

No: 46347-4-II
**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

FEARGHAL MCCARTHY; CONOR MCCARTHY, a minor, by
and through Fearghal McCarthy, his father; and CORMAC
MCCARTHY, a minor, by and through Fearghal McCarthy, his
father,

Appellants

vs.

COUNTY OF CLARK, CITY OF VANCOUVER,
DEPARTMENT OF SOCIAL AND HEALTH SERVICES,
CHILDREN'S PROTECTIVE SERVICES.

Respondents

Appeal from the Superior Court of Clark County
Case No: 08-2-04895-4

**OPENING BRIEF OF APPELLANTS
CONOR AND CORMAC MCCARTHY**

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in granting summary to the State of Washington and Clark County for negligent investigation because they conducted a faulty and biased investigation, which resulted in a harmful placement.

2. The trial court erred in granting summary judgment to the City of Vancouver for negligent investigation because City Prosecutor, Jill Petty, exceeded the scope of her duties as a prosecutor, acted in an investigatory manner, and conducted a biased investigation which resulted in a placement harmful to Conor and Cormac.

3. The trial court erred in granting summary judgment to the State of Washington, Clark County, and the City of Vancouver for Outrage because all of the defendants recklessly inflicted severe emotion distress upon Conor and Cormac as a result of their extreme and outrageous conduct.

II. INTRODUCTION AND ISSUES RELATED TO ASSIGNMENTS OF ERROR

Conor and Cormac McCarthy were removed from their father's non-abusive home and kept in their mother's abusive home as a result of the defendants' faulty and biased investigations. Each and every defendant committed acts that proximately caused the harmful placement decision. In addition, each and every defendant recklessly inflicted severe emotion distress to Conor and Cormac by their actions, inactions or both. The arresting officer controlled the flow of information to the court in order to

procure a determination of probable cause. Other officers took reports of their mother's violations of the restraining order, but refused to arrest. They controlled the flow of information to the prosecutor. The prosecutor controlled the flow of information going to the police by coaching and coercing their mother into gather more evidence against their father. The caseworker gave no information to the court because he conducted almost no investigation at all.

As a result of the defendants' actions both individually and collectively, Conor and Cormac have suffered psychological and emotional damage that may be fully discovered for years to come.

1. Was granting summary judgment in favor of the State of Washington and Clark County for negligent investigation inappropriate when there were disputed issues of material fact?
2. Was granting summary judgment to the City of Vancouver for negligent investigation inappropriate when there are disputed material facts about whether Jill Petty exceeded her scope of prosecutorial duty and stepped into an investigative role and whether the investigation she conducted resulted in a harmful placement decision?

3. Was granting summary judgment in favor of the State of Washington, Clark County, and the City of Vancouver for Outrage inappropriate when each and every defendant acted without any regard to Conor and Cormac's wellbeing and failed to prevent their severe emotional distress?

III. STATEMENT OF THE CASE

1. Procedural History

On May 25, 2010, Judge Nichols granted partial summary judgment in favor of the city of Vancouver as to the specific acts of its officers. CP-2112-16. The parties reconvened on July 30, 2010, where Judge Nichols also heard the City's motion to suppress corrected pages of Patricia's deposition. The court granted the motion to suppress, but allowed the testimony as a declaration, and granted summary judgment for the remainder of the claims against the city of Vancouver. CP-1095, 1098. The plaintiffs' motions for reconsideration was denied. CP-1099-1100, 1293.

After defendants Clark County and the State of Washington filed their motions for summary judgment the case was transferred to Judge Collier and the motion were pending before him for fourteen months until a hearing was set for May 9, 2014. CP-2068

On that day, the parties agreed that Judge Collier had the authority to decide all the motions including the summary judgment Judge Nichols

granted. Vol. I, RP, -207-08. Judge Collier granted Summary Judgment in favor of the State of Washington Department of Social and Health Services and Clark County. CP-2072-74.

For the Court's convenience, the appendix contains a list of all of the hearings, and which documents were considered at each hearing, with the corresponding CP pages. See A-1.

2. Statement of Facts

a. Background Facts

Conor McCarthy (born July 16, 1999) and Cormac McCarthy (born May 10, 2003) are the children of Fearghal and Patricia McCarthy, who married in 1998. CP-406-407. Throughout the marriage, Patricia experienced various mental health issues including panic attacks, insomnia and depression. CP-401. In May 2003, Patricia sought treatment, but after her sister's suicide in June 2004, her mental health deteriorated. CP-401. She began reporting paranoid fears, such as hospital staff plotting against her, and hallucinations. She also feared she would harm Cormac. Patricia was psychiatrically evaluated and obtained cognitive behavior therapy. CP-407.

She was prescribed psychotropic drugs and prescription narcotics, for various physical pains, which developed into a drug dependency. CP-

408. By spring of 2005, Patricia reported having angelic visitations at night and believed various animals were her deceased sister visiting her. CP-1938, 2010. When the couple fought about Patricia's drug use, and Fearghal threatened divorce, Patricia voiced her fear of losing custody of the children. CP-410.

b. The June 3, 2005 Arrest

It was during this tumultuous time, on June 3, 2005, when Patricia called 911 and reported that Fearghal had abused Cormac. CP-1569, 1571-72. Fearghal testified that Patricia, on June 2, 2005, (the week of the one year anniversary of her sister's suicide) renewed her pain medication and came home high. CP-1955. The couple argued about her escalating drug use, and Fearghal threatened divorce, but they later reconciled. CP 401-402.

Patricia testified that on June 3, 2005 she took Conor and Cormac to St. Joseph's church and called 911 to report Fearghal's abuse. CP-1571-72. The 911 operator told Patricia an officer would meet her at the church. CP-1577. The operator classified the call as cold, meaning the alleged aggressor was no longer at the scene, and dispatched Deputy Ed Kingrey ("Kingrey"). CP-1537.

Instead of meeting Patricia at the church, Kingrey contacted Patricia by telephone. CP-1537. She told him the children were with her and her mother Regina, at St. Joseph's Church and that they would stay in a shelter arranged by the church. CP-1543, 1826. She reported that Fearghal physically and emotionally abuse her for the past year and that the prior evening Fearghal had struck Cormac, who was then two, on the head, causing him to fall to the floor from a high dining chair and hit his head on the table on the way down. CP-1825-27. Yet, Patricia reported that Cormac had no injuries or any visible marks. *Id.* Kingrey also briefly spoke to her mother, Regina. CP-1537.

After telephoning Patricia, Kingrey went to the McCarthy residence and interviewed Fearghal. CP-1539. Fearghal denied the entire incident, especially striking Cormac. CP-1542. He also denied ever assaulting or physically abusing his wife. *Id.*; CP-1828. Fearghal said that he occasionally yelled out of frustration, but he never got physical. *Id.* Fearghal indicated Patricia was high on prescription pain medications the night before, that she had a history of delusions in the last year, and that she was taking medication for anxiety. CP-1789.

Kingrey admitted it is routine practice to assess whether drugs are involved when dispatched to an alleged domestic violence scene, but he

did not do so. CP-1544. Fearghal testified that he showed Kingrey the array of prescription drugs in the bathroom cabinet, but Kingrey did not recall whether that occurred. CP-1540, 1789. He did, however, state that it would not have mattered because he “was convinced in [his] own mind” that she was telling the truth. CP-1541. He did not inquire further about Patricia’s substance abuse, did not follow up with Patrica about her alleged drug use or mental stability and did not factor either of those into his investigation. CP-1542, 1827. He did not interview Conor, whom Regina named as a witness. CP-1541, 1827.

Kingrey testified that in his twenty years as a deputy, he has experienced situations where a spouse used an allegation of abuse to gain an advantage in a domestic dispute and that it was difficult to tell who was telling the truth. He also recognized the risk of false allegations in domestic violence settings and said that is why he typically contacts third party witnesses who observed an alleged assault. CP-1544.

Kingrey concluded that Patricia was credible, based on their phone conversation, and Fearghal displayed the classic behavior of an abuser because he denied having abused Patricia or Cormac and shifted the blame. CP-1541-42. However, Fearghal was not enraged or threatening in any way and Kingrey could not explain how his behavior is distinguished

from an innocent person's behavior. CP-1542, 1545-46. Kingrey did not inquire whether Fearghal had prior criminal history, or interview neighbors to determine whether they observed anything violent. CP-1543.

Kingrey arrested Fearghal for Assault IV-DV on Cormac and Assault IV-DV on Patricia based on three facts: (1) Fearghal denied he abused Patricia or Cormac, (2) Kingrey "thought a no-contact order would be a good thing to have at the time and the only way to get that was to book [arrest] Mr. McCarthy", and (3) Kingrey knew the "no-contact order would preclude Fearghal from seeing the children" and it would become a factor in the divorce, including limiting or prohibiting contact between Conor, Cormac, and Fearghal. CP-1542-43, 1556, 1828. Kingrey testified that even if he had known Patricia and Regina had significant issues with veracity, it would not have influenced his decision to arrest Fearghal. CP-1546.

After Kingrey transported Fearghal to the Clark County Jail, he returned to the residence to meet Patricia for the first time in person and obtained a Domestic Violence Victim Statement ("Smith Affidavit") from her. At that time, Patricia told Kingrey that she and the children did not need shelter, but would stay with her parents, who lived locally. CP-1547, 1828.

Kingrey's walk through of the McCarthy house revealed no signs of disturbance and he confirmed, through his own eyes, that Patricia showed no sign of physical trauma and through Patricia's word, that Cormac had no injuries either. CP 1544-1545. But, he did not see Cormac. CP-1541, 1547, 1550, 1825-28. In fact, he formed no opinion as to whether Cormac was actually injured. *Id.* He did not examine Cormac, inquire about a doctor's examination, whether Cormac sustained any bruising or other injuries, and did not refer the incident to CPS for further investigation. CP 1541, 1547, 1550.

After arresting Fearghal, Kingrey completed a Declaration of Probable Cause (the "PC Declaration") and submitted it to Judge Schreiber for a finding of probable cause. CP-1557-58. Kingrey did not present to the court that that neither Cormac nor Patricia had any injuries or bruises, that Cormac had not been taken to the hospital for examination, that Kingrey did not form an opinion about whether Cormac was actually injured, that Fearghal reported Patricia was taking medication for mental health issues, that Patricia had been experiencing delusional thoughts, that Patricia was abusing prescription pain medications, that Fearghal reported Patricia was high on prescription pain medications at the time of the alleged incident, or that Patricia initially reported she and the children

would have to stay in a shelter. Based on Kingrey's statement, Judge Schreiber found there was probable cause on June 5, 2005. *Id.*

As a result, Fearghal was issued a no contact order (the "NCO") prohibiting him from having any contact with Cormac and Cormac did not see Fearghal again until 2007. CP-1670.

c. Initial CPS investigation

Two days after the alleged incident, on June 4, 2005, Regina took Cormac to Kaiser Clinic, where she recounted Patricia's story. CP-1996. The physician noted a "slight yellow bruise non-tender," but based on Regina's allegations of abuse, the physician called CPS. CP-1996-97. Because Patricia did not report the alleged abuse, the physician also referred her to CPS for neglect. CP-1404.

Patricia testified to the events involving CPS Investigator, Patrick Dixon, ("Dixon") in the Stipulated Findings of Facts in the McCarthy divorce action. CP-1234. Dixon met with Patricia on June 13, 2005, at the McCarthy residence. He instructed Patricia to sign a safety plan that required her to prohibit Conor and Cormac from having any contact with Fearghal. He also told her that if she did not file for divorce, CPS would consider that a failure to protect the children and a violation of the safety

plan, and CPS would remove the children from her care. Dixon then referred her to divorce attorney, Marcine Miles. CP-1239.

Dixon testified that he conducted a face to face interview with Patricia, Conor, and Cormac on June 13, 2005, between noon and 1.30pm. CP-1216, 1323, 1945-46. But, evidence shows that Cormac was at daycare continuously from 8:50 am until 3:40pm on June 13. CP-2038. Dixon's Family Face Sheet, which documented the meeting, notes that he only met with Patricia and not the children. CP-1993. Conor testified that he did not meet with Dixon, who is an African American male, and that he would have remembered because most adults he had met were Caucasian females. CP-1781.

Dixon never spoke with Fearghal about the investigation. CP-1216. He testified that it was because: 1) because Fearghal was in Ireland and 2). there was a criminal investigation going on. CP-1216. On or about June 13, Fearghal did go overseas to visit family and attend his brother's wedding around June 13, but returned about two weeks later. CP-1599-1600. Dixon said CPS normally does not get involved with a police investigation. Instead, they defer to the police report for the investigation and the police report becomes part of their process. CP-1216. The police

take the lead in domestic violence and physical abuse cases and CPS relies on police interviews to make their own findings. CP-1218.

However, Dixon testified that it was important to talk to both parents if it does not mess up the integrity of the law enforcement investigation. CP-1218.

As part of Dixon's duties as a CPS investigator, he is supposed to complete an Investigative Risk Assessment ("IRA") and issue a CAPTA letter stating whether the abuse allegations are founded, inconclusive or unfounded, within ninety days of a referral CP-1973. But, a CAPTA letter was not issued until ten months later on April 21, 2006. CP-1409-10

Dixon testified that he relied on the police report, prepared by Kingrey, to complete a parenting risk assessment for both Fearghal and Patricia. Dixon gave Fearghal a 4 for parenting skills which is a moderate to high risk. CP-1217-18. However, Dixon did not request a copy of Kingrey's report until May 23, 2006 and the Sheriff's Office did not send a copy of Kingrey's report to CPS until June 9, 2006, over a month after the investigation was already closed. CP-1385, 1396.

Dixon testified that evidence of parental delusions would have impacted his risk assessments because "it places the child at risk of harm and injury". CP-1218 A parent who is not getting up to feed their

children would also affect his risk assessments, Id. But, neither Patricia's substance abuse, nor her mental health issues and her propensity for delusions, were explored during Kingrey's investigation or listed as risk factors in Dixon's IRA. CP-1374.

Dixon assigned these risk levels just prior to closing the case. He made a founded determination against Fearghal based on what Patricia told him. Dixon admitted that at least one of Fearghal's assigned risk factors was arbitrary. CP-1217.

During the November 1, 2004-November 1, 2005 year, Dixon performed at a sub-par level and was taken off caseload duties because "management had sufficient concerns about the quality of Dixon's work and safety of children on his caseload." CP-1980. Dixon's annual performance review, conducted by Dixon's supervisor, Denise Serafin, revealed that he fabricated reports, failed to meet collateral contacts, often backdated his entries into Service Episode Records ("SER"(s)) which conflicted with his handwritten notes, cut and pasted documentation from previous investigations to create SERs, recorded in person meetings on state holidays or on days Dixon absent, and did not complete Safety Assessments and IRA's until the close of the case, but did not keep sufficient notes to accurately reflect what actually occurred. CP-1972-74,

1976-81. The Review noted that the “referrals represent a serious data integrity concern which could have a direct bearing on child safety.” CP-1972.

On January 8, 2006, during the open CPS investigation, Fearghal reported several concerns about Conor and Cormac’s safety and welfare including the following: 1). Cormac suffered four dog bites to his face while left unsupervised, 2). Conor, had been riding his bike unsupervised, without a helmet, along a mile stretch of a busy, curvy, county road with no sidewalks, 3). Conor was being exposed to sexual activity, had imitated the sex act, and was being bathed naked with Patricia’s boyfriend’s three year old daughter in the same tub, 4). Cormac was locked in his bedroom with a chain lock and left in Conor’s care for extended periods of time. DSHS declined to investigate these reports because Fearghal had been arrested for assaulting Cormac. CP-1958-59, 2002.

d. Assistant City Attorney Jill Petty’s Involvement

Following Fearghal’s June 3, 2005 arrest, Assistant City of Vancouver Attorney, Jill Petty, from the Domestic Violence Prosecution Center (DVPC), contacted Patricia. CP-223, 360. Patricia talked to Petty on the phone two to three times before she filed for divorce. CP-163. On July 8, 2005, Petty amended the information to a single assault charge against Fearghal naming Cormac as the victim. CP-1673.

In July 2005 Patricia told Fearghal that she would recant her allegations and allow Fearghal to see the children if he agreed to accede the family business and the marital home to her, and agree to list the family home for sale with her realtor father. CP-1428. Patricia told Fearghal that he risked deportation from the criminal charges and that he needed to cooperate with her demands if he wanted a chance to see his children again. CP-1790. Patricia allowed Conor to spend July 21 and 23, 2005 with Fearghal. CP 1428-29.

When Patricia expressed her concerns about moving forward with the assault charge against Fearghal and wanted to recant, Petty told her she could lose her children if she did so. Petty told Patricia that the DVPC staff were outraged by the police report; Fearghal fit the profile of a typical abuser, she fit the profile of a typical domestic violence victim and she should be fearful of Fearghal. If she recanted, Patricia would lose all credibility in any divorce action and Fearghal would get custody of the children. Plus, Petty would notify CPS and they would take the children away from her put them in foster care, and Patricia would be prosecuted for making a false police report. CP-223-24.

Petty contacted Patricia multiple times and reiterated that Patricia was a typical domestic violence victim and characterized Fearghal as an

abuser. CP-224. She also encouraged Patricia to file for divorce and to petition for an Order of Protection to remove Fearghal from the marital home and preclude him from having any contact with his children for one year. *Id.*

Just a week after Conor spent time with Fearghal, on July 27, 2005, Patricia sent Fearghal a letter stating that she did not want Fearghal to have any contact with her or Conor for one year. CP 1429. Patricia obtained a temporary order for protection that barred Fearghal from having any contact with Patricia, Conor, or Cormac. CP-1350. Patricia filed for divorce on August 9, 2005. CP-196. On August 10, 2005, the July 28th temporary protection order was extended until August 31, 2005 for hearing on the divorce docket. CP-1355-58.

Patricia's divorce attorney, Marcine Miles, called Petty and suggested they cooperate CP-497. Patricia alleges that Miles relayed the conversation to her and Miles told her that she and Petty were going to strategize about what to do to make sure Patricia's divorce went in her favor. CP-614-15.

At the August 31, 2005 hearing, Patricia petitioned for an order of protection and termination of Fearghal's visits with Conor based on Fearghal's arrest and criminal charges. The court granted Fearghal limited

supervised visitation with Conor, and issued a mutual domestic violence restraining order (“DVRO”). The DVRO restrained both parties from harassing each other or going to each other’s homes. It also notified each party that a violation of the DVRO is a criminal offense, subject to arrest under RCW 26.50. CP1357-1361.

The court also appointed Dr. Kirk Johnson to perform a custody evaluation in which Fearghal’s arrest would be a major factor. CP-415, 1361. In December 2005, Dr. Johnson suspended his parenting evaluation until Fearghal resolved the criminal charges. CP-415.

According to Patricia, Petty told her the assault case was not very strong and that she needed to find something else. CP-516-17. The two had that conversation sometime between when the NCO was filed on June 6, 2005, and the first allegation of breach was a couple months later. CP-517.

Based on Patricia’s report, Petty filed additional criminal charges against Fearghal including a witness tampering charge, which was ultimately dismissed. CP-250-51.

c. Patricia’s violations of the mutual restraining order and non-arrests

Patricia first violated the mutual restraining order on October 5, 2005, when she called Fearghal three times and verbally abused both him

and his mother. Deputy Todd Young (“Young”) responded and, despite confirming a mutual restraining order was in place, and Patricia’s admission that she violated the restraining order, Young declined to arrest her. CP-1676-1677. In his report, Young listed the offense as a violation of protection order under RCW 26.50.110. CP-1675.

Patricia violated the mutual restraining order a second time on January 11, 2006, when she forcibly entered Fearghal’s home and to verbally assault him. Off-duty Vancouver Police Officer, Bill O’Meara was present and physically intervened. He testified that Patricia’s behavior was threatening and that he thought she would have assaulted Fearghal, had he not intervened. CP-668-69.

Fearghal called 911 and Deputy Doug Paulson (“Paulson”) and Young responded. CP-1794. Young advised Paulson there was a mutual restraining order in place and verified the DVRO order number. CP-1681. Paulson even included a copy of the DVRO with his report. Id. Patricia admitted that she had gone to Fearghal’s home, opened the front door and yelled at Fearghal. Id. Paulson reported that Fearghal feared for his safety, but did not make an arrest. CP-1682. In May 2006, the Domestic Violence Prosecution Center sent a letter that acknowledged this incident was an act of domestic violence and Fearghal was the victim. CP-414.

Despite Patricia's violations, the family court granted Patricia's motion to terminate all contact between Fearghal and Conor on January 17, 2006. That decision was based on Fearghal's arrest and pending criminal charges. CP-1456, 1460.

The original NCO was rescinded on March 20, 2006, but another one had been put in place on February 21, 2006. CP-1464.

f. Close of the CPS investigation

On April 12, 2006, Dixon created a SER of his in person meeting with Patricia, which was also the day he closed his investigation. He had created a SER for his alleged in person meeting with Conor on July 15, 2005. CP 1363-64.

Dixon's SER entries do not show he spoke to the referring Kaiser physician, attempted to contact Fearghal, notified Fearghal of any interviews with the children, spoke to Fearghal about the safety plan for the children, completed his investigation within 90 days of the referral, obtained a copy of Kingrey's report prior to concluding his investigation, created a SER within two days of the activity as required by CPS standards, or documented Patricia's statement that so she did not witness the actual alleged incident. CP 1974-5. Even so, Dixon concluded that the allegations against Fearghal were founded, with an additional founded

finding of negligent treatment of Conor, that the allegations were unfounded against Patricia, and substance abuse was not a contributing factor. CP-1216, 1375, 1419.

On April 21, 2006, DSHS sent Fearghal a letter stating they had investigated allegations against Fearghal and made findings of “founded”. CP 1409-10. Fearghal challenged the finding on May 11, 2006 and then Dixon requested a copy of Kingrey’s report on May 23, 2006. CP-1409,1415, 1396. On June 15, 2006, DSHS sent Fearghal a letter affirming the finding of founded CP-1405.

Fearghal appealed and requested a hearing before an Administrative Law Judge (“ALJ”). He presented exculpatory evidence, including contradictory facts within CPS records, violations of his rights, procedural deficiencies in Dixon’s investigation, the referring physicians’ medical report, a joint interview of Conor by Jill Petty and Fearghal’s criminal defense attorney, McMullen, evidence that Patricia was coaching Conor, and concerns about Patricia’s motivations and credibility. CP-1796. Prior to the ALJ’s determination, on October 5, 2006, DSHS changed its founded finding to “inconclusive”. CP-1301.

g. Patricia’s third non-arrest

On May 5, 2006, Fearghal reported that Patricia forged a \$5,000 check, and provided copies of the forgery, along with a court order stating they were each responsible for their own separate debts, and an affidavit of fraud, to Deputy Richard Farrell ("Farrell"). Farrell responded that the check forgeries were a civil issue and, even after Patricia admitted that she had no authority to draw on Fearghal's business account, Farrell did not arrest her. CP 673-75, 1452, 1795.

g. Criminal Charges resolved

On August 1, 2006, a new prosecutor dismissed the assault-IV and witness tampering charges as part of an Alford/Newton plea and Fearghal was instead charged with disorderly conduct for using abusive language. CP 1687, 1695. Mostly concerned about deportation, Fearghal accepted the plea offer. Sentencing included a 2 year probation period which restricted Fearghal from leaving the county and renewed the NCO pertaining to Cormac and Patricia. CP-1699, 1475-78. At this point Cormac had not had contact with Fearghal since June 3, 2005 and Conor had not had contact him since August 31, 2005. The NCO for Cormac was not rescinded until April 6, 2007. CP-332

h. Fearghal's report of abuse and Patricia's fourth non-arrest

Finally, the family ordered reunification counseling for Fearghal and Conor and Cormac on December 13, 2006. CP-352. On December 17, 2006, when Fearghal retrieved his community property from Patricia's residence, as ordered by the family court, he was verbally assaulted by six men, including Patricia's father and boyfriend, and even poked by Patricia's boyfriend. Deputy Farrell arrived, told Fearghal that he was aware of the history, and refused to take a report. CP-1795.

While inside the house, Fearghal discovered a chain-lock on a bedroom door, so he video-taped it and reported it to Farrell. Id. Farrell ordered Fearghal to turn off the video camera and refused to make a report. Id. The family court held Patricia in contempt for violating the DVRO. CP-414.

i. The Divorce Resolved

The divorce action was resolved in 2010. Patricia admitted that all her allegations against Fearghal were false and Fearghal was designated primary parent with sole-decision making in the parenting plan. The parenting plan imposed various restrictions on Patricia based on RCW 26.09.191 because of her history of violating DV restraining orders, her abusive use of conflict, drug abuse and other issues. CP-1234.

j. Conor and Cormac's treatment while separated from Fearghal

During the time Conor and Cormac were separated from their father, they suffered neglect, emotional abuse, and witnessed other children in the house being abused. CP-1781-83. No-one with the authority to intervene to protect them would do so. CP 1797.

Patricia locked herself in her room to sleep for entire days at a time leaving Conor, then five, to take care of Cormac. As a five year old, he prepared "chips, cereal, cookies and bread" for Cormac and himself to eat. Conor described spending his days playing video games and watching TV and often did not attend school because Patricia was still sleeping. CP-1781. Patricia left Conor and Cormac in the care of her boyfriend. Under his watch, Cormac was attacked by a dog. CP-1782. Conor described an incident when he was in Shaun's care where Shaun was doing doughnuts in his car and Conor hit his head on the front seat and knocked his tooth out. CP-1783.

Conor remembers Patricia telling him to tell "her truth" in the interviews with various attorneys and psychiatrists. CP-1780 During the almost two years he was separated from Fearghal, he was not allowed to even speak his name and he thought his father was dead. His "mind would

get lost on how he died, where he died, his last words before he died.” CP-1781-82.

Patricia’s boyfriend started spending the night and they started locking Cormac in his room and Conor could hear Cormac scream, “Conor let me out! Let me out! Let me out!” CP-1782.

Conor witnessed Shaun abuse his own children and would hear them screaming for him to stop. CP-1783. Conor also witnessed his mother abuse Shaun’s children by locking them in the garage with no bathroom and he could hear them screaming to be let out. CP-1783.

A specialist from OHSU, Dr. James Boehnlein, reviewed Conor’s declaration and concluded that “elements of multiple diagnosable mental health conditions are present”; that these diagnosable conditions are “mood disorders such as depression, and anxiety disorders such as posttraumatic stress disorder” and that there are “strong indicators” to support these diagnosable conditions as well as “a mental health evaluation.” CP-1787.

C. ARGUMENT

This court reviews an order of summary judgment *de novo* and construes the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Wilson v Steinbach*, 98 Wn.2d 434, 437, 656 P.2d

1030 (1982). Summary judgment is only appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*; CR 56(C).

1. SUMMARY JUDGMENT IN FAVOR OF THE STATE AND COUNTY WAS INAPPROPRIATE BECAUSE THEY BOTH, THROUGH THEIR EMPLOYEES, CONDUCTED A BIASED AND INSUFFICIENT INVESTIGATION WHICH LED TO A HARMFUL PLACEMENT DECISION

a. Elements of Negligent Investigation

The elements of any negligent claim are duty, breach, causation and damages. *Pedroza v. Bryant*, 101 Wn.2d 226, 228, 677 P.2d 166 (1984). Both the Department of Social and Health Services (“DSHS”) and Law Enforcement have a duty to investigate child abuse. RCW 26.44.050. This duty is only owed to a child or a parent, who may bring an action for negligent investigation when this duty is breached. *Tyner v. Dep't of Soc. & Health Servs.*, 141 Wn.2d 68, 80, 1 P.3d 1148 (2000). Damages are limited to a harmful placement decision or injuries resulting from such placement. *M.W. v. Dep't of Soc. and Health Servs.*, 149 Wn.2d 589, 602 70 P.3d 954, (2003). These standards apply to both DSHS and law enforcement, as the court has used them interchangeably. A harmful placement decision occurs when a child is removed from non-abusive home, placed in an abusive home, or left in an abusive home. *M.W.*, 149 Wn.2d at 602.

Proximate cause consists of both cause in fact, or but for causation, and legal causation. *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 478, 951 P.2d 749 (1998). Cause in fact means that but for the defendant's actions, the plaintiff would not have been injured. This a question for the jury. *Id.*

Legal causation is not as straight forward, but is "grounded in policy determinations." Legal causation looks at the connection between the injury and the act and whether, as a matter of policy, the defendant should be held liable. *Schooley*, 134 Wn.2d at 478-79. It also concerns foreseeability. *Tyner*, 141 Wn.2d at 82. The legislative intent of RCW 26.44 is to protect the child's wellbeing, which the court interpreted as protecting children from a harmful placement. Because the duty to investigate was specifically created to prevent harmful placements, a harmful placement is a foreseeable harm in every investigation. As a matter of policy, a caseworker or law enforcement officer who conducts a faulty or biased investigation is liable if a harmful placement occurs. See *M.W.*, 149 Wn 2d at 602.

In the context of child abuse investigations, a court ordered placement breaks the chain of causation as a matter of law, but only if that court has been presented with all the material facts. *Tyner*, 141 Wn. 2d at

86. This is because an investigating officer or caseworker can easily control the flow of information to a court. *Bender v. City of Seattle*, 99 Wn.2d 582, 592, 664 P.2d 492 (1983); *Tyner*, 141 Wn.2d at 86. This rule also safeguards against a negligent investigator using their faulty investigation to support their findings.

A material fact is one that would have changed the outcome of the court's decision. *Tyner*, 92 Wn. App. 504, 517-18, 963 P.2d 215 (1998), *rev'd on other grounds*, 141 Wn.2d 68, 1 P.3d 1148 (2000). It is a question of fact for the jury unless reasonable minds could reach but one conclusion. *Estate of Jones v. State*, 107 Wn. App. 510, 517-18, 15 P.3d 180 (2000).

To understand when this question should go to the jury and when it should not it is helpful to compare the following two cases: *Pectu v. State*, 121 Wn. App. 36, 86 P.3d 1234 (Ct. App. 2004) and *Bender*, 99 Wn.2d 582. In *Pectu*, the defendant was accused of sexually abusing his daughter. In a subsequent negligent investigation action, he argued that the dependency court's decision was not a superseding cause because the caseworker engaged in improper interviewing techniques, failed to interview collateral witnesses and her failed to provide the court with exculpatory information such as the favorable results of the sexual

deviancy evaluation and polygraph examination. *Pectus*, 121 Wn. App. at 60. But, all of this information was presented to the court either through *Pectus* or someone else. *Id.* Therefore, the trial court found that reasonable minds could only conclude that all material information was presented to the court and it granted summary judgment in favor of the defendants. The court of appeals affirmed. *Id.* at 61.

In contrast, Detective Vanderlaan, in *Bender*, initially investigated Bender, a pawn store owner, for selling stolen jewelry. He also presented the information to the prosecutor. *Bender*, 99 Wn.2d at 585-86. Although *Bender* was not a negligent investigation case, it is analogous because the court analyzed the same policy issues. The Washington Supreme court held that the prosecutor's decision to file charges was not a superseding cause as a matter of law because Detective Vanderlaan did not tell the prosecutor that his investigation failed to substantiate his informant's statements, that Bender immediately complied with the reporting laws, that the alleged disproportionate price paid by Bender, compared to the actual value of the ring, was not at all unusual in the second-hand jewelry market in Seattle with respect to legitimate transactions. *Bender*, 99 Wn. 2d at 592, 596. These facts were sufficient to submit the claim to the jury because reasonable minds could come to more than one conclusion about

whether this information would have changed the outcome. *Id.* at 592.

The most important distinction between the caseworker in *Pectu* and detective Vanderlaan in *Bender* is that Detective Vanderlaan was in a position to control the outcome by controlling the flow of information. *Id.*

Here, Judge Collier did not make any findings of fact or conclusions of law in his summary judgment order, so plaintiffs are left to guess about which elements he thought were lacking and which facts he considered undisputed. CP-2072-74.

b. Dixson's Negligence

As a caseworker, Dixson owed Conor and Cormac a duty to investigate the alleged abuse. At the time of the investigation, both parents had an open referral with CPS, but Dixson only interviewed Patricia and took everything she said at face value. Dixson breached his duty to Conor and Cormac by conducting a faulty and biased investigation. His breach was the legal causation of their harmful placement. As discussed above, the duty to investigate under RCW 26.44 was created to protect children from harmful placements, so it was foreseeable that his failure to abide by CPS standards and procedures would result in a harmful placement. It is true that a caseworker does not create an actionable breach of duty every time his investigation falls below a reasonable standard of care. *Pectu*, 121

Wn. App. at 59 citing *M.W.*, 149 Wn.2d at 601–02. But, that is not what happened here. Dixon’s investigation did not simply fall below a reasonable standard of care like the caseworker in *Pectu*. His total lack of any meaningful investigation, and complete reliance on the word of one parent, removed Conor and Cormac from a non-abusive home and prolonged their placement in an abusive home.

Whether Dixon was the but for cause of their harmful placement is a question of fact for the jury. Again, whether Dixon’s investigation was faulty or biased is a question of fact for the jury and his conduct and failure to comply with almost every CPS procedure are factors for the jury to consider. DSHS itself was concerned that Dixon’s actions were putting children at risk and they removed him from active investigation.

Here, the state argued below there were two superseding or intervening causes – Dixon’s supervisor who signed off on the report and the family court’s decision to grant a restraining order.

Neither of those events were a superseding or intervening cause because this situation is more like *Bender* than *Pectu*. Dixon was in a position to change the outcome by controlling the flow of information.

First, when his supervisor reviewed the file, she relied on what Dixon had entered into SER. His SER entry did not include his inability

to substantiate Patricia's statements or his admission that he assigned at least one arbitrary risk factor to Fearghal. It also contained fabricated evidence. When viewed in the light most favorable to Conor and Cormac, the evidence shows, that Dixson did not remember this referral and did not take sufficient notes to refresh his memory, so he fabricated the notes he entered into SER and closed the case with a founded investigation. But, those facts Dixson left out may have changed the result, and that is for a jury to decide.

Second, Dixson's actions are similar to the caseworker in *Tyner*. She made an "unfounded" determination, but did not inform the dependency court and was held liable for the children's harmful placement. *Tyner*, 141 Wn. 2d at 87. Here, the family court did not have the benefit of Dixson's information to aid in its decision. Dixson was in a position to change the outcome by presenting his findings. Instead, he conducted one interview and then fabricated evidence at the close of the referral ten months later.

The state attempted to analogize Fearghal to Pectu below by arguing that he had an opportunity to give the court any material information that DSHS would have given. But, that argument oversimplifies the process. A DVPO is usually issued automatically when

one is arrested for DV charges. The defendant does not have a chance to present his side of the story until trial, or not at all if he takes a plea. A TRO in civil court is issued ex parte without any input from the respondent and can be renewed using the preponderance of the evidence standard. RCW 26.10.115. But, most of the time, they are rubber stamped. In any event a show cause hearing is only about five to ten minutes and it does not usually involve witnesses or live testimony.

Whether Dixson withheld material information from his supervisor and the court, and whether this would have changed the outcome, is a question of fact for the jury.

c. Kingrey's Negligence

Kingrey had owed a duty to Conor and Cormac to investigate Patricia's allegations of child abuse. RCW 26.44.050. Cormac was not in imminent danger, so Kingrey could have taken the time to fully investigate the accusations. Instead, he made a pre-determination, after taking Patricia's statement over the telephone, that she was credible and Fearghal was an abuser. He ignored Fearghal's exculpatory information, relied on irrelevant information from Regina, failed to interview Conor or Cormac and made no attempt to even verify whether Cormac was injured.

Most importantly, Kingrey arrested Fearghal for the sole purpose of separating him from Patricia and the children. This was a placement decision. His actions show that he went to Fearghal's home with the intent to arrest him and nothing Fearghal said would change his mind. In fact, to Kingrey, Fearghal's denial was classic abuser behavior. In the light most favorable to the non-moving party, a reasonable jury could conclude that Kingrey made a harmful placement decision based on a faulty and biased investigation. In fact, Judge Collier agreed. He concluded that whether a harmful placement occurred and whether Kingrey's investigation was faulty creates an issue of fact and credibility. Those are issues for a jury. CP-1269-70.

In the trial court, the defense argued that Kingrey was not negligent because he had probable cause for arrest. But, this argument confuses liability under RCW 26.44 with qualified immunity analysis, discussed below.

An officer may arrest a person without a warrant if there is probable cause to believe the person has committed a gross misdemeanor involving physical harm. RCW 10.31.100(1). A defendant arrested without a warrant is entitled to a probable cause hearing, so an independent tribunal can determine whether probable cause exists. CrR 3.2.1.

Here, the court's determination of probable cause is not a superseding cause because Kingrey, just like Detective Vanderlaan in *Bender*, was in a position to change the outcome by controlling the flow of information. He did so by leaving out material facts. This is a question of fact for the jury unless reasonable minds could reach but one conclusion. *Tyner*, 141 Wn.2d at 86-87; *Hartley v. State*, 103 Wn.2d 768, 778, 698 P.2d 77 (1985). But, when the evidence is viewed in the light most favorable to the non-moving party, there is more than one conclusion.

Kingrey's declaration of probable cause left out the fact that he could not substantiate Patricia's statement and that Cormac suffered no injuries. In *Bender*, Vanderlaan did not believe Bender had an alibi, and thus did not bother to confirm or deny it, or to mention it to the prosecutor. Similarly, Kingrey did not believe Fearghal was innocent, so he did not tell the court that Fearghal presented exculpatory information about Patricia's mental instability and drug use. And, just like Vanderlaan in *Bender*, Kingrey cannot cleanse the transaction with a judge's determination of probable cause when he provided the information.

Subsequently, the family court granted Patricia's civil motion for an order of protection based on Kingrey's arrest report and Fearghal's pending criminal charges. The order of protection simultaneously removed

Conor and Cormac from a non-abusive home and placed them in an abusive home.

Not only could a jury conclude that Kingrey was the but for causation of the harmful placement, but he was also the legal cause. The harm was foreseeable because the statute was designed, and the duty to investigate was created, to protect children like Conor and Cormac from a harmful placement and unnecessary separation from a parent. *M.W.*, 149 Wn.2d 597-98. But more importantly, Kingrey made the arrest so Patricia could obtain a protection order. It would be illogical to allow Kingrey to purposefully influence a later placement decision and then claim he is insulated from liability because he was successful.

d. *Conor and Cormac's Damages*

As a result of Dixon's and Kingrey's investigations Conor was separated from his non-abusive father from January 2006 to January 2007 and Cormac was separated from him from June 2005 until January 2007. The separation itself is a harm that RCW 26.44 was put in place to avoid. In addition to the separation, Conor and Cormac were torn from a non-abusive home and left in an abusive home. The effects of child abuse are long lasting and often cannot be fully assessed until the child reaches adulthood. Scott Mendelson, M.D., *The Lasting Damage of Child Abuse*,

Huffington Post, Healthy Living, Feb. 25, 2015 available at http://www.huffingtonpost.com/scott-mendelson-md/the-lasting-damage-of-chi_b_4515918.html (last visited 2/25/15).

During the separation, Conor and Cormac were left in an abusive home. Conor remembers Patricia telling him to tell “her truth” in the interviews with various attorneys and psychiatrists. During the separation, he was not allowed to even speak Fearghal’s name. Thinking his father was dead, his thoughts were preoccupied with the details of Fearghal’s death. He and Cormac endured neglect and emotional abuse, and witnessed other children in the house being abused. They were left alone for entire days while Patricia locked herself in her room to sleep. Conor prepared meals of “chips, cereal, cookies and bread” for Cormac and himself to eat. Conor described spending his days playing video games and watching TV and often did not attend school because Patricia was still sleeping.

When Patricia’s boyfriend, Shaun, started spending the night, he started locking Cormac in his room and Conor could hear Cormac scream, “Conor let me out! Let me out! Let me out!” Once Conor was in the back seat of Shaun’s car while he was doing doughnuts and Conor hit his head on the front seat and knocked his tooth out. Another time Cormac was

attacked by a dog while in Shaun's care. Conor witnessed Shaun abuse his own children and would hear them screaming for him to stop. Conor also witnessed his mother abuse Shaun's children by locking them in the garage with no bathroom and he could hear them screaming to be let out.

In a recent study conducted by Trauma Center at Justice Resource Institute, researchers found that children who suffered psychological maltreatment, (defined psychological abuse as caregiver-inflicted bullying, terrorizing, coercive control, severe insults, debasement, threats, overwhelming demands, shunning, and isolation), suffered consequences at a same or greater rate than children who suffered physical or sexual abuse. The consequences include anxiety, depression, low self-esteem, symptoms of post-traumatic stress and suicidality. The American Psychological Association, *Childhood Psychological Abuse as Harmful as Sexual or Physical Abuse*, Oct. 8, 2014 Available at http://www.traumacenter.org/products/Childhood_Psychological_Abuse_APA_B0002.htm (last visited February 25, 2015)

Recently, majority scholars agree that severe alienation is abusive to children. Edward Kruk, *This Impact of Parental Alienation on Children: Undermining Loving Parent-Child Relationships as Child Maltreatment*, Posted by Psychology Today, originally in Co-Parenting

After Divorce, Apr. 25, 2013. available at
<https://www.psychologytoday.com/blog/co-parenting-after-divorce/201304/the-impact-parental-alienation-children> last visited
2/25/15.

A parent who engages in alienation may limit contact with the target parent, erase the other parent from the child's mind, forbid discussion and pictures of the other parent, force the child to choose between the parents by means of threats of withdrawal of affection, and belittling and limiting contact with the extended family of the targeted parent. *Id.*

e. Neither Dixson nor Kingrey have qualified immunity

Caseworkers have qualified statutory immunity for reporting or testifying about child abuse in good faith. RCW 26.44.060(1)(a). To come under this protection, the caseworker has the burden to prove that he or she (1) carried out a statutory duty, (2) according to procedures dictated by statute or superiors, and (3) acted reasonably. *Babcock*, 116 Wn.2d 596, 618, 809 P.2d 143 (1991). These are questions of fact for the jury. See *Lesley v. Dep't of Soc. and Health Servs.*, 83 Wn. App. 263, 275, 921 P.2d 1066 (Ct. App. 1996).

Here, the evidence is sufficient to show that a jury could conclude Dixson did not follow procedures and did not act reasonably. First, Dixson's performance review for the year of the investigation said he did not follow procedures. Second, he was taken off active investigation because he did not follow procedure. Third, the violations of procedure he committed show he acted unreasonably.

Similarly, in a negligent investigation claim under RCW 26.44.050, an officer may be protected by statutory and common law qualified immunity. *Rodriguez v. Perez*, 99 Wn. App. 439, 449, 994 P.2d 874 (Ct. App. 2000) *rev'd sub nom. Roberson v. Perez*, 156 Wn.2d 33, 35, 123 P.3d 844 (2005) (The negligent investigation cause of action failed because the County's investigation did not result in a "harmful placement decision" of the child). Neither RCW 26.44.050 nor RCW 10.99 provide an officer with qualified immunity, so statutory immunity does not apply. Common law qualified immunity applies when an officer owed a duty to the public and not just an individual. *Chambers-Castanes v. King County*, 100 Wn.2d 275, 284, 669 P.2d 451 (1983). The public duty doctrine does not apply here because the Legislature created an individual duty to investigate for the protection of a specified class. RCW 26.44. Conor and Cormac are part

of the class to whom law enforcement officers owe an individual duty.

Therefore, Kingrey, is not insulated by common law qualified immunity.

2. SUMMARY JUDGMENT IN FAVOR OF THE CITY OF VANCOUVER WAS INAPPROPRIATE BECAUSE JILL PETTY SHED HER IMMUNITY WHEN SHE EXCEEDED THE SCOPE OF HER PROSECUTORIAL DUTIES BY PERFORMING AN INVESTIGATORY MANNER. SHE THEN CONDUCTED HER INVESTIGATION WITH BIAS, WHICH RESULTED IN A HARMFUL PLACEMENT DECISION.

a. Petty does not have qualified immunity

A prosecuting attorney has immunity for acts taken pursuant to RCW 26.44 only when a prosecutor does not engage in functions outside the scope of prosecutorial duties. *Rodriguez*, 99 Wn. App. at 450; See also *Anderson v. Manley*, 181 Wash. 327, 331, 43 P.2d 39 (1935). When a prosecutor performs a function outside the scope of prosecutorial duties, he or she is exposed to the same liability as another person performing the same function. *Gilliam v. Dep't of Soc'l & Health Servs*, 89 Wn.App. 569, 583, 950 P.2d 20 (1998) (reasoning that it is inappropriate to hold one person accountable and not the other when they perform the same duties (quoting *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993))). Whether Petty exceeded the scope of her duties is a question of fact for the jury *Gilliam*, 89 Wn. App. at 585.

Here, there are disputed material facts about whether Petty conducted an investigation. When viewed in the light most favorable to the non-moving parties, the appellants, the evidence shows that Petty coached Patricia on how to obtain more evidence against Fearghal in order to win her divorce and keep him from having contact with Conor and Cormac. When Patricia expressed concern, Petty threaten her with removal.

Petty told Patricia the assault case against Fearghal was not very strong and encouraged her to find more evidence against him. She also told her that if Fearghal violated the no contact order it would strengthen Patricia's case. A violation could consist of written communication, e-mails, talking through somebody else, in person conversations or phone conversations. They had this conversation 2-3 times before August when Patricia produced an alleged written communication, and reported two times when Fearghal allegedly had in person contact with Cormac.

b. The investigation

Once Petty stepped out of her prosecutor shoes and into the role of a law enforcement officer she then owed the same duty to Conor and Cormac as Kingrey did. She breached that duty by conducting a faulty and biased investigation which caused a harmful placement.

In *Rodriguez*, the court found there was a cognizable claim against detective Perez because he threatened interviewees with jail, criminal charges and permanent family separation. *Rodriguez*, 99 Wn. App. at 441, 452. Just like Detective Perez, Petty threatened Patricia with jail, criminal charges and permanent separation if she recanted. Petty proximately caused Conor and Cormac's harmful placement. She knew she was influencing a placement decision when she coached Patricia. Petty testified that she only told Patricia to forward her complaints to the police when Patricia came to her. However, Petty controlled the flow of information to the police by coaching and coercing Patricia. As a result, Petty filed additional charges against Fearghal, which were instrumental in the family court's placement decision.

3. SUMMARY JUDGMENT IN FAVOR OF THE STATE, COUNTY, AND CITY FOR OUTRAGE WAS INAPPROPRIATE BECAUSE ALL OF THE DEFENDENTS RECKLESSLY INFLICTED SEVERE EMOTIONAL DISTRESS ON CONOR AND CORMAC

The elements outrage are: (1) Extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress, and (3) actual result to the plaintiff of severe emotional distress." *Rice v. Janovich*, 109 Wn.2d 48, 61, 742 P.2d 1230 (1987) The conduct in question must be "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). Initially it is the responsibility of the court to determine if reasonable minds could differ on whether the conduct was so extreme as to result in liability. *Dicomes v. State*, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989) citing *Phillips v. Hardwick*, 29 Wn.App. 382, 387, 628 P.2d 506 (1981).

In determining whether a case should go to jury, a court considers: (a) the position occupied by the defendant; (b) whether plaintiff was peculiarly susceptible to emotional distress, and if defendant knew this fact; (c) whether defendant's conduct may have been privileged under the circumstances; (d) the degree of emotional distress caused by a party must be severe as opposed to constituting mere annoyance, inconvenience or the embarrassment which normally occur in a confrontation of the parties; and, (e) the actor must be aware that there is a high probability that his conduct will cause severe emotional distress and he must proceed in a conscious disregard of it. *Phillips*, 29 Wn. App. at 388.

However, it does not require objective symptomology. *Kloepfel v. Bokor*, 149 Wn.2d 192, 194, 66 P.3d 630 (2003).

Here, the defendants' actions were extreme and outrageous. In a civilized society, no one expects law enforcement to plot against one parent to effect a placement decision, especially without confirming the parent they are protecting is not the actual abuser. No one expects a caseworker, the person who is supposed to protect vulnerable children, to fabricate evidence and arbitrarily make a founded determination. Further, no one expects police officers to refuse to arrest a person who is admittedly in violation of a domestic violence restraining order and allow that person to keep their children in an abusive home. Lastly, no one expects a prosecutor to coach, coerce, and strategize with one parent about how to permanently separate her children from their father. These are acts that should not occur in a civilized society.

Every defendant recklessly inflicted severe emotional distress on Conor and Cormac because every one of them were in a position to end their abuse and did not. None of the defendants even confirmed that Patricia was not an abuser. In fact, when Fearghal reported to Farrell that he saw the chain lock on Cormac's door, Farrell refused to take a report.

Conor and Cormac suffered actual severe emotional distress. Their distress does not have to be a mental condition, or even manifest itself in an objective symptomology.

Dixon, Kingrey, Petty, Paulson, Young and Farrell were all in a position of power. Conor and Cormac were peculiarly susceptible to emotional distress because they are children. Their emotional distress was severe. Being separated from their father for nearly two years and enduring psychological abuse was not just a mere annoyance. All of the defendants were aware that if they were wrong about which parent was the abuser, it would most likely cause severe emotional distress. The legislature created the Domestic Violence Act and the duty to investigate under RCW 26.44.050 to avoid this exact situation. It was to ensure an investigation, so that a child would not remain in an abusive home.

The legislature determined that the act of domestic violence is utterly intolerable in civilized society when it created the Domestic Violence Prevention Act. The statement of intent in RCW 10.99.010 recognizes "the importance of domestic violence as a serious crime against society." The legislature found that existing criminal statutes were adequate, but that law enforcement was not enforcing them when an assault occurred between two people in a relationship. To prevent this disparaging treatment, it enacted RCW 10.99. *Roy v. City of Everett*, 118 Wn.2d 352, 356, 823 P.2d 1084 (1992).

A law enforcement officer is liable under RCW 10.99 for failure to take action. *Id.* at 359 (1992). If it is a separate cause of action, then it necessarily follows that damages from non-compliance are foreseeable.

4. THE STATE, COUNTY, AND CITY ARE LIABLE FOR
NEGLIGENT INVESTIGATION UNDER THE SUBSTANTIAL
FACTOR

The substantial factor applies in three types of cases: 1) where either one of two causes would have produced the identical harm, thus making it impossible for plaintiff to prove the but for test, 2). where a similar, but not identical, result would have followed without the defendant's act; and 3). where one defendant has made a clearly proven but quite insignificant contribution to the result, as where he throws a lighted match into a forest fire. *Daugert v. Pappas*, 104 Wn.2d 254, 262, 704 P.2d 600 (1985); see also W. Prosser & W. Keeton, Torts § 41 (5th ed 1984).

Here, the State, County, and City all contributed to Conor and Cormac's harm. As discussed above Dixon, Kingrey, and Petty all proximately caused a harmful placement – Kingrey and Petty by their actions and Dixon by both his actions and inactions. When the evidence is viewed in the light most favorable to Conor and Cormac, as the non-moving parties below, it is enough for a reasonable jury to conclude that

each and every defendant played so important a part in producing the result that responsibility should be imposed.

5. THE TRIAL COURT SHOULD HAVE ACCEPTED PATRICIA'S CORRECTED DEPOSITION PAGES AS SUCH INSTEAD OF TREATING IT AS A DECLARATION

Evidentiary rulings made in conjunction with summary judgment are also reviewed de novo. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

Patricia testified that when she received her copy of the final deposition transcripts in April 2010 she went to the public library and read them line by line. CP-1068. She made the necessary corrections and took them to Schmitt and Lehmann, the transcribing service, at the end of the day on May 7, 2010. CP-1068. She signed the sworn signature page given to her by Schmitt and Lehmann which was hand labelled 18 of 18. CP-1068-69. The administrative assistant, Robyn Kraemer, notarized the her signature. CP-904, 1084. On July 15, 2010, Defendant City of Vancouver served plaintiffs with a Notice of Deposition Upon Written Questions (CR 31), regarding the deposition of Kraemer, which was to take place on July 22, 2010. CP-898-900. According to Kraemer's answers, on May 7, when Patricia came in to get the signature page notarized, she only left that page and no correction pages. CP-904-06. Kraemer testified that Patricia mailed

them between June 1 and June 10. CP-905-06. Defendant City of Vancouver then attached the signature page and the correction pages, as two separate exhibits, to its motion to suppress correction pages. See CP-911-928. The court heard the motion at the summary judgment hearing on July 30, 2010, and granted the suppression, but allowed the corrections as a declaration. CP-1098.

The trial court should have denied the City's motion to suppress the corrected pages because Patricia complied with CR 30(e) by timely making revisions. Patricia was not deposed several times, but her deposition was broken up into several parts, she had 30 from the time she received the last transcripts to correct them all. It is important the pages are entered as a correction and not a separate declaration because it shows that Patricia did not change her mind about what happened, but instead corrected what actually happened. The pages also explain why her answers were not correct, namely that Petty coached her in the ladies room on the day of her first deposition and told her how to paint Fearghal in order to win the divorce.

6. PLAINTIFFS ARE ENTITLED TO COSTS ON APPEAL

"In any action in the superior court of Washington the prevailing party shall be entitled to his or her costs and disbursements." RCW 4.84.030.

Where a statute allows for the award of attorney fees to the prevailing party at trial it is interpreted to allow for the award of attorney fees to the prevailing party on review as well. *See generally Puget Sound Plywood, Inc. v. Master*, 86 Wn.2d 135, 542 P.2d 756 (1975). RCW 4.84.080 allows the prevailing party on appeal an award of two hundred dollars. Therefore, Conor and Cormac are entitled to an award of two hundred dollars for attorney fees and for reimbursement of any costs incurred.

F. CONCLUSION

Deputy Kingrey conducted a faulty and biased investigation for the purpose of affecting a placement decision. He controlled the flow of information and left out material facts to secure a warrant and subsequent DVPO. The family court also relied, at least in part, on Kingrey's biased report when it made its placement decision.

Petty stepped outside her prosecutorial duties when she performed investigatory acts. She then conducted her investigation with bias which resulted in a harmful placement, namely non-removal from an abusive home. In addition, whether she exceeded the scope of her prosecutorial duties is a question of fact and requires a determination of credibility, which is in the province of the jury.

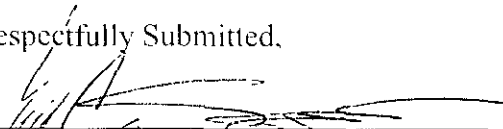
Dixson conducted a biased and faulty investigation when he failed to comply with most of the procedures put in place by his supervisor and set forth in the Washington Administrative Code. His faulty investigation led to a harmful placement decision, namely removal from a non-abusive home and non-removal from an abusive home.

All of these defendants committed Outrage by acting in an extreme and outrageous way, which recklessly inflicted severe emotional distress upon Conor and Cormac. When the evidence is viewed in the light most favorable to the non-moving party, it was sufficient for the trial court to make a threshold determination that a jury could conclude there was Outrage.

For all these reasons, this court should reverse all summary judgment rulings and remand this case for trial.

DATED this 2 day of March, 2015.

Respectfully Submitted,



Erin C. Sperger, WSBA-No. 45931
Attorney for Conor and Cormac McCarthy
1617 Boylston Avenue
Seattle, WA 98122

APPENDIX

LIST OF HEARING AND WHICH DOCUMENTS WERE CONSIDERED

Second Amended Complaint		Sub# 44A	CP 0001	
Declaration of Patricia McCarthy		Sub# 48	CP 0020	
Defendant COV's Motion for SJ		Sub #88	CP 0022	
Declaration of Officer Tyson Taylor		Sub# 89	CP 0059	
Exhibit 1	Officer Taylor's report, 11/29/07		CP 0062	
Exhibit 2	CAD Log from 11/29/07		CP 0066	
Declaration of Kortney Langston		CP# 91	CP 0070	
Exhibit 1	Officer Langston's report, 8/12/2005		CP 0073	
Exhibit 2	Statement of Patricia McCarthy		CP 0076	
Exhibit 3	Records from Bally's Fitness		CP 0080	
Exhibit 4	No-contact order		CP 0089	
Declaration of Ted Gathe		Sub# 92	CP 0092	
Exhibit 1	2000 Interlocal Agreement		CP 0094	
Exhibit 2	Addendum to Interlocal Agreement		CP 0101	
Exhibit 3	Addendum to Interlocal Agreement		CP 0105	
Declaration of Dan Lloyd		Sub# 93	CP 0112	
Exhibit A	Excerpts from deposition of Patricia McCarthy, Vol I, 9/28/09		CP 0120	
	Exhibit 6 - 911 Audio		CP 0190	
	Exhibit 7 - DV Victim Statement		CP 0192	
	Exhibit 8 - Petition for Dissolution Declaration of Patricia McCarthy		CP 0196 CP 0207	
	Exhibit 9 - Declaration of Patricia McCarthy to VPD		CP 0213	
	Exhibit 11 - Declaration of Patricia McCarthy	Sub#48	CP 0216	
	Exhibit 12 - Stipulation to Findings of Fact ISO Parenting Plan		CP 0218	
Exhibit B	Deputy Ed Kingrey's 6/3/05 citation		CP 0229	
Exhibit C	Probable Cause booking sheet & Declaration of probable cause		CP 0232	
Exhibit D	Deputy Ed Kingrey's report 6/3/05		CP 0236	
Exhibit E	No contact order and terms of release, case # 277218		CP 0244	
Exhibit F	Amended Information filed on 7/8/05, case # 277218		CP 0247	
Exhibit G	Original Information filed on 1/26/06, case# 06-1-00184-2		CP 0249	
Exhibit H	Amended Information filed on 1/31/06, case# 06-1-00184-2		CP 0252	
Exhibit I	DV No-contact order filed on 2/21/06, case# 06-1-00184-2		CP 0255	
Exhibit J	Book & Release Order filed on 2/21/06, case# 06-1-00184-2		CP 0258	
Exhibit K	Judgment and Sentence for Dismissal, case# 277218		CP 0260	
Exhibit L	Amended Information filed 7/8/05 with handwritten notation		CP 0263	
Exhibit M	Second Amended Information filed on 8/1/06, case# 06-1-00184-2		CP 0265	
Exhibit N	Statement of Defendant on Plea of Guilty, 8/1/06, case#06-1-00184-2		CP 0267	
Exhibit O	Memorandum of Disposition, 8/1/06, case# 06-1-00184-2		CP 0277	
Exhibit P	Findings of Fact, Conclusions of Law, Judgment and Sentence		CP 0279	
Exhibit Q	CD-ROM and Chain of Custody Sheet for sentencing hearing		CP 0290	
Exhibit R	Report of Proceedings Cause 06-1-00184-2, 8/1/06		CP 0295	
Exhibit S	DV No-contact order filed on 8/1/06, case# 06-1-00184-2		CP 0328	
Exhibit T	Order to Rescind DV No-contact order, 4/6/07		CP 0331	
Exhibit U	DV No-contact order filed on 4/6/07		CP 0333	
Exhibit V	Information filed on 11/10/05, case# 14194V		CP 0336	
Exhibit W	DV No contact order 12/8/05, case 14194V		CP 0339	
Exhibit X	Motion and Order for Dismissal, 10/4/06, case# 14194V		CP 0342	
Exhibit Y	Order of Dismissal, 10/6/06, case# 14194V		CP 0344	
Exhibit Z	Order to Rescind No-contact order, 10/6/06, case# 14194V		CP 0346	

	Exhibit AA	Order Terminating All Contact, case# 05-3-01349-1		CP 0348
	Exhibit BB	Order on Reunification, 12/13/06 in case# 05-3-01349-1		CP 0351
	Exhibit CC	Order re Hospital filed <i>on Nov 29, 2007</i>		CP 0354
	Exhibit DD	Notice of Intent to Withdraw, filed 8/25/08		CP 0356
Declaration of Carolyn Jill Petty ISO COV Motion for SJ			Sub# 94	CP 0359
Declaration of Gregory E. Price			Sub# 102	CP 0363
	Exhibit A	Excerpts from COV's Answers and Objections to Plaintiffs Discovery Requests/Interrogatories		CP 0365
	Exhibit B	Stipulation and Order Dismissing Claims against Jill Petty		CP 0392
Declaration of Fearghal McCarthy			Sub# 103	CP 0400
	Exhibit A	Stipulation to Findings of Fact ISO Parenting Plan		CP 0405
Declaration of Thomas Boothe			Sub# 104	CP 0417
	Exhibit A	Excerpts from deposition of Patricia McCarthy, 9/28/09		CP 0423
	Exhibit B	Email from Dan Lloyd, 3/26/10		CP 0426
	Exhibit C	Notice of Depositions		CP 0429
	Exhibit D	Medical Record for Cormac McCarthy, 6/4/05		CP 0432
	Exhibit E	Stipulation to Findings of Fact ISO Parenting Plan		CP 0436
Declaration of Cheryl Vorhees			Sub# 105	CP 0448
Plaintiffs Memorandum in Opposition to COV's Motion for SJ			Sub# 106	CP 0450
Defendant COV's Reply ISO Motion for SJ			Sub# 108	CP 0475
Declaration of Marcine Miles			Sub# 109	CP 0496
	Exhibit I	Notice of Intent to Withdraw as an attorney		CP 0499
Supplemental Declaration of Daniel Lloyd				
	Exhibit A	Excerpts from depositions of Patricia McCarthy		CP 0503
		Exhibit 33 - Emails between Dan Lloyd and Patricia McCarthy		CP 0511
	Exhibit B	Exhibit 5 to deposition of P. McCarthy - 911 transcript		CP 0533
	Exhibit C	Email string between counsel		CP 0538
	Exhibit D	Cover sheet for Plaintiffs' Discovery Requests/Interrogatories		CP 0543
Declaration of Daniel Lloyd In Opposition to Motion to Strike			Sub# 114	CP 0546
	Exhibit I	Correspondence on 3/12/10 from Schmitt & Lehman		CP 0549
Defendant COV's Response in Opposition to Motion to Strike			Sub# 115	CP 0554
Plaintiffs' Motion to Strike Declarations			Sub# 116	CP 0559
Supplemental Declaration of Thomas Boothe ISO Opposition to Motion for SJ			Sub# 117	CP 0564
	Exhibit 1	Excerpt from deposition of Patricia McCarthy, 3/3/2010		CP 0577
	Exhibit 2	Excerpt from deposition of Patricia McCarthy, 3/4/2010		CP 0581
	Exhibit 3	Excerpt from deposition of Patricia McCarthy, 3/24/2010		CP 0588
	Exhibit 4	Excerpt from deposition of Patricia McCarthy, 3/25/2010		CP 0599
Declaration of Gregory E. Price			Sub# 126	CP 0627
	Exhibit A	Affidavit in Support of Summons		CP 0632
	Exhibit B	Contempt order entered on 9/5/08, cause 05-3-01349-1		CP 0665
	Exhibit C	Pre-trial order entered on 9/5/08, cause 05-3-01349-1		CP 0646
Declaration of Gregory Price ISO Motion for Reconsideration			Sub#131	CP 0649
	Exhibit A	CCSO Report by Deputy Todd Young		CP 0651
	Exhibit B	CCSO Report by Deputy Douglas Paulson		CP 0661
	Exhibit C	Declaration of Bill O Meara		CP 0667
	Exhibit D	CCSO Report by Deputy Richard Farrell		CP 0671
Plaintiffs Motion for Reconsideration of Order Granting Partial SJ			Sub# 132	CP 0693
Defendant COV's Response to Motion for Reconsideration			Sub# 135	CP 0705
Declaration of Daniel Lloyd in Opposition to Motion for Reconsideration			Sub# 136	CP 0718
	Exhibit A	Excerpts from COV's Answers and Objections to Plaintiffs Requests/Interrogatories		CP 0722
Plaintiffs' Supplemental Memorandum in Opposition to COV's Motion for SJ			Sub# 138	CP 0726
Declaration of Megan Holley ISO Plaintiffs' Supplemental Memorandum			Sub# 139	CP 0738
	Exhibit A	Patricia McCarthy's sworn deposition correction sheet		CP 0740

	Exhibit B	Excerpts from deposition of Patricia McCarthy, 9/28/09		CP 0758
	Exhibit C	Excerpts from deposition of Jill Petty, 5/27/10		CP 0794
	Exhibit D	Excerpts from deposition of Marcine Miles, 5/26/10		CP 0807
	Declaration of Pamela Anderson		Sub# 140	CP 0814
	Declaration of Daniel Lloyd ISO COV's Motion to Suppress		Sub# 141	CP 0815
	Exhibit 1	Deposition Notice and Subpoena for Patricia McCarthy		CP 0824
	Exhibit 2	Email Correspondence from Patricia McCarthy		CP 0840
	Exhibit 3	Letter from Schmitt and Lehmann to P. McCarthy, 10/7/09		CP 0863
	Exhibit 4	Excerpts from deposition of P. McCarthy, Vol. III, 9/28/09		CP 0865
		Exhibit 30 – Email from Dan Lloyd to P. McCarthy		CP 0875
	Exhibit 5	Deposition Notices and Subpoena's for Patricia McCarthy		CP 0876
	Exhibit 6	Deposition Notice and Subpoena's for Patricia McCarthy		CP 0882
	Exhibit 7	Correspondence from Schmitt and Lehmann, 3/12/10		CP 0888
	Exhibit 8	Notice of filing (Volumes IV and V of P. McCarthy's deposition)		CP 0893
	Exhibit 9	Letter from Schmitt and Lehmann dated 7/8/10 with correction sheets of Patricia McCarthy		CP 0895
	Exhibit 10	Written deposition of Ms. Robin Kraemer (with deposition correction sheets of Patricia McCarthy).		CP 0897
	Defendant COV's Motion to Suppress Correction Pages to Deposition of P. McCarthy		Sub# 142	CP 0929
	Second Supplemental Declaration of Daniel Lloyd ISO COV's Motion for SJ		Sub# 145	CP 0944
	Exhibit A	Excerpt from deposition of Marcine Miles		CP 0947
	Exhibit B	Excerpt from deposition of Jill Petty		CP 0997
	Exhibit C	Excerpt from deposition of Patricia McCarthy, 3/25/10		CP 1005
	Defendant COV's Supplemental Brief ISO Motion for SJ		Sub# 146	CP 1011
	Plaintiffs' Memorandum in Opposition to COV's Motion to Suppress Correction Pages		Sub# 147	CP 1030
	Declaration of Greg Price		Sub# 148	CP 1045
	Exhibit A	Letter from Dan Lloyd 15/7/10		CP 1048
	Exhibit B	Word Index to Volume IV Deposition of Patricia McCarthy		CP 1050
	Exhibit C	Word Index to Volume V Deposition of Patricia McCarthy		CP 1059
	Declaration of Patricia McCarthy		Sub# 149	CP 1067
	Supplemental Declaration of Dan Lloyd		Sub# 151	CP 1071
	Exhibit 1	Email from Patricia McCarthy 5/3/10		CP 1075
	Exhibit 2	Letter to Patricia McCarthy 5/4/10		CP 1077
	Exhibit 3	Mailing label		CP 1080
	Exhibit 4	Signature Corrections Page signed by Patricia McCarthy		CP 1083
	Defendant COV's Reply in Support of Motion to Suppress		Sub# 152	CP 1085
	Order Granting Remainder of Defendant COV's SJ Motion		Sub# 153	CP 1093
	Order Granting COV's Motion to Suppress		Sub# 154	CP 1096
	Order Denying Plaintiffs' Motion for Reconsideration		Sub# 155	CP 1099
	Defendant Clark County's Motion for Summary Judgment		Sub# 178	CP 1101
	Declaration of Gene A Pearce		Sub# 179	CP 1119
	Exhibit A	Deposition Transcript of Deputy Edward Kingrey		CP 1122
	Exhibit B	Clark County Superior Court docket 05-3-01349-1		CP 1141
	Exhibit C	Criminal Summons in Clark County cause # 06-1-00184-2		CP 1171
	Exhibit D	Letter from Plaintiffs' counsel dated 10/1/10		CP 1174
	Declaration of Bruce Hall		Sub# 181	CP 1178
	Plaintiffs Memorandum in Opposition to Clark County's Motion for Sum Judg		Sub# 182	CP 1182
	Declaration of Gregory E. Price in Support of Memorandum in Opposition		Sub# 183	CP 1199
	Exhibit A	Excerpt from deposition of Deputy Ed Kingrey		CP 1201
	Exhibit B	Excerpt from deposition of Patrick Dixson		CP 1213
	Exhibit C	Deputy Kingrey's report on 6/3/05		CP 1219
	Exhibit D	Deputy Paulson's report on 1/11/06		CP 1227
	Exhibit E	Stipulated Findings of Fact in Support of Parenting Plan		CP 1233
	Exhibit F	Excerpts from deposition of Patricia McCarthy		CP 1245

Defendant Clark County's Reply Brief ISO Motion for Summary Judgment		Sub# 184	CP 1249
Declaration of Douglas Paulson ISO Motion for Summary Judgment		Sub# 185	CP 1256
Exhibit A	Pre-trial DV No-contact order - cause 14194V		CP 1258
Exhibit B	Temporary restraining order - cause 05-3-01349-1		CP 1261
Ruling on Defendant's Motion for Summary Judgment		Sub# 187	CP 1267
Motion for Reconsideration of Ruling on Clark County's Motion for SJ		Sub# 190	CP 1273
Declaration of Fearghal McCarthy ISO Motion for Reconsideration		Sub# 190A	CP 1280
Response to Motion for Reconsideration		Sub# 199	CP 1283
Ruling on Motion for Reconsideration		Sub# 203	CP 1293
Defendant DSHS Memorandum ISO Motion for Summary Judgment		Sub# 212	CP 1296
Declaration of Denise Serafin		Sub# 213	CP 1318
Declaration of Patrick Dixson		Sub# 214	CP 1322
Declaration of Thomas Knoll		Sub# 215	CP 1327
Exhibit 1	Excerpt from deposition of Patricia McCarthy, (27-31)		CP 1332
Exhibit 2	Excerpt from deposition of Patricia McCarthy, (85)		CP 1339
Exhibit 3	Exhibit 13 to deposition of Patricia McCarthy (police report)		CP 1341
Exhibit 4	Exhibit 17 to deposition of Patricia McCarthy (Ord.Prot.)		CP 1349
Exhibit 5	Exhibit 19 to deposition of Patricia McCarthy (Ord.Prot.)		CP 1354
Exhibit 6	Exhibit 20 to deposition of Patricia McCarthy (TRO)		CP 1356
Exhibit 7	Exhibit 25 to deposition of Patricia McCarthy (SER History)		CP 1362
Exhibit 8	Exhibit 26 to deposition of Patricia McCarthy (Safety Plan)		CP 1365
Exhibit 9	Exhibit 45 to deposition of Patrick Dixson (SER)		CP 1367
Exhibit 10	Exhibit 47 to deposition of Patrick Dixson (**SER**)		CP 1376
Exhibit 11	Exhibit 48 to deposition of Patrick Dixson (SER)		CP 1417
Exhibit 12	Excerpt from deposition of Patrick Dixson, (59-60)		CP 1421
Exhibit 13	Decl. of FMC in Response to Motion for Restraining Order		CP 1425
Exhibit 14	Letter from Plaintiffs' Counsel dated 10/4/10		CP 1432
Exhibit 15	Excerpt from deposition of Patrick Dixson, (109)		CP 1437
Exhibit 16	Excerpt from deposition of Patrick Dixson, (110)		CP 1439
Exhibit 17	Copies of 12 orders (RO's, no-contact orders, etc)		CP 1441
Exhibit 18	Findings of Fact, Conclusions of Law, Judgment and Sentence		CP 1469
Exhibit 19	Excerpt from deposition of Patrick Dixson, (38)		CP 1480
Exhibit 20	Excerpt from deposition of Patrick Dixson, (52)		CP 1482
Defendant Clark County's Motion and Memorandum for Summary Judgment		Sub# 216	CP 1484
Declaration of Jim Hansen ISO Motion for SJ		Sub# 217	CP 1508
Exhibit A	Copies of CC Sherriff's Office General Orders		CP 1510
Declaration of Doug Paulson ISO Motion for SJ		Sub # 218	CP 1513
Exhibit A	Pre-trial DV no-contact order		CP 1520
Exhibit B	TRO from Clark County Superior Court cause 05-3-01349-1		CP 1515
Declaration of Bernard Veljaic			
Exhibit A	Deputy Ed Kingrey's report 6/3/05		CP 1525
Exhibit B	Deposition of Ed Kingrey, 7/29/10		CP 1533
Exhibit C	Criminal citation, 6/3/05		CP 1552
Exhibit D	Probable Cause sheet, dated 6/3/05		CP 1555
Exhibit E	Deposition of Patricia McCarthy (Vol 1), 9/28/09 +Exhibits		CP 1560
Exhibit F	Deputy Ed Kingrey's declaration of probable cause		CP 1666
Exhibit G	CC District Court No-contact order, 6/6/05		CP 1669
Exhibit H	CC District Court Information, dated 7/8/05		CP 1672
Exhibit I	Deputy Todd Young's report, dated 10/5/05		CP 1674
Exhibit J	Deputy Doug Paulson's report, dated 1/11/06		CP 1678
Exhibit K	Deputy Rich Farrell's report, dated 5/5/06		CP 1683
Exhibit L	Second Amended Information, cause 06-1-00184-2, 8/1/06		CP 1686
Exhibit M	Statement of Defendant on Plea of Guilty, cause 06-1-00184-2		CP 1688

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	Exhibit N	Report of Proceedings Cause 06-1-00184-2, 8/1/06		CP 1698
	Exhibit O	DV No-contact order, cause 06-1-00184-2, 8/1/06		CP 1701
	Appendix I	Title 13 Juvenile Courts and Juvenile Offenders, Chap 13.34		CP 1733
	Declaration of Ed Kingrey ISO Motion for SJ			CP 1737
	Plaintiffs Opposition to Defendant's Motions for SJ		Sub# 222	CP 1740
	Declaration of Conor McCarthy		Sub# 223	CP 1779
	Declaration of James Boehnlein		Sub# 224	CP 1786
	Declaration of Fearghal McCarthy		Sub# 225	CP 1789
	Declaration of Megan Holley		Sub# 226	CP 1799
	Exhibit 1	Declaration of Greg Price (*missing page on exhibit*)	Sub #183	CP 1802
	Exhibit 2	Declaration of Bruce Hall	Sub #181	CP 1851
	Exhibit 3	Patricia McCarthy's Deposition Correction Sheet		CP 1855
	Exhibit 4	Chart demonstrating Patricia McCarthy's corrections		CP 1873
	Exhibit 5	Excerpt from deposition of Patrick Dixson		CP 1942
	Exhibit 6	Excerpts from depositions of Patricia McCarthy		CP 1949
	Exhibit 7	Fax from Patrick Dixson to police department		CP 1965
	Exhibit 8	Patrick Dixson's 2004-2005 Performance and Development Plan		CP 1968
	Exhibit 9	Excerpts from Deposition of Denise Serafin		CP 1983
	Exhibit 10	Chart comparing statements of Patrick Dixson		CP 1990
	Exhibit 11	Comprehensive Family Assessment Sheet		CP 1992
	Exhibit 12	Excerpt from Intake Summary Report		CP 1995
	Exhibit 13	Medical Record for Cormac McCarthy, 6/4/05		CP 1996
	Exhibit 14	CPS report dated Janaury 8, 2006		CP 1998
	Exhibit 15	SER entry referencing June, 13, 2005 face to face meeting		CP 2004
	Exhibit 16	Declaration of Thomas Boothe	Sub #??	CP 2006
	Exhibit 17	Statement prepared by Michelle Hansen		CP 2038
	Declaration of Thomas Knoll		Sub#227	CP 2041
	Exhibit I	Complaint		CP 2045
	Defendant's State Motion to Strike ISO Motion for Summary Judgment		Sub# 228	CP 2062
	Letter from City of Vancouver to Judge Scott Collier dated February 11, 2014		Sub# 236	CP 2068
	Order Re State of Washington and Clark County's motion for Summ. Judgmt.		Sub# 239	CP 2072
	Notice of Appeal		Sub# 244	CP 2075
	Designation of Clerk's Papers		Sub# 251	CP 2103
	Certificate - Clerk's Papers			CP 2107
	Summary Judgment Hearing 4/16/10		Sub# 118	CP 2108
	Log Sheet		Sub# 119	CP 2110
	Order Granting in Part and Deferring in Part COV Motion for SJ		Sub# 129	CP 2112
	Defendant COV's Cost Bill		Sub# 156	CP 2117
	Plaintiffs' Objection to Cost Bill		Sub# 161	CP 2132
	Motion and Declaration for Supplemental Order		Sub# 248	CP 2136
	Defendant COV's Response to Motion for Supplemental Order		Sub# 250	CP 2144
	Clark County's Response to Motion for Supplemental Order		Sub# 252	CP 2151
	Defendant DSHS Response to Motion for Supplemental Order		Sub# 254	CP 2153
	Motion hearing for Supplemental Order		Sub# 256	CP 2157
	Order Denying Plaintiff's Motion for Supplemental Order		Sub# 256A	CP 2158
	Defendant COV's Motion for Entry of Judgment		Sub# 258	CP 2160
	Plaintiff FMC's Objection to COV's Cost Bill		Sub# 264	CP 2166
	Judgment in favor of COV		Sub# 271	CP 2171
	Supplemental Designation of Clerk's Papers		Sub# 272	CP 2174
	Certificate - Clerk's Papers			CP 2177

CERTIFICATE OF SERVICE

I, Erin C. Sperger, declare under penalty of perjury that I delivered a copy of Appellants Conor and Cormac McCarthy's opening brief to the Court of Appeals Division II at 950 Broadway in Tacoma, WA on March 2, 2015.

I also delivered a copy of the opening brief to following parties via email.

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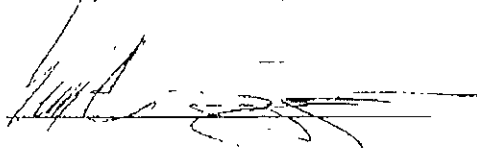
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360-944-8200

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I also delivered a copy of this certificate of service to The Clerk of the Court for Division II at
coa2filings@courts.wa.gov

DATED March 2, 2015 at Seattle, WA.

A handwritten signature in black ink, appearing to read 'Erin C. Sperger', is written over a horizontal line.

Erin C. Sperger, WSBA No. 45931
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