

NO. 37167-7-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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CRAIG STOVER

Plaintiff,

PIERCE COUNTY CORRECTIONS  
HEALTH CLINIC, PIERCE COUNTY  
JAIL, and PIERCE COUNTY, a local  
governmental entity of the State of  
Washington

Defendants.

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**APPELLANT'S BRIEF**

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Richard F. DeJean  
Attorney for Petitioner  
P.O. Box 867  
Sumner, WA 98390  
(253) 863-6047  
WSBA #2548

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## I. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1. The Trial Court erred in dismissing Plaintiff's Eighth Amendment Cause of Action.

ASSIGNMENT OF ERROR NO. 2. The Court erred in entering its Order of July 7, 2006 denying Plaintiff the name, address and phone number of other inmates in Plaintiff's cell.

ASSIGNMENT OF ERROR NO. 3. The Court's failure to grant Plaintiff's Second Motion for Summary Judgment, filed October 12, 2007.

ASSIGNMENT OF ERROR NO. 4. The Court erred in granting Defendant's Second Motion for Summary Judgment, November 9, 2007.

ASSIGNMENT OF ERROR NO. 5. The Court erred in granting Summary Judgment as to all Causes of Action, November 30, 2007.

### **Issues Pertaining to Assignments of Error:**

ISSUE NO. 1: Should the Trial Court had dismissed Plaintiff Eighth Amendment Cause of Action where the facts showed that the Plaintiff, a person with known seizure disorder and whose previous traffic arrest records with the Defendant clearly demonstrated that he had seizure disorder and needed medication and where he attempted to advise the booking personnel and the

transport personnel the following morning that he was having “pet mals” (which precede Grand Mals) and where the jail personnel disregarded their own Rules and Regulations with the expected result that Appellant had a Grand Mal and suffered injuries to his face and eye and where, following his return from the emergency room, he was left with soiled clothes for two days as a result of both bowel and urinary incontinence during the seizure and even denied the use of his cane and, further, was allowed in a confinement in excess of 21 days to see the doctor only once? (Assignment of Error 1)

ISSUE NO. 2:           Should the Trial Court have denied Plaintiff’s Motion in discovery for the names and addresses and phone numbers of inmates sharing the same cell as the Plaintiff where, if a trial is an attempt to arrive at the truth, the only persons with first hand knowledge of events occurring in the jail, are denied access by Plaintiff’s attorney and their presentation is withheld from the trial proceedings. (Assignment of Error 2)

ISSUE NO. 3:           Should the Trial Court have denied Plaintiff’s Motion for Summary Judgment on the issues of negligence and medical negligence where Plaintiff presented the testimony of the Defendant’s own medical director, Dr. Miguel Balderrama, which testimony demonstrated that Defendant had violated three standards of care, together with the testimony of Mary Scott, director of nursing, which showed that Defendant had violated two additional rules and regulations? (Assignment of Error 3)

ISSUE NO. 4:           Should the Trial Court have granted Defendant’s Second Motion for Summary Judgment in the face of the testimony of Dr. Miguel Balderrama, which testimony demonstrated that Defendant had violated three standards of care, together with the testimony of Mary Scott, director of nursing, which showed that Defendant had violated two additional rules and regulations. (Assignment of Error 4)

ISSUE NO. 5: Should the Trial Court have granted Defendant's Motion to Dismiss All Remaining Causes of Action, including the issue of common law negligence, where the dismissal occurred after the Court had invited the parties to file pleadings to determine if the issue of common law negligence remained (CP 809-810) and where the Plaintiff presented testimony from the transport officer of the Defendant that if he had been told that an inmate believed a seizure was imminent, that he would not have placed him in handcuffs and transported him but would have left him in the cell to be taken to the medical clinic. (CP 847) And, further, that he would seek out a medical person to evaluate him. (CP 848) Additionally, should the Court have dismissed the Plaintiff's entire case where there was still an issue of whether the Plaintiff was incarcerated on March 10 or on March 11. (Assignment of Error 5)

## II. STATEMENT OF THE CASE

The Plaintiff Craig Stover was arrested on an outstanding traffic warrant and placed in the Pierce County jail. There is a dispute as to whether this occurred on March 11, 2004 or March 10, 2004. The Plaintiff suffers from seizure disorder, hyperglycemia, arthritis and colon cancer. He is on Social Security Disability. The Plaintiff's traffic warrant arises from a driving violation which came about when he had a seizure behind the wheel. Plaintiff has not driven since that day. Plaintiff had, just prior to this traffic violation, voluntarily contacted the FBI with information on an unsolved murder in New Mexico. He had overheard a person at a rodeo function discussing the murder. The Plaintiff was in the Pierce County jail on this traffic violation when he was needed at the trial in New Mexico and the FBI arranged for him to leave the jail and appear and testify at the trial. It was Plaintiff's understanding that the FBI had "taken care of" the traffic citation. Evidently that had not happened and that was the warrant on which he was arrested. (CP 318-322)

At the time of booking, Plaintiff advised the booking personnel that he had seizure disorder and needed medication. While still in the booking area, Mr. Stover remembers the booking nurse calling Safeway pharmacy and being advised of his medication, Tegretol, and the dose level. The Defendant denies that it had this information. The personnel at Safeway also advised the booking nurse that he had filed a prescription there for approximately one year. The Plaintiff testified that he had medication at his home and it was not necessary for him, during that period of time, to purchase the medication at Safeway. (CP 318-319) One of the records of the Defendant clearly shows that this conversation with Safeway occurred. (CP 626) This exchange between Mr. Stover and the booking personnel occurred at 3:19 p.m. There was no medication provided to the Plaintiff. The Defendant will attempt to explain this away by stating that it could not make contact with the Plaintiff's doctor and that Mr. Stover had not had a prescription filled at Safeway within the last 90 days. However, one of the Assessment Protocols governing the operation of the jail provides that if the inmate's medical practitioner is unavailable then "the medical director or a qualified designee will sign the order". And, the regulations governing the operation of the jail require that either the medical director or a physician's assistant be on duty during regular clinic hours. (CP 627)

Further, a "Receiving Screening" protocol for the jail provides that the booking nurse will consult with either a physician's assistant or an ARNP for medical concerns. This was not done. Further, this same protocol provides that non-urgent medical needs shall be identified on the "Receiving Screening Form/Booking Sheet" and scheduled for "appropriate follow-up". This was not done. (CP 628) And, in spite of having been advised of the serious medical problems suffered by Craig Stover and after even having been advised that he had a stroke one week prior, he was not assigned to the medical unit but was, instead, placed into the general population.

There was testimony presented to the trial court that more medical attention should have been directed to Mr. Stover on the afternoon of his booking and that he should have been scheduled for evaluation by a doctor or a physician's assistant the following morning. Further, he should have remained in his cell until medically evaluated. (CP 601-603)

On the following morning, when the medication nurse came into his cell unit, Mr. Stover asked her to have him see the doctor because he needed medication and, further, that he was having "pet-mals seizures". In spite of having been advised of the fact that he felt he was going to have a seizure (he testified that "pet-mals" generally precede a Grand Mal) and that he needed medication, both on the afternoon of his booking and the following morning, absolutely nothing was done by the Defendant and, not only did the Defendant fail to provide any type of care to Mr. Stover but it proceeded, through its transport officer, to place him in handcuffs and a "belly-chain" to transport him to the Tacoma Municipal Court for arraignment. And, the negligence of the Defendant did not stop with these actions/omissions for when the group of inmates arrived at the "holding tank" for the Municipal Court, Mr. Stover was left restrained with the handcuffs and the belly-chain and the transport officer placed him in a separate room with no visualization of him from the point where the transport officer placed himself. Predictably, after having advised jail personnel that he was having "pet-mal seizures" and that he needed his medication, Mr. Stover did suffer a Grand Mal seizure and since there was no one there to provide assistance to him and since he was still in cuffs and chains, he fell unrestrained to the floor. (CP 314-315; 318-322) The noise from Mr. Stover's fall was of such a loud volume that the transport officer thought an altercation was taking place. (CP 629) This noise was perceived by the transport officer even though he was in a separate room with the wall separating him from Mr. Stover.

As the transport officer entered the holding tank, he saw Mr. Stover “lying on the floor face down. He was bleeding from his mouth and nose. He then starting shaking in a way that appeared to be a seizure.” (CP 629)

Emergency personnel took Mr. Stover to St. Joseph’s Hospital. As part of the history taking at St. Joseph’s Hospital, it was noted that he had suffered urinary incontinence in the seizure. Mr. Stover testified that he actually experienced bowel incontinence also. He was left in this soiled clothing for approximately two days. Not only was this extremely uncomfortable to his person but it created a socially disturbing relationship between he and his other cellmates.

Mr. Stover testified that the frequency of his seizures has increased following this episode in the Pierce County jail.

This case went through the discovery process and both parties filed initial Motions for Summary Judgment and on August 25, 2006, the Trial Court denied Plaintiff’s Motion for Summary Judgment and granted Defendant’s Motion, in part, dismissing Plaintiff’s causes of action of Res Ipsa Louquitur, claim of Constitutional violation pursuant to USC 42 Section 1983 and the claim of outrage. The Defendant had challenged all of Plaintiff’s causes of action and the Court denied the Defendant’s Summary Judgment motion as to the remaining causes of action. The Defendant then filed a Motion for Reconsideration on September 5, 2006 and the Court denied this Motion in its entirety.

The case then proceeded to trial on May 1, 2007. However, there was no Court room available and the parties “trailed” for four days without a Court room becoming available. The case then went back on the trial calendar.

Without the benefit of any new evidence (other than some argument about Plaintiff’s military record, which has no bearing on any of the issues in the litigation) the Defendant filed yet a third Motion for Summary Judgment and as a result of this motion and one following it, the

Trial Court dismissed Plaintiff's case in its entirety. A case which, on May 1, 2007, if a courtroom would have been available, would have proceeded to trial was now, without any reason being given by the Trial Court, dismissed.

### III. ARGUMENT:

#### **Argument on Issue No. 1:**

By this Order, the Court dismissed Plaintiff's claims for Res Ipsa Louquitur (Fourth Cause of Action); violation of Plaintiff's Eighth Cause of Action; violation of Plaintiff Eighth Amendment Constitutional Rights (Fifth Cause of Action) and the Tort of Outrage (Seventh Cause of Action). All other Causes of Action specifically remained. Plaintiff, in this appeal, does not challenge the ruling of the Court dismissing Plaintiff's claim of outrage or of Res Ipsa Louquitur. Plaintiff does believe the Court committed error in dismissing Plaintiff's Eighth Amendment claim. The Defendant was aware of the many medical problems of the Plaintiff, including his seizure disorder status from the time he was booked into the Defendant's jail. And the Defendant was aware, by its own records, that he had had one as recently as the week prior. (CP 76) Not only did the Defendant fail to provide Plaintiff with medical attention on the day he was booked but instead of sending him to the medical unit on the following day, they placed him in handcuffs and leg shackles and transported him to the Tacoma Municipal Court. As if this were not enough, they left him in this condition in the "holding tank" with the transport guard positioned some distance away with no visualization of him. (CP 77) In addition to having advised the booking personnel of his medical needs, the Plaintiff also had advised them that he can "feel" when seizures are imminent (he describes them as "pet-mals" and had also advised the jail staff of this). (CP 79, CP 298-299) The Defendant's records also demonstrate that when Mr. Stover requested to see a doctor regarding his medications that he was advised that he would be placed "on the list for next week"! (CP 137) He was also complaining about a visual

disturbance in his left eye as a result of the fall in the holding tank. The Assessment Protocols of the Defendant provide that all medical problems outside of the booking nurse's scope of practice shall be managed by consulting a physician or a physician's assistant. (CP 151) And, all medical concerns are to be addressed prior to completion of the booking process. (CP 150) None of this was done in reference to Craig Stover. Mr. Stover was even denied the use of his walking cane. (CP 78)

Chief Ronald Hyland (RTR) of the Sumner Police Department filed a declaration that advised the trial court that given the medical conditions from which Craig Stover suffered "he should have been housed in the medical unit of the jail. It is my further opinion that he either should not have been handcuffed in the holding tank, or if handcuffed that he should have been strapped to the chair in such a fashion that he could not have fallen from the chair should he have a seizure. Violation of both, or either, of the above would be a violation of reasonable law enforcement practices and the operation of a jail facility. This would be indicative of inadequate training, supervision or both." (CP 266-267)

Craig Stover further advised the trial court that "I requested on several occasions to see the doctor because of concerns about my medication and because of concerns I had about considerable swelling and discoloration about my right eye which I struck when I fell in the holding tank during my seizure. I was only allowed to see the doctor on one occasion. My medical condition had deteriorated to such an extent that the other inmates in my cell were also asking that I be allowed to see a doctor." (CP 271)

Further, at the time Mr. Stover had his seizure on March 12, he suffered both bowel and urinary incontinence. This was admitted by the Defendant when it failed to respond to Plaintiff's Requests for Admission that "Admit that when returned from the medical emergency department

of St. Joseph's Hospital that Craig Stover had soiled his pants and that he was left in this condition for two days". (CP 833)

In *Our Lady of Lourdes v. Franklin County*, 120 Wn. 2d 439, 842 P. 2d 956 (1993), the Washington Supreme Court made it very clear that:

"Under the Federal Constitution the County must provide necessary and emergency medical care for its jail inmates."

Further, in *Estelle v. Gamble*, 429 US 97 (1996), the United States Supreme Court established that deliberate indifference to serious medical needs of a prisoner violates the Eighth Amendment's prohibition and gives rise to a cause of action under 42 USC Section 1983. The Court said:

"We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'... proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under Section 1983."

Further, in the decision in *Hoptowit v. Rhay*, 682 Fed. 2d 1237, the Court held that prison officials show deliberate indifference to serious medical needs if prisoners are unable to make their medical problems known to medical staff, and that a medical staff must be competent to examine prisoners and diagnose illnesses; and further must be able to treat such medical problems.

In a well-reasoned opinion and one which is almost an all fours with instant case, the Court in *Shea v. City of Spokane*, 17 Wn. App. 236, 562 P. 2d 264, in deciding a claim by a prisoner who also fell as a result of a seizure said:

“The duty to the prisoner arises because when one is arrested and imprisoned for the protection of the public, he is deprived of his liberty, as well as his ability to care for himself.

The duty which Defendant owed to Plaintiff arose out of this special relationship in which Defendant was one ‘required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection.’ Restatement of Torts 2d, Section 314A(4), page 118.

When a City takes custody of a prisoner it must provide health care for that prisoner. This is a positive duty arising out of the special relationship that results when a custodian has complete control over a prisoner deprived of liberty. The extent of this control is well illustrated in this case by the jailer’s denial of Plaintiff’s request to telephone a doctor. It is evident to this Court that the nature of the relationship is such as to render non-delegable the duty of providing for the health of a prisoner. Stated another way, the duty is so intertwined with the responsibility of the City as custodian but it cannot be relieved of liability for the negligent exercise of that duty by delegating it to a ‘independent contractor’ physician.”

The Trial Court should not have dismissed Plaintiff’s Eighth Amendment claim.

**Argument on Issue No. 2:**

On June 28, 2006, the Plaintiff filed a Motion to Compel Discovery and among other relief requested was for “the names, addresses and telephone numbers of those inmates occupying the cell in which Craig Stover was placed following his return from the hospital.”

(CP 23)

By memorandum of journal entry, the Court did not order the Defendant to provide this information but only to provide a copy of the entire jail roster, the names only, with no identifying information. (CP 335) Plaintiff’s counsel estimates that there were in excess of 2,000 names on the jail roster with no way of identifying who was in Plaintiff’s cell. And, obviously, these individuals would have knowledge about what was happening to the Plaintiff – what were his medical conditions, what complaints were being made, what medical attention was

given to him, etc. It is submitted that if this is to be a trial to establish the truth, these names, together with identifying information (Plaintiff is not looking for the charges lodged against these individuals) should be provided to the Plaintiff.

**Argument on Issue Nos. 3 and 4:**

Granting Defendant's Second Motion for Summary Judgment, November 9, 2007:

The Defendant filed its Defendant's Second Motion for Summary Judgment, November 9, 2007. (CP 578) Among the issues, one of the issues framed by the Defendant in its Motion was: "Is Summary Judgment Appropriate Where Plaintiff Cannot Produce Necessary Expert Testimony Supporting his Allegation of Medical Malpractice?" (CP 592) The Defendant went on to advise the Trial Court, first, that Plaintiff did not have an expert medical witness to establish liability and causation. (CP 593) The Defendant was evidently under the belief that Plaintiff could not establish these elements and could not respond to its Motion through the testimony of its own witnesses, but, rather, must have an expert medical witness of its own. Because, that is exactly what Plaintiff did, that is, Plaintiff utilized the testimony of the Defendant's own medical personnel to clearly demonstrate negligence in the care of Craig Stover. The Defendant cited to the Trial Court Noel v. King County, 42 Wn. App. 227, for the proposition that: "In Noel v. King County, 42 Wn. App. 227, 232 (Div. 1, 1987), the Court said, 'Summary Judgment is appropriate because Plaintiff failed to show by expert medical testimony that there is any issue of material fact as to the breach of any applicable standard of care.'" (CP 593) In responding to this, the Plaintiff presented the testimony of Dr. Miguel Balderrama, the medical director of Defendant's correctional facility. Dr. Balderrama testified:

"Q: And you would agree that a person who has a known seizure disorder and who is on Tegretol to control the seizures – you would agree that that person would be at risk if he either doesn't take his medication or is denied his medication. Would

you agree with that statement, he would be at risk for another seizure?

A: If you do not take your medication?

Q: Or if you are denied access to your medication?

A: If you don't take your medication, by all means, yes you are at risk.

Q: So if you are denied access to it, you wouldn't be taking it, correct?

A: If you are denied, of course.

Q: So in that setting a person would still be at risk for another seizure?

A: Yes."  
(CP 598)

And, Dr. Balderrama further testified:

"A: Your statement. It's very rare. Most of the patients if they are going to have a complex tonic-clonic seizure – if they are of the category of patients that will have auras, basically what you are referring to –

Q: Right.

A: They will have them quite clear, very close to the time of the onset of the seizure. In my experience, I have never seen someone telling me that for days they have auras...

Q: Again, if someone – if I'm seeing a patient and the patient is telling me 'I have auras' basically I have to be ready for a seizure...

A: Again, in clinical medicine, very few physicians are clinicians in any setting – yes, you can take the medication but you still have to be ready to have the seizure."  
(CP 599)

And, further:

"Q: And by other means would be to be ready to restrain the person if a seizure should come about?

A: That is correct.

Q: And that would be the recognized standard of care, wouldn't it?

A: That would be what any prudent physician would do in a situation where a patient is reporting having seizure disorder.

Q: And reporting auras?

A: And again, auras or – you have to just be aware of what kind of auras they are having. Some people have auras but they don't even themselves recognize as auras.

Q: Are you saying you have to question the person?

A: You have to question the person. You bet.

Q: And that would be part of the standard of care, to engage in a questioning process to bring out the type of aura that generally precedes the seizure with this person.

A: Yes.

Q: So if the arrestee provides the booking nurse with that history of seizure disorder, feeling auras, and not having his medication, then the nurse has to go through a series of questions to eliminate every other cause?

A: Yes.

Q: And that would be the standard of care, right?

A: Yes.

Q: Do you know of any questions that were placed to Craig Stover of that nature as we sit here today?

A: When I reviewed the chart, I do not recall seeing any from nursing, I do recall seeing evidence from Mr. Ortiz.

Q: Mr. Ortiz what, please?

A: I saw evidence that he evaluated the patient.

Q: But not on that day did he, not on March 11?

A: What happened on March 11?

Q: That was the booking. I'm sorry, that was the booking. I don't want you answering these blind so to speak. Let me give you – now this has been identified as his clinical record. Tell me if you see anything in there that would indicate that Mr. Ortiz evaluated Mr. Stover or his condition on March 11.

Q: Do you see anything in the records that I've placed in front of you that would indicate that Mr. Ortiz participated in any fashion in the booking process or clarification process of Mr. Stover on March 11, 2004.

A: And the answer is no.

A: The first note that I have here from PA Ortiz is on March 15.”  
(CP 599-601)

And, Mary Scott, the nursing supervisor also testified as follows:

Q: He has told – told the booking nurse that he felt that he was going to have a seizure and needed medication, told her that he felt that he was going to have a seizure.

A: So what exactly is your question? What would I do?

Q: Yes.

A: If he felt he was going to have a seizure right then, then I would put him in a place where he would be safe and visible for me to see whether he had a seizure.

Q: How long would you keep him there?

A: Well, if he thought he was going to have a seizure right now, I would keep him there for a few minutes until he felt like he was no longer going to have a seizure.

Q: You would question the person further about how imminent he felt the seizure might be in coming on, wouldn't you?

A: Yes, I would do that.

Q: And to have not done that, that would be violation of the rule and regulations?

A: I would not say that it would not – that it would be a violation of the rules and regulations.

Q: That's a fairly common source of injury to persons in correctional facilities, is it not? The – the actual happening of a seizure, people get injured that way don't they?

A: People get injured having seizures, yes.

Q: When was the – when was your practitioner notified of the status of Craig Stover in the Pierce County jail, the presence and the status of Craig Stover in the Pierce County jail...

A: No, it looks to me like – like that it was ordered – that they were notified when he returned from the ER after having the seizure on 3-12.

Q: Okay, so that would have been the first instance that the practitioner was notified, according to the records you have in front of you.

A: That's what it looks like to me, yes.

Q: Okay, do you know of any reason by your practitioner would not have been earlier notified?

A: Because he didn't have any medica – he didn't have any prescription for Tegretol when he came in, so he would have been put on a list to be seen, and the practitioner would – he would have been put on a list to be seen.

Q: By whom, please?

A: By the booking nurse.

Q: To be seen by the booking nurse?

A: No. The booking nurse would have put him on to be seen by –

Q: To be seen by whom though?

A: By the practitioner.

Q: As we sit here today, you do not see any list that was – any list that Craig Stover was placed on to be seen by clinic personnel on March 12, do you?

A: No.

Q: And not to have put him on that list would have been a violation of the regulations of the Pierce County jail?

A: It would have been a violation of the nursing guidelines.  
(CP 601-603)

In summary, we had Dr. Balderrama testifying as follows:

First, a person with known seizure disorder who advises the booking nurse of his history of seizure disorder and feeling auras, and being without medication, then the booking nurse has to go through a series of questions to eliminate every other cause. (CP 599-601) And, Mr. Stover testified that when he was booked into the jail he told the booking officer that he had seizure disorder (epilepsy) and that he needed his medication. (CP 78) And, he further testified that when the booking nurse asked him about his medication, he told her he was on Tegretol and that he had purchased it from Safeway. He then recounts how the nurse called Safeway and then there is a dispute as to whether Safeway failed to tell her the dose level or as Mr. Stover testified that he overheard the Safeway pharmacist advise her of the medication and the dose level. Further, he told the booking nurse that he was having “pet mals” (auras) but rather than continue the questioning process, the booking nurse told Mr. Stover to “sit down and shut my mouth or she was going to put me in the hole”. (CP 268-269) And, the failure to do this was a violation of the standard of care according to Dr. Balderrama. Dr. Balderrama even testified that he did not see any appropriate questions from the nurse (CP 599-601) and although he did see appropriate questioning from Mr. Ortiz, that occurred after Mr. Stover had fallen and injured himself. (CP 599-601) Thus, we have a clear violation of the standard of care by the testimony of the Defendant’s own medical director! The Court should have denied the Defendant’s Motion for

Summary Judgment and should have granted the Plaintiff's Motion for Summary Judgment on the issue of liability.

Secondly, Dr. Balderrama testified that if a patient tells him that he is having auras that the standard of care would be to ready ones self to restrain the person if a seizure should come about. (CP 599). And, certainly, placing a person in handcuffs and a belly chain is not protecting the person from the impending seizure. The Plaintiff testified that he told both the booking nurse and the officer transporting him to the Municipal Court that he was having "pet mals". (CP 235-236) Again, by the Defendant's own medical expert, there was a violation of the standard of care. And, again, the Trial Court should have denied the Defendant's Motion for Summary Judgment and granted the Plaintiff's Motion on the issue of liability.

Thirdly, Mary Scott, the nursing supervisor for the Defendant, testified that for a prisoner reporting that he felt a seizure coming on she would do as Dr. Balderrama said, and that is, question the inmate further and that to not have done so would be a violation of the jail's rules and regulations. (CP 601-603) And, again, Mr. Stover testified that there was no such questioning undertaken (CP 268-269) and Dr. Balderrama even backed him up on this by stating that he did not see any appropriate questions from the nurse. (CP 599-601) Again, the Trial Court should have denied the Defendant's Motion for Summary Judgment and should have granted the Plaintiff's Motion on the issue of liability.

As a prelude to the fourth violation of the standard of care/medical rules and regulations, the Defendant is attempting to justify its actions by stating that it was unaware of Mr. Stover's medication and the dose level. And, even though Mr. Stover denies this and there were records in Defendant's own possession that would contradict this, Nurse Scott further testified that if an inmate who reported seizure disorder and who did not have a current prescription for his medication when came into the jail, the standard of care required that he be put on a list to be

seen by the medical practitioner. She further testified that Craig Stover was not placed on such a list on either March 11 or March 12. Lastly, she said not to have done so would be a violation of the nursing guidelines. (CP 603)

And, Craig Stover presented the following testimony to the Trial Court in opposition to the Defendant's Motion for Summary Judgment:

"I incorporate by reference by Declaration previously filed herein. When I said, in that Declaration, that I can 'feel' a seizure coming on, I begin having what I call 'pet mals', or seizures much smaller in degree than a Grand Mal. I was having these as I was being booked into the jail and on the day that they transported me to the Municipal Court. I told both the booking nurse and the officer in charge of my transportation to the Municipal Court that I was having these 'pet mals' and that this generally preceded a larger seizure.

Again, my recollection is that my hands were cuffed and my legs were shackled as they were taking me to the Municipal Court. The statements by the Defendant that I did not provide them with information regarding my dosages and my prescriptions are absolutely wrong. I told them I was on Tegretol and the dose level that I took.

When the Defendant states that St. Joseph's Hospital had the 'ability to conduct immediate diagnostic testing but also their prior records of Plaintiff's prior ER admissions' that same statement should apply to the Defendant jail. During my last incarceration in Defendant's jail, I was taking Tegretol and the jail has that in their records and has the dose amount in their records. Further, during my last incarceration, I was placed in the medical unit and remained there the entire time."

(CP 604, 605)

Mr. Stover also advised the Trial Court:

I was initially booked in to the general population at the Pierce County Jail. When I was booked, I told the booking officers that I had a seizure disorder (epilepsy), arthritis, hyperglycemia and other ailments and that I needed medication. I had a Grand Mal seizure when I was waiting for my initial court appearance at a time when I was handcuffed and shackled. As a result of being so constrained, I had absolutely no way to protect myself and my fall to the floor was unrestrained. As a result of this I received injuries to my face, lip and eye."

(CP 606, 607)

In a Second Supplemental Declaration, Mr. Stover further advised the Trial Court:

To clarify the statements I made in my Supplemental Declaration wherein I state that I told the booking nurse I was on Tegretol and the dose level that I took, I did tell her that I was on Tegretol and that I took it three times a day. As a matter of fact, when she and I were together and when she was asking me these questions, she called the Safeway Pharmacy and the pharmacy told her that I was on Tegretol but that I had not purchased any from them for a year. When she told me this, I told her that I did not have to purchase the Tegretol from Safeway because I had ample supplies at my home... At this time, the booking nurse told me to 'sit down and shut my mouth or she was going to put me in the hole'. Additionally, the male officer who was fingerprinting me told me if he heard me 'open my mouth one more time, he was going to keep me in a small room, which he pointed out, for 5 hours'. They were evidently getting upset because I was trying to clarify my medications etc. and also requesting that they call the FBI so that they could obtain information from the FBI that I should never have been arrested as I had been a government witness in a murder trial in another state and this occurred during the time that the underlying charges were being processed and since the FBI needed me at this trial, they told me that they had 'taken care of these charges'. Further, the FBI came to Tacoma and took me from the jail to the trial.

... there was also another nurse who came into the Annex where I was being held prior to being taken to Court, and this nurse was distributing medication to certain of the inmates. At this time, I went up to her and told her that I needed my medication as I was having these 'pet mals' and that I was going to be taken to Court. She said that I could wait until I got back from Court before she would do anything. I told her that these 'pet mals' generally precede a Grand Mal and this did not have any effect on her. I was not given any medication.

As to the reference to Dr. Brooks' counseling me about failing to consistently take my medication, there was a brief period of time when my medical coverage was cancelled. However, this was corrected and ever since then I have consistently taken my medication.

The Defendant also states to the Court that it did not breach a duty to me because the emergency room records from St. Joseph's Hospital showed that I had not taken Tegretol for three weeks before the seizure and had not taken Dilantin for one month. As I

previously said, any competent, qualified medical provider, if they were advised by jail personnel that I had had a Grand Mal seizure, should have known that statements made by me that quickly after a Grand Mal could not be relied upon. Further, as I have advised the Court, there was no three week period when I had not taken my Tegretol. I had taken Tegretol, and continue to take it daily.

As to the statement of the Defendant that no information was received from Safeway Pharmacy, as I have stated earlier, I was at the booking counter immediately opposite the nurse when she called Safeway Pharmacy. I did hear and understand that Safeway Pharmacy informed her of my medication and my dose level.

I have read that the Defendant also argues that there was no indifference to my medical condition. I requested on several occasions to see the doctor because of concerns about my medication and because of concerns I had about considerable swelling and discoloration about my right eye which I struck when I fell in the holding tank during my seizure. I was only allowed to see the doctor on one occasion. My medical condition had deteriorated to such an extent that the other inmates in my cell were also asking that I be allowed to see a doctor.”

(CP 608-612)

How, in the face of testimony from the Defendant's own medical personnel, could the Trial Court have dismissed Plaintiff's causes of action of common law negligence and medical negligence against the Defendant!

In concomitant with the Defendant's filing of its Second Motion for Summary Judgment, the Plaintiff also filed his Motion for Summary Judgment. (CP 613) As set forth in the preceding paragraphs, the Plaintiff presented through the Defendant's own medical experts un rebutted testimony of at least three violations of the standards of care in providing proper medical attention to the Plaintiff. This testimony was clear and since it came from the Defendant's own medical experts, how could it be questioned? The Trial Court should have granted Plaintiff's Motion for Summary Judgment on the issue of Medical Negligence.

**Argument on Issue No. 5:**

In documents entitled Supplement to Plaintiff's Motion to Determine Claim of Negligence and Motion re: Remaining Causes of Action (CP 816) and Defendant's Supplemental Briefing that No Claims Based on Common Law Negligence Remain and Request to Continue Plaintiff's Motion in Limine (CP 850), the parties filed pleadings in response to the Court's invitation at the conclusion of its Order Granting Defendant's Second Motion for Summary Judgment (CP 810) wherein the Court stated: "The Court will hear further argument on the claims of common law negligence which may remain."

In the Order Granting Defendant's Second Motion for Summary Judgment, the Court only addressed the issues of medical negligence and failure of the Defendant to adequately train or supervise its employees. The remaining claim of common law negligence was not, and never has been, addressed by the Court. This is reflected in both the Memorandum of Journal Entry wherein the Court addressed the parties and said: "The Court is unclear if there are any unresolved issues with regard to the Complaint." (CP 807-808) And, in the Order Granting Defendant's Second Motion for Summary Judgment, where the Court in the Order provided: "The Court will hear further argument on claims of common law negligence which may remain." (CP 809-810) Please see Exhibit 1 hereto.

Plaintiff's first cause of action as set forth in his Complaint, reads:

"First Cause of Action:  
Incorporating herein by reference Paragraphs I and II, Plaintiff alleges that through the negligence of the Defendants, Plaintiff sustained serious and significant injuries to his person, some of which will be permanent in nature."

This cause of action had never previously been ruled upon by the Court even though it was part of Defendant's Second Motion for Summary Judgment. In response to the invitation of

the Court, Plaintiff filed a Motion to Determine Claim of Negligence and specifically advised the Court that this claim was based upon the following:

- (1) Placing the Plaintiff in handcuffs and a belly-chain and taking him to the holding tank and leaving him there without supervision;
- (2) The failure to place Craig Stover in a medical unit subsequent to his return from the emergency room;
- (3) The failure to provide Plaintiff with Tegretol for the last several days of his incarceration;
- (4) The failure to properly account for Craig Stover from March 10, 2004 through March 11, 2004. (CP 812-813)

The Defendant appears to argue to the Court that the County can only be held negligent if it is shown to have violated its own rules and regulations. That, of course, is not the law in the State of Washington. The case of *Stalter v. State*, 113 Wn. App. 1, 51 P. 3d 837 (Div. 2, 2002), is a case quite on point in that the County had arrested the wrong person and, as here, was claiming that its duty, or lack thereof, arose from its administrative regulations. In rejecting this, the Court said:

“A duty can arise either from common law principles or from a statute or regulation... Thus, although the County’s policies and rules do not establish a duty, they also do not shield the County from a duty that might arise from another source... We conclude that once jail management is on notice that it may be holding a detainee under authority of a warrant erroneously, it has a duty, at a minimum, to investigate further. This is consistent with the practical realities of the situation. By definition, a detainee lacks access to community resources.”

Plaintiff was of the belief that this Motion was simply to advise the Court that this cause of action still remained for determination. It was, obviously, not part of a Summary Judgment proceeding and Plaintiff envisioned that the Court would either determine that the Motion had not previously been ruled upon (and then, assumedly, one of the parties would make it the

subject of a Summary Judgment Motion, or the Court would determine that it had previously been the subject of a Summary Judgment Motion).

However, on November 30, 2007, rather than determining whether such a cause of action still existed or not, the Court entered an Order dismissing all further claims of the Plaintiff. (CP 895-896)

The Plaintiff had supported this Motion with the deposition testimony of the transport officer who took Plaintiff to the holding tank, Officer Hector Hernandez, who stated that he felt Mr. Stover's seizure in the holding tank was an emergency. (CP 847) And, further, that if he had been told that a prisoner felt he was going to have a seizure he would not have put him in handcuffs, and he would have left him in the cell to be taken to the medical clinic. Officer Hernandez testified:

“A: If a Defendant – well, I’ve never been put in that situation. So if a Defendant tells me that he’s going to have a seizure, I don’t think I would put him in handcuffs. I think I would probably notify – or leave him back so they can transport him to the clinic. I don’t – I don’t quite understand.

Q: Fine. Is there anything – I take it there’s nothing in your daily – day-to-day instructions that would give you any guidance in that as to whether if an inmate tells you that he may be having a – he feels a seizure coming on, there’s nothing that you can refer to to tell you what to do?

A: Well, just through my own experience and common sense would tell me that if he’s telling me that the seizure is about to happen, I would – I, myself, I think I would seek a medical person out to evaluate him.”

(CP 847-848)

And that, of course, is common law negligence, by doing exactly the opposite of what he, himself, felt should have been done, as a corrections officer.

As to the matter of failing to account for Craig Stover for one day in the Pierce County Jail, Plaintiff had provided the testimony of Craig Stover that he was arrested on March 10 and taken to the Pierce County Jail on that day. (CP 825)

Additionally, Plaintiff had presented to the Court, on this issue of failing to account for Craig Stover in the jail, the response of the Defendant to an interrogatory wherein the Defendant stated that Plaintiff "was seen by Nurse Becky Hay on 3/09/04." (CP 830) Additionally, the Plaintiff's testimony was that he was arrested on March 10, 2004. (CP 848-849) In support of his Motion, Plaintiff also filed a response from the City of Tacoma reflecting that they were rejecting Mr. Stover's claim "for damages resulting from an incident that occurred on 3/10/04." (CP 829) Additionally, there were games being played with Mr. Stover's medication records where a date was changed from what appears to be 3-11-04 to 3-15-04. (CP 294) This, again, would be consistent with Mr. Stover's version. He always maintained that he was arrested on March 10 because that was his birthday and that was the reason he was in the vehicle, as a passenger, when he was arrested. He was being taken to a birthday party being given for him. There are people with answers to these questions, the cellmates of Craig Stover, however the Defendant has refused to release that information.

It seems somewhat obvious what happened and that is the County thought that Mr. Stover was a homeless person. As one can see from the property inventory, he had, essentially, only the clothes on his back (CP 123), at the time of the inventory and at the time he was released on March 31, 2004. (CP 132) This was because he was a passenger and did not need, nor did he have, a driver's license etc. since he had not driven since the stroke which resulted in the underlying traffic citation of 2001. The County felt it had a homeless man and evidently felt it did not need to account for him.

**Causation:**

Somehow, even though the Defendant was entirely within the supervision of the Defendant's jail staff and could not take any measures to protect himself (such as calling his own doctor, driving to an emergency room, etc.) the Defendant argues that the Plaintiff has not established causation. That is not the case. Dr. Balderrama testified:

"A: If you don't take your medication, by all means, yes you are at risk.

Q: So if you are denied access to it, you wouldn't be taking it, correct?

A: If you are denied, of course.

Q: So in that setting a person would still be at risk for another seizure?

A: Yes.

...

A: Again, if someone – if I'm seeing a patient and the patient is telling me 'I have auras' basically I have to be ready for a seizure."  
(CP 598, 599)

Further, Dr. Balderrama told the Court:

"A: Again, in clinical medicine, very few physicians are clinicians in any setting – yes, you can take the medication but you still have to be ready to have the seizure.

Q: And by other means would be to be ready to restrain the person if a seizure should come about?

A: That is correct.

Q: And that would be the recognized standard of care, wouldn't it?

A: That would be what any prudent physician would do in a situation where a patient is reporting having seizure disorder."  
(CP 620)

The case of *Stalter v. State*, 113 Wn. App. 1, 51 P. 3d 837, also bears factual similarities to instant litigation in that the Defendant in Stalter was arrested on a warrant of arrest for his brother, and was booked into the Pierce County Jail. He advised his booking officers of the misidentification. In determining that the jail could be held on a negligence claim for failing to further investigate the identity of the person once they were put on notice that he was not the person named in the warrant, the Court also stated that proximate cause is, almost always, a question for the jury. As the Court said:

“The question of proximate cause is for the jury unless the facts are undisputed and there is only one logical inference. Here a jury could find that if the booking officer or his supervisor had examined Robert Stalter’s booking file and allowed Reid, the arresting officer, an opportunity to review the file, Stalter would have been released immediately rather than two days later... Thus, the Trial Courts erred when they dismissed the negligence claims.”

Further, the Court in *Herskovits v. Group Health*, 99 Wn. 2d 609, 664 P. 2d 474, held:

“This Court has held that a person who negligently renders aid and consequently increases the risk of harm to those he is trying to assist is liable for any physical damages he causes.”

#### IV. CONCLUSION:

After the Plaintiff’s case had survived two Motions for Summary Judgment, and after the parties had appeared for trial in May of 2007 and had “trailed” for four days without having a courtroom available, these last recounted events occurred which resulted in the dismissal of Plaintiff’s remaining causes of action. These events are inexplicable to the Plaintiff.

While Plaintiff does not challenge the dismissal of his claims of Res Ipsa Louquitur or the tort of outrage, Plaintiff certainly believes that the claims for negligent supervision and medical inattention (medical negligence) as well as common law negligence were clearly established in that the Defendant’s own medical personnel testified to breaches of the standards

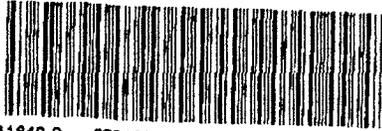
of care and their own protocols. Further, Plaintiff believes there was more than sufficient evidence to prevent the Trial Court from granting Defendant's Motion for Summary Judgment on the issue of the Eighth Amendment Constitutional Violation. The Order of the Trial Court granting Defendant's Motions for Summary Judgment should be overturned, except as to the causes of action for Outrage and Res Ipsa Louquitur.

Respectfully submitted this 24<sup>th</sup> day of April, 2008.



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Richard F. DeJean      WSBA #2548  
Attorney for Appellant



05-2-11640-0 28616815 CME 11-13-07



**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

CRAIG STOVER

Plaintiff(s)

vs.

PIERCE COUNTY CORRECTIONS HEALTH CLINIC

Defendant(s)

Cause Number: 05-2-11640-0

**MEMORANDUM OF JOURNAL ENTRY**

Page 1 of 2

Judge/Commissioner: JOHN R. HICKMAN  
Court Reporter: Laura Venegas  
Judicial Assistant/Clerk: Connie Mangus

STOVER, CRAIG	RICHARD FRANCIS DEJEAN	Attorney for Plaintiff/Petitioner
PIERCE COUNTY CORRECTIONS HEALTH CLINIC	KAWYNE A. LUND	Attorney for Defendant
PIERCE COUNTY JAIL	KAWYNE A. LUND	Attorney for Defendant
PIERCE COUNTY	KAWYNE A. LUND	Attorney for Defendant

*Proceeding Set: Motion - Summary Judgment*

Proceeding Outcome: Summary Judgment Held

Resolution:

Outcome Date: 11/09/2007 10:39

**Clerk's Scomis Code: SMJHRG**  
 Proceeding Outcome code: **SMJHRG**  
 Resolution Outcome code:  
 Amended Resolution code:

5211

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

CRAIG STOVER

Cause Number: 05-2-11640-0

**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

PIERCE COUNTY CORRECTIONS HEALTH CLINIC

Page: 2 of 2

Judge/Commissioner:  
JOHN R. HICKMAN

MINUTES OF PROCEEDING

Judicial Assistant/Clerk: Connie Mangus

Court Reporter: Laura Venegas

**Start Date/Time: 11/09/07 9:12 AM**

**November 09, 2007 09:11 AM** Attorney Kawyne Lund argues the defendant's motion for summary judgment. **09:29 AM** Attorney Richard DeJean argues against the defendant's motion for summary judgment. **09:45 AM** Attorney Lund responds. **09:50 AM** Attorney DeJean responds. **09:50 AM** The Court rules on the County's motion for partial summary judgment: Granted. The Defendant's motion for partial summary regarding unlawful failure to train is granted. Order to be prepared.

**10:35 AM** Case goes back on the record. Attorney Lund addresses the Court with regard to the December 12, 2007, court date. **10:36 AM** The Court addresses the parties. The Court is unclear if there are any unresolved issue with regard to the complaint. Attorney Lund believes the case is "over". **10:38 AM** The Court will not make that ruling at this point in time. The Court will hear argument on common law negligence.

**End Date/Time: 11/09/07 10:40 AM**



05-2-11640-0 28618828 ORGSJ 11-13-07

Hon. John R. Hickman - Dept. #22



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

CRAIG STOVER,

Plaintiff,

NO. 05 2 11640 0

vs.

PIERCE COUNTY CORRECTIONS  
HEALTH CLINIC, PIERCE COUNTY JAIL,  
and PIERCE COUNTY, a local governmental  
entity of the State of Washington,

ORDER GRANTING DEFENDANTS'  
SECOND MOTION FOR SUMMARY  
JUDGMENT

November 9, 2007

Defendants.

THIS MATTER having come on regularly for hearing before the undersigned judge of the above entitled Court on November 9, 2007, for Defendants' Second Motion for Summary Judgment. After consideration of the motions, memoranda and supporting documents, exhibits and other materials submitted and oral argument to the Court, the Court hereby enters the following,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Defendants' Motion for Summary Judgment is GRANTED this Court having found that there is no material fact in dispute that Defendants' violated the appropriate standard of care in their care and treatment

1 of Plaintiff and therefore this claims is DISMISSED WITH PREJUDICE; FURTHER,

2 ~~That there is no dispute as to any material fact that any acts or omission of Defendant~~  
3 ~~were the proximate cause of Plaintiff's seizure and any alleged injury suffered,~~ FURTHER,

*JRH*

4 That Defendants' Motion for Summary Judgment that Plaintiff's claim that  
5 Defendants failed to adequately train or supervise its employees is be dismissed, is  
6 GRANTED, finding that there is no admissible evidence or dispute of a material fact that  
7 supports this claim, accordingly, this claim is also DISMISSED WITH PREJUDICE.  
8

9 ~~Therefore, based on the admissible evidence, briefing, exhibits, and argument of~~  
10 ~~counsel, Plaintiff's claims in this matter are HEREBY DISMISSED WITH PREJUDICE IN~~  
11 ~~THEIR ENTIRETY.~~

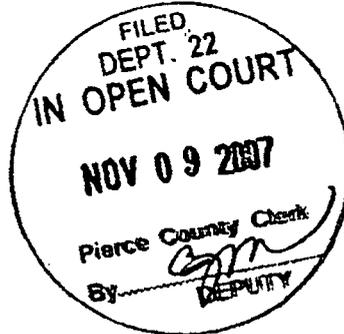
*The Court will hear further argument  
on claims of Common Law Negligence which may remain.*

12 DATED this 9 day of November, 2007.

13 SIGNED:

14 *[Signature]*  
15 \_\_\_\_\_  
16 Judge John R. Hickman

17 Presented by:



18 \_\_\_\_\_  
19 Kawyne A. Lund, D.P.A.  
20 Attorney for Defendant  
21 WSB 19614  
22 955 Tacoma Ave. So., Rm. 301  
23 Tacoma, WA 98402

24 Approved for Entry:  
25 *[Signature]*  
Richard DeJean  
Attorney for Plaintiff  
WSB 2548  
P.O.Box 867  
Sumner, WA 98390

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STATE OF WASHINGTON  
BY Brenda High  
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**COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II**

**CRAIG STOVER** )  
)  
**Plaintiff,** )  
)  
**vs.** )  
)  
**PIERCE COUNTY CORRECTIONS** )  
**HEALTH CLINIC, PIERCE COUNTY** )  
**JAIL, and PIERCE COUNTY, a local** )  
**governmental entity of the State of** )  
**Washington** )  
)  
**Defendants.** )

**Court of Appeals No.: 37167-7-II**

**CERTIFICATE OF SERVICE**

I, Brenda M. High, certify under penalty of perjury under the laws of the State of Washington that on April 24, 2008 I served the documents; namely, Appellant's Brief, to which this is attached to the party listed below in the manner shown:

Grace Kingman [ ] By United States Mail  
Deputy Prosecuting Attorney [ X] By Legal Messenger  
955 Tacoma Ave. S., Suite 301 [ ] By Facsimile  
Tacoma, WA 98402-2160 [ ] By Overnight Fed Ex Delivery

*Brenda High*  
Brenda High  
Legal Secretary for Richard F. DeJean