

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
7/1/2024 8:00 AM  
BY ERIN L. LENNON  
CLERK

No. Case #: 1032188

SUPREME COURT OF THE STATE OF WASHINGTON

PEDRO NAVARRO, Petitioner

V.

CITY OF AUBURN, Respondent

MOTION FOR DISCRETIONARY REVIEW

7-1-24:  
Treated as a  
petition for  
review.  
*Supreme Court  
Clerk's Office*

Pedro Navarro, Pro Se

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Burien, WA 98166

206-742-2820

1       A. IDENTITY OF PRITIONER

2           Pedro Navarro, Pro Se, asks this court to accept  
3   review of the decision designated in part B of this motion.

4  
5       B. DECISION

6           Navarro respectfully asks this court to review the  
7   unpublished decision of the Court of Appeals Division One  
8   on April 29, 2024, and the denial of the Motion for  
9   Reconsideration on May 31, 2024. The decision failed to  
10   apply the appropriate legal standard as determined by prior  
11   decisions of this court and other divisions and contains  
12   issues of substantial public interest. A copy of the decision  
13   and order denying motion to reconsider are attached as  
14   Appendix A and B.

15    C.    ISSUES PRESENTED FOR REVIEW

16        1) The trial court erred in denying Navarro's Motion to  
17        vacate.

18        2) The trial court erred in denying Navarro's motion  
19        for reconsideration.

1       D. STATEMENT OF THE CASE

2           Pedro Navarro (hereinafter “Navarro”) requested  
3   public records under the Public Records Act (PRA), *Ch.*  
4   42.56 RCW from the City of Auburn (City) about a criminal  
5   investigation on a couple occasions. After the City denied  
6   his request claiming the records were exempt from  
7   disclosure, Navarro sought judicial review. The trial court  
8   dismissed Navarro’s action on summary judgment  
9   concluding that the records were exempt from disclosure  
10   because the investigation was ongoing based solely on the  
11   declaration of Detective Jones.

12          After ultimately obtaining the requested records,  
13   Navarro moved to vacate the summary judgment order  
14   arguing that the order was obtained by fraud,  
15   misrepresentation, or misconduct, under *CR 60(b)(4)*. After  
16   conducting a show cause hearing the trial court ultimately  
17   denied the motion to vacate and motion for reconsideration.

18          Navarro subsequently appealed the trial courts denial  
19   of the motion to vacate and motion for reconsideration. The

1 Court of Appeals Division One affirmed the denial holding  
2 that the trial court did not abuse its discretion but failed to  
3 conduct a De Novo review of the requested records to  
4 determine if they are legally exempt under the effective law  
5 enforcement exemption. Due to the fact that Navarro is a pro  
6 se litigant and the judges in division one is pro government,  
7 not pro law, their decision is in contradiction of established  
8 Washington law and case law from this court and the other  
9 divisions of the court of appeals.

10 E. ARGUMENTS WHY REVIEW SHOULD BE  
11 ACCEPTED

12  
13 The decision of the court of appeals Division Ones is  
14 in direct conflict with decisions of this court and of  
15 published decisions of other divisions of the court of appeals  
16 and it involves an issue of substantial public interest that  
17 should be determined by this court. *RAP 13.4(b)*.

18 The Court of Appeals should have stood in the same  
19 position as the trial court where the record only consists of  
20 affidavits, memoranda, and other documentary evidence.

21 *Koenig v. Thurston County*, 175 Wn.2d 837, 842, 287 P.3d

1 523 (2012) (citing Progressive Animal Welfare Society v.  
2 University of Washington, 125 Wn. 2d 243, 252, 884 P.2d  
3 592 (1994) (PAWS II)); Lindeman v. Kelso School Dist. No.  
4 458, 162 Wn.2d 196, 172 P.3d 329, 330 (2007), and  
5 conducted a de novo review of the requested records to  
6 determine if the requested records fall within the “effective  
7 law enforcement” exception. Lindeman, 172 P.3d at 330  
8 (citing former RCW 42.17.340(3), now codified in RCW  
9 42.56.550(3)) (Judicial review of the agency's decision to  
10 withhold the records is de novo). It is evident from the court  
11 of appeals unpublished ruling that they did not participate in  
12 a de novo review of the records or act in the same position as  
13 the trial court. Which is mandated by this court’s prior  
14 precedence and by the legislature. “*Stare decisis*” requires  
15 the court of appeals to follow this court’s precedence and be  
16 pro law not pro government.

17 The legislature and this court have also mandated that  
18 the exceptions be narrowly construed and that the effective  
19 law enforcement exemption apply to limited set of

1 circumstances. Lindeman, 172 P.3d at 331 (citing former  
2 RCW 42.17.251, codified now as RCW 42.56.030) (In  
3 determining whether the PDA requires disclosure, this court  
4 must liberally construe its public records provisions and  
5 narrowly construe its exemptions.) The court of appeals  
6 decision effectively gave the “effective law enforcement”  
7 exemption broad implications instead of narrow  
8 implications. Based on the court of appeals decision any law  
9 enforcement agency can circumvent the requirements of the  
10 PDA and do not have to meet their burden and prove that the  
11 requested records be essential to effective law enforcement.  
12 Instead, now all the agency has to do is tell the court that  
13 they are essential to effective law enforcement, without  
14 actually proving it. The court of appeals decision also allows  
15 trial courts now to decide PDA cases not on a case-by-case  
16 basis but on a generalized basis. Which broadly construes  
17 the effective law enforcement exemption not narrowly  
18 construes it.

1           Furthermore, uniform application and enforcement of  
2   the public records act and application and enforcement of its  
3   exemptions "involves an issue of substantial public interest  
4   that should be determined by the Supreme Court" pursuant  
5   to *RAP 13.4(b)(4)*. This case presents a prime example of an  
6   issue of substantial public interest. The Court of Appeals  
7   holding, while affecting parties to this proceeding, also has  
8   the potential to affect every Judicial review of public records  
9   act in this state and gives every judge hearing a public  
10   records act case to alleviate the agency of its burden of  
11   proof, allows the agency to claim the requested records are  
12   exempt from disclosure under the "effective law  
13   enforcement exemption" without actually proving they are  
14   "essential to effective law enforcement", so basically gives  
15   agencies the unprecedented authority to claim the effective  
16   law enforcement exemption on any record even if they are  
17   not essential to effective law enforcement.

18           A decision that has the potential to affect a number of  
19   proceedings in the lower courts may warrant review as an

1 issue of substantial public interest if review will avoid  
2 unnecessary litigation and confusion on a common issue.  
3 State v. Watson, 155 Wash.2d 574, 577, 122 P.3d  
4 903 (2005); In re Flippo, 380 P.3d 413, 185 Wn. 2d 1032  
5 (2016).

6 The *RAPs* are intended to "be liberally interpreted to  
7 promote justice and facilitate the decision of cases on the  
8 merits." *RAP 1.2(a)*. Moreover, we may choose to disregard  
9 the *RAPs* if the interests of justice require. *RAP 1.2(c)*.  
10 Review is appropriate in this situation where an incorrect  
11 holding will have sweeping implications. State v.  
12 Watson, 155 Wash.2d at 577-78.

13 Courts are to take into account the Act's policy "that  
14 free and open examination of public records is in the public  
15 interest, even though such examination may cause  
16 inconvenience or embarrassment to public officials or  
17 others". *RCW 42.56.550(3)*; American Civ. Lib. Un. v.  
18 Blaine Sch. Dist., 95 Wn. App. 106, 110, 975 P.2d 536  
19 (1999) (citing Progressive Animal Welfare Society v.



1 University of Washington, 125 Wn. 2d 243, 251-52, 884  
2 P.2d 592 (1994)). It is clear from the legislatures use of the  
3 term "...in the public interest..." in RCW 42.56.550(3), that  
4 PDA challenges involves issues of substantial public interest  
5 and have sweeping implications across the entire state and  
6 incorrect holdings should be determined by this court,  
7 especially when the lower courts incorrectly interpreted prior  
8 precedent from this court or completely failed to follow prior  
9 precedent from this court or other divisions.

10 F. CONCLUSION

11 This court should accept review for the reasons  
12 indicated in part E and accept review of the motion for  
13 discretionary review.

14 Dated this 28 day of June, 2024

15

16 Respectfully submitted,

17 /S/ Pedro Navarro

18 [Navarropedro2019@gmail.com](mailto:Navarropedro2019@gmail.com)

19

APPENDIX A

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

PEDRO NAVARRO,

Appellant,

v.

AUBURN POLICE DEPARTMENT;  
THE CITY OF AUBURN,

Respondents.

No. 85651-1-I

DIVISION ONE

UNPUBLISHED OPINION

MANN, J. — Pedro Navarro requested public records under the Public Records Act (PRA), ch. 42.56 RCW from the City of Auburn (City) about a criminal investigation. After the City denied his request claiming the records were exempt from disclosure, Navarro sought judicial review. The trial court dismissed Navarro's action on summary judgment concluding that the records were exempt from disclosure because the investigation was ongoing. After ultimately obtaining the requested records, Navarro moved to vacate the summary judgment order arguing that the order was obtained by fraud, misrepresentation, or misconduct, under CR 60(b)(4). Navarro appeals the trial court's decision denying his motion to vacate. Because the investigation was open and active at the time of Navarro's request, the trial court did not abuse its discretion in denying the motion to vacate. We affirm.

In September 2019, a jogger was stopped in the early morning hours by a vehicle. The driver got out of the vehicle and pointed a handgun—later identified as a BB gun—at the jogger before returning the vehicle and driving off. Auburn Police Department Detective Rob Jones began investigating the event as an attempted robbery and assault. The vehicle was later identified as belonging to Navarro.

In June 2020, Navarro requested records of the investigation from the City under the PRA. The City denied Navarro's request claiming that the records were exempt from disclosure under RCW 42.56.240<sup>1</sup> and Newman v. King County, 133 Wn.2d 565, 573, 947 P.2d 712 (1997), because they related to an active police investigation. Navarro again requested the records in January 2021. The City again denied the request claiming that the investigation remained active.

Navarro sought judicial review of the City's denial of this record request in March 2021. The City moved for summary judgment arguing the exemption was proper under RCW 42.56.240(1) and Newman. In a supporting declaration, Detective Jones confirmed the investigation was ongoing:

6. Between January 18-28, 2021, I reviewed Auburn Police Department Case no. 19-11385 and confirmed that this continued to be an open and active criminal investigation. The Major Crimes Unit of the Auburn Police Department was continuing to work on this matter including but not limited to, interviewing potential witnesses and involved individuals.

7. In January of 2021, it remained vital for effective law enforcement to categorically exempt all case documents so that the release of this information would not influence the statements of involved persons or

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<sup>1</sup> RCW 42.56.240 exempts from disclosure certain investigative, law enforcement, and crime victim records.

potentially jeopardize evidence. As of January 28, 2021, this case had not been referred to a prosecutor for a filing determination.<sup>[2]</sup>

The trial court granted the City's motion and dismissed Navarro's complaint with prejudice.

Navarro made a third unsuccessful request to the City for the records in September 2022. Following litigation, Navarro received the requested records in early June 2023. The last entry in Detective Jones's report was dated October 3, 2019, and concluded:

Based on the information available at this time, there is no doubt that the listed suspect vehicle and subjects are involved in this crime. However, without the victim being able to identify the suspect, I am unable to establish enough suspect information to forward this case to the Prosecutor's Office for filing of criminal charges. I will attempt to contact Montrae and Juvenile BATTLE to see if they are willing to talk to me about this case and provide further suspect information.

Disposition: Active.<sup>[3]</sup>

Following receipt of the records, Navarro moved to vacate the order granting summary judgment under CR 60(b)(4) and argued that the City committed perjury when Detective Jones testified that the investigation was ongoing.<sup>4</sup> According to Navarro, the active investigation ceased in October 2019. In opposition, the City argued that Navarro failed to show fraud, misrepresentation, or misconduct because the case was active and open given that Detective Jones could have continued investigating up until the 2022 statute of limitations.<sup>5</sup>

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<sup>2</sup> Navarro unsuccessfully sought reconsideration.

<sup>3</sup> Detective Jones retired in May 2022.

<sup>4</sup> Navarro also cited CR 60(b)(11) but failed to argue "any other reason justifying relief."

<sup>5</sup> The City argued in the alternative that the motion was untimely and that the relief sought by Navarro was moot because he had received the requested records.

At the hearing on the motion, Auburn Assistant Chief of Police Sam Betts testified about his review of the case:

Q: . . . if a police investigation is active and ongoing, why is it important to keep those investigative records from the public? . . .

A: . . . because you'd have confidential information. . . . a confidential informant, you could have suspect information you're following-up on, evidentiary leads.

Q: . . . in your review, were there ongoing investigative work in January of 2021 and beyond, during the statute of limitations?

A: It does appear there was.

Q: Okay. And when did the—well, let me ask this: What was the underlying nature of the investigation? So was it a felony investigate?

A: It does appear to be a felony investigation, yes.

Q: And what is the applicable statute of limitations for a felony investigation?

A: In this case, it would be three years, so September of 2022.

Q: Okay. And I'll ask one other question, which is when the police report says, "Forward to OIC Postawa," what does "OIC" stand for?

A: Oic does stand for "officer in charge."

On July 12, 2023, the trial court denied the motion to vacate.

Navarro moved for reconsideration under CR 59(a) arguing the trial court accepted testimony from someone who does not have direct knowledge of the investigation and the investigation is not active. In its ruling, the trial court explained that while it discounted the weight of Betts's testimony, it was still useful for understanding the general procedures utilized when investigating cases. The trial court denied the motion finding that although it was unclear as to the reason no charges were filed, there was enough inferences and evidence to suggest an active investigation was pending before the statute of limitations expired.

Navarro appeals the order denying his motion to vacate and the order denying reconsideration and seeks costs under RCW 42.56.550(4) for the period of June 23, 2020 to June 23, 2023.

II

Navarro argues the trial court abused its discretion by denying the motion to vacate the summary judgment order. He contends that Detective Jones committed perjury when he testified the case was open and active when no work was done on the case after October 2019. We disagree.

A trial court's decision on a motion to set aside a judgment is reviewed for abuse of discretion. Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co., 176 Wn. App. 185, 195, 312 P.3d 976 (2013). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." Littlefield, 133 Wn.2d at 47. "If the trial court's ruling is based on an erroneous view of the law or involves application of an incorrect legal analysis it necessarily abuses its discretion." Dix v. ICT Grp., Inc., 160 Wn.2d 826, 833, 161 P.3d 1016 (2007).

Motions for reconsideration are addressed to the sound discretion of the trial court and a reviewing court will not reverse a trial court's ruling absent a showing of

manifest abuse of discretion. Wilcox v. Lexington Eye Inst., 130 Wn. App. 234, 241, 122 P.3d 729 (2005).

Under CR 60(b)(4), the trial court may vacate a judgment procured by fraud, misrepresentation, or misconduct. The rule is aimed at judgments unfairly obtained, not factually incorrect judgments. Sutey v. T26 Corp., 13 Wn. App. 2d 737, 756, 466 P.3d 1096 (2020). As a result, “the fraudulent conduct or misrepresentation must cause the entry of the judgment such that the losing party was prevented from fully and fairly presenting its case or defense.” Sutey, 13 Wn App. 2d at 756 (quoting Lindgren v. Lindgren, 58 Wn. App. 588, 596, 794 P.2d 526 (1990)). The fraud, misrepresentation, or other misconduct must be established by clear and convincing evidence. Lindgren, 58 Wn. App. at 596. “Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown by the evidence to be ‘highly probable.’” In re Dependency of A.N.C., 24 Wn. App. 2d 408, 414-15, 520 P.3d 500 (2022) (quoting In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995)), review denied, 1 Wn.3d 1012 (2023).

The PRA exempts from disclosure specific intelligence information and specific investigative records compiled by law enforcement, the nondisclosure of which is essential to effective law enforcement or for the protection of a person’s right to privacy. RCW 42.56.240(1). But “where the suspect has already been arrested and the matter referred to the prosecutor for a charging decision. . . the risk of inadvertently disclosing sensitive information that might impede apprehension of the perpetrator no longer exists.” Cowles Pub. Co. v. Spokane Police Dep’t, City of Spokane, 139 Wn.2d 472, 477-78, 987 P.2d 620 (1999). To determine whether an investigation is leading toward



an enforcement, we examine “(1) ‘affidavits by people with direct knowledge of and responsibility for the investigation . . .’; (2) whether resources are allocated to the investigation; and (3) whether enforcement proceeding are contemplated.” Newman, 133 Wn.2d at 573 (alteration in original) (quoting Dickerson v. Dep’t of Just., 992 F.2d 1426, 1431-32 (6th Cir. 1993)).

In Newman, the county and the Federal Bureau Investigation (FBI) had personnel assigned to the case, individuals responsible for the investigation stated the case was still open and enforcement was contemplated, and evidence suggested that the release of the requested documents would inhibit police discretion of when and how to release information. Newman, 133 Wn.2d at 574. Our Supreme Court held that information in an open investigation file is essential to effective law enforcement and thus is exempt from disclosure. Newman, 133 Wn.2d at 575. The court reasoned that requiring law enforcement to segregate documents according to importance before a case is solved could lead to the disclosure of sensitive information. Newman, 133 Wn.2d at 574.

Navarro’s reliance on Hor v. City of Seattle, 18 Wn. App. 2d 900, 493 P.3d 151 (2021), is misplaced. In Hor, this court concluded the trial court improperly excluded posttrial statements by an officer which, if deemed credible, could rise to the level of misconduct under CR 60(b)(4). Hor, 18 Wn. App. 2d at 912. But the court did not rule on the merits of the CR 60 motion. Hor, 18 Wn. App. 2d at 911.

Here, the trial court determined that Detective Jones was credible. We are not persuaded that the trial court abused its discretion by relying on Detective Jones’s testimony as the person with direct knowledge of and who was responsible for the

investigation. Nothing indicates the trial court abused its discretion by making reasonable inferences from the testimony of Assistant Chief Betts as to general procedures used when investigating cases. Resources were assigned to the case as shown by the police report and Detective Jones's testimony. Evidence also supports that for a potential felony charge, the investigation was kept open so that charges could have been filed up until the statute of limitations expired in September 2022. When Navarro requested the records, the investigation was open and active.

The trial court did not abuse its discretion by denying the motion to vacate or the motion to reconsider.<sup>6</sup>

We affirm.

Mann, J.

WE CONCUR:

Smith, C.J.

Dwyer, J.

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<sup>6</sup> Because Navarro does not prevail against the City, he is not entitled to costs.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PEDRO NAVARRO,

Appellant,

v.

AUBURN POLICE DEPARTMENT;  
THE CITY OF AUBURN,

Respondents.

No. 85651-1-I

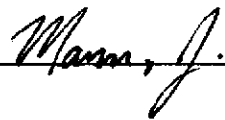
DIVISION ONE

ORDER DENYING MOTION  
FOR RECONSIDERATION

Appellant Pedro Navarro moved to reconsider the court's opinion filed on April 29, 2024. The panel has determined that the motion for reconsideration should be denied. Therefore, it is

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

  
\_\_\_\_\_

**PEDRO NAVARRO - FILING PRO SE**

**June 30, 2024 - 12:22 PM**

**Filing Motion for Discretionary Review of Court of Appeals**

**Transmittal Information**

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**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** Pedro Navarro, Appellant v. City of Auburn; Auburn Police Department, Respondents (856511)

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