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No. 67864-7

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

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STATE OF WASHINGTON
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SUZANNE L. WEINSTOCK, an individual,

Appellant,

vs.

ALAMO RENTAL (US), INC., a Delaware corporation; ALAMO
FINANCING L.P., a Delaware limited partnership; MARVIN L.
BRYANT, an individual; LARRY PETERSON, an individual,

Respondents.

BRIEF OF RESPONDENTS

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I. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The trial court correctly dismissed Ms. Weinstock's claims as a matter of law because the claims were based on Alamo's¹ protected communication with a governmental agency that was of reasonable concern to that agency.

Correctly finding Alamo prevailed on the defense provided in RCW 4.24.510, the trial court awarded Alamo \$10,000 in mandatory statutory damages and \$39,149.90 in reasonable attorney fees and costs incurred in establishing the defense. The trial court did not abuse its discretion in awarding fees and costs.

II. COUNTER STATEMENT OF THE CASE

A. Introduction

Alamo submitted a Failure to Return Rental/Lease Declaration to the Port of Seattle Police Department ("POSPD") after customer Suzanne Weinstock failed to return an Alamo rental car forty-three days (43) beyond her one-week rental period. CP 194. Potential theft of rental property is of obvious concern to the POSPD. CP 300. As a result of this police report Weinstock was arrested. CP 194. Her lawsuit is a result of that report. CP 191. Weinstock has no evidence, let alone clear and

¹ For reading ease, corporate defendant Alamo and individual defendants, Alamo employees Marvin Bryant, and Larry Peterson will hereinafter be collectively referred to as "Alamo" unless further specificity is required.

convincing evidence, that this report was submitted in bad faith. CP 118-119.

B. Statement of Facts

Weinstock entered a one-week car rental agreement at Alamo's SeaTac location commencing October 6, 2008, ending October 13, 2008.² CP 192. Larry Peterson was at the rental counter when Weinstock picked up the vehicle. *Id.* He was the Lead Sales Manager at the time and gave her a free upgrade upon her persistent demands for the same. *Id.*

Weinstock did not provide a then-current address where she could receive mail; nor did she give Alamo a valid telephone number at the time of the rental. *Id.*

Alamo undertook various measures to contact Weinstock once the rental became overdue. CP 193. Administrative Representative Marvin Bryant and other Alamo employees attempted contact via telephone unsuccessfully. *Id.* and CP 245-46. They could not identify any alternative contact information for Weinstock. *Id.* Two demand letters were sent to the address Weinstock provided at the time of her rental. *Id.* These letters were sent on November 6 and November 12, 2008; both were returned as "undeliverable; unable to forward." *Id.*

² The Alamo Rental Agreement is attached to this Response Brief, Appendix at A1. It is also in the record as CP 265-266.

Weinstock finally contacted Mr. Peterson telephonically on November 14, 2008 – approximately one month after the rental term. *Id.* To Mr. Peterson’s surprise, Weinstock had the vehicle on the East Coast. *Id.* Mr. Peterson told her the vehicle was long overdue and her credit card had repeatedly been declined. *Id.* Mr. Peterson told Weinstock to return the vehicle to the closest Alamo location. *Id.* She refused and requested she be allowed to return the vehicle to the SeaTac location no later than November 21, 2008. *Id.* Mr. Peterson warned her that the vehicle could be reported stolen if she failed to return the vehicle by that date. CP 257. Weinstock never provided payment beyond the one week rental term. CP 198.

On November 14, 2008, Alamo also received a call from Sterling Savings Bank advising Weinstock was passing fraudulent checks. CP 194, 262.

By November 24, 2008, 43 days beyond the rental term, the car had not been returned. CP 194. On that date, the missing vehicle was reported to the POSPD.³ *Id.*, CP 223-25.

Weinstock was pulled over due to a seatbelt violation and subsequently arrested on November 25, 2008 at approximately 7:22 p.m. by Washington State Patrol (“WSP”) Trooper Brandon Lee. Trooper Lee

³ The Port of Seattle Police Department Incident Report is attached to this Response Brief, Appendix at A2. It is also in the record as CP 223-25.

confirmed the stolen vehicle report and, upon searching the vehicle identified a number of items including what appeared to be items stolen from various hotels.⁴ CP 194, 227-29.

Alamo had no further involvement in the determination, investigation and/or decisions of the POSPD, Washington State Patrol, Skagit County Prosecuting Attorney's Office in arresting or charging Weinstock. CP 194.

On December 2, 2008, Weinstock was charged with Possession of a Stolen Motor Vehicle pursuant to RCW 9A.56.068. CP 194. The Information was amended to add the charge of Possessing Stolen Property in the Third Degree, RCW 9A.56.170, and filed on October 18, 2010.⁵ *Id.*, 231-32.

Weinstock's criminal trial was originally set for February 23, 2008. CP 195. She continued her parallel criminal trial seventeen times over the course of three years. *Id.*⁶

⁴ The WSP Report of Investigation Narrative is attached to this Response Brief, Appendix at A3. It is also in the record as CP 227-29.

⁵ Skagit County Superior Court Amended Information for Cause No. 08-1-00933-4 is attached to this Response Brief, Appendix at A4. It is also in the record as CP 231-32.

⁶ Weinstock requests this Court to take judicial notice of a January 5, 2012 order of dismissal in her criminal proceeding (Skagit County Cause No. 08-1-00933-4), this is improper pursuant to ER 201 and RAP 9.11. The order of dismissal (a) was not before the trial court and is therefore not contained in the record and (b) is irrelevant to a determination of any issue now on appeal and does not constitute an "adjudicative fact" as required by ER 201. Alamo requests the criminal order of January 5, 2012 be stricken from consideration on appeal.

Weinstock filed her civil lawsuit on June, 2010, alleging defamation, outrage, invasion of privacy, and a violation of the Consumer Protection Act. CP 195. All these claims are based on the alleged wrongful arrest as a result of Alamo's Failure to Return report submitted to the POSPD. *Id.*

Alamo asserted frivolity as an affirmative defense from the outset of this litigation putting Weinstock and her attorney on notice of potential sanctions. CP 208. Weinstock and her attorney consistently misrepresented that she was in possession of evidence to substantiate her claims. CP 210. Alamo attempted to conduct the most basic of discovery – interrogatories and Weinstock's deposition – before filing their motion to dismiss. CP 209. Every time Alamo attempted to get Weinstock's side of the story, she and her attorney created needless conflict and implemented abusive tactics to evade civil discovery on the hollow premise that she may have to evaluate whether her Fifth Amendment privilege would apply. *Id.*; *see also* CP 302-08 (outlining Weinstock's discovery tactics).

Alamo was forced to note Weinstock's deposition five times over the course of three months before getting Weinstock to attend her deposition under the trial court's Order. *Id.* There were three discovery motions, plus an interlocutory appeal on the trial court's order denying her

requested stay of discovery. *Id.* This Court denied that appeal. *Id.* Weinstock's abusive and manipulative discovery tactics forced Alamo to incur substantial attorney fees and expenses and finally revealed the absence of any evidence to support her claims. CP 210. Alamo, Mr. Bryant and Mr. Peterson were burdened with the expense, stress, and inconvenience of this sham litigation, and the Court's time and resources were taken for granted. *Id.* Alamo then brought a Motion to Dismiss pursuant to RCW 4.24.500 and .510.

After prevailing upon the defense provided in RCW 4.24.510, Alamo brought a separate motion for attorney fees and statutory damages against Weinstock and her attorney of record. CP 208. Alamo's counsel provided detailed billing statements for the trial court's review. CP 603-07.

Based on its review of the detailed billing and additional evidence, the trial court entered an Order setting forth findings that the hourly rates charged by Alamo's counsel and staff were below market rate and "do not require further discussion." CP 189. The trial court further found the award of \$39,000.00 in attorney fees and \$149.90 in costs was reasonable in both time spent and hourly rate requested, and imposed \$10,000.00 in statutory damages against Weinstock only. *Id.*

Weinstock's motion for reconsideration of the trial court's October 7, 2011 Order of dismissal was presented, and denied on January 10, 2012. CP 608. Weinstock's appeal follows.

C. Weinstock's Suit is Barred

There are disputed background facts in this case, but none of them matter for purposes of the trial court's Anti-SLAPP dismissal. The bottom line is this: Weinstock's retaliatory lawsuit is *precisely* of the type Washington's Anti-SLAPP statute was designed to eradicate. CP 197. Weinstock can demonstrate no probability, let alone a clear and convincing probability, of prevailing on any of her claims. CP 201-204. Furthermore, there is no evidence that Alamo abused its privilege and constitutional right to communicate potential wrongdoing to a government agency pursuant to RCW 4.24.510. CP 211.

III. SUMMARY OF ARGUMENT

The only question before this Court is whether Alamo's report to the police of potential wrongdoing falls under the qualified privilege afforded by Washington's Anti-SLAPP⁷ statute. The answer is a resounding yes. As a result, and consistent with the sound discretion of the trial court, Alamo is entitled to statutory damages and reasonable attorney fees.

⁷ Strategic Lawsuit Against Public Policy.

Weinstock produced no evidence that Alamo acted in bad faith in reporting her undisputed Failure to Return the Alamo rental car 43 days past the rental period to the police because none exists. At best is a manufactured conspiracy theory unsupported by a shred of evidence. Regardless, even a report made in bad faith is a privileged communication under RCW 4.24.510.

IV. ARGUMENT

A. Standard of Review on Dismissal

The standard of review on an order of summary judgment is de novo, and the appellate court places itself in the position of the trial court. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989). If the plaintiff fails to show sufficient evidence to establish the existence of an element essential to the plaintiff's case, a court should grant the motion. *Id.* at 225 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986)).

Here, the undisputed facts establish that Alamo has immunity for Mr. Bryant's communication with a governmental agency under RCW 4.24.510, and because of that immunity, Weinstock's claims against Alamo arising from that communication necessarily fail. Even if RCW 4.24.510 required that this communication be in good faith, which it does not, the burden is on Weinstock to establish bad faith by clear and

convincing evidence, to defeat a claim for statutory \$10,000.00 damages. See RCW 4.24.510; *Segaline v. State Dep't of Labor and Industries*, 144 Wn.App. 312, 325, 182 P.3d 480 (2008), rev'd on other grounds, 169 Wn.2d 467, 238 P.3d 1107 (2010) (citing *Lillig v. Becton-Dickinson*, 105 Wn.2d 653, 657-78, 717 P.2d 1371 (1986); see also *Radley v. Raymond*, 34 Wn.2d 475, 482, 209 P.2d 305 (1949); *Ripley v. Grays Harbor County*, 107 Wash.App. 575, 27 P.3d 1197 (2001).

B. The Anti-SLAPP Statute Does Not Contain a Good Faith Requirement

RCW 4.24.510 provides, in relevant part:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . **is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization.**

(Emphasis added).

RCW 4.24.510 immunizes persons who communicate a complaint or information to a branch or agency of federal, state, or local government that is reasonably of concern to the agency. It was enacted in response to legislative concern that lawsuits were being used to intimidate citizens from exercising their rights under the First Amendment and article I, section 5 of the Washington state Constitution to report potential wrongdoing to government agencies. *Segaline*, 169 Wn.2d 473.

The stated legislative purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies. RCW 4.24.500. Former RCW 4.24.510 (1989) expressly required that the protected communications be made in good faith. But, the legislature eliminated the good faith language in a 2002 amendment. Laws of 2002, ch.232, §2. It also modified a provision that awards \$10,000 in statutory damages to a successful defendant, as applicable “unless the court finds that the complaint or information was communicated in bad faith.” *Id.*

C. Alamo’s Communication of Potential Wrongdoing to the Police is Privileged Under RCW 4.24.510

The issue before this Court does not require excruciating deconstruction of Washington’s Anti-SLAPP statute. The parties are in agreement on one fundamental point: in ascertaining the meaning of a statute “the court’s fundamental objective is to ascertain and carry out the Legislature’s intent, and if the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *State Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002) (citations and internal quotations omitted)); Appellant’s Br. at 12. To reach the result sought by Weinstock

this Court must either (a) ignore the plain language of RCW 4.24.510, or (b) legislate from the bench.

The scope of immunity provided by the plain language of the Anti-SLAPP statutes is not altered by how a party feels they have been wronged. It is determined by whether the communication was made to a government agency “regarding any matter reasonably of concern to that agency or organization.” It is that simple.

1. A Concise History of Anti-SLAPP in Washington

The Legislature enacted RCW 4.24.510 to encourage the reporting of potential wrongdoing to governmental entities. *Valdez-Zontek v. Eastmont School District*, 154 Wn.App. 147, 225 P.3d 339 (2010); *Bailey v. State*, 147 Wn.App. 251, 191 P.3d 1285 (2008); *Gontmakher v. The City of Bellevue*, 120 Wn.App. 365, 85 P.3d 926 (2004).

In fact, RCW 4.24.500 originally lacked any reference to the constitutional issues implicated by SLAPP litigation. It merely noted the Legislature’s concern that the threat of lawsuits would deter individuals from reporting wrongful activity to the appropriate authorities. RCW 4.24.500 (2000). Thus, Washington’s initial statutory scheme lacked a strong policy statement recognizing the constitutional dimension of the SLAPP problem. *Id.*

“Although legal commentators commonly describe sections 4.24.500-.520 as Washington’s Anti-SLAPP statute, the legislation more closely resembles a whistleblower immunity statute.” Michael Eric Johnston, *A Better SLAPP Trap: Washington State’s Enhanced Statutory Protection for Targets of “Strategic Lawsuits Against Public Participation,”* 38 GONZ. L. REV. 263, 282 (2003).

The evolution of Washington’s Anti-SLAPP is easily tracked as there is little case law on the matter. *See Gilman v. MacDonald*, 74 Wn.App. 733, 138-39, 875 P.2d 697 (1994) (holding that where a defendant claims immunity under RCW 4.24.510, the party claiming defamation “must show by clear and convincing evidence, that the defendant knew of the falsity of the communications or acted with reckless disregard as to their falsity.”); *Right-Price Recreation, LLC v. Connells Prairie Community Council*, 105 Wn.App. 813, 21 P.3d 1157 (2001), remanded by 146 Wn.2d 370, 46 P.3d 789 (2002) (following the “actual malice” standard set forth in *Gilman*).

Finding the earlier versions of 4.24.510 did not afford a SLAPP target a particularly efficient remedy, the Legislature amended 4.24.510 in 2002 in several significant ways to broaden the protection. First, it added a new first section containing a strong policy statement recognizing the

constitutional threat of SLAPP litigation.⁸ Second, perhaps most relevant for this appeal, the Legislature removed the good faith requirement as an element of the SLAPP defense. Laws 2002, ch. 232, § 2. Third, the statute now authorizes statutory damages of \$10,000, as well as expenses and attorney fees, if the SLAPP target prevails in asserting the statute's defense. *Id.* Fourth, the amended statute authorizes the trial court to deny the SLAPP target statutory damages if the plaintiff can prove the target had communicated to the government agency in bad faith. *Id.* The practical effect of the latter provision is to impose on the SLAPP plaintiff the burden of proving the target had acted in bad faith.

The amended section 4.24.510 provides much greater protection to SLAPP targets. Now the potential SLAPP target enjoys a near absolute

⁸ Laws of 2002 c 232 § 1; This section reads:

Strategic lawsuits against public participation, or SLAPP suits, involve communications made to influence a government action or outcome which results in a civil complaint or counterclaim filed against individuals or organizations on a substantive issue of some public interest or social significance. SLAPP suits are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.

Although Washington state adopted the first modern anti-SLAPP law in 1989, that law has, in practice, failed to set forth clear rules for early dismissal review. Since that time, the United States supreme court has made it clear that, as long as the petitioning is aimed at procuring favorable government action, result, product, or outcome, it is protected and the case should be dismissed. Chapter 232, Laws of 2002 amends Washington law to bring it in line with these court decisions which recognizes that the United States Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making.

statutory immunity. Even communications made in bad faith will be immune. *See Bailey v. State*, 147 Wn.App. at 262.

The Legislature enacted a new section, RCW 4.24.525 to provide accelerated procedures for disposition of alleged SLAPP litigation, effective in June, 2010.⁹ This legislation does nothing to alter the interpretation or application of RCW 4.24.500 and .510 as it applies to this case. In fact, it is another act by the Legislature to augment the protection afforded to SLAPP targets from an abusive use of the courts:

This act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts.

Laws of 2002 ch. 118, § 3.

The immunity created by the statute is broadly construed. The statutory phrase “immune from civil liability on claims based upon the communication” refers to the starting point or foundation of the claim, and does not limit immunity only with respect to Alamo’s report to the police. **It grants immunity from causes of action based on the method of arriving at the content of the communication as well.** *Dang v. Ehredt*, 95 Wn.App 670, 683, 977 P.2d 29 (1999).

⁹ A verbatim copy of RCW 4.24.510 and .525 with historical and statutory notes are attached to this Response brief in Appendix B.

2. *Precedential Application of the Anti-SLAPP Statute*

The Court need look no further than *Dang v. Ehredt* which upheld the grant of summary judgment to defendants in a virtually identical case. *Dang*, 95 Wn.App. 670. There, plaintiff sued the police, a bank and several bank employees for false arrest, false imprisonment, negligence and for civil rights violations. *Id.* Ms. Dang was arrested when she attempted to cash her paycheck at her own bank. *Id.* When the teller scanned the check, a computer alert directed the teller not to cash the check from that account and to notify the bank's fraud department. *Id.* The branch's customer service manager called the bank's loss prevention department but no one answered so she called 911 and reported a possible counterfeit item. *Id.* The police arrived, investigated and arrested Ms. Dang. *Id.* It was later learned that the plaintiff's check was not counterfeit. *Id.*

The Court of Appeals affirmed summary judgment dismissal of the bank and its employees holding that **RCW 4.24.510 granted civil immunity from all of Ms. Dang's claims.** *Id.* The court rejected Ms. Dang's argument that the statute only granted immunity from defamation actions and dismissed all of the claims against the bank and its employees. In rejecting the plaintiff's argument, the court stated:

[A]llowing a cause of action for the events surrounding the communication to the police, while immunizing the communication itself, would thwart the policies and goals underlying the immunity statute..., **no meaningful distinction can be drawn between the cause of action based on the bank's communication to the police and a cause of action based on the method of arriving at the content of the communication.**

Id. at 683 (emphasis added).

Our facts are more compelling than those in *Dang*. As opposed to the teller in *Dang* who simply followed the instruction of a computer popup after one questionable action by Ms. Dang, Alamo employees made **multiple** attempts to contact Weinstock to retrieve its property before filing the police report. Not only did Weinstock fail to return the rental vehicle by terms of the rental contract, she failed to provide a valid address where she could claim certified mail, failed to provide a phone number where Alamo could contact her, and failed to provide a valid form of payment beyond the October 13, 2008 rental termination date. Alamo attempted to extend the rental using the credit card on file, but Weinstock's credit card was continually declined. Alamo also received a call from Sterling Savings Bank that Weinstock was allegedly passing fraudulent checks; yet another red flag. Alamo had every reason to notify authorities of Weinstock's questionable conduct.

It is undisputed Weinstock's one week rental agreement commenced on October 6, 2008 and terminated on October 13, 2008. It is undisputed Weinstock never provided any form of payment to change the terms of the rental and never returned the vehicle to any Alamo location prior to her arrest or prior to the vehicle being reported stolen. Weinstock repeatedly refused to tender payment to extend the rental. The bottom line is this: Weinstock had a contractual obligation to return the Alamo rental by October 13, 2008, and she breached the agreement by maintaining possession of the vehicle for an extra forty-three (43) days beyond the terms of the contract.

On November 24, 2008, *six weeks* after Weinstock was contractually obligated to return the rental, Mr. Bryant reported the vehicle as stolen to the POSPD. Alamo took no other action but to trust the power and discretion of the POSPD.

Furthermore, where the plaintiff in *Dang* was found to be innocent shortly after being reported to the police, Weinstock's criminal charges of possession of stolen property, including a charge completely unrelated to possession of the rental vehicle, in Skagit County Superior Court were pending for over three years. The Skagit County Prosecuting Attorney had probable cause to maintain charges against Weinstock for Possession

of a Stolen Motor Vehicle and Possession of Stolen Property in the Third Degree.

Making Alamo's position even more resolute is the fact that Weinstock was facing criminal charges that are entirely unrelated to Alamo's police report. Pursuant to a search incident to arrest, Washington State Patrol Trooper Lee determined Weinstock had a number of seemingly stolen items from various hotels in the back of the Alamo rental. This is what forms the basis for the third degree possession of stolen property charge.

Similar to *Dang*, in *Kauzlarich v. Yarbrough*, 105 Wn.App. 632, 652, 20 P.3d 946 (2001), an attorney's statement regarding death threats made by a husband in a divorce proceeding and the attorney's request to the superior court administration for security in the courtroom were held to be privileged communications under RCW 4.24.510. The Court of Appeals noted that the statute bars all claims, including claims of defamation, fraudulent concealment and negligent or intentional infliction of emotional distress. *Id.*

Thus, *all* of Weinstock's claims are barred by RCW 4.24.510. Just as in *Ehredt*, no meaningful distinction can be drawn between Weinstock's cause of action based on Alamo's communication to the

police and a cause of action based on the method of arriving at the content of the communication.

Like Washington State courts, the Ninth Circuit United States Court of Appeals recently affirmed a District Court decision that the anti-SLAPP statute immunized a coffee chain employee's communications made to police complaining about a customer's behavior at a drive-thru window. *DiBiasi v. Starbucks Corp.*, 414 Fed.Appx. 948, 2011 WL 578545 (C.A.9 (Wn.)).¹⁰ In *DiBiasi*, Starbucks employees complained to police about DiBiasi's conduct at a drive-thru window. *Id.* The police arrested DiBiasi for indecent exposure, although he was not prosecuted. *Id.* DiBiasi filed 42 USC §1982 and §1988 actions against Starbucks and several of its employees alleging malicious prosecution and discrimination, and violations of Washington State law. *Id.*

The United States District Court for the Eastern District of Washington granted the defendants' summary judgment motion based on the anti-SLAPP statute but denied the defendants' requests for attorneys' fees, costs, and statutory damages for failing to establish that they had acted in good faith. *Id.* Starbucks and its employees appealed the denial of awarding fees, costs, and statutory damages. *Id.*

The Ninth Circuit Court of Appeals stated:

¹⁰ This case was not selected for publication in the Federal Reporter but is cited here, and to the trial court, pursuant to GR 14.1 and FRAP 32.1. CP 200-201.

The record establishes that [the Starbucks's employee] complained to the police regarding...DiBiasi's conduct in the Starbucks drive-thru; that the complaint was a matter of concern to the police; and that Dibiasi sued...as a result of [the employee's] complaint. Therefore appellants met the requirements for immunity under Wash.Rev.Code §4.24.510.

The court held the statute did not require appellants establish that they acted in good faith to qualify for immunity. *Id.* Moreover, DiBiasi failed to establish appellants acted with actual malice and appellants were therefore entitled to fees, costs and statutory damages. *Id.* The Court reversed the District Court's denial of fees, costs, and statutory damages and remanded for this calculation. *Id.*

Our case is just as straightforward. Mr. Bryant complained to the POSPD advising of Weinstock's failure to return the Alamo rental 43 days after the contractual due date. As a result, Weinstock sued Alamo, Mr. Bryant and Mr. Peterson. Therefore, all defendants here meet the requirements for immunity under RCW 4.24.510. While Alamo acted in good faith, they do not bear the burden of establishing this fact for immunity to attach.

Weinstock's reliance on *Segaline, supra*, is entirely misplaced under our facts. In *Segaline*, the "narrow issue before the court [was] whether a government agency that reports information to another

government agency is a “person” under RCW 4.24.510.” 169 Wn.2d at 473. The court held a government agency does not have free speech rights therefore the Anti-SLAPP statute did not apply. Alamo is a corporation, not a governmental agency. The definition of “person” within the Anti-SLAPP legislation includes corporations. There can be no confusion, RCW 4.24.525 sets forth:

“Person” means an individual, **corporation**, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity...

(Emphasis added).

Weinstock erroneously argues Mr. Bryant’s communication to the police is not immunized pursuant to the Anti-SLAPP statute because “it was communicating a matter of purely private concern, unrelated to any matter of political, social or other concern to the community.” CP 279. The identical argument was raised and dismissed in *Bailey v. State, supra*.

The *Bailey* court unequivocally held:

...[T]he terms “to influence a government action or outcome” and the terms “public interest or social significance” are not contained in RCW 4.24.510. These terms are contained in the legislative notes on the intent of the 2002 amendment. Laws of 2002, ch. 232, §1.

Bailey, 147 Wn.App. at 263 (emphasis added).

The *Bailey* court determined the defendant's statement to her employer Eastern Washington University (EWU) regarding statements and actions of her co-worker were immunized from civil suit under the Anti-SLAPP statute.

To obtain immunity under RCW 4.24.510 the claim against [defendant] must be based on a communication she made to EWU "**regarding any matter reasonably of concern to that agency or organization.**" [Defendant] complained about [plaintiff] to EWU concerning several matters of reasonable concern to EWU. Thus, her communication falls squarely under the immunity provided by RCW 4.24.510.

Id., at 263 (quoting RCW 4.24.510).

Even more compelling than EWU's interest in the words and conduct of its employees, the POSPD has an obvious interest in providing law enforcement and preventing crime. All of Weinstock's claims stem from Alamo's immunized communication. This is the poster child for the type of retaliatory lawsuit prohibited by Washington's Anti-SLAPP legislation and must be dismissed.

D. There is No Remaining Basis for Suit Against Alamo

All of Weinstock's claims stem from Alamo's failure to return report to the police. Weinstock provides no binding or persuasive Washington authority to the contrary.¹¹ Weinstock concedes *Dang* holds

¹¹ Weinstock presents cases from Tennessee, California and Georgia. This appeal concerns application of a Washington state law. These out of jurisdiction cases carry absolutely no authority here. Appellant's Br. at 27-28.

the immunity provided by RCW 4.24.510 must be broadly interpreted. Appellant's Br. at 25-26. Yet, Weinstock still argues her claims for outrage and violation of the CPA can somehow pierce this immunity "even if...such a communication is relevant to the establishment of one or more elements of her claim." Appellant's Br. at 27. This is wrong. Weinstock has no basis for an outrage claim but for Alamo's communication to the police. The same rings true for her CPA claim. All of Weinstock's claims stem from Alamo's communication to a government agency that was of reasonable concern to that agency.

E. The Trial Court Properly Awarded Mandatory Statutory Damages and Reasonable Attorney Fees and Expenses

1. Statutory Damages Under RCW 4.24.510

RCW 4.24.510 provides that "a person prevailing upon the defense provided for in this section . . . shall receive statutory damage of ten thousand dollars," with the proviso that "[s]tatutory damages may be denied if the court finds that the complaint or information was communicated in bad faith."

As such, a court "shall" award statutory damages to a party prevailing upon the immunity defense, although a court "may" deny statutory damages based on a finding of bad faith. Under Washington law, it is well-established the use of the term "may" in a statute is regarded as

permissive or discretionary, while the use of the term “shall” is regarded as mandatory. *See, e.g., Erection Co. v. Department of Labor and Industries.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993); *Streng v. Clarke*, 89 Wn.2d 23, 28, 569 P.2d 60 (1977). As a result, an award of statutory damages to a defendant prevailing on the defense provided by RCW 4.24.510 is mandatory unless the court in its discretion declines to award such damages based on a finding of bad faith by the defendant.

Under Washington law, bad faith must be established by “clear, cogent, and convincing” evidence. *Radley*, 34 Wn.2d at 482. This standard requires proof that the fact in question is “highly probable.” *Colonial Imports, Inc. v. Carlton Northwest, Inc.*, 121 Wn.2d 726, 735, 853 P.2d 913 (1993). “To prove bad faith, one must show actual or constructive fraud or a neglect or refusal to fulfill some duty....not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.” *Ripley*, 107 Wn.App. at 584 (internal quotation marks and citations omitted).

Here, the trial court properly exercised its discretion in finding Weinstock did not meet this burden. Weinstock accuses Alamo of filing the police report 43 days after their vehicle was overdue because someone at Alamo knew or should have known she was returning the car. There is

no evidence to support this. In fact, the evidence and all reasonable inferences suggest just the opposite.

There is no apparent reason why Alamo would file a false report with the police about a missing vehicle or have any incentive to invent the “false” allegation. Whether the vehicle was considered 43 or 3 days overdue, it was overdue. In addition, Weinstock had not paid for any of the 43 additional days, and there was absolutely no indication she would do so, particularly given the fact that (a) her credit card was continually declined and (b) Sterling Savings Bank had called Alamo advising Weinstock had been passing fraudulent checks.¹² Even when she was pulled over on November 25, 2008 and ultimately arrested, she was heading northbound in Burlington, approximately 80 miles north of the SeaTac Alamo. There is no reason why Alamo would have made a false report. Even if Weinstock was on her way returning the vehicle she had not. She failed to return a car that did not belong to her when the car was reported to POSPD.

The trial court did not abuse its discretion in determining Alamo’s communication to the police was not in bad faith thereby awarding \$10,000.00 in mandatory statutory damages.

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¹² CP 194, 262.

2. Attorney Fees and Expenses Under RCW 4.24.510

RCW 4.24.510 states that a party prevailing on the defense provided by the statute shall be entitled to “reasonable attorneys’ fees incurred in establishing the defense.” Amount of attorney fee award is discretionary, and will be overturned only for manifest abuse of discretion. *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 738 P.2d 665 (1987). Abuse of discretion on part of trial court in awarding attorney fees is shown when court’s decision is manifestly unreasonable or based upon untenable grounds. *Loeffelholz v. C.L.E.A.N.*, 119 Wn.App. 665, 690, 82 P.3d 1199 (2004). The record must show a tenable basis for the award. *Id.*

If attorney fees are recoverable for only some of a party’s claims, the award must properly reflect a segregation of the time spent on issues for which fees are authorized from time spent on other issues. *Mayer v. City of Seattle*, 102 Wn.App. 66, 79-80, 10 P.3d 408 (2000), review denied, 142 Wn.2d 1029, 21 P.3d 1150 (2001); *Smith v. Behr Process Corp.*, 113 Wn.App. 306, 344, 54 P.3d 665 (2002); *Dash Point Village Assocs. v. Exxon Corp.*, 86 Wn.App. 596, 611, 937 P.2d 1148 (1997). This is true even if the claims overlap or are interrelated. *Travis v. Washington Horse Breeders Ass’n, Inc.*, 111 Wn.2d 396, 411, 759 P.2d 418 (1988); *Fisher Properties, Inc. v. Arden–Mayfair, Inc.*, 106 Wn.2d

826, 850, 726 P.2d 8 (1986); *Smith*, 113 Wn.App. at 344-45. However, an exception exists where “no reasonable segregation ... can be made.” *Mayer*, 102 Wn.App. at 80 (quoting *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 673, 880 P.2d 988 (1994), cert. denied, 513 U.S. 1112, 115 S.Ct. 905, 130 L.Ed.2d 788 (1995)). The burden of segregating, like the burden of showing reasonableness overall, rests on the one claiming such fees. *Kastanis v. Educ. Employees Credit Union*, 122 Wn.2d 483, 501–02, 859 P.2d 26 (1993); *Malarkey Asphalt Co. v. Wyborney*, 62 Wn.App. 495, 514–15, 814 P.2d 1219 (1991).

The procedural history of this case was greatly and unnecessarily complicated by Weinstock’s criminal proceedings, largely due to the discovery gamesmanship by Weinstock and her attorney of record.

Alamo meticulously outlined the abnormal degree of conflict Weinstock created throughout discovery in this case. CP 302-08. With this comprehensive picture of Weinstock’s discovery tactics – condoned and approved time and time again by her attorney of record – Alamo incurred attorney fees and costs defending an action which was frivolous, not based on current law nor advanced with a good faith argument for the modification of existing law.

Weinstock and her attorney continually represented they had evidence to substantiate their claim all the while stalling the civil case

while the criminal case was pending. Even scheduling Weinstock's deposition was an arduous endeavor.

Alamo's efforts to establish the Anti-SLAPP defense included discovery in part which cannot, and should not, be segregated from time spent researching and drafting the motion. That certainly is not unreasonable. As Weinstock claimed liability, the defense had to determine what evidence she had to substantiate her claims. Ultimately, we learned she had no such evidence.

Alamo did segregate their bills and presented three options for awarding reasonable attorney fees: (A) total fees and expenses incurred defending Weinstock's frivolous claim from inception to dismissal: \$51,190.60; (B) total fees and expenses incurred minus all amounts incurred due to Ms. Weinstock's parallel criminal proceeding: \$43,720.41; or (C) total fees and expenses incurred preparing and responding to pre-trial motion practice necessitated by Weinstock's dual proceedings and refusal to participate in discovery including Alamo's motion to dismiss (this is reasonably limited to research and drafting time only; no phone calls, notices of deposition, deposition, and/or correspondence is included in this calculation): \$19,892.25.¹³ Alamo's total attorney fees and costs reasonably incurred from the inception of

¹³ See CP 603-06 for these calculations.

this case through dismissal is \$51,190.60 plus additional costs of \$5,569.70 totaling \$56,760.30.

The trial court exercised its sound discretion and awarded \$39,000.00 in reasonable attorney fees and \$149.90 in costs incurred by Alamo in establishing the Anti-SLAPP defense. Weinstock may not like the result, but there is no evidence the trial court did not make this award on untenable grounds. The trial court obviously segregated time spent on establishing the Anti-SLAPP defense from other time because it did not award all fees and expenses incurred in defending Weinstock's claims. The trial court did not abuse its discretion in awarding these fees.

F. Alamo is Entitled to an Award of Attorney Fees and Costs in Defending this Appeal

Pursuant to RCW 4.24.510, a defendant is entitled to an award of reasonable attorney fees and expenses incurred in establishing his or her defense. As set forth above, all claims against Alamo stem from one communication with a government entity. Alamo asks the Court to affirm the trial court's dismissal of Weinstock's claims under RCW 4.24.510, entitling them to an award of reasonable attorney fees and expenses necessitated by this appeal as provided under RCW 4.24.510 and RAP 18.1(a). *See* RCW 4.24.510 and RAP 18.1(a).

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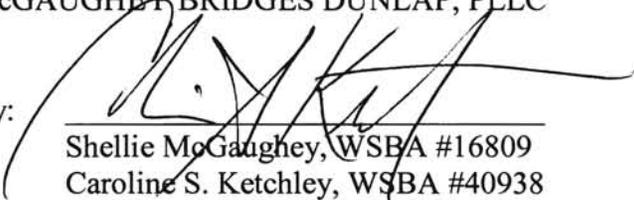
V. CONCLUSION

All of Weinstock's claims stem from Alamo's communication with the POSPD after Weinstock failed to return Alamo's car over a month past the expiration of the car rental agreement. Reports of possible criminal activity are reasonably of concern to the police. This lawsuit is barred pursuant to RCW 4.24.510 and was rightfully dismissed by the trial court. Consequently, the trial court, awarded \$10,000.00 in mandatory statutory damages and reasonable attorney fees and costs. The record demonstrates the trial court's determination was sound and justified. The trial court's rulings must be affirmed.

DATED this 23rd day of March, 2012.

McGAUGHEY BRIDGES DUNLAP, PLLC

By:



Shellie McGaughey, WSBA #16809
Caroline S. Ketchley, WSBA #40938
Attorneys for Respondents

Appendix A



RA # 415695392		RES # 446660851	
SUZANNE WEINSTOCK MIAMI BEACH, FL 33141		CONTRACT ID 93666 EXT REF #	
RENTAL LOCATION SEATTLE ARPT (888)826 6893 SEATTLE / TACOMA INTERNATIONAL ARPT SEATTLE, WA 98188		RENTAL DATE 06-OCT-2008 RENTAL TIME 08:13 PM	
RETURN LOCATION SEATTLE ARPT (888)826 6893 SEATTLE / TACOMA INTERNATIONAL ARPT SEATTLE, WA 98188		RETURN DATE 13-OCT-2008 RETURN TIME 06:00 PM	
RATE RULES AND QUALIFICATIONS INITIAL X AFFINITY WEEKLY VOICE ONLY Min. rental 5 days Max. rental 28 days Sat		VEHICLE INFORMATION RESERVED Intermediate 2/4 Door Car Auto A/C DRIVEN STANDARD SIZE SPORT/UTILITY CHARGED Intermediate 2/4 Door Car Auto A/C MAKE TOYOTA MODEL HIGHLANDER COLOR MAROON ODOMETER 16412 PLATE ABB8857 REG AREA AZ VEHICLE # 82071959 BAY R1 STALL R18	

CHARGES	UNIT	PRICE/UNIT	CURRENT CHARGE
RENTER'S RESPONSIBILITY			
TIME & DISTANCE	WEEK	90.42 X 1	90.42
UNDERSTAY FEES	Day	15.00 X	0.00
OVERSTAY FEES	Day	10.99 X	0.00
EXTRA - TIME & DISTANCE	Day	20.09 X	0.00
EXTRA - TIME & DISTANCE	Hour	6.70 X	0.00
UNLIMITED MILES/KM-TIME & DISTANCE	M/KM	0.00 X	0.00
REFUELING SERVICE CHARGE	Gallon	5.18 X	0.00
CUSTOMER FACILITY CHG 5.00/DAY	Day		35.00
CONCESSION RECOVERY FEE 11.11 PCT @ 11.11%			10.34
VEH LICENSE RECOVERY FEE .38/DAY	Day		2.66
WA RENTAL CAR TAX 9.7PCT 9.70%			10.03
SALES TAX 9.00%			9.31

ESTIMATED CHARGES 157.76 INITIAL X

PAYMENTS
VISA 9447 Auth #

- I DECLINE OPTIONAL ALAMO PROTECTION PLUS (APP) AS OF 06-OCT-2008 08:13 PM. X
- I DECLINE OPTIONAL COLLISION DAMAGE WAIVER. X SL
- I DECLINE OPTIONAL EXTENDED PROTECTION (EP). X SL
- I DECLINE OPTIONAL CAREFREE PERSONAL PROTECTION COVERAGE (PERSPRO). X SL
- I DECLINE ALAMO'S OPTIONAL ROADSIDE SERVICE PLUS X SL

'EARLY RETURN' IS RETURNING THE RENTAL VEHICLE PRIOR TO THE SCHEDULED DAY. IF I VIOLATE THE RENTAL AGREEMENT BY FAILING TO RETURN THE CAR AS STATED, I UNDERSTAND THAT, IN ADDITION TO MY OTHER CHARGES, THE RENTAL RATE WILL INCREASE AND I WILL BE ASSESSED AN EARLY RETURN FEE OF 15.00 PER RENTAL. X DNA

'OVERSTAY' IS THE RATE PER DAY OVERSTAY FEE. IF I VIOLATE THE RENTAL AGREEMENT BY FAILING TO RETURN THE CAR AS STATED, I UNDERSTAND THAT THE RENTAL RATE MAY INCREASE AND I WILL BE ASSESSED AN OVERSTAY FEE OF 10.99 PER DAY IN ADDITION TO MY OTHER CHARGES. X SL

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, CERTAIN OPTIONAL INSURANCE PRODUCTS. CERTAIN MATERIAL POLICY TERMS, LIMITATIONS, CONDITIONS, EXCLUSIONS, AND CLAIMS REPORTING INFORMATION PERTAINING TO THESE INSURANCE PRODUCTS ARE SUMMARIZED IN ALAMO'S RENTAL AGREEMENT JACKET. BEFORE DECIDING WHETHER TO PURCHASE AN INSURANCE PRODUCT, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN VEHICLE, HOME, OR OTHER INSURANCE COVERAGE AFFORDS YOU COVERAGE FOR DAMAGE TO, OR USE OF, THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE; HOWEVER, ALAMO EMPLOYEES ARE NOT QUALIFIED TO EVALUATE THE ADEQUACY OF YOUR OWN INSURANCE POLICIES. THE PURCHASE OF AN OPTIONAL INSURANCE PRODUCT FROM ALAMO IS NOT REQUIRED TO RENT A VEHICLE. CLAIMS MAY BE REPORTED VIA THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-803-4444. ALAMO'S ADDRESS IS: CLAIMS DEPARTMENT, 6929 N. LAKEWOOD AVE., SUITE 100, TULSA, OK 74117, PHONE: 918-401-6000. LICENSE NUMBER ALAMORU939BC. THE WASHINGTON INSURANCE COMMISSIONER'S CONSUMER HOTLINE IS: 1-800-562-6900. YOU ACKNOWLEDGE RECEIPT OF THIS NOTICE AND ALAMO'S RENTAL AGREEMENT JACKET BY ENTERING INTO THIS AGREEMENT.



NO ADDITIONAL DRIVERS ARE AUTHORIZED TO DRIVE THE VEHICLE WITH THE EXCEPTION OF THE DRIVERS LISTED BELOW.

YOU AGREE TO ALL PROVISIONS CONTAINED WITHIN THIS AGREEMENT, INCLUDING THOSE CONTAINED WITHIN ALAMO'S RENTAL AGREEMENT JACKET AND ALL APPLICABLE OPTIONAL PRODUCT BROCHURES, AND YOU ACKNOWLEDGE RECEIPT OF EACH OF THEM. YOU UNDERSTAND AND AGREE THAT, TO THE EXTENT PERMITTED BY LAW, IF YOU DO NOT COMPLY WITH CERTAIN KEY PORTIONS OF THIS AGREEMENT (AND, WHERE APPLICABLE, THE TERMS OF ANY ASSOCIATED CORPORATE, GOVERNMENT, OR TOUR ACCOUNT AGREEMENT), ALL COLLISION DAMAGE WAIVER, LIABILITY INSURANCE AND UNINSURED/UNDERINSURED MOTORIST BENEFITS, AND CERTAIN OTHER OPTIONAL PRODUCTS, IF ANY, DESCRIBED IN THIS AGREEMENT ARE VOID AND, THUS, WILL NOT BE PROVIDED.

RENTER :

THANK YOU FOR RENTING WITH ALAMO RENT A CAR

*minor scratches & nicks on both bumpers -
NOV 18 8 78
Oleg Miroshnik*



Port of Seattle PD - Crime / Incident Report

Port of Seattle PD
 Po Box 68727
 Seattle, WA 98168
 206 433-4610

1

Case No. C20082885
 Report No. C20082885.1
 Report Date: 11/24/2008

Page 1 of 3

Subject: 2357 - Theft of Rental, Leased, or Loaned Property

PDA :

Case Report Status	A - Approved	Disposition	4 - Active
Occurred On	10/13/2008 6:00:00 PM	Date Entered	11/24/2008 9:41:12 AM
Or Between (Date and time)		Entered By	188 - Roling, David
Reporting Officer	188 - Roling, David	Date Verified	11/26/2008 7:08:13 AM
Assisted By		Verified By	118 - Kim, Michael
Location	2006 S 146h St - Alamo Rent-A-Car	Date Approved	12/18/2008 2:24:05 PM
Reporting Agency	Port of Seattle PD	Approved By	614 - Neigel-Britt, Brenda
Related Cases		Jurisdiction	PDDG - Police
Local Geographic Code		Grid	
State Geographic Code		Sector	
Call Source		Map	
Vehicle Activity		Adult/ Juvenile Clearance	
Direction Vehicle Traveling		Clearance Reason	
Cross Street		Date of Clearance	
Means		Division	Patrol
Motive		Notified	
Narrative		Insurance Letter	

THIS COPY WAS PREPARED BY THE
 PORT OF SEATTLE POLICE DEPARTMENT
 FOR *McNaughy, Bridges, DuLax*
 DATED *7-8-11*
 FURTHER DISSEMINATION OF THIS
 DOCUMENT IS NOT AUTHORIZED

On 11/24/08, at approximately 0858 hours, I was dispatched to Alamo-Rent-a-Car, located at 2006 South 146th Street, in regards to a stolen rental vehicle. At approximately 0912 hours, I arrived and contacted Complainant Bryant. Bryant stated that on 10/6/08, at approximately 2013 hours, a female (Weinstock, Suzanne) rented a vehicle (Maroon 2008 Toyota Highlander, AZ #ABB8857) from Alamo. Weinstock was contractually obligated to return the vehicle on 10/13/08 at 1800 hours, but failed to return the vehicle. Attempts to call or contact Weinstock were unsuccessful. A certified return/receipt letter was sent to Weinstock's listed address on 10/21/08 with negative success. The customer service representative who rented the vehicle to Weinstock is Oleg Mirochinik, however it is unknown whether he has additional information or can identify the person who rented the vehicle. It is unknown whether there is videotape evidence, and I was told by Bryant to contact "Car Rental Security" to inquire about any possible videotape. Alamo's approximate loss is \$20,000.

The vehicle was entered as a stolen by POSPD dispatch. Dispatch informed me that computer checks were done on the vehicle's plate on 11/23/08 at 1945 hours by Washington State Patrol (WSP) in Wenatchee, and 2245 hours by WSP in Moses Lake. I did not inquire into the circumstances of the computer checks at this time.

Offense Details: 2357 - Theft of Rental, Leased, or Loaned Property

Offense	2357 - Theft of Rental, Leased, or Loaned Property	Location	45 - Parking Lot / Garage	No. Prem. Entered	
IBR Code	240 - Motor Vehicle Theft	Hate/Bias Criminal Activity	88 - None (No Bias)	Entry Method	
IBR Group	A	Domestic Violence	No	Other Method of Entry	
Crime Against Using	PR	Evidence Collected		Type of Security	
Offense Completed	C - Completed	Other Evidence Collected		Other Security Tools	
Child Abuse				Other Tools Used	

Suspect S1: Weinstock, Suzanne

PDA

Suspect Number	S1	DOB	2/16/1958	Place of Birth	
Name	Weinstock, Suzanne	Age	50	SSN	
Aliases		Sex	F - Female	DLN	
Address	1576 Daytonia Rd	Race	U - Unknown	DLN State	FL - Florida
CSZ	Miami Beach, FL 33141	Ethnicity	U - Unknown	DLN Country	
Phone	203 770-5983	Height		Occupation/Grade	
Business Phone		Weight		Employer/School	
Gangs		Eye Color		County	
Tribe Affiliation		Hair Color		Country	
Glasses		Facial Hair		Resident Status	U - Unknown
Scars/Marks/Tattoos		Facial Shape		Complexion	
Suspect MO		Appearance		Facial Feature	
Attire		Hair Length		Oddities	
Suspect Pretended to Be		Hair Type		Distinctive Features	
				Speech	

Port of Seattle PD - Crime / Incident Report

Port of Seattle PD
Po Box 68727
Seattle, WA 98188
206 433-4610

Case No. C20082885
Report No. C20082885.1
Report Date: 11/24/2008

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Teeth
Suspect Notes

Hair Style

Custody Status

Victim V1: [E] Alamo RAC

PDA

Victim No.	V1	Victim Of	2357 - Theft of Rental, Leased, or Loaned Property
Victim Type	B - Business		
Name	[E] Alamo RAC	DOB	
Aliases		Age	
Address	2006 S 146th	Sex	
CSZ	Seatac, WA	Race	
Phone		Ethnicity	
Business Phone	206 431-7550	Height	
Weapon Used		Weight	
Attire		Eye Color	
Injury		Hair Color	
Circumstances		Facial Hair	
		Complexion	
Law Enforcement Officer Killed or Assaulted Information	Type Assignment Activity Other ORI	Justifiable Homicide Circumstances	

Victim Offender Relationships

Offender Relationship
Victim Notes:

ther Entity: O1 -- Bryant, Marvin

PDA

Entity Code	O1		
Entity Type	P - Other Individual		
Name	Bryant, Marvin	DOB	
Aliases		Age	
Address	2006 S 146th	Sex	M - Male
CSZ	Seatac, WA	Race	W - White
Phone		Ethnicity	N - Not of Hispanic Origin
BusinessPhone		Height	
Attire		Weight	
		Eye Color	
		Hair Color	
		Facial Hair	
		Complexion	
Entity Notes		POB	
		SSN	
		DLN	
		DLN State	
		DLN Country	
		Occupation/Grade	
		Employer/School	Alamo
		County	
		Country	
		Resident Status	

Property Description Item 1: 3500 - Automobile (Locally Stolen) - Toyota Highlander

Item No.	1
Property	3500 - Automobile (Locally Stolen)
IBR Type	03 - Automobiles
UCR Type	D - Locally Stolen Motor Vehicle
Status	Stolen/Etc. (Bribed/Defrauded/Embezzled/Ransomed/Etc.)
Other Property Description	
Count	1
Value	20000
Manufacturer	Toyota
Model	Highlander
Serial No.	JTEES41A182071959
License No.	ABB8857
Color	MAR - Maroon/ Burgundy
Description	Toyota Highlander

Port of Seattle PD - Crime / Incident Report

Port of Seattle PD
Po Box 68727
Seattle, WA 98168
206 433-4610

Case No. C20082885
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Vehicle Year
License Year 2008
State AZ - Arizona
Body Style 4D - 4 Door

Recovered Date
Owner
Disposition
Evidence Tag
Recovered Value
Owner
License
State
Year
Model
Make
Color
Special Features
Style
Drug Type
Drug Quantity
Drug Measure

Property Notes

WASHINGTON STATE PATROL

Case #
08-016998

- Primary Officers Report
- Assisting Officers Report
- Technical Specialist Report
- Supplemental Report

REPORT OF INVESTIGATION

Page 1 of 2

Type of investigation: Theft of a motor vehicle/ possession of stolen property 1st degree/ failure to wear seatbelt	Date: 11-25-2008
Location: SR-20 & Fairhaven Street	Time: 1925

(S)uspects / (W)itnesses / (V)ictims

<input checked="" type="checkbox"/>	S	Name: Weinstock, Suzanne Lee	DOB: [REDACTED]	Misc:
<input type="checkbox"/>	W	Address: 1576 Daytonia Road	Race: W	Sex: F
<input type="checkbox"/>	V	City: Miami Beach	State: FL	Zip: 33141
<input type="checkbox"/>	W	Home Phone:	Work Phone:	Height: 5-09
<input type="checkbox"/>	V	License/St: [REDACTED] FL	Expiration: 02-16-2013	BAC:
<input type="checkbox"/>	W	Eyes: Blu	Hair: Brn	Weight: 120
<input type="checkbox"/>	V	Interpreter (type):		
<input type="checkbox"/>	S	Name: Alamo	DOB:	Misc:
<input type="checkbox"/>	W	Address: Seattle/ Tacoma International Airport	Race:	Sex:
<input type="checkbox"/>	V	City: Seattle	State: WA	Zip: 98188
<input type="checkbox"/>	W	Home Phone:	Work Phone:	Height:
<input checked="" type="checkbox"/>	V	License/St:	Expiration:	BAC:
<input type="checkbox"/>	W	Eyes:	Hair:	Weight:
<input type="checkbox"/>	V	Interpreter (type):		
<input type="checkbox"/>	S	Name: Best Western Butte Plaza Inn	DOB:	Misc:
<input type="checkbox"/>	W	Address: P.O. Box 1055 - 1015 South Haynes	Race:	Sex:
<input type="checkbox"/>	V	City: Butte	State: MT	Zip: 59301
<input type="checkbox"/>	W	Home Phone:	Work Phone:	Height:
<input checked="" type="checkbox"/>	V	License/St:	Expiration:	BAC:
<input type="checkbox"/>	W	Eyes:	Hair:	Weight:
<input type="checkbox"/>	V	Interpreter (type):		

Vehicle Information

Vehicle 1	Color: Burgundy	Year: 2008	Make: Toyota	Model: Highlander	Style: SUV
	License: ABB8857	State: AZ	Comments: RO Alamo		
Vehicle 2	Color:	Year:	Make:	Model:	Style:
	License:	State:	Comments:		

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this report and subsequent pages are true and correct (RCW 9A.72.085):

Signature: 	Print Name: B. Lee	Badge #: 929	Date: 11-25-2008
Place Signed: Skagit County	Approved by: 	Date: 1-8-09	

WASHINGTON STATE PATROL
REPORT OF INVESTIGATION
Narrative

On November 25, 2008 at approximately 1922 I was facing WB on Orange Avenue at Burlington Boulevard. I was parked on the shoulder observing traffic travelling North and South on SR-20. I observed a burgundy Toyota Highlander SUV Arizona license ABB8857 travel North passed my location. I observed clearly through the front window and passenger window that the female driver was not wearing her seatbelt. I clearly observed the shoulder strap and buckle hanging along the "B" pillar of the vehicle. I observed the metal buckle shine from my headlights as the vehicle passed by me.

I immediately travelled behind the vehicle and initiated a traffic stop. The vehicle slammed on the breaks coming to a complete stop blocking the right lane of travel EB on SR-20. I advised the subject over my vehicles PA system to move into the parking lot at the corner of SR-20 and Fairhaven Street which the subject did.

I approached the vehicle on the driver's side and contacted the female subject. Before I could advise the subject the reason for the stop she immediately stated that she had a clean record and did not think she had committed any crimes. I advised the subject the reason for the stop and I asked the subject for her driver's license, vehicle registration and proof of insurance. The subject stated that she had taken off her seatbelt quickly to remove her coat because she had been stung by a wasp twice. The subject showed me her arm and I observed no bites or any areas that may have been inflamed due to a wasp bite. I asked the subject several times for the information. The subject still continued to go on about me falsely stopping her and she had an emergency which she could take off her seatbelt. After several minutes the subject provided me with a Florida driver's license identifying the subject as Suzanne Lee Weinstock DOB [REDACTED]. Weinstock stated the vehicle was a rental from the Larry at the airport. I asked Weinstock what airport and Weinstock stated Seattle. Weinstock provided me with a rental agreement from Alamo.

A DOL check of Weinstock through WSP Communications indicated Weinstock had a 2013 expiration. A vehicle registration check of Arizona license ABB8857 through WSP communications indicated the vehicle was stolen from the Port of Seattle Police Department. I observed on the rental agreement that the vehicle was supposed to be returned on October 13, 2008. I placed Weinstock under arrest at approximately 1927. I read Weinstock her constitutional rights from the department issued rights warning card which Weinstock stated the vehicle was not stolen and she was being falsely arrested. I asked WSP Communications to confirm that the vehicle was stolen. WSP Communications confirmed through Port of Seattle Police Department that the vehicle was stolen and the stolen report was entered on November 24, 2008.

I placed Weinstock in the back of my patrol and Weinstock continued state the vehicle was not stolen and she was working closely with Larry the supervisor at Alamo. Weinstock stated that she had a wealthy family an internal investigation was going to need to be done for my false arrest and mistreatment. Weinstock insisted that a sergeant and a lieutenant respond. Sergeant J. Armstrong #290 was at the scene and I advised Armstrong of Weinstocks statements. Weinstock stated that Larry must be called and he could explain what is going on with the vehicle. Armstrong attempted to contact Alamo.

Upon search of the vehicle incident to arrest I observed several items of interest. The vehicle was a SUV with a back seat that was folded down to allow more storage space. I observed several bags containing plastic cups, soaps, conditioners, towels, laundry bags, sealed toothbrushes, sealed toilet paper rolls, sealed Kleenex boxes and clean folded bed sheets. Several of the items displayed the names of hotels which were Best Western, Hampton Inn and Fairfield Inn Marriot or were in bags that displayed the names. Underneath the items were several blankets, what looked to be a comforter and duvet cover and a thermal blanket which is usually placed in between the flat sheets and the comforter. Other items in the vehicle were sealed bags of socks, new boots, a thermal jack with tags and groceries which were underneath the comforter that was spread over the floor portion of the backseat.

Upon search of the front passenger seat I observed several receipts to hotels throughout the U.S. Due to the items in the vehicle I contacted one of the hotels.

WASHINGTON STATE PATROL
REPORT OF INVESTIGATION

Narrative

Upon contacting the Best Western War Bonnet Inn located in Miles City Montana I spoke with the front desk clerk and advised the clerk of the situation. The clerk advised me that she specifically remembered Weinstock. I provided the clerk of the other Best Western Hotel names. The clerk stated that she would contact the hotels and provide me with any information pertaining to Weinstock. Upon looking at the receipts I observed various names which were provided to the hotels including Susie Lee, Suzanne Lee, S. Lee, Suzy Lee and Suzie Lee Lee.

I contacted Weinstock and asked why the receipts showed several different names. Weinstock stated that Lee was her legal name and there were multiple ways of spelling her name. I asked Weinstock about the items from the hotels. Weinstock stated the items were hers and were not stolen. Weinstock stated that she could explain where every item in her car was from.

I photographed the interior and the exterior of the vehicle.

The vehicle was impounded to Apex Towing. Upon arrival of the Apex Towing Weinstock stated that she had \$1200 in cash located in her purse and several credit cards. Armstrong and I both searched the purse and located \$325. The currency was later photographed. The purse was removed along with several cards, U.S. currency and a diamond ring. Apex Towing impounded the vehicle. I transported Weinstock to the Skagit County Jail.

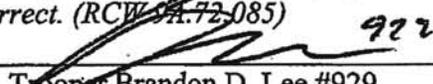
Upon my arrival at the Skagit County Jail Weinstock was booked on and investigative hold for possession of stolen property 1st degree. The charge of theft of a motor vehicle, possession of stolen property 1st degree and failure to wear seatbelt will be referred to the Skagit County Prosecutor.

On November 26, 2008 at approximately 0910 I spoke with Kami from Best Western Butte Plaza Inn in Butte, Montana. Kami stated that Weinstock did stay in the Best Western in Butte, Montana. Kami stated through email that the housekeeper who cleaned Weinstocks room advised that the comforter, duvet cover and flat sheet were missing after Weinstocks stay. Kami stated that the staff at the Best Western in Mile City, Englewood and Norwalk did not advise of any missing items. The estimated cost of the items was 200 dollars.

On November 26, 2008 at approximately 0915 I spoke with Tina Pullar, operations manager at Fairfield Inn & Suites Marriot in Burlington, WA. Pullar advised me that Weinstock did stay at the Inn and was an extremely smooth talker. Pullar advised me that Weinstock put a \$250 dollar deposit down due to an inactive credit card.

Additional phone calls have been made to hotels and awaiting further information.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (RCW 9A.72.085)

 922
 Trooper Brandon D. Lee #929

Skagit County
 Location

11-26-2008
 Date

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA
2018 OCT 18 AM 11:28

SKAGIT COUNTY SUPERIOR COURT STATE OF WASHINGTON	
STATE OF WASHINGTON, Plaintiff,	NO: 08-1-00933-4
vs.	AMENDED INFORMATION
SUZANNE LEE WEINSTOCK, Defendant.	

TO: SUZANNE LEE WEINSTOCK
 AKA: UNK
 DOB: 02/16/1958
 LKA: 1576 DAYTONA ROAD, MIAMI BEACH, FL 33141
 PHY: C/F/HT:509/120 LBS/BLU EYES/BRN HAIR
 ID#: SID#UNK; FL DOL#W523-792-58-556; DOC#UNK
 AGENCY: WSP #08-016998

By this Amended Information, the Prosecuting Attorney accuses you of the crimes of:

COUNT I

Possession of Stolen Motor Vehicle - RCW 9A.56.068 - Class B Felony

On or about November 25, 2008, in the County of Skagit, State of Washington, the above-named Defendant did knowingly receive, retain, possess, conceal, or dispose of a stolen motor vehicle, to-wit: Toyota Highlander Arizona License ABB8857, knowing that it had been stolen and did withhold or appropriate the property to the use of a person other than the true owner or person entitled thereto; contrary to Revised Code of Washington 9A.56..068.

Adult Penalty: (Maximum Penalty - Ten (10) years imprisonment and/or a \$20,000 fine pursuant to RCW 9A.56..068, plus restitution and assessments.)

ORIGINAL

COUNT II

Possessing Stolen Property in the Third Degree – For Offenses Committed prior to September 1, 2009 - RCW 9A.56.170 – Gross Misdemeanor

On or about November 25, 2008, in the County of Skagit, State of Washington, the above-named Defendant did knowingly receive, retain, possess, conceal, or dispose of stolen property, of a value not exceeding \$250, knowing that it had been stolen and did withhold or appropriate the property to the use of a person other than the true owner or person entitled thereto; contrary to Revised Code of Washington 9A.56.170(1).

Adult Penalty: (Maximum Penalty - One (1) year in jail or \$5,000 fine, or both, pursuant to RCW 9A.56.170(2) and RCW 9A.20.021(2), plus restitution, assessments and court costs.)

SKAGIT COUNTY PROSECUTING ATTORNEY

DATED: September 27, 2010

By



PAUL W. NIELSEN, WSBA#31487
DEPUTY PROSECUTING ATTORNEY

Appendix B

CWest's Revised Code of Washington Annotated CurrentnessTitle 4. Civil Procedure (Refs & Annos)▣ Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)→→ **4. 24. 510. Communication to government agency or self-regulatory organization--Immunity from civil liability**

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

CREDIT(S)

[2002 c 232 § 2; 1999 c 54 § 1; 1989 c 234 § 2.]

HISTORICAL AND STATUTORY NOTES

Intent--2002 c 232: "Strategic lawsuits against public participation, or SLAPP suits, involve communications made to influence a government action or outcome which results in a civil complaint or counterclaim filed against individuals or organizations on a substantive issue of some public interest or social significance. SLAPP suits are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.

Although Washington state adopted the first modern anti-SLAPP law in 1989, that law has, in practice, failed to set forth clear rules for early dismissal review. Since that time, the United States supreme court has made it clear that, as long as the petitioning is aimed at procuring favorable government action, result, product, or outcome, it is protected and the case should be dismissed. Chapter 232, Laws of 2002 amends Washington law to bring it in line with these court decisions which recognizes that the United States Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making." [2002 c 232 § 1.]

Laws 1999, ch. 54, § 1, rewrote the section, which previously read:

"A person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense."

Laws 2002, ch. 232, § 2, rewrote the section, which previously read:

"A person who in good faith communicates a complaint or information to any agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business

and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.”

C

West's Revised Code of Washington Annotated Currentness

Title 4. Civil Procedure (Refs & Annos)

Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)

→→ 4.24.525. Public participation lawsuits--Special motion to strike claim--Damages, costs, attorneys' fees, other relief--Definitions

(1) As used in this section:

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

- (d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or
- (e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.
- (3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.
- (4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.
- (b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.
- (c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.
- (d) If the court determines that the responding party has established a probability of prevailing on the claim:
- (i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and
- (ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.
- (e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.
- (5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.
- (b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.
- (c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.
- (d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.
- (6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made

under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

CREDIT(S)

[2010 c 118 § 2, eff. June 10, 2010.]

HISTORICAL AND STATUTORY NOTES

Findings--Purpose--2010 c 118: "(1) The legislature finds and declares that:

(a) It is concerned about lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances;

(b) Such lawsuits, called 'Strategic Lawsuits Against Public Participation' or 'SLAPPs,' are typically dismissed as groundless or unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;

(c) The costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues;

(d) It is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process; and

(e) An expedited judicial review would avoid the potential for abuse in these cases.

(2) The purposes of this act are to:

(a) Strike a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern;

(b) Establish an efficient, uniform, and comprehensive method for speedy adjudication of strategic lawsuits against public participation; and

(c) Provide for attorneys' fees, costs, and additional relief where appropriate." [2010 c 118 § 1.]

Application--Construction--2010 c 118: "This act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts." [2010 c 118 § 3.]

Short title--2010 c 118: "This act may be cited as the Washington Act Limiting Strategic Lawsuits Against Public Participation." [2010 c 118 § 4.]