meet an extremely high burden to establish a *prima facie* case of outrage. He cannot establish any "extreme and outrageous" behavior, especially since his criminal prosecution was supported by probable cause and Sergeant Unfred's statements were protected by privilege. The Court should not accept review of this issue.

## V. CONCLUSION

Mr. Hart is unable to articulate a reasonable basis upon which this Court should accept discretionary review. Accordingly, the City respectfully requests that this Court deny his petition.

Respectfully submitted this 14th day of March, 2014.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 13, 2014, I caused the foregoing document to be delivered via electronic mail and U.S. Mail to the following:

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DATED this 13th day of March, 2014.

Maureen E. Pattsner
MAUREEN E. PATTSNER

## OFFICE RECEPTIONIST, CLERK

**From:** Maureen Pattsner <maureen@christielawgroup.com>
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Dear Clerk -

Attached please find the Response to Petition for Review to be filed in the following matter:

Gregory R. Hart, Respondent/Cross-Appellant, v. City of Lakewood, Appellant/Cross-Respondent
Supreme Court No. 89914-2
Court of Appeals No. 43304-4-II

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