

NO. 44829-7-II

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

HAFID TAHRAOUI,

Appellant,

v.

FRANKLIN BROWN, ET AL.,

Respondent.

RESPONDENTS' BRIEF

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Should the trial court's CR 12(c) dismissal of plaintiff's malicious prosecution claim be affirmed when the officers had probable cause to believe plaintiff committed the theft of a trailer hitch?
2. Should the trial court's CR 12(c) dismissal of plaintiff's abuse of process claim be affirmed when plaintiff's First Amended Complaint stated insufficient facts to support this cause of action?
3. Should the trial court's CR 12(c) dismissal of plaintiff's claim of outrage be affirmed when plaintiff's First Amended Complaint stated insufficient facts to support this cause of action?
4. Should the trial court's CR 12(c) dismissal of Defendants Pierce County Sheriff's Department and Pierce County from Plaintiff's Complaint be affirmed when the Sheriff's Department is not a legal entity with the ability to sue or be sued, and where plaintiff failed to state a legal basis for suing Pierce County?
5. Can plaintiff show error with regard to the section contained in defendants' CR 12(c) motion entitled "Factual Background" when this section contained an accurate summation of the facts, and defendants appended to this motion a full and complete copy of Plaintiff's First

///

Amended Complaint to facilitate the trial court's review of the complaint at issue?

B. STATEMENT OF THE CASE

1. Procedure

Tahraoui filed suit in Pierce County Superior Court in 2011. The defendants removed the matter to the U.S. Federal District Court. In February 2012, the Honorable Benjamin Settle granted defendants' FRCP 12(b)(6) motion to dismiss with regard to all of Tahraoui's federal claims.¹ The federal court remanded the remaining state law claims to the Pierce County Superior Court.

On remand, the defendants filed in the superior court a CR 12(c) motion to dismiss the remaining state claims. On March 1, 2013, the plaintiff requested additional time to file a responsive brief, and he provided a declaration stating that he was precluded from working on his case full time due to a four-month period of illness. CP 117. The matter came before the Honorable Garold E. Johnson. The defendants did not oppose the continuance, and a continuance was granted.

¹ The federal district court dismissed Tahraoui's claims that the defendants had violated the First, Fourth, and Fourteenth Amendments. Tahraoui had raised these claims under 42 U.S.C. § 1983. CP 83-85. The Ninth Circuit affirmed the District Court's dismissal. Tahraoui has filed a motion in the Ninth Circuit for a rehearing en banc, which remains pending at this time.

On March 29, 2013, the matter reconvened before the trial court. During argument, the plaintiff asked the court if it had a chance to read the materials. RP 3-29-13, at 3-4. The Court informed plaintiff, "I read it all. Actually, I've read it now twice, because I read it last week as well." RP 3-29-13, at the conclusion of the hearing, the court granted the defendants' CR 12(c) motion for dismissal. This appeal follows.

2. Facts

The following facts are contained in, and summarized from, plaintiff's First Amended Complaint ("FAC"). See CP 15 - 28; Appendix "A."

On May 9, 2008, plaintiff went to the Spanaway area to buy a generator from Eric Pate. CP 16 - 17. Later that day, plaintiff went to Pate's house and bought some tools. CP 17. On May 10, 2008, plaintiff again went to Pate's house. CP 17. Plaintiff saw Pate leave the residence in tears prior to having any contact with him. CP 17. Plaintiff was told by a third party² that Pate's father had passed away and Pate was going to his father's house. CP 17. A trailer hitch belonging to Pate was present on the property. CP 17. Tahraoui valued the hitch as being "not worth more than \$100." CP 20. Tahraoui left Pate's house with the trailer hitch and

² Plaintiff's First Amended Complaint identified the third party as being Pate's "step father." CP 17.

without talking to Pate. CP 17. Tahraoui asserts he paid the third party \$50 for the hitch. CP 17.

On May 11, 2008, Pate telephoned Tahraoui and told him the hitch was not for sale. CP 17 - 18. Pate asked Tahraoui to bring it back immediately. CP 17. Tahraoui replied that he bought the hitch from the third party and was "not obligated to give it back" to Pate. CP 17. "On that same day, Pate contacted the Pierce County Sheriff to report that Tahraoui had stolen the hitch from him." CP 18. Deputy Sheriff Brown was dispatched to Pate's house to investigate the theft claim. CP 18. Brown called Tahraoui and left the following message:

Hafid, this is Deputy Brown with the Pierce County Sheriff's Department. You took the trailer hitch [from Eric Pate]. I'll bet that you will return the hitch before I get my hand[s] on you and put you in the Pierce County Jail. If you want to contact me call 911 and ask for Deputy Brown.

CP 18. Tahraoui called Brown back. Tahraoui did not deny that he had the trailer hitch. CP 18. Tahraoui asserted that he had bought the hitch and that Brown "should hear his side of the story before deciding to arrest him." CP 18. Tahraoui did not agree to bring back the trailer hitch. See CP 18.

On May 12, 2008, Tahraoui contacted the Sheriff's Department to complain about Brown's investigation of the case. CP 19. Lieutenant Rustin Wilder investigated Tahraoui's complaint. CP 19. Later that day,

Wilder telephoned plaintiff and informed him that plaintiff was facing arrest for multiple crimes including theft and extortion. CP 19.

On March 4, 2009, after nearly one year had elapsed, Tahraoui received notice in the mail that he was charged with misdemeanor theft in Pierce County District Court arising from the trailer hitch incident, and plaintiff was arraigned later that month. CP 20 - 21. On May 5, 2009, the charges were dismissed with prejudice. CP 21. Pate presumably could not be located to testify at the misdemeanor proceeding. At the time of the underlying incident, Pate informed Tahraoui that Pate was moving out of state. CP 16 - 17. Tahraoui never named Pate as a defendant to this civil action.

C. ARGUMENT

1. Standard of Review

The Court reviews a CR 12(c) dismissal on the pleadings de novo. *Gaspar v. Peshastin Hi-Up Growers*, 131 Wn. App. 630, 634-35, 128 P.3d 627 (2006). A motion to dismiss for failure to state a claim under CR 12(b)(6) and a motion for judgment on the pleadings under CR 12(c) raise identical issues and are subject to the same standard of review. *Gaspar*, 131 Wn. App. at 634-35.

2. The Trial Court Properly Dismissed Tahraoui's Malicious Prosecution Claim Because Tahraoui's Complaint Showed the Officer Had Probable Cause to Believe Tahraoui Committed Theft of Pate's Trailer Hitch

To prove malicious prosecution, a plaintiff must prove five elements: (1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution. *Clark v. Baines*, 150 Wn.2d 905, 911, 84 P.3d 245 (2004). Taharoui's claim was properly dismissed because the facts established officers had probable cause to believe plaintiff committed theft of the trailer hitch.

The existence of probable cause is a complete defense to a claim of malicious prosecution. *Clark*, 150 Wn.2d at 912 (citing *Hanson v. City of Snohomish*, 121 Wn.2d 552, 563, 852 P.2d 295 (1993)). Whether an officer had probable cause to believe a crime was committed is a question of law to be determined by the court. *Pallett v. Thompkins*, 10 Wn.2d 697, 700, 118 P.2d 190 (1941). Probable cause exists where there are facts and circumstances sufficient to establish a reasonable inference that the

defendant is involved in criminal activity. *State v. Maddox*, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004).

The determination of probable cause involves "a reasonableness test, considering the time, place, and circumstances, and the officer's special expertise in identifying criminal behavior." *McBride v. Walla Walla County*, 95 Wn. App. 33, 38, 975 P.2d 1029 (citations omitted), *rev. denied*, 138 Wn.2d 1015 (1999). "It is only the probability of criminal activity, not a prima facie showing of it that governs probable cause." *Maddox*, 152 Wn.2d at 505.

The plaintiff's First Amended Complaint establishes that officers had probable cause to believe plaintiff had committed theft of the trailer hitch. A person commits the crime of theft when he or she wrongfully obtains or exerts unauthorized control over the property of another with the intent to deprive that person of the property. RCW 9A.56.020(a). Plaintiff took possession of Pate's trailer hitch after Pate had left the house. CP 17 (FAC, at ¶ 11 and 12). Pate telephoned Tahraoui, told him the hitch was not for sale, and he asked Tahraoui to bring it back immediately. CP 17 (FAC, at ¶ 13). Tahraoui refused. CP 17 - 18 (FAC, at ¶ 13). Pate reported to Deputy Brown that plaintiff stole Pate's trailer hitch. CP 18 (FAC, at ¶ 14). As part of Brown's investigation, Brown telephoned plaintiff and left a message. Plaintiff called Brown back. During their

phone conversation, Tahraoui admitted to Brown that he had possession of the trailer hitch and did not intend on returning it to Pate. See CP 18 (FAC, at ¶ 17). This phone call corroborated the key facts Pate had provided, and these facts were sufficient to give the officers probable cause to believe that plaintiff had wrongfully obtained or exerted unauthorized control over the trailer hitch with the intent to deprive Pate of the property. This probable cause, as established from the facts contained in the complaint, defeats plaintiff's malicious prosecution claim.

Plaintiff argues that the deputies lacked probable cause to believe plaintiff committed theft of the trailer hitch because, according to plaintiff, Deputy Brown did not spend more than five minutes investigating Pate's theft complaint. In raising this argument, plaintiff's essentially argues that the deputies were negligent in their investigation because they did not devote enough police resources and investigation time to the case. It is well-settled, however, that a claim for negligent investigation against a police officer is not cognizable in Washington. *Fondren v. Klickitat County*, 79 Wn. App. 850, 862, 905 P.2d 928 (1995). Holding law enforcement investigators liable for their negligent acts would impair vigorous prosecution and have a chilling effect on law enforcement. *Dever v. Fowler*, 63 Wn. App. 35, 45, 816 P.2d 1237 (1991), 824 P.2d 1237, *rev. denied*, 118 Wn.2d 1028 (1992). The court should reject plaintiff's

argument that more police time should have been spent investigating this case.

Plaintiff argued that probable cause does not exist because he allegedly bought the hitch from a third party at a time when Pate was not present on the property, and that he had a belief that this third party had the authority to accept money for the hitch on Pate's behalf. *See* RCW 9A.56.020(2)(a) (It is a defense to a theft charge that the defendant appropriated the property "openly and avowedly under a claim of title made in good faith, even though the claim be untenable.") Plaintiff's argument should be rejected. Probable cause exists even if a criminal defendant can assert facts that support an affirmative defense to the crime. *McBride v. Walla Walla County*, 95 Wn. App. 33, 975 P.2d 1029, 990 P.2d 967 (1999).

In *McBride*, a police officer arrested McBride for assaulting McBride's son. During his investigation, the officer gathered facts and information indicating McBride acted in self-defense. Nevertheless, the officer arrested McBride. In a subsequent civil action against the police for malicious prosecution, McBride did not dispute hitting the victim, but he claimed officers lacked probable cause to arrest him because the police had information McBride was acting in self-defense. The court in *McBride* held that McBride's assertion of an affirmative defense did not

vitiate probable cause:

Self-defense is an affirmative defense which can be asserted to render an otherwise unlawful act lawful. But the arresting officer does not make this determination. The officer is not judge or jury; he does not decide if the legal standard for self-defense is met.

McBride, 95 Wn. App. at 40 (emphasis added). The court in *McBride* concluded "The self-defense claim did not vitiate probable cause." *Id.*

Similarly, in this case, Pate reported to Deputy Brown that Tahraoui had stolen Pate's trailer hitch. Brown's phone contact with Tahraoui confirmed that Tahraoui had taken the trailer hitch, and that Tahraoui intended to retain the hitch and not return it to Pate. Tahraoui asserted, however, that a third party at Pate's residence sold the hitch to him when Pate was not present. Under *McBride*, facts that might support an affirmative defense do not negate or vitiate probable cause. Because probable cause existed, plaintiff's malicious prosecution claim must be dismissed.

This conclusion is also supported by *State v. Fry*, 142 Wn. App. 456, 174 P.3d 1258 (2008), *aff'd at* 168 Wn.2d 1(2010). In *Fry*, an officer smelled marihuana in the defendant's house and used this evidence as probable cause to search the house. The court rejected the defendant's contention that probable cause was negated by the defendant's assertion that he was authorized to use marijuana in a medical context:

Here, probable cause to search Mr. Fry's house existed as soon as officers smelled marijuana. [Fry's] production of a medical use document did not provide automatic protection against a reasonable police investigation and search. Whether the affirmative defense of medical use of marijuana was viable was an issue for trial.

Fry, 142 Wn. App. at 461 (emphasis added).; see also *Fry*, 142 Wn.2d at 7(Lead Opinion by J.M. Johnson, J.); *Fry* 142 Wn.2d at 20 (Concurring Opinion by Chamber, J.). As in *Fry*, probable cause was established in this case during the officer's investigation, and the existence of facts that may have supported an affirmative defense do not negate this probable cause. Plaintiff's malicious prosecution claim should be dismissed because the officers had probable cause to believe plaintiff committed the crime of theft.

3. Tahraoui Failed to Plead Sufficient Facts To Support His Claim of Abuse of Process

The trial court's ruling dismissing plaintiff's abuse of process claim should be affirmed. An abuse of process claim requires proof of a misuse or misapplication of the process after the initiation of the legal proceeding. *Loeffelholz v. Citizens for Leaders With Ethics & Accountability Now (C.L.E.A.N.)*, 119 Wn. App. 665, 699–700, 82 P.3d 1199, *rev. denied*, 152 Wn.2d 1023 (2004); *see also Saldivar v. Momah*, 145 Wn. App. 365, 388, 186 P.3d 1117 (2008), *rev. denied*, 165 Wn.2d 1049 (2009). Plaintiff did not allege the deputies performed any action, let alone action that

constituted "misuse or misapplication of process," after the Prosecutor's Office filed a misdemeanor theft charge against the plaintiff.

In *Loeffelholz*, the court held that a trial court properly dismissed an abuse of process counterclaim when the defendant failed to present evidence that the plaintiff took any improper action following the issuance of process. *Loeffelholz*, 119 Wn. App. at 699-700. The "mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process." *Loeffelholz*, 119 Wn. App. at 699. Instead, "[t]he gist of the action is the misuse or misapplication of the process, after it has once been issued, for an end other than that which it was designed to accomplish." *Loeffelholz*, 119 Wn. App. at 700 (emphasis added). For example, the improper purpose in an abuse of process claim "usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself such as the surrender of property or the payment of money, by the use of the process as a threat or a club." *Batten v. Abrams*, 28 Wn. App. 737, 746, 626 P.2d 984 (1981). This coercion is "a form of extortion, and it is what is done in the course of negotiations, rather than the issuance or any formal use of process itself, which constitutes the tort [of abuse of process]." *Loeffelholz*, 119 Wn. App. at 699-700 (quoting *Batten*, 28 Wn. App. at 746).

In this case, plaintiff had phone contact with Deputy Brown on May 11, 2008, and with Lieutenant Wilder on May 12, 2008. CP 17, 19. Process was not issued until almost a year later when plaintiff received notice of the misdemeanor charge in March 2009. CP 20, 21. Plaintiff did not allege in his First Amended Complaint that the officers performed any action with regard to this case (let alone any improper action) once the criminal case was initiated in March 2009. Under *Loeffelholz*, the trial court properly dismissed plaintiff's abuse of process claim.

4. Tahraoui Failed to Plead Sufficient Facts to Support a Claim of Outrage/Intentional Infliction of Emotional Distress

The trial court's ruling dismissing plaintiff's Outrage claim should be affirmed. The tort of outrage requires proof of: (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual result to the plaintiff of severe emotional distress. *Dicomes v. Washington*, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989). In order for conduct to constitute the tort of outrage, it must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Grimsby v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291 (1975). Plaintiff's allegations did not meet this standard, and his complaint was properly dismissed.

Plaintiff's contention against Brown is that during the phone conversation, Brown decided to arrest plaintiff without adequately considering plaintiff's side of the story. CP 18. He also claims Brown threatened to put plaintiff in jail if plaintiff did not return the hitch to Pate. CP 18. Plaintiff's complaint against Wilder is that Wilder concluded Deputy Brown did not do anything wrong, and that plaintiff was facing arrest for multiple crimes including theft and extortion. CP 19.

Plaintiff essentially alleges that both officers formed the intent to have him arrested, and that Brown expressed the "threat" during the phone conversation. It is uncontested that the plaintiff was never arrested and never had face-to-face contact with either Franklin or Wilder. "Conduct supporting a claim of outrage must be more than mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Kirby v. City of Tacoma*, 124 Wn. App. 454, 474, 98 P.3d 827 (2004), 1131 rev. denied, 154 Wn.2d 1007, 114 P.3d 1198 (2005)(emphasis added). Plaintiff asserts he was "threatened" with arrest, but a mere threat is not actionable under *Kirby*. See *Kirby*, 124 Wn. App. at 474 (threats by employer to terminate or to suspend the plaintiff not actionable under outrage). The trial court's ruling dismissing plaintiff's outrage claim should be affirmed. Plaintiff did not meet the demanding standard of showing "extreme and outrageous conduct."

5. The Trial Court Properly Dismissed the Pierce County Sheriff's Department From This Case

The trial court properly dismissed the Pierce County Sheriff's Department from this case because it is not a separate legal entity with the capacity to sue or be sued. To determine whether a governmental entity is a separate legal entity that may be sued, the court: (1) examines the enactments that established those entities, and then (2) determines whether the legal enactments allow lawsuits against the governmental entity named as a defendant. *See Roth v. Drainage Improvement Dist. No. 5*, 64 Wn.2d 586, 588, 392 P.2d 1012 (1964). The Legislature has enabled county sheriffs in chapter 36.28 RCW, and the Pierce County Code authorizes its Sheriff's Department in PCC 2.06.030.

These provisions, however, do not enable the Sheriff's Department as a separate legal entity that may sue or be sued. In contrast, the Legislature has specifically provided that the counties in this state have the capacity to sue and be sued: "The several counties in this state shall have capacity as bodies corporate, to sue and be sued in the manner prescribed by law. . . ." RCW 36.01.010 (emphasis added). Plaintiff has named Pierce County as a defendant, and Pierce County is a legal entity that may sue or be sued. The Sheriff's Department is not a legal entity and was properly dismissed from this lawsuit. *See Foothills Development Co. v.*

Clark County Board Of County Com'rs, 46 Wn. App. 369, 376-77, 730 P.2d 1369 (1986) (Court affirms dismissal of County Board from lawsuit because the County Board is not a separate entity with the capacity to be sued).

6. The Trial Court Properly Dismissed Pierce County From This Lawsuit

Even though Pierce County is a legal entity, it was properly dismissed from this case. Vicarious liability is derivative and depends upon the liability of the agent. *Brown v. Labor Ready N.S. Inc.*, 113 Wn. App. 643, 646-47, 54 P.3d 166 (2002). As explained above, plaintiff did not show liability on the part of the defendants. Plaintiff therefore could not show Pierce County was vicariously liable. His claims against the County were properly dismissed.

7. Plaintiff Cannot Show Error With Regard to His Motion to Strike or Disregard

Plaintiff argues the trial court erred "in not striking or at least disregarded [sic] Respondents' statement of factual background in their CR 12(c) motion." Brief of Appellant, at 11. The trial court did not rule on plaintiff's motion. Plaintiff has not preserved this issue for appeal.

Even if the court were to review plaintiff's claim, his claim lack merit. Plaintiff's basic contention is that in providing only a summary of the operative facts contained in plaintiff's First Amended Complaint (as

opposed to a verbatim recitation), the defendants tried to hide, falsify and/or misrepresent facts to the trial court. Plaintiff raises this contention even though the defendants appended to their CR 12(c) motion a **full and complete copy** of plaintiff's First Amended Complaint to facilitate the trial court's review of the complaint at issue. CP 14-28 (Appendix "A" to defendants' motion to dismiss).

Moreover, the record reflects that each of five instances complained of by plaintiff consists of an accurate summary of operative facts. See CP 2-4 (Factual Background section of defendants' CR 12(c) motion).

a. "Instead of leaving, Tahraoui remained on the property."

The statement that "[i]nstead of leaving, Tahraoui remained on the property" (CP 2, line 19) is not false or misleading. It is uncontested that plaintiff did not leave Pate's property upon seeing Pate leave, and plaintiff took possession of the hitch after Pate left the residence. Plaintiff contends the statement is misleading because it "gives [sic] impression that Plaintiff did not have permission to be at Pate's house." Whether plaintiff had "permission" to be at Pate's house, however, is a non-issue. Pate and the defendants never alleged Tahraoui committed the crime of criminal trespass, which involves being on the premises of another without

permission. See RCW 9A.52.080. Plaintiff cannot show that defendants' summary was "misleading."

b. "Plaintiff was told by a third party that Pate's father had passed away and Pate was going to his father's house."

Plaintiff argues that defendants concealed the identity of the third party "Shelly", whom plaintiff asserted was Pate's step-father, in the following sentence: "Plaintiff was told by a third party that Pate's father had passed away and Pate was going to his father's house." CP 2, line 18. Plaintiff's argument has no merit. It is uncontested that the individual "Shelly," whom plaintiff asserts sold plaintiff the trailer hitch, was neither the owner of the hitch (Pate) nor the person who took possession of the hitch (Tahraoui). His role was accurately summarized as that of a "third party." Plaintiff cannot show defendants "misled" the trial court.

c. "Tahraoui left Pate's house with the trailer hitch and without first talking to Pate concerning this action."

It is uncontested that Tahraoui left Pate's house with the hitch without first talking to Pate. Yet plaintiff takes issue with the following: "Tahraoui left Pate's house with the trailer hitch and without first talking to Pate concerning this action." CP 2, line 22. Plaintiff alleges: "This false allegation by defendants give the impression that plaintiff knew that the hitch was a private property of Pate and the third party had no

permission to sell it." Even though plaintiff alleges this statement is false, plaintiff's own First Amended Complaint contains the assertion that Tahraoui left Pate's house without talking to Pate: "And at around 12 p.m., **Tahraoui left Pate's house driving home without talking to Pate.**" CP 17 (FAC ¶ 12). Plaintiff cannot show defendants' statement was "false."

d. "On May 11, 2008, Pate telephoned Tahraoui and told him the hitch was not for sale."

It is uncontested that on May 11, 2008, Pate telephoned Tahraoui to tell him that the hitch was not for sale and to bring it back immediately. CP 17. Plaintiff nonetheless asserts that the following statement was "false": "On May 11, 2008, Pate telephoned Tahraoui and told him the hitch was not for sale." CP 3, lines 1 - 2. Plaintiff argues that the defendants should have included in the statement that Pate told Tahraoui that his step-father made a "mistake" in selling the hitch to Tahraoui. But the crime of theft includes both obtaining and *retaining* the property of another without permission. See RCW 9A.56.020(a) (defining "theft" as wrongfully obtaining or exerting unauthorized control over the property of another). It is uncontested that plaintiff exerted control over the hitch, that Pate thereafter told Tahraoui the hitch was not for sale, and that Tahraoui nonetheless retained possession of the hitch. Defendant's statement was not "false."

e. Length of Time Deputy Brown Spent Investigating Pate's Allegation.

Plaintiff argues defendants should have included in their factual summary plaintiff's assertion that Deputy Brown "spent less than 5 minutes" to investigate the theft claim. As discussed above, there is no cause of action in this case for "negligent investigation" by a police officer. *Fondren*, 79 Wn. App. at 862. Plaintiff's contention should be rejected. Defendants did not hide, falsify and/or misrepresent facts to the trial court.

Plaintiff nonetheless implies that the trial court ruled without conducting a full review of the materials submitted by both the defendants and the plaintiff. The trial court judge, however, made it clear on the record that he had reviewed "all" of the materials:

I read it all. Actually, I've read it now twice, because I read it last week as well.

RP 3-29-13, at 4. Plaintiff cannot show error. His arguments concerning his motion to strike or disregard should be rejected.

D. CONCLUSION

The defendants respectfully request that the Court affirm the trial court's CR 12(c) dismissal of this case.

DATED: January 23, 2014.

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DECLARATION OF MAILING

On this date I deposited a properly addressed envelope directed to: Hafid Tahraoui, Appellant, at P.O. Box 45365, Seattle, WA 98145 into the mail of the United States of America with appropriate pre-paid postage containing a copy of the document to which this declaration is affixed. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: January 23, 2014, at Tacoma Washington.

s/ DEBRA BOND

DEBRA BOND

Legal Assistant

Pierce County Prosecutor's Office

Civil Division, Suite 301

955 Tacoma Avenue South

Tacoma, WA 98402-2160

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PIERCE COUNTY PROSECUTOR

January 23, 2014 - 3:58 PM

Transmittal Letter

Document Uploaded: 448297-Respondents' Brief.pdf

Case Name: Tahraoui v. Brown, et al.

Court of Appeals Case Number: 44829-7

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondents'

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Debra A Bond - Email: **dbond@co.pierce.wa.us**