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No. 95062-8

SUPREME COURT
OF THE STATE OF WASHINGTON

CESAR BELTRAN-SERRANO, an incapacitated person, individually,
and BIANCA BELTRAN as guardian *ad litem* of the person and estate of
CESAR BELTRAN-SERRANO,

Appellants,

v.

CITY OF TACOMA, a political subdivision of
the State of Washington,

Respondent.

BRIEF OF APPELLANTS

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A. INTRODUCTION

This case involves the interaction between a City of Tacoma (“City”) police officer and a seemingly homeless, older, mentally ill Hispanic man, Cesar Beltran-Serrano, that needlessly escalated to the officer’s unreasonable employment of deadly force against him. The officer did not have probable cause to arrest Beltran-Serrano for any alleged wrongdoing; rather, the officer’s interaction was seemingly a part of her community caretaker function. For a variety of reasons, the trial court concluded that an officer in Washington owes no duty in common law negligence to refrain from the unreasonable use of deadly force. That is error.

Beltran-Serrano asks this Court to confirm that a municipality employing a law enforcement officer and the officer owe a traditional negligence duty of care to a person with whom the officer interacts not to unreasonably employ deadly force. The reasonableness of the use of deadly force must be assessed under the totality of the circumstances of the interaction.

Moreover, as this duty is a matter of common law, and not statute, this Court should also confirm that the public duty doctrine is inapplicable.

B. ASSIGNMENTS OF ERROR

(1) Assignment of Error

The trial court erred in entering its September 1, 2017 order granting the City's motion for summary judgment dismissing Beltran-Serrano's negligence claim against the City.

(2) Issues Pertaining to Assignment of Error

1. Does a government, acting through its law enforcement officers, owe a duty of care to persons with whom those officers interact to act reasonably in using lethal force against such persons under the totality of the circumstances of such interaction? (Assignments of Error Number 1)

2. Does the public duty doctrine apply to preclude the existence of a common law negligence duty of care to persons against whom law enforcement officers improperly employ lethal force? (Assignments of Error Number 1)

C. STATEMENT OF THE CASE¹

On June 29, 2013, Tacoma Police Officer Michel Volk was working swing shift and driving north on Portland Avenue in Tacoma. CP 364. She saw a man wandering aimlessly on the corner of an intersection that was a known location for panhandling. *Id.* Volk decided to park her patrol vehicle near the man and educate him about panhandling laws. She did not have reasonable suspicion or probable cause that the man was committing a crime. CP 381. She approached the man, and observed him

¹ Under CR 56(e), the City was entitled to summary judgment on Beltran-Serrano's negligence claim only if there was no genuine issue of material fact and the City was entitled to judgment as a matter of law. The trial court should have taken the facts, and reasonable inferences from those facts, in a light most favorable to Beltran-Serrano as the non-moving party on summary judgment, *Dowler v. Clover Park Sch. Dist. No. 409*, 172 Wn.2d 471, 484, 258 P.3d 676 (2011). This Court reviews the trial court's decision *de novo*. *Id.*

digging in a hole for no apparent reason. CP 393-95. She also observed that the man had poor hygiene and appeared homeless. *Id.* The man then lifted an old bottle out of the hole, took a swig of an orange liquid, and put the bottle back. CP 365, 400. Volk began to talk to the man. CP 400. He looked at her blankly and continued to dig in the hole. *Id.* Officer Volk then asked the man if he understood English, and he shook his head, indicating “no.” *Id.* Volk radioed for a Spanish speaking officer, Jake Gutierrez. CP 524. Gutierrez was nearby, between less than one and a half minute away with sirens on, or five minutes at a normal speed. CP 411-12.

After determining the man did not understand her, and before Gutierrez arrived, Volk moved closer to him and interrogated him in English. CP 440. The man became scared, confused, and attempted to get away from her. CP 415. He started to cross the intersection of E. 28th Street and Portland Avenue. CP 432, 446. Volk chased Beltran-Serrano across the street. CP 415-16. In an attempt to stop him, she used her taser on his back as he was moving away from her. CP 400-01. The taser did not have its desired effect and Beltran-Serrano was still standing, able to brush the taser tags away from his body. CP 400-01, 451. Beltran-Serrano turned away from Volk and continued to try to get away from her. CP 415, 432. Volk panicked and immediately threw her taser to the

ground, pulled out her Glock 45 and fired four shots into Beltran-Serrano's right arm, his buttocks, his torso, and across his left forearm into his upper left back. CP 458. The shooting occurred within 37 seconds of Volk's call for back-up. CP 396.

Beltran-Serrano was severely injured by the shooting. CP 97-239. Although no eye witnesses corroborated Volk's version of events, and despite the fact that Volk did not sustain any injuries, the Tacoma Police charged Beltran-Serrano with assault in the second degree and obstructing a law enforcement officer; those charges were ultimately dismissed. CP 337-38.

Beltran-Serrano, through his guardian *ad litem*, filed the present action in the Pierce County Superior Court against the City. CP 1-27, 73-79. The City moved for partial summary judgment. CP 240-94. Beltran-Serrano opposed that motion. CP 335-58.

Beltran-Serrano provided the trial court substantial expert testimony from well-qualified experts like police practices expert Susan Peters, former Bellevue Police Chief Donald Van Blaricom, and ballistics expert, Matthew Noedel, indicating that Volk breached a duty of care to Beltran-Serrano. CP 369-90, 453-84.

Both Van Blaricom and Peters testified that Volk's conduct was contrary to good police practice in interacting with citizens generally.

Chief Van Blaricom testified that Volk provoked a violent confrontation by needlessly escalating a simple informative talk with a citizen into a deadly force situation. CP 381. She did not have reasonable suspicion or probable cause to suspect Beltran-Serrano had committed a “crime involving the infliction or threatened infliction of serious physical harm,” CP 381, or even to believe Beltran-Serrano had committed the crime of panhandling. *Id.*

Peters testified consistently with Van Blaricom’s opinions, CP 475, 477, 480, emphasizing that Volk’s use of deadly force was unreasonable, unnecessary, and excessive, CP 477, and that Volk failed to use reasonable alternatives to deadly force. CP 480. Noedel’s testimony, based on an exhaustive ballistics evaluation, was that Beltran-Serrano could not have been shot while moving his torso in a threatening manner, as Volk claimed. “None of the fired bullet paths to Beltran support him ‘swinging’ or otherwise moving his arms at the time of receiving the gunshots. Such claims are not supported by the physical evidence.” CP 459.

Multiple witnesses testified that there was no assault or altercation on the street corner. CP 415, 431-32. For example, Teresa Graham testified by declaration as follows:

On June 29, 2013 I was driving with my daughter in my 2004 Yukon XL Four door SUV. We were headed down Portland Avenue and we stopped at the light before the

underpass in order to go southbound on I-5. While we were stopped at the red light at the northwest corner of the intersection I saw a police officer talking to a Hispanic man near an orange bike. The interaction appeared calm and I did not see anything physical going on or loud talking or shouting. I had my window down and had a clear and unobstructed view of the intersection. ... The man started running across the street in the crosswalk crossing the lane coming off of the freeway. The officer pursued him and she tried to shoot him with a taser. The taser appeared to miss him but may have nicked him because he turned around briefly and then turned away from the officer and continued across the street away from her. The officer threw down the taser and grabbed her weapon and he turned his back around to run away and she just shot him four times. My complete attention was on the entire interaction, from the time the officer was talking with the man until the man was shot.

CP 432. Another civilian, Winona Stevens, corroborated that testimony:

As we were stopped, I looked out my window to the left and saw a police officer and a man on the northwest corner of the intersection. I had a clear view of the entire incident. The police officer parked and her and the man started walking towards each other and ended up at the man's belongings and a bike. Then the two people stood at the corner. The officer was close to the man, about 2-3 feet away. I saw the man was down towards the ground and then he stood up. The man did not hit or strike the officer in any way. The officer then pulled out what I assumed was a weapon due to the officer's, which later I learned was a tazer [sic]. This action by the officer seemed to escalate the situation. The man started backing away from the officer. He was focused on her and trying to get away from her. The man had something in his hands that was black and flexible looking. It was not a hard metal object and did not resemble a weapon. ... The man started moving away from the officer. He was not running, but it seemed like he was trying to get away from her. The man was backing up, turning, backing-like he was trying to make sure he didn't

trip over the island in the road or run into a car. The man never moved back towards the officer. The distance between the man and the officer was about 10-20 feet. The man did not have anything that resembled a weapon in his hands. I did not feel like the man was a threat to me, my son, or the officer and did not feel that anyone was in danger of the man attacking them.

CP 415.

Significantly, a Washington State Patrol trooper appeared at the scene of Volk's altercation with Beltran-Serrano. Trooper Rushton's dashcam video likewise did not depict an altercation or assault on the corner:

Q: Okay. And is that depicted on this video?

A: I don't see it on the video, no.

CP 502.

Volk had no legal justification or duty to pursue Beltran-Serrano when he chose to walk away from her and across the street. CP 505.² Rather, Volk created a volatile and threatening situation through her own actions that escalated the confrontation. CP 380. Significantly, she knew that back-up was a mere few minutes away. CP 377. She chose not to wait for Officer Gutierrez, and instead forced an interaction with someone who could not understand her and was "non-responsive" to her

² Chief Van Blaricom opined that even if Beltran-Serrano had hit Volk on the street corner, the officer was still under no duty or obligation to pursue him, and indeed should not have done so since back-up was on the way. CP 506.

commands. *Id.* Volk yelled commands in English at Beltran-Serrano, and then became aggravated and agitated that he was not listening to her, despite knowing that he did not understand English. CP 400. Volk did not need to taser Beltran-Serrano; instead of letting him leave, Volk chased after Beltran-Serrano and tasered him in the back as he fled. She admitted “he was no longer, in my mind, he was no longer a threat to me at that point cause his back was to me; so I put my, I holstered my firearm, pulled out my ECT, discharged it.” CP 400. Volk either improperly deployed the taser, or ignored her training that mentally ill individuals may not be affected by the use of a taser. CP 404.

Immediately after the taser failed to have its intended effect, Volk then overreacted and shot Beltran-Serrano four times in the torso, buttocks, and arm as he was moving backward and away from her. CP 404, 458. Volk’s determination that lethal force was justified was unreasonable under the circumstances. CP 380-81. There was no evidence Beltran-Serrano posed any threat, let alone a threat of imminent serious injury or death justifying use of lethal force, to Volk or anyone else. CP 381. Beltran-Serrano had “turned away from the officer like he was trying to run away and that’s when she pulled out the gun and popped it four times.” CP 509. He was unarmed, moving away from the officer, and had an overall passive demeanor. These actions all culminated in

Volk's choice to shoot him four times from a distance that she described to be 21 feet.

Although not relevant on summary judgment when the facts are considered in a light most favorable to Beltran-Serrano as the non-moving party, in order to attempt to justify this shooting, Volk later claimed that Beltran-Serrano had lifted a metal object and was swinging it in her direction, causing her to fear for her life. CP 366. That assertion is unsupported by scientific evidence, as ballistics expert Matthew Noedel confirmed. CP 459. In addition to Volk's claim of imminent threat of harm from Beltran-Serrano being fully debunked by the WSP video, Trooper Rushton's testimony, and eyewitnesses, Volk suffered from credibility problems, given her changing, and widely varying, accounts of events.³

³ Credibility issues are for the trier of fact. *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003) ("... credibility determinations are solely for the trier of fact."); *Kim v. Lakeside Adult Family Home*, 185 Wn.2d 532, 551, 374 P.3d 121 (2016). Volk asserted that Beltran-Serrano posed a threat to her, but gave markedly differing versions of events that led to the shooting. Hours after shooting Beltran-Serrano, Volk told fellow officer Loretta Cool that Beltran-Serrano did not listen to her, and that he came toward her. CP 498-99, 528. Then she tasered him and the taser had no effect. CP 498. Next, he ran across the road, she followed him, and then he came at her with a piece of metal. *Id.* She stated she "blocked the attack with her arm. *Id.* She fired her weapon, which did not seem to stop him, so she fired again. *Id.* She said the second shots stopped him." *Id.*

Eleven days later, Volk issued a four-page written statement recounting the shooting. CP 364-67. Volk reported that while she was standing on the street corner with Beltran-Serrano, he bent over to get what she thought would be his identification, grabbed a pipe, and swung it at her. He then ran into the street. CP 365. In an oral statement on July 10, 2013, CP 398-408, Volk reported Beltran-Serrano hit her in the

Further, Beltran-Serrano specifically contended that Volk's actions were contrary to Tacoma Police Department policies and training on police encounters with mentally ill individuals.⁴ The symptoms of Beltran-Serrano's mental illness were readily apparent to Volk by her own admissions; she observed his poor hygiene, his confusion or inability to understand her, and his behavior of digging in a hole on the side of the road and drinking out of a bottle in the hole. CP 393-95. This behavior did not seem normal to Volk. CP 395. Volk also noted that the taser may not have affected Beltran-Serrano due to his apparent mental instability. CP 404. A reasonable police officer would have been alerted that Beltran-Serrano was at least potentially suffering from mental illness and acted accordingly, as Volk's colleague, Officer Loretta Cool, testified. CP 494.⁵

arm at the street corner of the intersection. CP 402. She stated he then ran across the street, and she followed. CP 402-03. As he was running away from her, Volk reported she tasered him in the back. CP 404. None of the multiple lay witnesses who observed this event saw Beltran-Serrano hit Volk with a heavy metal object, either on the street corner or in the intersection. There is no evidence in the record that Volk received medical treatment for getting hit with a pipe.

⁴ Tacoma police officers are trained to identify symptoms of mental illness among subjects they choose to interact with. CP 475, 486-91. Specifically, officers learn that a person with schizophrenia may demonstrate neglect of basic hygiene, a "blunted" emotion expression, disordered thinking, and delusions. CP 490.

⁵ The training protocol for Tacoma officers is that if a mental illness is even suspected, an officer should engage that individual in a specific manner, including: remaining calm and not overreacting, showing concern and understanding, exhibiting patience, while being aware a uniform might frighten them, listening, and telling the individual what was going to be done, and not maintaining direct eye contact. CP 491.

Van Blaricom concluded that Volk should have appreciated that Beltran-Serrano was mentally ill. CP 378. Peters explained that Volk’s interactions with Beltran-Serrano were inconsistent with her training and Tacoma policy, and needlessly escalated the situation. CP 475-77. Volk showed no awareness that her uniform and marked police car might frighten him; instead, she crowded Beltran-Serrano closely and questioned him forcefully; Volk was not even aware she had done this. CP 477. She rushed the interaction instead of exhibiting “extreme patience” when she continued to interrogate Beltran-Serrano in English – even though a Spanish-speaking officer was at most five minutes away. CP 476-77. Peters opined that “[h]ad Officer Volk continued to stand back (about 7 to 8’ as she stated from Beltran), remain patient and wait for Officer Gutierrez to arrive, more likely than not, a different outcome in this case would have occurred.” CP 477. Critically, Volk was unaware of a majority of the procedures guiding law enforcement interactions with mentally ill subjects. CP 475-77.

In sum, under the totality of the circumstances, given Officer Volk’s training (or apparent lack thereof) in dealing with mentally ill persons, her needlessly provocative interaction with a man who had not

These modified behaviors are important in order to prevent a situation from escalating, to calm the subject down, and to handle the situation. CP 496-97.

committed a crime, and her poor decisionmaking in employing lethal force, this tragic situation should not have occurred, as documented by Beltran-Serrano in ample lay and expert testimony.

Nevertheless, the trial court, the Honorable Susan Serko, granted the City's motion on September 1, 2017, seemingly concluding that the City owed no common law duty under Washington law not to use deadly force against Beltran-Serrano. CP 698-700; RP (9/1/17):26.⁶ Beltran-Serrano moved to certify the trial court's ruling. CP 701-11. The City joined in the motion in order to have its issue about the Wickizer testimony addressed on review. The court then certified the issue pursuant to RAP 2.3(b)(4). CP 756-61.⁷ Beltran-Serrano filed timely notices for discretionary review to this Court, while the City timely sought discretionary review by the Court of Appeals, Division II. CP

⁶ The trial court's basis for granting the City's motion is not expressly articulated in its order, CP 698-700, but the City argued that Volk was acting within "the course and scope" of her employment, negating any claim of improper training, and that a negligence claim could not stand because Beltran-Serrano's "cause of action is assault and battery and that's what goes to the jury." The court responded: "Thank you. I agree. I'm going to grant the motion." RP (9/1/17):26. Although not expressly mentioned in the court's order, the City also aggressively argued the application of the public duty doctrine. RP (9/1/17):17-18, 26.

⁷ The court's September 25, 2017 *nunc pro tunc* order posed the issue as follows:

The issue of whether a police officer owes a duty of reasonable care to act reasonably when using deadly force is an issue appropriate for certification.

CP 760.

768-82. This Court's Commissioner granted direct discretionary review.

See Appendix.

D. SUMMARY OF ARGUMENT

Washington law on law enforcement's use of deadly force is an often contradictory, unclear amalgam of legal principles that cries out for clarification from this Court. The law is clear that governments in Washington are not immune from claims for negligent training or supervision of officers employing deadly force. Nor are governments immune from negligence claims generally merely because a plaintiff may also have a claim against a law enforcement officer for an intentional tort like assault or battery. Some courts have misconstrued the duty of governments to refrain from the improper use of deadly force. Similarly, some courts have misapplied the public duty doctrine as well.

This Court should confirm that an officer owes a duty of care to a person with whom the officer interacts not to unreasonably employ deadly force. The reasonableness of the use of deadly force must be assessed under the totality of the circumstances of the officer's interaction with the person.

Taking the facts, and reasonable inferences from those facts in a light most favorable to Beltran-Serrano as the non-moving party, this case involves a police officer's negligent use of deadly force against Cesar

Beltran-Serrano, a seemingly homeless, older Hispanic man with apparent mental illness, and a non-English speaker.

The City through Officer Volk owed a duty to Beltran-Serrano not to employ deadly force because, under the totality of the circumstances, he did not merit such a use of force. Volk lacked probable cause to arrest Beltran-Serrano and Volk's conduct was ultimately entirely inconsistent with her community caretaker function. Beltran-Serrano did not constitute an imminent threat to the life or limb of Officer Volk or anybody else; for purposes of summary judgment, as documented in the WSP dashcam, and according to eyewitnesses, Beltran-Serrano never struck Volk.⁸

The public duty doctrine is inapplicable here as the City's duty to Beltran-Serrano arises not under a statute, but under common law principles.

E. ARGUMENT

(1) The Trial Court Erred in Failing to Discern a Negligence-Based Duty Not to Unreasonably Employ Deadly Force

The trial court erred in failing to discern that the City owed a duty of care to Beltran-Serrano not to use deadly force under the totality of the circumstances present here. The trial court may also have erred in

⁸ If Beltran-Serrano did not strike Volk, the City's own police expert admitted Volk's use of deadly force against Beltran-Serrano would not be justified. CP 450.

assuming that there was no duty in negligence for police officers in Washington to refrain from the unreasonable use of deadly force because the public duty doctrine applied.

(a) Background to Washington Law on Law Enforcement Use of Deadly Force

Washington law affords virtual criminal immunity to law enforcement officers who employ deadly force against persons with whom they interact. RCW 9A.16.040.⁹ See Appendix. That law prompted the filing of Initiative 940, an initiative to the Legislature, for which sufficient signatures have been turned over to the Secretary of State. The Legislature must enact it or a substitute. If they do the latter, or fail to take any action, the measure will be on the 2018 general election ballot.¹⁰

⁹ An extensive analysis of that law by the *Seattle Times* disclosed that between 2005 and 2014, 213 people were killed by police in Washington. Steve Miletich, Christine Willmsen, Mike Carter, Justin Mayo, *Shielded by the Law*, *Seattle Times*, <http://projects.seattletimes.com/2015/killed-by-police>. Nationally, more than a thousand people were fatally shot by police in 2017; black males accounted for 22% of those deaths, although such males are but 6% of the total U.S. population. *Police fatally shot nearly 1,000 in U.S. last year*, *Seattle Times*, January 7, 2018.

¹⁰ Initiative 940 provides for a good faith standard in RCW 9A.16.040 in lieu of the present malice clause of RCW 9A.16.040(3). To meet the good faith standard of the statute, the measure states:

(a) The good faith standard is met only if both the objective good faith test in (b) of this subsection and the subjective good faith test in (c) of this subsection are met.

(b) The objective good faith test is met if a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

Similarly, Washington law on the ability of a police shooting victim to recover for the unreasonable use of lethal force by officers is not a picture of clarity. While it is true that such a victim may in certain narrow circumstances recover under federal law in a 42 U.S.C. § 1983 claim,¹¹ under state law for assault and battery,¹² or under particular negligence theories such as negligent infliction of emotional distress, those claims are often narrowly confined or are foreclosed by broad immunity defenses.¹³

(c) The subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance.

(d) Where the use of deadly force results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform the determination of whether the use of deadly force met the objective good faith test established by this section and satisfied other applicable laws and policies.

The measure also mandates that officers receive violence de-escalation and mental health training and establishes a duty for officers to render first aid.

¹¹ *Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985).

¹² *E.g., McKinney v. City of Tukwila*, 103 Wn. App. 391, 408-09, 13 P.3d 631 (2000), but court there also concluded that the officers had qualified immunity for assault and battery claims where the use of force was reasonable.

¹³ For example, in a § 1983 case, a plaintiff must first prove that the officer used lethal force pursuant to a municipal policy or practice, *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 692, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Individual officers may have qualified immunity to § 1983 claims under federal law unless (1) the facts, when taken in the light most favorable to the plaintiff, show that the officer's conduct violated a constitutional right; and (2) the right was clearly established at the time of the alleged misconduct. *Saucier v. Katz*, 533 U.S. 194, 200-01, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001); *Brosseau v. Haugen*, 543 U.S. 194, 125 S. Ct. 596, 160 L. Ed.

Older Washington cases like *Keates v. City of Vancouver*, 73 Wn. App. 257, 869 P.2d 88, *review denied*, 124 Wn.2d 1026 (1994) even suggest that municipalities are largely immune from tort claims by victims of unreasonable police practices; Division II there stated: “... law enforcement activities are not reachable in negligence.” *Id.* at 267. This Court has clearly rejected such a broad (and erroneous) overstatement of Washington law. For example, in *Washburn v. City of Federal Way*, 178 Wn.2d 732, 310 P.3d 1275 (2013), this Court clearly concluded that a municipality could be liable in negligence for unreasonable police practices in serving anti-harassment orders. The Court concluded that the

2d 583 (2004); *Pearson v. Callahan*, 555 U.S. 223, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009). Indeed, under the applicable federal cases on qualified immunity requiring documentation that the right is “clearly established,” such immunity applies so broadly as to give officers using lethal force virtual blanket immunity from § 1983 liability. *E.g.*, *White v. Pauly*, ___ U.S. ___, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017). *See Mattos v. Agarano*, 661 F.3d 433 (9th Cir. 2011), *cert. denied*, 566 U.S. 1021 (2012) (use of taser).

State law also provides qualified immunity for officers from assault and battery and false arrest claims under a three-part test that is different from the federal qualified immunity test. *Guffey v. State*, 103 Wn.2d 144, 690 P.2d 1163 (1984) (officers have qualified immunity from state law false arrest, imprisonment, and assault claims); *Staats v. Brown*, 139 Wn.2d 757, 991 P.2d 615 (2000) (“An officer is entitled to state law qualified immunity where the officer (1) carries out a statutory duty, (2) according to procedures dictated to him by statute and superiors, and (3) acts reasonably.”). *Guffey*, 103 Wn.2d at 152. *Guffey* and *Staats* specifically note that this test applies specifically to false arrest claims. *Staats*, 139 Wn.2d at 777-78; *Guffey*, 103 Wn.2d at 152. *Staats* did not deal with *negligence* claims. The question of whether the *Staats* test applies to claims sounding in negligence has never been considered by this Court. In fact, looking at the elements of the test leads to the conclusion that it does not apply. In particular, the second element of the test examines whether the officer followed authorized procedures. This makes sense in the context of a false arrest claim, where the issue is solely whether the officer believed his or her intentional action of arresting a suspect was authorized by law and required by standard procedure. However, in the context of a negligence claim, where the issue is whether the officer breached his or her duty of care, it is possible to follow procedures and still fail to exercise the ordinary care required in that situation.

City had a common law duty under § 302B of the *Restatement (2d) of Torts* to a harassment victim when its police officers negligently served an anti-harassment order on the harasser who then murdered his victim.¹⁴ It was foreseeable that the harasser might wreak vengeance on his victim. This duty was not avoided by the public duty doctrine.

Various Court of Appeals decisions have established that governments can be liable in negligence for “law enforcement activities.”

¹⁴ Numerous federal cases have puzzled over Washington law on the existence of a duty in tort in lethal force cases, coming to strikingly conflicting conclusions. Those courts have recognized that Washington law provides a cause of action in negligence for excessive use of force. *E.g.*, *Conely v. City of Lakewood*, 2012 WL 6148866 (W.D. Wash. 2012) (recognizing state law negligence and negligent infliction of emotional distress claims where police used dog inflicting excessive force on plaintiff wanted on a no bail felony warrant); *Kirby v. City of East Wenatchee*, 2013 WL 1497343 (E.D. Wash. 2013) at *14 (recognizing state law negligence claims for excessive force).

Those courts have also come to conflicting results in applying the public duty doctrine. In numerous cases, courts have held that the public duty does not bar state law negligence claims. *Escalante v. City of Tacoma*, 2016 WL 7375301 at *7 (W.D. Wash. 2016) (public duty doctrine does not bar negligence claim); *Soule v. City of Edmonds*, 2015 WL 5022771 (W.D. Wash. 2015) (state law negligence claims for excessive force against an arrestee not barred by public duty doctrine); *Mitchell v. City of Tukwila*, 2012 WL 4369187 at *4 (W.D. Wash. 2012) (claim premised on tasing by officer was an affirmative act to which the public duty doctrine does not apply); *Logan v. Weatherly*, 2006 WL 1582379 at *4 (E.D. Wash. 2006) (under *Coffel*, claim that the individual officers were negligent in dispersing O.C. spray inside the building is not precluded by the public duty doctrine).

However, in other cases courts, have held to the contrary. *E.g.*, *Thomas v. Cannon*, 2017 WL 2289081 at *14 n.7 (W.D. Wash. 2017) (negligence claims against police officers dismissed because plaintiff failed to identify an exception to the public duty doctrine); *Lawson v. City of Seattle*, 2014 WL 1593350 at *13 (W.D. Wash. 2014) (doctrine bars negligence claims against officer); *Willard v. City of Everett*, 2013 WL 4759064 at *4-5 (W.D. Wash. 2013), *aff'd*, 637 Fed. Appx. 441 (9th Cir. 2016) (doctrine bars claims in officer involved shooting); *James v. City of Seattle*, 2011 WL 6150567 at *15 (W.D. Wash. 2011) (doctrine bars negligence claims); *Jimenez v. City of Olympia*, 2010 WL 3061799 at *15 (W.D. Wash. 2010) (doctrine bars negligence by arrestee claim against officers and City of Olympia).

For example, in *Garnett v. City of Bellevue*, 59 Wn. App. 281, 796 P.2d 782 (1990), *review denied*, 116 Wn.2d 1028 (1991), Division I recognized that a claim of negligent infliction of emotional distress could be stated against police officers for their interaction with women in a lounge.

Further, Washington courts have recognized that under Washington common law, a police officer must act *reasonably* when an officer undertakes to act. *Coffel v. Clallam County*, 47 Wn. App. 397, 403-04, 735 P.2d 686, *review denied*, 108 Wn.2d 1014 (1987). This duty stems from the common law duty to avoid the foreseeable consequences of a person's actions.¹⁵ There, a number of local police officers and sheriff's deputies responded to two different break-ins at the plaintiffs' place of business (both resulting from an ownership dispute). The day after the first break-in, the responding deputy told the plaintiff that the matter was "strictly a civil case, and that he 'didn't want to hear any more about it.'" *Id.* at 399. That evening, other officers responded to a second call and found that the perpetrator had returned and was destroying the premises. *Id.* Those officers "took no action to prevent the destruction" and, instead, told the property owners *they* had to leave. *Id.* at 399-400. Division II upheld a negligence claim against the County.

¹⁵ Actors have a duty to exercise reasonable care to avoid the foreseeable consequences of their acts. *Restatement (2d) of Torts* § 281 cmts. c, d (1965).

Properly understood, Washington law presently provides that law enforcement officers owe a duty in negligence when interacting with citizens, including interactions involving deadly force.

(b) The City Was Not Immune for Improper Training of Officer Volk to Deal with a Mentally Ill Citizen

The trial court here seemingly concluded that the City was immune from a negligence action based on improper training, as the City argued. CP 250-52. That was error, particularly where Washington law has long recognized that a public employer of police officers may be liable for the improper training or supervision of employees that results in injury to third persons. *See, e.g., Jahns v. Clark*, 138 Wash. 288, 244 P. 729 (1926) (sheriff liable on bond for deputies' negligent shooting of minor).

Below, the City contended that it was immune from a claim in tort for negligent officer training/supervision in the use of deadly force if the officer was acting in the course of her/his employment, citing *Evans v. Tacoma Sch. Dist. No. 10*, 195 Wn. App. 25, 380 P.3d 553, *review denied*, 186 Wn.2d 1028 (2016) and *LaPlant v. Snohomish County*, 162 Wn. App. 476, 271 P.3d 254 (2011).¹⁶ The City confuses its duty with its liability for Volk's conduct. *See Scott v. Blanchet High School*, 50 Wn. App. 37,

¹⁶ As Division II noted in *Evans*, claims in tort against an employer are analytically distinct from the employer's liability for conduct of an employee based on *respondeat superior*. 195 Wn. App. at 46-47. Plainly, the City was vicariously responsible for Volk's negligence if she was in the course of her employment.

43, 747 P.2d 1124 (1987), *review denied*, 110 Wn.2d 1016 (1988); *Niece v. Elmview Group Home*, 131 Wn.2d 39, 49-52, 929 P.2d 420 (1997).

Beltran-Serrano was entitled to argue in the alternative that the City was liable on its own for the negligent training/supervision of Volk or was liable on the basis of *respondeat superior* for Volk's negligent conduct. Washington law recognizes that alternative theories of liability may be pleaded and presented to the jury at trial. CR 18(a). Indeed, in *LaPlant*, Division I specifically recognized that the passenger in a stolen car injured during a police pursuit had a negligence claim against the County on the basis of *respondeat superior* for the negligent driving of the deputies that caused the passenger's injuries. 162 Wn. App. at 478-79. *See also, Traverso v. City of Enumclaw*, 2012 WL 2892021 (W.D. Wash. 2012) (court refuses to dismiss negligence claims against the City where there were no stand-alone claims against the responsible jail officers).

Moreover, the City's argument that it is immune from any analysis of whether it was properly training its officers on interacting with mentally ill people or in using lethal force if an officer shot a mentally ill person in the course of her/his duties while being ignorant of, or improperly trained in, applicable City policies, makes little sense. Here, ample testimony supports Beltran-Serrano's theory that Volk was improperly trained to interact with mentally ill persons. Despite the City's unambiguous

policies on police interactions with mentally ill persons, Volk behaved in this case as if she did not know those policies or she chose to ignore them, evidencing her lack of proper training.

Volk needlessly escalated her encounter with Beltran-Serrano, a person patently suffering from mental illness, by continuing the interaction after she learned he did not speak English, refusing to wait for back-up to arrive, and chasing after him when he attempted to leave the situation. Tacoma police officers are trained to identify symptoms of mental illness among subjects they choose to interact with. CP 486-91. Specifically, officers learn that a person with schizophrenia may demonstrate neglect of basic hygiene, a “blunted” emotion expression, disordered thinking, and delusions. CP 490. The symptoms of Beltran-Serrano’s mental illness were readily apparent to Volk by her own admission; she observed his poor hygiene, his confusion or inability to understand her, and his behavior of digging in a hole on the side of the road and drinking out of a bottle in the hole. CP 305-09. In total, this behavior did not seem normal to Volk. CP 308.¹⁷

Any reasonable police officer would have been alerted that Beltran-Serrano was at least potentially suffering from mental illness and acted accordingly. For example, Officer Cool stated:

¹⁷ She later noted that the taser may not have affected Cesar due to his apparent mental instability. CP 404.

Q: Okay. If you approached somebody and they were on their stomach, lying on the ground, digging in a hole in the ground, and their appearance was unkept, would you have any reason to suspect that that person was suffering from mental illness?

....

Q: Okay. So would you, in approaching that person, consider that they may be under the influence of drugs or may be suffering from mental illness?

A: Yes, I would.

CP 494.

If a person with whom Tacoma police officers interact is even suspected of having a mental illness, they must engage that individual in a specific manner, including: remain calm and do not overreact, show concern and understanding, exhibit extreme patience, be aware your uniform might frighten them, listen, tell them what you are going to do before you do it, do not maintain direct eye contact. CP 490. These modified behaviors are important in order to prevent a situation from escalating, to calm the subject down, and handle the situation. CP 496-97.

Beltran-Serrano's expert, Sue Peters, explained that Volk's interactions with him were inconsistent with training and policy and needlessly escalated the situation. CP 476-77. Volk showed no awareness that her uniform and marked police car could frighten him. Instead, she crowded Beltran-Serrano closely and questioned him forcefully. In her

deposition, Volk was not even aware of this procedure. CP 477. Volk rushed the interaction instead of exhibiting “extreme patience” when she continued to interrogate Beltran-Serrano in English – even though a Spanish-speaking officer was at most five minutes away. CP 477. Peters opined that “[h]ad Officer Volk continued to stand back (about 7 to 8’ as she stated from Beltran), remain patient and wait for Officer Gutierrez to arrive, more likely than not, a different outcome in this case would have occurred.” *Id.* Critically, in deposition, Officer Volk was unaware of a majority of the procedures guiding law enforcement interactions with mentally ill subjects. *Id.*

In sum, a victim of the unreasonable use of deadly force by law enforcement is not foreclosed from contending that a government’s negligent training/supervision of its law enforcement officers to deal with mentally ill persons led to the unreasonable use of deadly force. Beltran-Serrano submitted ample evidence to present this theory of negligence to a jury. As will be noted *infra*, this failure on the City’s part is better analyzed as an aspect of the totality of circumstances to be assessed in determining if the use of deadly force was reasonable.

- (c) The City Was Not Immune from a Negligence Claim Merely Because Volk Acted Volitionally

The City also argued below that it could not be liable in negligence if its officers commit assault and battery, an intentional tort, CP 249-50, and the trial court seemingly agreed. RP (9/1/17):26. The City was wrong, and the trial court erred.

This Court need look no further than its own precedents to realize why this argument makes little sense. There can be both negligence and intentional tortious conduct in the same case leading to a particular result. For example, a hospital could be liable under principles of corporate negligence established in *Pedroza v. Bryant*, 101 Wn.2d 226, 232-33, 677 P.2d 166 (1984) for the improper training or selection of a physician who failed to secure informed consent from a patient before a procedure, while the physician is liable for the failure to secure informed consent or common law battery. *Bundrick v. Stewart*, 128 Wn. App. 11, 17, 114 P.3d 1204 (2005) (“An action for total lack of consent sounds in battery...”).¹⁸ This Court has been confronted with circumstances where the State is liable for its negligence in investigating child abuse, allowing an abuser to intentionally harm a child. *See, e.g., Babcock v. State*, 116 Wn.2d 596, 809 P.2d 143 (1991) (recognizing claim of negligent placement against State for rape of child while in such placement).

¹⁸ In *Bundrick*, the plaintiff sued the defendants for breach of the standard of care under RCW 7.70 (negligence), failure to secure in informed consent under RCW 7.70, and common law battery. 128 Wn. App. at 15.

In *Tegman v. Accident & Medical Investment, Inc.*, 150 Wn.2d 102, 75 P.3d 497 (2003), this Court dealt specifically with circumstances where both intentional and negligent conduct caused harm to the plaintiff; the fact that some of the harm was caused by intentional conduct did not bar the negligence claim. *See also, Rollins v. King County Metro Transit*, 148 Wn. App. 370, 199 P.3d 499, *review denied*, 166 Wn.2d 1025 (2009).¹⁹

In addition to being inconsistent with Washington law, as noted above, the California Supreme Court rejected an argument nearly identical to the one presented by the City here. *Grudt v. City of Los Angeles*, 468 P.2d 825 (Cal. 1970).²⁰ *Accord, Munoz v. Olin*, 596 P.2d 1143 (Cal. 1979) (both negligence and intentional tort theories submitted to jury in shooting case). Other courts have similarly rejected such an argument. *District of Columbia v. Downs*, 357 A.2d 857 (D.C. App. 1976) (recognizing that under D.C. law a plaintiff could sue for both negligence and

¹⁹ Justice Chambers made this point in his concurrence in *Sheikh v. Choe*, 156 Wn.2d 441, 128 P.3d 574 (2006), noting there that “As often happens, Sheikh pleaded a case involving both negligent and intentional acts that resulted in indivisible harm.” *Id.* at 460. He recognized that it is, in fact, not at all uncommon in Washington law for cases to have negligence and intentional tort elements in the very same action.

²⁰ There, a police officer in plain clothes, carrying a double-barreled shotgun, approached a car, possibly causing the driver to think he was being robbed or attacked. The driver accelerated the car toward a second plainclothes officer, and then both officers opened fire on the driver, killing him. *Id.* The California Supreme Court reversed dismissal of the negligence claims and held that the plaintiff could present both intentional and negligence theories to the jury in a shooting case.

assault/battery);²¹ *Reed v. District of Columbia*, 474 F. Supp. 2d 163, 173-74 (D.D.C. 2007) (same).²² *See also, Ryan v. Napier*, 406 P.3d 330 (Ariz. App. 2017) (recognizing negligence claim for unreasonable employment of K-9 police dog and separate intentional tort claim); *Reed*, 474 F. Supp. 2d at 173-74 (negligence claim submitted to jury in wrongful death shooting claim against police officer where a “distinct act of negligence, a misperception of fact, may have played a part in the decision to fire.”); *LaBauve v. State*, 618 So. 2d 1187, 1190 (La. App.), *review denied*, 624 So. 2d 1235 (La. 1993) (trial court did not err in allowing negligence claim against police officer where officer pushed 76-year-old man onto rocks and gravel in course of arrest); *Picou v. Terrebonne Par. Sheriff’s Office Through Rozands*, 343 So. 2d 306, 308 (La. App.), *appl. denied*, 345 So. 2d 506 (La. 1977).

Officer Volk negligently used deadly force. That her negligence culminates in a volitional act does not disqualify the claim from proceeding in negligence. This case must be evaluated under its totality of the circumstances, including evidence regarding Volk’s preshooting

²¹ *See also, Dist. of Columbia v. White*, 442 A.2d 159 (D.C. App. 1982); *Etheredge v. Dist. of Columbia*, 635 A.2d 908 (D.C. App. 1993) (reversing order on judgment notwithstanding the verdict as to plaintiff’s negligence claims).

²² The court held that a plaintiff in a wrongful police shooting case can proceed to trial on both negligence and assault and battery, noting that “[t]hese cases often share common characteristics, notably the use of deadly force and evidence of two opposing factual scenarios – a police officer claiming he [or she] shot in self-defense and a witness claiming the decedent was unarmed when shot.” *Id.* at 174.

conduct. Focusing solely on the moment of the shooting itself would be contrary to established tort principles. *Hayes v. County of San Diego*, 305 P.3d 252, 257-58 (Cal. 2013) (“preshooting conduct is included in the totality of circumstances surrounding an officer’s use of deadly force, and therefore the officer’s duty to act reasonably when using deadly force extends to preshooting conduct”).

Beltran-Serrano’s negligence claim extends to his entire encounter with Officer Volk and is not confined to her ultimate volitional decision to shoot. It is entirely consistent with Washington negligence law to submit both negligent and intentional tort claims to the jury.

In sum, the trial court erred in concluding that the City was seemingly exempt from a duty of care in negligence to Beltran-Serrano to refrain from unreasonably employing deadly force against him in this case. Again, the better analysis of the negligent and volitional aspects of Volk’s conduct is under the rubric of the totality of the circumstances surrounding Volk’s employment of deadly force against Beltran-Serrano.

(d) This Court Should Confirm a Duty of Care in Negligence to Avoid the Unreasonable Use of Deadly Force to Citizens Generally under a Totality of the Circumstances Standard

Public policy supports confirmation by this Court of a duty of care in negligence on the part of law enforcement officers to refrain from the

unreasonable use of deadly force. The issue of police use of lethal force is literally one that is taken from daily news source headlines and persists in our society from the “Black Lives Matter” movement²³ to NFL games, and even in presidential Twitter messages. Whether in Ferguson, Missouri or in Washington State communities,²⁴ this is a live issue. *See generally*, Chad Flanders, Joseph Welling, *Police Use of Deadly Force: State Statutes 30 Years After Garner*, 35 St. Louis U. Pub. L. Rev. 109 (2015).

Evidencing the public importance of the lethal force issue, President Obama appointed a task force in 2015 to review policing issues. The President’s Task Force on 21st Century Policing issued a May 2015 report in which it emphasized the necessity of clear and comprehensive policies on the use of force by police. https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf. In specific, the Task Force recommended that such policies should

²³ The “Black Lives Matter” movement has received impetus from police shootings of unarmed black men from Ferguson, Missouri to many other parts of the United States. It is no less significant a matter for the unjustifiable shooting in this case of an unarmed, mentally ill, homeless, Hispanic man by a Tacoma officer.

²⁴ The police shooting death in Seattle of a 30-year-old pregnant mother of four, Charleena Lyles, who actually called the Seattle Police reporting a burglary of her apartment is but one recent example. She was shot seven times. *See* Jerry Large, *Charleena Lyles’ death by police adds to a list that should shame us*, *Seattle Times* Jun. 22, 2017. <https://www.seattletimes.com/seattle-news/charleena-lyles-death-by-police-adds-to-a-list-that-should-shame-us/>. (noting Lyles was 451st person killed by U.S. police in 2017).

emphasize de-escalation, and there should be external and independent criminal investigations of police use of lethal force. Report at 19-21.

The issue of police use of deadly force also prompted the Legislature in 2016 to create a Task Force on the Use of Deadly Force in Community Policing pursuant to SHB 2908, Laws of 2016, ch. 200, § 2.²⁵ The Task Force issued its report on December 1, 2016. <https://capaa.wa.gov/task-force-on-the-use-of-deadly-force-in-community->

²⁵ In that legislation, the Legislature reaffirmed the public significance of the police deadly force issue:

The legislature recognizes the invaluable contributions of law enforcement officers, who risk their own lives every day to protect our families and communities. We hold law enforcement to a high standard in their positions of public trust and as the guardians in our communities, and the legislature applauds their efforts to show respect and compassion to all citizens while holding individuals accountable for their criminal activity.

The legislature acknowledges that officers are often placed in harm's way and must make decisions quickly while under extreme stress. Although regrettable in every case, the use of deadly force may sometimes be necessary to protect the safety of others. The legislature also recognizes that both the people of this state and law enforcement officers themselves rely on and expect accountability, the failure of which damages the public trust in those who serve the public honorably and with compassion.

It is the intent of the legislature to improve our law in a manner that provides clear guidance to law enforcement, respects and supports the role of law enforcement to maintain public safety, and fosters accountability and public trust.

Laws of 2016, ch. 200, § 1.

policing/. That report prompted numerous, and differing, views on a variety of issues associated with police use of lethal force.²⁶

Tort law serves a crucial deterrent role, preventing conduct dangerous to society and harmful to health and welfare of our citizens. This Court has clearly articulated that function of our tort law: “Tort duties are important to our society and are imposed for a variety of reasons. We impose these duties to protect innocent parties; to deter hazardous,²⁷ reckless, and negligent conduct, to compensate for injuries, and to provide a fair distribution of risk.” *Eastwood v. Horse Harbor Foundation, Inc.*, 170 Wn.2d 380, 407, 241 P.3d 1256 (2010). All of those purposes are present here. The confirmation of a duty of care in negligence to refrain from the unreasonable employment of lethal force by police will impel better precautions against improper use of lethal force

²⁶ For example, relevant to this case, both the Washington Commission on Hispanic Affairs and Disability Rights Washington offered specific comments. The Commission noted a Seattle *Times* report regarding the disproportionate number of certain racial/ethnic group members killed by police in Washington. Report at 44.

²⁷ The deterrent effect of tort law is critical. *Jackson v. City of Seattle*, 158 Wn. App. 647, 657, 244 P.3d 425 (2010) (deterrent effect of holding waterline construction contractors liable for slope alterations leading to landslide); *Carrera v. Sunheaven Farms*, 196 Wn. App. 240, 259, 383 P.3d 563 (2016), *aff'd*, 189 Wn.2d 297, 401 P.3d 304 (2017) (noting deterrent effect injured worker actions against third-party tortfeasors on “dangerous workplace conduct and conditions.”). Where an exception to general tort principles, as the City contends, should apply as to police use of lethal force, the deterrent effect of tort law is weakened. *Davis v. Baugh Indus. Contractors, Inc.*, 159 Wn.2d 413, 419-20, 150 P.3d 545 (2007) (rejecting a common law exception to contractor liability for faulty construction). This Court should adhere to principles deterring unreasonable use of lethal force against innocent citizens.

such as improved law enforcement training and clearer protocols for when lethal force is appropriate.

The duty sought by Beltran-Serrano here is not an onerous one. It has been applied in our sister states. California courts have recognized a duty of care in negligence to refrain from the unreasonable use of deadly force since 1970. *Grudt, supra*.²⁸ California courts have “long recognized that peace officers have a duty to act reasonably when using deadly force.” *Hayes*, 305 P.3d at 256. “...the reasonableness of a peace officer’s conduct must be determined in light of the totality of the circumstances.” *Id.* at 257.²⁹ In *Hayes*, the California Supreme Court held that an officer’s “tactical conduct and decisions preceding the use of deadly force are relevant considerations under California law in determining whether the use of deadly force gives rise to negligence liability. Such liability can

²⁸ In *Grudt*, the California Supreme Court held that both negligence and intentional tort theories could go to the jury in a case where two plainclothes Los Angeles police officers shot a 55-year-old unarmed carpenter. Moreover, the court held the trial court’s exclusion of the LAPD tactical manual on firearm use that specified when the use of deadly force was appropriate to be error.

²⁹ Peters confirmed that a similar approach applies in Washington: “as an officer, you look at the whole situation and assess it together, so if there’s several red flags, that’s how an officer views situations,” CP 522, as did Chief Van Blaricom:

From a police practices perspective, the fundamental issues in any use of force are: 1) Was force reasonably necessary under the totality of circumstances? 2) If force was reasonably necessary, was the amount or degree of force used objectively reasonable under the totality of circumstances?

CP 371-72.

arise, for example, if the tactical conduct and decisions show, as part of the totality of circumstances, that the use of deadly force was unreasonable.” *Id.* at 263. As the California Supreme Court summarized, “peace officers have a duty to act reasonably when using deadly force, a duty that extends to the totality of the circumstances surrounding the shooting, including the officers’ preshooting conduct.” *Id.* See also, *Han v. City of Folsom*, 695 Fed. Appx. 197 (9th Cir. 2017). There is no indication that this duty has impeded the ability of law enforcement officers in California to do their job of protecting the public or increased the risk to officers.

Here, the circumstances of Officer Volk’s interaction with Beltran-Serrano make application of the duty very compelling. The officer lacked probable cause to believe Beltran-Serrano committed a crime, or any reason to believe he was a danger to her or to others, justifying a stop under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Volk did not even seem to have authority to act as a community caretaker with respect to Beltran-Serrano, *State v. Kinzy*, 141 Wn.2d 373, 5 P.3d 668 (2000), *cert. denied*, 531 U.S. 1104 (2001) (limits on policy community caretaker authority), and certainly not to shoot him in the course of such “caretaking.” Beltran-Serrano was an innocent homeless, mentally ill,

Hispanic man deserving of an appropriately respectful, non-lethal interaction with the police.

In sum, this Court should adopt the clear rule for unreasonable use of deadly force that has been employed in California and other jurisdictions – law enforcement officers owe a duty of care to all persons with whom they interact, whether or not mentally ill as was Beltran-Serrano, to refrain from the unreasonable employment of deadly force against such persons; the reasonableness of the officer’s conduct is assessed in light of the totality of the circumstances surrounding the officer’s interaction with the person.

Rather than parse the various aspects of the negligence by the City such as improper training of officers to interact with the mentally ill, improper training in the employment of lethal force, or the negligent and intentional acts by the officer using deadly force, the better analysis is to adopt California’s measurement for the reasonableness of the officer’s use of deadly force – the totality of the circumstances of the officer’s interaction with the citizens against whom deadly force is employed. The officer’s training in interacting with the citizenry and persons with special needs, officer training in the use of deadly force, the particular characteristics of the person against whom force is used, and the particular

facts of the officer-citizen interaction and employment of deadly force are all relevant factors, among others, in this analysis.

Employing such a standard here, the City owed a duty in negligence to Beltran-Serrano to avoid the unreasonable use of deadly force. A jury was entitled to determine under the totality of the circumstances of the Volk/Beltran-Serrano interaction, whether the City's actions were reasonable, particularly where Beltran-Serrano was not under arrest, and he presented no imminent threat to Volk or anyone else, as documented in the eyewitness accounts and the expert ballistics testimony.

(2) The City Owed Beltran-Serrano a Duty of Care in Tort and the Trial Court Misapplied the Public Duty Doctrine in Concluding to the Contrary

As noted *supra*, the trial court may have also erred in concluding that the public duty doctrine³⁰ barred Beltran-Serrano's negligence claim. This was not a matter of a duty owed to the amorphous public, but one owed particularly to Beltran-Serrano, the shooting victim.

Our Legislature abolished sovereign immunity. "The doctrine of governmental immunity springs from the archaic concept that 'The King Can Do No Wrong.'" *Kelso v. City of Tacoma*, 63 Wn.2d 913, 914, 390 P.2d 2 (1964). In 1961, the Legislature enacted RCW 4.92.090 abolishing

³⁰ The public duty doctrine has been criticized by jurists and scholars alike. *J & B Development Co. v. King County*, 100 Wn.2d 299, 311, 669 P.2d 468 (1983) (Utter, J., concurring); Jenifer Kay Marcus, *Washington's Special Relationship Exception to the Public Duty Doctrine*, 64 Wash. L. Rev. 401, 414-17 (1989).

state sovereign immunity. That waiver quickly extended to municipalities in 1967. RCW 4.96.010; *Kelso*, 63 Wn.2d at 918-19; *Hosea v. City of Seattle*, 64 Wn.2d 678, 681, 393 P.2d 967 (1964). Local governments have since been “liable for damages arising out of their tortious conduct ... to the same extent as if they were a private person or corporation.” RCW 4.96.010. These statutes operate to make state and local government “presumptively liable in all instances in which the Legislature has *not* indicated otherwise.” *Savage v. State*, 127 Wn.2d 434, 445, 899 P.2d 1270 (1995) (emphasis in original).

The City’s duty analysis and application of the public duty doctrine in this case, CP 246-49, 688-91, is nothing more than a backdoor device to effectively restore sovereign immunity despite legislative abolition of that immunity. “[G]overnmental entities in Washington are liable for their ‘tortious conduct’ to the ‘same extent’ as a private person or corporation.” *Washburn*, 178 Wn.2d at 753 (citing RCW 4.92.090(2)).

The public duty doctrine does not apply here. The public duty doctrine is a “‘focusing tool’ ... to determine whether a public entity owed a duty to a ‘nebulous public’ or a particular individual.” *Osborn v. Mason County*, 157 Wn.2d 18, 27, 134 P.3d 197 (2006) (quoting *Taylor v. Stevens County*, 111 Wn.2d 159, 166, 759 P.2d 447 (1988)) (internal quotations omitted). It is not an immunity – a surreptitious restoration of

sovereign immunity abolished by RCW 4.92.090 and RCW 4.96.010 – as the City would have this Court believe. To this end, the public duty doctrine does not apply here for two key reasons.

Most patently, the trial court erred in applying the public duty doctrine to a common law cause of action. *Munich v. Skagit Emergency Comm. Ctr.*, 175 Wn.2d 871, 288 P.3d 328 (2012). This Court has clearly limited the public duty doctrine to legal obligations imposed by a statute, ordinance, or regulation:

Since its inception, the “public duty” analysis has remained largely confined to cases in which the plaintiff claims that a particular statute has created an actionable duty to the “nebulous public.” Although we could have been clearer in our analyses, the only governmental duties we have limited by application of the public duty doctrine are duties imposed by a statute, ordinance, or regulation. This court has never held that a government did not have a common law duty solely because of the public duty doctrine.

Id. at 886-87 (citations omitted).³¹

³¹ Division I agreed with that principle in *Mancini v. City of Tacoma*, 188 Wn. App. 1006, 2015 WL 3562229 (2015), holding that the public duty doctrine does not apply to common law claims that exist independent of any statutory duty.

The public duty doctrine is not a judicially-created immunity. It does not bar a common law claim brought by the person to whom the breached duty was owed. The trial court erred in dismissing Mancini’s negligence claim.

Id. at *8. The court permitted Mancini’s claim of common law negligence against the City for its nonconsensual invasion of her home. *Id.* See also, *Mita v. Guardsmark, LLC*, 182 Wn. App. 76, 84, 328 P.3d 962 (2014) (public duty doctrine inapplicable to common law claims).

Moreover, in each of the cases referenced *supra* in which a Washington court found a duty in tort for police practices, the court expressly found the public duty doctrine *inapplicable*. This was true for a negligent infliction of emotional distress claim in *Garnett*, and for active malfeasance by officers in *Coffel*, 47 Wn. App. at 403-04. In reversing summary judgment as to those officers and Clallam County, Division II rejected the suggestion that the public duty doctrine applied to the claims against them:

The doctrine provides only that an individual has no cause of action against law enforcement officials for failure to act. Certainly if the officers do act, they have a duty to act with reasonable care.

Id. at 403. This Court's decision in *Washburn*, *supra*, reaffirmed the view that the public duty doctrine is not triggered in cases of misfeasance, such as this. In *Washburn*, this Court held that an officer who served an anti-harassment order had a duty to act reasonably in the service of that order, so as not to expose a third party to criminal behavior. 178 Wn.2d at 759-61.

Finally, as noted *supra*, the public duty doctrine, if applicable at all here, is a focusing tool to avoid a duty to the nebulous public. There is no question here but that the City's duty was owed to a specific, readily identifiable individual – Cesar Beltran-Serrano.

In sum, to the extent that the trial court applied the public duty doctrine in rendering its summary judgment for the City, it erred.

F. CONCLUSION

Beltran-Serrano did not constitute an imminent threat to the life or limb of Officer Volk or anybody else; Volk's actions were fully documented by a WSP dashcam and eyewitnesses. This Court should confirm that governments owe a duty of care in negligence to their citizens when law enforcement officers unreasonably use lethal force. This Court should hold that law enforcement officers have a duty to refrain from the unreasonable use of deadly force; the reasonableness of the officer's conduct should be measured in light of the totality of the circumstances confronted by the officer. Ample evidence, both lay and expert, documented that a question of fact was present on the breach of the City's duty to Beltran-Serrano.

This Court should reverse the trial court's September 1, 2017 summary judgment order and allow Beltran-Serrano's negligence claim to go to the jury. Costs on appeal should be awarded to Beltran-Serrano.

DATED this 7th day of March, 2018.

Respectfully submitted,



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Attorneys for Appellants Beltran-Serrano

APPENDIX

RCW 9A.16.040:

(1) Homicide or the use of deadly force is justifiable in the following cases:

(a) When a public officer is acting in obedience to the judgment of a competent court; or

(b) When necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.

(c) When necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

(ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; or

(iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or

(iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.

(3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

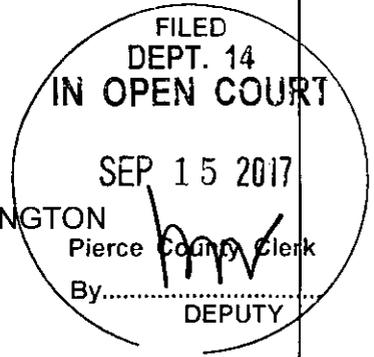
(4) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.



THE HONORABLE SUSAN K. SERKO
Hearing Date: September 15, 2017 @ 9:00 am



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

CESAR BELTRAN-SERRANO, an
incapacitated person, individually, and
BIANCA BELTRAN as guardian *ad litem* of
the person and estate of CESAR
BELTRAN-SERRANO;

Plaintiff,

v.

CITY OF TACOMA, a political subdivision
of the State of Washington;

Defendant.

No. 15-2-11618-1

ORDER ON PLAINTIFF'S
MOTION TO CERTIFY
ISSUE FOR
DISCRETIONARY REVIEW
AND STAY OF
PROCEEDINGS

THIS MATTER having come before the Court on Plaintiff's Motion to Compel
Inspection and Testing of Ballistic Evidence in the above referenced cause; the City of
Tacoma appearing by and through its attorney of record, Jean P. Homan, Deputy City
Attorney, and plaintiff, Cesar Beltran-Serrano, appearing through his attorneys of
record, John R. Connelly, Jr., Micah LeBank and Meaghan Driscoll, and the Court
having reviewed the records and following:

- 1. Plaintiff's Motion to Certify Issue for Discretionary Review under RAP
2.3(b)(4) and Stay Proceedings;

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9/19/2017 2166

- 1 2. Declaration of Meaghan Driscoll in Support of Plaintiff's Motion to Certify and Stay Proceedings with exhibits thereto;
- 2
- 3 3. Defendant's Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings;
- 4
- 5 4. Affidavit of Jean P. Homan in Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings, and exhibits thereto; and
- 6
- 7 5. Plaintiff's Reply to Motion for Certification of Negligence Issue and Stay Proceedings.

8 The Court finds as follows: The issue of whether
 9 a police officer owes a duty of
 10 reasonable care to act reasonably
 11 when using deadly force is an
 12 issue appropriate for certification.
 13 Further, in the interests of
 14 judicial economy, certification
 15 of both orders on partial
 16 summary judgment is
 17 appropriate.

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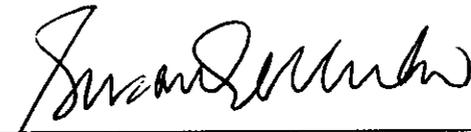
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1 THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the
2 Order Granting Defendant's Motion for Partial Summary Judgment, entered by this
3 Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to
4 RAP 2.3; it is further

5 ORDERED, ADJUDGED and DECREED that the Order Granting Plaintiff's
6 Motion for Partial Summary Judgment on Past Medical Specials, entered by this Court
7 on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP
8 2.3; it is further

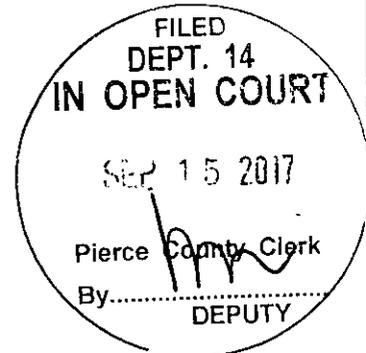
9 ORDERED, ADJUDGED and DECREED that this matter is stayed until such
10 time as the appellate proceedings on these issues are concluded.

11 DONE IN OPEN COURT this 15 day of September, 2017.

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14 _____
15 HONORABLE SUSAN K. SERKO

16 WILLIAM FOSBRE, City Attorney

17 By: 
18 JEAN P. HOMAN
19 WSB #27084
20 Attorney for Def. City of Tacoma



21 CONNELLY LAW OFFICES, PLLC

22 By: 
23 JOHN R. CONNELLY, JR., #12183
24 MICAH LEBANK, #38047
25 MEAGHAN DRISCOLL, #49863
Attorneys for Plaintiff



15-2-11618-1 49986833 ORSP 09-26-17

THE HONORABLE SUSAN K. SERKO

Hearing Date: September 15, 2017 @ 9:00 am

DEPT. 14
IN OPEN COURT

SEP 25 2017

Pierce County Clerk
By: *Cym*
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CESAR BELTRAN-SERRANO, an
incapacitated person, individually, and
BIANCA BELTRAN as guardian *ad litem* of
the person and estate of CESAR
BELTRAN-SERRANO;

Plaintiff,

v.

CITY OF TACOMA, a political subdivision
of the State of Washington;

Defendant.

No. 15-2-11618-1

AMENDED ORDER ON
PLAINTIFF'S MOTION TO
CERTIFY ISSUE FOR
DISCRETIONARY REVIEW
AND STAY OF
PROCEEDINGS

*NUNC PRO TUNC
to 9/15/2017*

NUNC PRO TUNC ORDER

This matter is before the Court on the parties' petition to correct an error in the order entered by this Court on September 15, 2017, on Plaintiff's Motion to Certify Issue for Discretionary Review Under RAP 2.3(b)(4) and Stay Proceedings. The order incorrectly identified the motion as "Plaintiff's Motion to Compel Inspection and Testing of Ballistic Evidence." The Court's Order is hereby amended, *nunc pro tunc*, to read as follows:

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9/27/2017

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1 THIS MATTER having come before the Court on Plaintiff's Motion to Certify Issue
2 for Discretionary Review Under RAP 2.3(b)(4) and Stay Proceedings in the above
3 referenced cause; the City of Tacoma appearing by and through its attorney of record,
4 Jean P. Homan, Deputy City Attorney, and plaintiff, Cesar Beltran-Serrano, appearing
5 through his attorneys of record, John R. Connelly, Jr., Micah LeBank and Meaghan
6 Driscoll, and the Court having reviewed the records and following:

- 7 1. Plaintiff's Motion to Certify Issue for Discretionary Review under RAP
8 2.3(b)(4) and Stay Proceedings;
- 9 2. Declaration of Meaghan Driscoll in Support of Plaintiff's Motion to Certify and
10 Stay Proceedings with exhibits thereto;
- 11 3. Defendant's Response to Plaintiff's Motion to Certify Issue for Discretionary
12 Review and Stay Proceedings;
- 13 4. Affidavit of Jean P. Homan in Response to Plaintiff's Motion to Certify Issue
14 for Discretionary Review and Stay Proceedings, and exhibits thereto; and
- 15 5. Plaintiff's Reply to Motion for Certification of Negligence Issue and Stay
16 Proceedings.

17 The Court finds as follows: The issue of whether a police officer owes a duty of
18 reasonable care to act reasonably when using deadly force is an issue appropriate for
19 certification. Further, in the interests of judicial economy, certification of both orders on
20 partial summary judgment is appropriate.

21 THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the
22 Order Granting Defendant's Motion for Partial Summary Judgment, entered by this
23 Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to
24 RAP 2.3; it is further
25

9/27/2017 2310 0119

1 ORDERED, ADJUDGED and DECREED that the Order Granting Plaintiff's
2 Motion for Partial Summary Judgment on Past Medical Specials, entered by this Court
3 on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP 2.3;
4 it is further

5 ORDERED, ADJUDGED and DECREED that this matter is stayed until such time
6 as the appellate proceedings on these issues are concluded.

7 DONE IN OPEN COURT this 25 day of September, 2017.

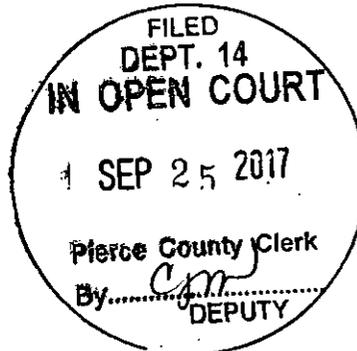
8 *DATED*

Susan K. Serko

10 HONORABLE SUSAN K. SERKO

11 WILLIAM FOSBRE, City Attorney

12 By: *Jean P. Homan*
13 JEAN P. HOMAN
14 WSB #27084
15 Attorney for Def. City of Tacoma



16 CONNELLY LAW OFFICES, PLLC

17 By: *Meaghan Driscoll*
18 JOHN R. CONNELLY, JR., #12183
19 MICAH LEBANK, #38047
20 MEAGHAN DRISCOLL, #49863
21 Attorneys for Plaintiff

FILED

DEC 15 2017

WASHINGTON STATE
SUPREME COURT

W

KMS

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CESAR BELTRAN-SERRANO, an
incapacitated person, individually, and
BIANCA BELTRAN as guardian ad
litem of the person and estate of CESAR
BELTRAN-SERRANO,

Petitioner,

v.

CITY OF TACOMA,

Respondent.

No. 95062-8

RULING GRANTING REVIEW

Cesar Beltran-Serrano, individually and through his guardian ad litem, Biana Beltran, seeks direct discretionary review of a Pierce County Superior Court order granting the city of Tacoma's motion for partial summary judgment as to Mr. Beltran-Serrano's negligence claim against the city. Mr. Beltran-Serrano's action arises from his nonfatal shooting by a city police officer. At issue here substantively is whether the city owed Mr. Beltran-Serrano an actionable duty of care to not negligently employ deadly force against him, and relatedly whether the public duty doctrine bars the negligence claim. Procedurally related to these issues is whether, if discretionary review is justified, to retain the case in this court or transfer it to the Court of Appeals for review in the first instance. RAP 4.2(a). Review is granted and the case is retained in this court for reasons explained below.

The underlying facts need not be related in detail. Mr. Beltran-Serrano, an apparently homeless Hispanic man with possible mental health problems and possibly no English communication skills, was shot multiple times by a police officer after an initial encounter between the officer and Mr. Beltran-Serrano went awry. Mr. Beltran-Serrano subsequently filed an action against the city sounding in tort, asserting a claim of negligence. The city answered that it owed no cognizable duty of care and that Mr. Beltran-Serrano's negligence action was barred by the public duty doctrine. The matter proceeded to two motions for partial summary judgment: Mr. Beltran-Serrano's motion concerning the reasonableness of special medical expenses, and the State's motion (the one at issue here) on whether Mr. Beltran-Serrano had an actionable negligence claim under the theories and defenses asserted. The trial court granted both motions, the result being in relevant part dismissal of Mr. Beltran-Serrano's negligence claim.

Mr. Beltran-Serrano filed a motion for certification of appealability under RAP 2.3(b)(4) as to both partial summary judgment orders. Mr. Beltran-Serrano also requested a stay in the trial court pending this court's decision on an implicitly anticipated motion for discretionary review as to the negligence issue, or if the court grants review, a decision on the merits. In response, the city agreed that RAP 2.3(b)(4) certification as to both partial summary judgment orders was appropriate. The city did not discuss discretionary review by this court or the issue of a stay. The trial court granted the motion and issued an order that both summary judgment orders met the criteria for certification under RAP 2.3(b)(4). With respect to the negligence issue, the trial court framed the issue as, "whether a police officer owes a duty of reasonable care to act reasonably when using deadly force." Order re: Plaintiff's Motion to Certify, at 2 (App. at 690).

The city filed a motion for discretionary review of the medical expense issue in the Court of Appeals. No. 51317-0-II. In the meantime, Mr. Beltran-Serrano filed the instant motion for direct discretionary review in this court. The Court of Appeals has not yet ruled on the city's motion for discretionary review, and at Mr. Beltran-Serrano's request, the court stayed the matter pending resolution of Mr. Beltran-Serrano's motion in this court. Oral argument on the instant motion was heard telephonically on December 14, 2017.

Mr. Beltran-Serrano argues that discretionary review is justified because the trial court committed obvious error that renders further proceedings useless and because the trial court certified and the parties stipulated that the challenged order implicates a controlling legal question where there is a substantial basis for a difference in opinion and immediate appellate review may materially advance resolution of the litigation. RAP 2.3(b)(1), (4).

A superior court commits "obvious error" under RAP 2.3(b)(1) only where its decision is clearly contrary to statutory or decisional authority with no discretion involved. *See* I Washington Appellate Practice Deskbook, § 4.4(2)(a) at 4-34 to 4-35 (4th ed. 2016). Having reviewed the briefing and records provided in this matter, I am not persuaded that the trial court committed obvious error on what is a plainly unsettled legal question—one Mr. Beltran-Serrano describes as a novel issue of first impression—involving the complex interplay between common law tort principles, the duties of a municipal police officer, and the meaning and scope of the public duty doctrine. RAP 2.3(b)(1).

As for certification under RAP 2.3(b)(4), it is important to note that such certification is no guarantee that an appellate court will grant review. Rather, trial court certification is one of several factors a court may consider in determining whether to grant review, and denial of discretionary review may be based on other prudential

considerations. *See Katz v. Carte Blanche Corp.* 496 F.2d 747, 754 (3d Cir. 1974) (noting that under the parallel federal procedure in 28 U.S.C. § 1292(b), denial of permission to appeal may be based upon a different assessment than that of the district court, but that “leave to appeal may be denied for entirely unrelated reasons such as the state of the appellate docket or the desire to have a full record before considering the disputed legal issue”). In this case, however, I agree that the partial summary judgment order as to negligence turns on controlling but debatable questions as to whether a municipality, acting through a law enforcement officer, has a potentially actionable duty of care when deploying potentially deadly force against a member of the public and whether the public duty doctrine applies to such a scenario, and that prompt resolution of these interrelated issues will materially advance the outcome of this controversy. RAP 2.3(b)(4); *see, e.g., Munich v. Skagit Emergency Comm. Ctr.*, 175 Wn.2d 871, 886-92, 288 P.3d 328 (2012) (Chambers, J., concurring, joined by four other justices, discussing purpose and limits of public duty doctrine); *Hayes v. County of San Diego*, 305 P.3d 252, 263 (Cal. 2013) (liability can arise under California law, if officer’s tactical conduct and decisions show, as part of the totality of circumstances, that the use of deadly force was unreasonable). Accordingly discretionary review of the partial summary judgment order as to negligence is justified.

The next question is whether review should be in this court or in the Court of Appeals in the first instance. RAP 4.2(a). Mr. Beltran-Serrano argues that direct review is required to resolve conflicts among Court of Appeals decisions or to clarify inconsistencies in the court’s decisions. RAP 4.2(a)(3). But Mr. Beltran-Serrano fails to identify such conflicts or inconsistencies, relying heavily on decisions that do not fall within this rule.

The city argues that in the interest of judicial economy the negligence issue should be decided concurrently with the medical expense issue currently being

considered in the Court of Appeals. The city has a point, and the Court of Appeals is capable of deciding this thorny issue in the first instance.¹ But early resolution of the negligence issue in this court will arguably affect the damages issue. This view is consistent with the Court of Appeals stay of consideration of the medical expense issue pending action in this court on the negligence issue.²

More fundamentally, the negligence issue goes to the core controversy in this case, which has statewide, and arguably nationwide, implications. No one can deny that controversies involving police shootings, fatal and nonfatal, is a recurring issue that troubles the nation. Thus, even if the Court of Appeals decides this issue in the first instance, it seems all but inevitable that the aggrieved party will file a petition for review, which this court is likely to grant in order to decide the issue as one of substantial public interest. RAP 13.4(b)(4). In light of these observations, and mindful of the serious and recurring nature of this issue, I conclude that the negligence issue in this case involves a “fundamental and urgent issue of broad public import” that requires this court’s prompt and ultimate determination. RAP 4.2(a)(4).

Accordingly, the motion for discretionary review is granted and the case is retained in this court for a determination on the merits. The Clerk is requested to calendar the case for oral argument and set a perfection schedule.



COMMISSIONER

December 15, 2017

¹ I disagree with the implied suggestion that the Court of Appeals is somehow less capable than this court in resolving the negligence issue.

² I offer no view on whether, if this court retains the case, the pending medical expenses matter in the Court of Appeals should be transferred here or whether discretionary review of that issue is warranted.

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Brief of Appellants* in Supreme Court Cause No. 95062-8 to the following parties:

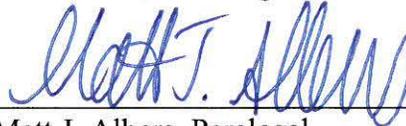
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Original E-filed with:
Washington Supreme Court
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: March 7, 2018 at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

TALMADGE/FITZPATRICK/TRIBE

March 07, 2018 - 9:56 AM

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Appellate Court Case Title: Cesar Beltran-Serrano v. City of Tacoma
Superior Court Case Number: 15-2-11618-1

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