APPENDIX

APPENDIX A

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[FILED AUG 2 2022]

No. 21-35436
D.C. No. 4:19-cv-05254-TOR

ANTHONY HAWORTH,

Plaintiff-Appellant,

v.

CITY OF WALLA WALLA; *ET AL.*,

Defendants-Appellees,

and

DOES, JOHN AND JANE; *et al.*,

Defendants.

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Argued and Submitted May 19, 2022
Seattle, Washington

MEMORANDUM*

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: WARDLAW, GOULD, and BENNETT, Circuit Judges. Partial Dissent by Judge BENNETT.

After being prosecuted for crimes related to the alleged sexual assault of his stepdaughter, Appellant Anthony Haworth brought this suit against the City of Walla Walla, the County of Walla Walla, and the officials involved in his criminal prosecution: Detective Marcus Goodwater, Police Chief Scott Bieber, Deputy Prosecuting Attorney Michelle Morales, and Prosecuting Attorney James Nagle. Haworth alleged violations of his rights under 42 U.S.C. § 1983 as well as various state law tort claims, including malicious prosecution. He appeals the district court's dismissal of all his claims. We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part and reverse in part.

1. We affirm the dismissal of Haworth's § 1983 claims against Detective Goodwater, Chief Bieber, and the City of Walla Walla (the "City Defendants"). Detective Goodwater is entitled to qualified immunity from Haworth's claim that he directed the complaining witness to destroy evidence because Haworth is unable to show that Goodwater acted in bad faith or that Haworth was unable to obtain comparable evidence by other means. *United States v. Sivilla*, 714 F.3d 1168, 1172 (9th Cir. 2013). Haworth was aware of the online comment that was deleted, and there is no "readily apparent" exculpatory value to an alleged victim's comment that a criminal defendant "did it." *United States v. Martinez-Martinez*, 369 F.3d 1076, 1087 (9th Cir. 2004).

Goodwater is similarly entitled to qualified immunity from Haworth's claim that he suppressed impeachment evidence by failing to timely record a conversation he had with the complainant's grandmother, who told Goodwater that her granddaughter was a pathological

liar. Although the allegedly suppressed evidence was material and favorable to Haworth, Haworth is unable to show that he was prejudiced by Goodwater's delay in reporting the conversation. *See Raley v. Ylst*, 470 F.3d 792, 804 (9th Cir. 2006).

Haworth's witness intimidation claim against Goodwater also fails as a matter of law because the facts, even when viewed in the light most favorable to Haworth, do not demonstrate that Goodwater substantially interfered with the defense's witness in a way that caused him not to testify. *Soo Park v. Thompson*, 851 F.3d 910, 919 (9th Cir. 2017). The state criminal prosecution against Haworth was dismissed before trial, and the witness cooperated in an interview with law enforcement and a deposition before the dismissal.

2. Because Goodwater's conduct does not amount to a constitutional violation, Haworth's claims against Goodwater's supervisor, Chief Bieber, and the City do not establish a constitutional violation. *See Hansen v. Black*, 885 F.3d 642, 645–46 (9th Cir. 2018); *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). The district court properly dismissed these claims, and it did not abuse its discretion by denying discovery. Haworth needed to provide specific reasons for why he could not present facts essential to oppose the motion for summary judgment. Fed. R. Civ. P. 56(d). The district court did not abuse its discretion in finding that the affidavit from Haworth's counsel for "general requests for discovery to understand witnesses' states of mind" did not satisfy this standard.

3. We also affirm the district court's dismissal of Haworth's § 1983 claims against Deputy Prosecuting Attorney Morales, Prosecuting Attorney Nagle, and the County of Walla Walla (the "County Defendants").

Morales is entitled to absolute prosecutorial immunity from Haworth's claim that she gave legal advice to Detective Loney regarding the July 2018 "do over" search warrant. Morales gave advice during the prosecutorial, not investigatory, phase. *See KRL v. Moore*, 384 F.3d 1105, 1112–13 (9th Cir. 2004). Judgment on the pleadings was proper.

Morales is entitled to absolute immunity from Haworth's claim that she personally swore a declaration in support of the warrant. She was acting pursuant to guidance from the Washington Association of Prosecuting Attorneys to correct the warrant in light of a new decision from the Washington Court of Appeals. Ensuring evidence previously collected will be admissible at trial "is no less a function of an advocate than deciding what evidence will be presented at trial." *Id.* at 1112. Providing legal background to a judge is not the function "any competent witness might have performed." *Kalina v. Fletcher*, 522 U.S. 118, 129–30 (1997). Because Morales is absolutely immune, so too is her supervising prosecutor, Nagle. *See Garmon v. Cnty. of Los Angeles*, 828 F.3d 837, 845 (9th Cir. 2016).

4. We affirm the district court's dismissal of Haworth's claims against the County of Walla Walla. Haworth includes vague references to general County policies and contends that the policies "were described in various ways in the district court," without any citation. We reject Haworth's claims because "arguments presented in such a cursory manner are waived." *Badgley v. United States*, 957 F.3d 969, 978–79 (9th Cir. 2020).

5. We reverse, however, the dismissal of Haworth's malicious prosecution claims against all Defendants. Probable cause is a "complete defense" to a malicious

prosecution tort claim in Washington. *Hanson v. City of Snohomish*, 852 P.2d 295, 298 (Wash. 1993). The district court concluded that probable cause existed at the initiation of and throughout the prosecution. But that reasoning ignores that the state trial court dismissed the criminal case against Haworth for insufficient evidence, and Washington law provides explicitly that a dismissal in favor of the criminal defendant establishes a *prima facie* case of a lack of probable cause. *Peasley v. Puget Sound Tug & Barge Co*, 125 P.2d 681, 688 (Wash. 1942). Defendants may rebut this *prima facie* case with evidence establishing probable cause, *id.*, but the district court erred by relying only on evidence that existed at the initiation of the prosecution to suggest that probable cause existed throughout the proceedings. The dissent claims that Defendants rebutted this *prima facie* case because Haworth did not offer evidence that the complainant retracted her allegation. This turns Washington's legal standard on its head. It was Defendants' burden to rebut, and they did not sufficiently do so to be awarded judgment as a matter of law.

There is a genuine dispute of material fact whether probable cause for Haworth's criminal prosecution eroded between February 2018, when the state court denied Haworth's motion to dismiss for insufficient evidence, and April 2019, when the state court dismissed the case for insufficient evidence. Haworth is entitled to discovery on these claims. We reverse the district court's dismissal of the malicious prosecution

claims against all Defendants and remand for further proceedings consistent with this decision.[1]

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

[1] The County Defendants raised prosecutorial immunity from the state law malicious prosecution claims for the first time at oral argument. The County Defendants may pursue this defense on remand, but we decline to consider it here. *See In re Pac. Pictures Corp.*, 679 F.3d 1121, 1130 (9th Cir. 2012).

BENNETT, Circuit Judge, dissenting in part:

"Probable cause exists where the facts and circumstances . . . are sufficient in themselves to warrant a man of reasonable caution in a belief that an offense has been or is being committed." *Bender v. City of Seattle*, 664 P.2d 492, 502 (Wash. 1983) (citation omitted). "Washington law provides explicitly that a dismissal in favor of the [accused] establishes a *prima facie* case of a lack of probable cause." Mem. Disp. 5 (citing *Peasley v. Puget Sound Tug & Barge Co.*, 125 P.2d 681, 688 (Wash. 1942)). "A prima facie case thus made by the plaintiff, however, may be rebutted . . . by the defendant's evidence. If it is so rebutted, then the plaintiff must *by evidence* affirmatively establish want of probable cause." *Peasley*, 125 P.2d at 688 (citation omitted). Even though the case against Haworth was dismissed, no one disputes that probable cause existed at the beginning of the proceedings. Mem. Disp. 5. And, as Haworth's counsel conceded at oral argument, Haworth offered no evidence that the accuser ever retracted her allegation against Haworth at any point in the proceedings. Oral Argument 3:30–3:59. Thus, the defendants rebutted Haworth's prima facie case and the burden of proof shifted to Haworth to show that probable cause eroded during the proceedings. But the majority, based on just the dismissal of the criminal case against Haworth, would reverse the district court's dismissal of Haworth's malicious prosecution claim. Mem. Disp. at 5–6. Because the majority applies the wrong standard, and because Haworth presented no evidence that probable cause eroded before the criminal case against him was dismissed, I respectfully dissent from this portion of the majority's disposition.

"Probable cause 'boils down, in criminal situations, to a simple determination of whether the relevant official, police or judicial, could reasonably believe that the person to be arrested has committed the crime.'" *State v. Fisher*, 35 P.3d 366, 372 n.47 (Wash. 2001) (citation omitted). "Probable cause does not require . . . guilt beyond a reasonable doubt." *State v. Neeley*, 52 P.3d 539, 543 (Wash. Ct. App. 2002). The existence of probable cause at the beginning of the proceedings against Haworth is undisputed. Mem. Disp. 5. And Haworth presented no evidence that probable cause eroded during the proceedings.

The majority's reversal of the district court contravenes Washington law. The majority finds that "[t]here is a genuine dispute of material fact whether probable cause for Haworth's criminal prosecution eroded between February 2018, when the state court denied Haworth's motion to dismiss for insufficient evidence, and April 2019, when the state court dismissed the case for insufficient evidence."[1] Mem. Disp. 6. But the majority conflates the standard and burden of proof for showing guilt with the standard and burden for showing probable cause. "There is a distinction between a finding of probable cause and a finding of guilt. The issue here is not whether [the accused] is guilty or innocent, it is whether the police and the City . . . had probable cause to prosecute." *Hanson v. City of Snohomish*, 852 P.2d 295, 299 (Wash. 1993).

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[1] The state court ruled: "NOW THEREFORE, THE COURT FINDS: Insufficient evidence exists in this case to support criminal charges, and/or sustain a conviction beyond a reasonable doubt." Thus, the court did not rule that the evidence was insufficient to support probable cause or that probable cause had eroded.

This case is analogous to *Rodriguez v. City of Moses Lake*, 243 P.3d 552 (Wash. Ct. App. 2010). In *Rodriguez*, the appellant was charged with filing a false insurance claim because she claimed that a piano, keyboard, and a jukebox were destroyed in a house fire, but the fire marshal did not notice any of those items in his investigation. *Id.* at 553. After the charges were filed, Rodriguez showed the fire marshal "an indistinct picture she claimed showed a burned piano." *Id*. at 553, 555. She also explained that the keyboard and jukebox were "in a hidden basement at the time of the fire"; the fire marshal "had not discovered the hidden basement before the house was demolished." *Id*. at 553. Rodriguez "attempted to persuade the prosecuting attorney with her evidence, but without apparent success." *Id*. at 555. The case was resolved in favor of Rodriguez, who brought a malicious prosecution claim. *Id*. at 553–54.

The court held that probable cause existed from the beginning and throughout the proceedings, and thus dismissed the malicious prosecution claim. *Id.* at 554–55. The court held that the fire marshal's investigation, in which he did not notice a piano, keyboard, or a jukebox, was sufficient to show that "probable cause existed at the time charges were filed." *Id.* at 554. Rodriguez's explanation that the keyboard and jukebox were in a hidden basement and the fact that she showed the fire marshal and the prosecutor a picture of an allegedly burned piano "did not negate probable cause" because they were "defense evidence for the fact-finder [at trial] to consider and assign weight." *Id*. at 555. The court held that "probable cause continued *until* the conflicting evidence was weighed at trial and resolved in favor of Ms. Rodriguez," and "until then, the evidence warranted a person of reasonable caution to believe an offense had been committed." *Id*.

(emphasis added). As a result, the court held that the state trial court "did not err in dismissing the malicious prosecution claim." *Id*.

As in *Rodriguez*, probable cause existed at the beginning based on the accuser's allegation against Haworth and continued until the case was dismissed because the accuser never retracted her allegation. Haworth argues that "the significant evidence that the charges against [him] are false . . . confirm[s] the lack of probable cause," apparently referring to the allegation that "Michael Torrescano . . . was having sex with [the accuser] when she claims that she was raped by Haworth." But like in *Rodriguez*, that allegation (and the other facts that may have surfaced after the criminal case started) "did not negate probable cause" because that evidence "was defense evidence for the fact-finder [at trial] to consider and assign weight." *Rodriguez*, 243 P.3d at 555. Thus, the district court did not err in dismissing the malicious prosecution claim because both at the start and through to when the case was dismissed, as a matter of law, "the evidence warranted a person of reasonable caution to believe an offense had been committed." *Id.*

Torrescano's allegation was both relevant and significant. But so too were Haworth's initial and continual denial that he had raped the accuser, and his claim that the accuser had concocted the entire allegation because "she feels [that] her mother got nothing in the divorce" from Haworth. But no one claims that Haworth's denial, no matter how "believable," either negated probable cause at the beginning of the proceeding or at any subsequent time. That is even though a trier of fact would have been able to consider and assign weight to Haworth's version of events. Despite Haworth's version of events, the

evidence was sufficient at the outset to warrant a person of reasonable caution to believe that Haworth raped the accuser. And that is so even though the *trier of fact* might have rejected the State's evidence. Both propositions were true at every stage of the proceedings against Haworth—the evidence was sufficient to warrant a person of reasonable caution in a belief that Haworth had raped the accuser, *and* the trier of fact might have rejected the State's evidence. The other evidence that surfaced here is not the type of evidence that could have ever caused probable cause to *dissipate*,[2] though it is the type of evidence that causes prosecutors to rethink initial charging decisions every day.

This point is made clear by the majority disposition and Haworth's argument. Neither identifies (nor even tries to identify) the time when probable cause supposedly dissipated.[3] What is it about Haworth's evidence that eroded probable cause? The majority concludes that there is a genuine dispute of material fact as to whether probable cause for Haworth's criminal prosecution eroded between February 2018 and April 2019. But the majority does not say *why* there is a dispute of material fact. There was always a dispute of material fact as to whether Haworth raped the accuser. There was never a dispute of material fact

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[2] Such evidence, of course, could exist. A defendant could provide conclusive proof that on the day of a supposed crime, he was halfway around the world. Or a video could show that someone else had committed the crime. But what we have here—merely a different and potentially more believable version of events—is not such "impossibility" evidence.

[3] Indeed, when asked at oral argument to identify a specific time, Haworth's counsel merely claimed that "it was at a point before the termination of litigation." Oral Argument 4:35–5:10.

as to whether the accuser maintained her claim that Haworth raped her.[4]

Imagine if this case had been a federal criminal appeal that had come before us on the denial of Haworth's Rule 29 motion for a judgment of acquittal.[5] We would have instantly found that the evidence (based on the accuser's accusation alone) was easily sufficient to sustain the conviction. How can it then be that the same evidence is *insufficient* to warrant a person of reasonable caution in a belief that Haworth raped the accuser? There was never a determination by the state court that probable cause dissipated—there was merely a determination by the prosecutor that it "would be in furtherance of justice . . . to dismiss the charges against defendant."[6]

Like Washington caselaw which the majority's disposition contravenes, the caselaw of many other states has held consistently that a determination of probable cause does not involve weighing the credibility of witnesses or evidence, unless the testimony or evidence suggests an *impossibility*. *See, e.g.*, *State v.*

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[4] The majority claims that I have "turn[ed] Washington's legal standard on its head." Mem. Disp. 6. It is the majority, however, that has done so by ignoring the plain language of the caselaw and an equally plain application of that caselaw to the facts of this case: even viewed in the light most favorable to Haworth, there was undisputed and sufficient evidence of probable cause from start to finish.

[5] *See, e.g.*, 18 U.S.C. § 2241 (aggravated sexual abuse within the special maritime and territorial jurisdiction of the United States).

[6] As noted above, the trial court made no finding that probable cause had dissipated, only determining that the evidence was "[i]nsufficient . . . to support criminal charges, and/or sustain a conviction beyond a reasonable doubt." (emphasis added).

Koch, 499 N.W.2d 152, 162 (Wis. 1993) ("The judge is not to choose between conflicting facts or inferences, or weigh the state's evidence against evidence favorable to the [criminal] defendant. Probable cause at a preliminary hearing [for a bindover decision] is satisfied when there exists a believable or plausible account of the defendant's commission of a felony."); *State v. Barker*, 888 N.W.2d 348, 353 (Minn. Ct. App. 2016) ("Probable cause exists if the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal if proved at trial. The district court must view the evidence in the light most favorable to the state and may not assess the relative credibility or weight of . . . conflicting evidence." (internal quotations and citations omitted)); *State v. Virgin*, 137 P.3d 787, 793 (Utah 2006) (For probable cause determinations, "magistrates may only disregard or discredit evidence that is wholly lacking and incapable of creating a reasonable inference regarding a portion of the prosecution's claim. It is inappropriate for a magistrate to weigh credible but conflicting evidence at a preliminary hearing[,] as a preliminary hearing is not a trial on the merits but a gateway to the finder of fact. Therefore, magistrates must leave all the weighing of credible but conflicting evidence to the trier of fact and must view the evidence in a light most favorable to the prosecution, resolving all inferences in favor of the prosecution." (cleaned up)). It is hardly impossible that Haworth raped the accuser.

Banks v. Nordstrom, Inc., 787 P.2d 953 (Wash. Ct. App. 1990), which specifically concerned whether probable cause that initially existed eroded later in the proceedings, further undermines Haworth's malicious prosecution claim. In *Banks*, a department store erroneously identified the plaintiff as a shoplifter and

notified the police. *Id.* at 955. After the plaintiff was charged with felony theft, the department store's security officer who had misidentified the plaintiff told the plaintiff that she was not the actual shoplifter. *Id*. The parties disputed whether the department store notified prosecutors of the plaintiff's innocence before the date when the charges were dismissed. *Id*. at 958. The state trial court granted summary judgment to the department store on the plaintiff's malicious prosecution claim, but the Washington Court of Appeals reversed and remanded because "the circumstances surrounding the continuation of the proceeding against [plaintiff] are disputed" and thus "whether there was a want of probable cause is for the jury." *Id*.

Unlike Haworth's case, *Banks* concerned "a party that properly instituted or procured the institution of criminal proceedings [and] subsequently became aware *of the defendant's innocence*." *Id*. at 956 (emphasis added). In *Banks*, the department store conceded to the plaintiff that it was aware of her innocence. *Id*. at 955. But here, the accuser claimed throughout the proceedings below that Haworth had raped her and never recanted her accusation. Although evidence surfaced later that may have cast doubt on her claims, no evidence indicated that the prosecution "knew" that Haworth was innocent. Instead, as in *Rodriguez*, Torrescano's allegation "did not negate probable cause" because "it was defense evidence for the fact-finder to consider and assign weight." *Rodriguez*, 243 P.3d at 555.[7] Haworth has failed to show that probable cause eroded during the proceedings.

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[7] I have found no Washington state case that has held that probable cause has "eroded" (or even can "erode") during a proceeding in which a victim never recanted a "personal knowledge"

Finally, even though the majority's decision is non-precedential, it carries a significant cost. We, of course, always want prosecutors and law enforcement officers to be concerned about whether the charges they are about to bring or have brought are appropriate and supported by the evidence. But do we really want them to fear malicious prosecution claims when deciding, for example, whether to charge or continue to charge a suspect based on a woman's rape claim because the suspect proffers evidence questioning her credibility and claims that she had had sex with a different person or other people?[8]

For these reasons, I respectfully dissent in part.

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accusation against the accused. And Haworth has cited no such case.

[8] The district court stated that Haworth "argues throughout that Goodwater intentionally ignored, failed to document, or failed to believe different witness accounts, particularly reports that [the accuser] was not credible or was sexually promiscuous." As the district court correctly noted: "[W]hether or not [the accuser] was sexually promiscuous is not relevant or admissible in this sort of prosecution."

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[FILED OCT 4 2022]

No. 21-35436
D.C. No. 4:19-cv-05254-TOR
Eastern District of Washington, Richland

ANTHONY HAWORTH,

Plaintiff-Appellant,

v.

CITY OF WALLA WALLA; *et al.*,

Defendants-Appellees,

and

DOES, JOHN AND JANE; *et al.*,

Defendants.

ORDER

Before: WARDLAW, GOULD, and BENNETT, Circuit Judges.

A majority of the panel has voted to deny Defendant-Appellees' Petition for Panel Rehearing. Judge Bennett would have granted the petition. Defendant-Appellees' petition for panel rehearing, filed August 30, 2022, is DENIED.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. 4:19-cv-5254

ANTHONY HAWORTH

Plaintiff,

v.

CITY OF WALLA WALLA; AND MARCUS GOODWATER, INDIVIDUALLY, AND IN HIS CAPACITY AS AN EMPLOYEE OF THE CITY OF WALLA WALLA; AND SCOTT BIEBER, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF CITY OF WALLA WALLA; AND, WALLA WALLA COUNTY; AND MICHELLE MORALES INDIVIDUALLY, AND IN HER CAPACITY AS AN EMPLOYEE OF WALLA WALLA COUNTY; AND, JAMES NAGLE, INDIVIDUALLY, AND IN HIS CAPACITY AS AN EMPLOYEE OF WALLA WALLA COUNTY; AND, JOHN / JANE DOE EMPLOYEES OR AGENTS OF CITY OF WALLA WALLA; AND, JOHN / JANE DOE EMPLOYEES OR AGENTS OF WALLA WALLA COUNTY,

Defendants.

William A. Gilbert, WSBA #30592
Gilbert Law Firm, P.S.
421 W. Riverside Ave, Suite 353
Spokane, WA 99201
T: 509·321·0750
F: 509·343·3315
E: bill@wagilbert.com

Attorney for Plaintiff

COMPLAINT FOR DAMAGES

Comes now the Plaintiff, ANTHONY HAWORTH, by and through his attorneys, William A. Gilbert and Gilbert Law Firm, P.S. and alleges:

I. INTRODUCTION

1.1 This case arises out of the malicious prosecution of ANTHONY HAWORTH, violations of his Constitutional Rights, and related torts as committed by all defendants. The claims are brought under 42 USC 1983, and 1985 and governing State and Federal statutory and common law over which this court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

1.2 All administrative and statutory prefiling requirements have been met, and this case is properly before this Court.

II. PARTIES

2.1 Plaintiffs re-allege paragraphs 1.2 as though fully set forth herein.

2.2 At all times relevant hereto, Plaintiff, ANTHONY (TONY) HAWORTH, was over the age of majority, and resided in Franklin County, State of Washington.

2.3 Defendant WALLA WALLA COUNTY is a municipal corporation organized under the laws of the State of Washington.

2.4 Defendant, CITY OF WALLA WALLA is a municipal corporation organized under the laws of the State of Washington.

2.5 Defendant MARCUS GOODWATER was at all times relevant hereto, over the age of majority, employed by the CITY OF WALLA WALLA, and acting as an agent for CITY OF WALLA WALLA, and

WALLA WALLA COUNTY, and was a resident of Walla Walla County, State of Washington.

2.6 Defendant SCOTT BIEBER was at all times relevant hereto, over the age of majority, employed by the CITY OF WALLA WALLA, and acting as an agent for CITY OF WALLA WALLA, and WALLA WALLA COUNTY, and was a resident of Walla Walla County, State of Washington.

2.7 Defendant MICHELLE MORALES was at all times relevant hereto, over the age of majority, employed by WALLA WALLA COUNTY and was a resident of Walla Walla County, State of Washington.

2.8 Defendant JAMES NAGLE was at all times relevant hereto, over the age of majority, employed by WALLA WALLA COUNTY and was a resident of Walla Walla County, State of Washington.

2.9 Upon information and belief, defendants JOHN and JANE DOE were at all times relevant hereto, over the age of majority, employed by WALLA WALLA COUNTY or the CITY OF WALLA WALLA.

III. JURISDICTION AND VENUE

3.1 Plaintiffs re-allege paragraphs 1.1 through 2.9 as though fully set forth herein.

3.2 This is a Complaint for violation of Plaintiff ANTHONY HAWORTH's Constitutional Rights (42 U.S.C. § 1983; 1985) over which this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has supplemental subject matter jurisdiction of related state-law claims under 28 U.S.C. § 1367.

3.3 This Court has personal jurisdiction over all parties as they *reside* in the Eastern District of Washington.

3.4 Venue is Proper in the Eastern District of Washington as the cause of action arises out of the acts or omissions of the Defendants that took place in Franklin and Walla Walla County, which lay within the jurisdictional bounds of the Eastern District of Washington; and all Defendants reside in the Eastern District of Washington.

3.5 Administrative Exhaustion: All statutory administrative requirements have been met, and this claim is ripe for review by this Court.

IV. FACTS

4.1 Plaintiffs re-allege paragraphs 1.1 through 3.5 as though fully set forth herein.

4.2 The factual assertions herein were known by the Defendants prior to charging TONY HAWORTH; or in the alternative, were facts acquired during the pendency of the criminal case. The Defendants are in possession of corresponding statements and evidence; and were in possession of the statements and evidence throughout the period of the malicious prosecution of TONY HAWORTH.

4.3 TONY HAWORTH is employed as a City of Pasco police officer. He has been so-employed since July 2012.

4.4 TONY grew up in Othello, Washington. Growing up, TONY was a good student, and an active member of his church and community. He was also active in extracurricular activities, and achieved the rank of Eagle Scout in the Boy Scouts.

4.5 After high school, TONY joined the Marine Corps. While in the Marine Corps, TONY served two tours in Iraq, including combat operations in Fallujah.

4.6 After TONY was discharged from the Marine Corps, the decorated Marine sought a career in law enforcement. He has been so employed for 14 years; six years with Franklin County S.O., and eight with Pasco P.D..

4.7 While enlisted in the Marine Corps, TONY met and married Christina Najdowski-Skaggs. When they married in 2003, Christina had two daughters from a previous marriage, Alix (8 y/o), and Cassidy (6 y/o). TONY took the girls in, and treated them as his own children.

4.8 After TONY was honorably discharged from the Marine Corps, the family moved to the Tri-Cities, where TONY was hired as a sheriff's deputy by the Franklin County Sherriff's Office.

4.9 TONY spent six years working for Franklin County. Christina's daughters, Alix and Cassidy, lived with TONY and Christina during this period. The family also expanded, with TONY and Christina adding two daughters of their own.

4.10 TONY's marriage to Christina was marred by Christina's addiction and psychological issues. Christina is a severe alcoholic who suffers from mental illness. In addition to diagnosable DSM IV-V conditions, Christina's mental illness manifests in habitual nocturnal behavior. She would stay up all night, and sleep most of the day. During her waking hours, she drank alcohol. This typically left Christina in a state of almost perpetual intoxication.

4.11 Christina's problems with mental illness and alcohol abuse increased over time. It got to the point that she could not care for herself, let alone her children. She would drink heavily and forget where the two younger girls were. She would drink until she

passed out, leaving the girls at school or neglecting them while TONY was at work.

4.12 When Christina was intoxicated or asleep, Alix and Cassidy often took care of the younger girls.

4.13 As one would expect, Christina's almost incessant state of intoxication and mental illness issues gradually destroyed the marriage.

4.14 In the spring of 2015, the marriage began to completely unravel. Seeking support for herself, and an ally in the ongoing marital struggle, Christina reached out to Alix and involved Alix in the marital strife.

4.15 Prior to this, TONY and Alix always had a very good relationship. As soon as Christina communicated the marital concerns with Alix, she (Alix) stopped communicating with TONY. Christina acknowledged to TONY that this was her fault because she had enlisted Alix to take sides against him.

4.16 In August, 2015, after numerous attempts to get Christina to address her alcoholism and mental illness, TONY gave Christina one last opportunity to stop drinking and possibly salvage the marriage by agreeing to inpatient rehabilitation.

4.17 When Christina left rehab, got drunk, and found her way back home, TONY filed for divorce.

4.18 When TONY filed for divorce in October, 2015, Christina immediately reached out to her daughter Alix for help. Alix was serving in the U.S. Air Force in Texas.

4.19 Alix was keenly aware that her mother could not take care of herself, and would never be given custody of the children, or the home, in any divorce. This caused Alix a great deal of stress. Alix conveyed

her concern about this to her sister, Cassidy. Alix went so far as to say she was going to try to get custody of the two younger girls herself, and make sure her mother, Christina, was taken care of.

4.20 Within two weeks of TONY filing for divorce, Christina and Alix concocted a story they believed would force TONY to pay Christina money, give Christina custody of the two younger girls, and forfeit the family home to Christina in the divorce. Their plot involved an allegation that TONY molested and raped Alix when she was a minor.

4.21 Christina and Alix first shared this story to a family friend, Erin McKever, within days of TONY filing for divorce.

4.22 According to Erin McKever, she was contacted one evening by Christina and asked to come to the Haworth residence. It was obvious to Erin that Christina was intoxicated when she called. When Erin arrived at the Haworth residence, Christina opened the door and promptly fell on the ground (drunk).

4.23 After Erin arrived at the Haworth residence, Alix called to speak to Erin and Christina. According to Erin, Alix appeared to be intoxicated as well.

4.24 During this telephone conversation between Alix and Erin, Alix told Erin several different versions of the concocted story about TONY allegedly molesting and raping her. Through the course of the conversation the story changed numerous times. Alix couldn't keep her story straight. The more she talked the bigger the story became – and the more the story changed.

4.25 Each time Erin asked Alix specific questions, the story would change. When she asked Alix why she had not reported this, Alix said she would report it

"when the time is right." The intoxicated Alix repeatedly told Erin that "Tony was supposed to take care of my mom for the rest of her life . . . he's not going to do that, so I am going to punish him for that."

4.26 In the end, Erin found Alix's story unbelievable.

4.27 After the conversation with Alix and Christina, Erin immediately took measures to ensure TONY was aware of the allegations.

4.28 When TONY found out what Alix and Christina were saying, he did the last thing the two conspiring women expected; he reported the allegation to his supervisors at the Pasco Police Department ("Pasco P.D.").

4.29 Pasco P.D. reviewed the allegations and determined they were not credible.

4.30 The divorce was finalized in February, 2016. TONY was awarded possession of the house, along with full custody of the two younger girls.

4.31 Spousal support payments established during the dissolution were scheduled to continue through March 15, 2017.

4.32 Notably, during the divorce proceedings, neither Christina nor Alix said anything more about their allegation that TONY had molested and raped Alix.

4.33 Following the divorce, Christina began making drunken threats to kill TONY and his new girlfriend. Ultimately, a criminal investigation was conducted into the threats, and a restraining order was entered prohibiting Christina from having any contact with TONY or his girlfriend.

4.34 Christina violated the order and again made threats to kill the couple. Christina was arrested and jailed for violating the Order. Thereafter, she again violated the order, and was again jailed, this time over the Thanksgiving holiday in 2016. When released, she ignored her release restrictions, and refused to appear for hearings. Warrants were issued for her arrest.

4.35 Christina then moved out of state. She recently returned to the Tri-Cities where she was arrested and jailed on active warrants. When arrested she was so intoxicated that she had to be hospitalized. This is the reporting party that started this entire investigation.

4.36 Per the divorce decree, TONY stopped paying the spousal support on or about March 15, 2017. Two weeks later, an intoxicated Christina Haworth called Benton and Franklin County Support, Advocacy, Resource Center (SARC) and made a report that Alix had been raped by TONY when she was a minor. SARC told Christina that because Alix was an adult, Alix would have to report this herself.

4.37 Christina called Alix and talked her into calling SARC.

4.38 A SARC representative spoke with Alix and sent a report to the Franklin County Prosecutor. Recognizing it had a conflict, Franklin County sent the case to Walla Walla County for investigation. Walla Walla County prosecutors contacted the Walla Walla Police Department, who assigned Detective, MARCUS GOODWATER to the investigation.

4.39 On March 27, 2017, GOODWATER interviewed Alix via telephone.[1] During the 20-minute

[1] Although not unheard of, interviewing an alleged victim of an alleged molestation / rape over the phone is not a recommended

interview, Alix told GOODWATER she was touched inappropriately between age 14 and 19, and raped by TONY in November, 2011 when she was 17.

4.40 Although Alix's story changed repeatedly thereafter, the gist of the allegations reported to GOODWATER were that the molestation allegedly occurred between age of 14 and 19, and the rape allegedly occurred when Alix was 17, on or about November 5, 2011, while her mother, Christina, was out of state at a wedding.

4.41 Based solely on the statement from Alix, about an alleged sexual assault she stated took place six years prior to her interview, GOODWATER sought and received a search warrant for the Haworth residence. The search warrant allowed officers to search the residence for computers, cell phones, and electronic data storage devices. The warrant was signed by Walla Walla County Superior Court Judge John Lohrmann. That search warrant was later determined to be constitutionally overbroad, and was suppressed.

4.42 In addition to GOODWATER requesting and obtaining a constitutionally overbroad search warrant, Walla Walla Police officers violated TONY HAWORTH's constitutional rights during the search of the Haworth residence, by, without limitation,

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practice in police work. Every officer asked about this under oath in the criminal prosecution of this case agreed that the preferred method would be to conduct the interview in person. There are a multitude of reasons why, for example: (1) you cannot make a credibility assessment over the phone (93% of communication is nonverbal); (2) you cannot effectively control the interview over the phone; (3) you have no idea what else is happening in the room where the speaker is located – are they being coached, do they have notes, what's going on?

intentionally exceeding the scope of the search warrant.

4.43 During the preparation for service of the search warrant, GOODWATER had advised officer(s) to intentionally exceed the scope of the warrant by searching for evidence not identified in the warrant, and searching in locations outside the scope of the warrant. (Discussed further *infra.*)

4.44 The search warrant resulted in the confiscation of a desktop tower computer, several cell phones, other electronic devices, and mobile data storage devices.

4.45 The tower computer was a device the entire family used to store data. This would include a shared iTunes account. The cell phones were part of a family sharing plan, used by Alix, Christina, Cassidy, and TONY. The family sharing plan allowed these phones to interact between one another depending on the settings of the phones. This allowed text messages and other electronic messages sent over one phone to appear on one of the other phones without that phone being an actual addressee for the message. This was an important fact in the case that was vetted thoroughly by the TONY's computer forensic experts. This fact was ignored or contested by GOODWATER and MORALES at every phase of the case.

4.46 During the search of the seized electronics, GOODWATER located numerous nude and sexually explicit images Alix had taken of herself ("selfies"), and distributed widely across the internet to young men and women.

4.47 According to witnesses in the case, Alix enjoyed taking nude selfies posing in compromising sexual positions such as while masturbating. Witnesses

have confirmed that Alix sent hundreds of these images out via text message and other electronic means to boys / men and women. GOODWATER and MORALES were aware of this evidence, and ignored it.

4.48 A number of these selfie images of Alix in various sexual poses were found in the unallocated space of a backup of a cell phone that was located on the hard drive on a desktop computer used by the entire family—including Alix. The cell phone was an old phone that had been previously used by TONY.

4.49 Alix' sister, Cassidy, later declared, under oath, that she had found nude images of Alix on iPods that she was checking for such things before they were passed down to her younger sisters. GOODWATER and MORALES were aware of this evidence, and ignored it.

4.50 A close friend of Alix, whom Alix had initially suggested GOODWATER interview[2], has stated that she was present with Alix on a number of occasions when Alix was either taking these sexually charged images, or sending them to boys / girls who were asking for them.

4.51 One of the young males to whom Alix had sent nude images has testified that Alix sent him hundreds of nude and sexual images. GOODWATER and MORALES were present for this testimony, and ignored it.

4.52 Alix was over the age of 18 when she took the nude images of herself. There was nothing illegal about being in possession of these images. Walla Walla

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[2] GOODWATER did call her, but when it appeared she was not going to be helpful, and may actually provide information helpful to TONY, he stopped the interview.

Police detectives testified that being in possession of the photos was not a violation of the law. GOODWATER and MORALES incorporated the images into the charging decision regardless.

4.53 Despite focused efforts to do so, Walla Walla was never able to establish how or when the images ended up in the location where they were discovered. In fact, when questioned about this very issue, the Walla Walla police detective with specialized computer forensic training who located the evidence testified, under oath, that the only thing he could determine with any certainty was where he located the images; which were not illegal to possess. GOODWATER and MORALES were present for this testimony, and ignored it.

4.54 Contrary to the State's position, forensic experts hired by TONY were able to ascertain a number of ways the images could have found their way into the unallocated space on the phone at issue; including ways that the holder of the phone would not even be aware that the images were there. GOODWATER and MORALES were aware of this, and either disbelieved the scientific proof, or discounted it.

4.55 During the execution of the search warrant the police searched the attic, removed insulation, and found a hole approximately 1-inch in diameter in the attic wall adjoining Alix's bedroom. It was Walla Walla's contention, based upon a story told by Alix, that TONY had used the hole to watch Alix in her room. Police officers executing the warrant specifically went to the attic seeking this evidence even though this was not mentioned in the search warrant application, or authorized by the search warrant.

4.56 Walla Walla P.D. officers failed to follow even the most fundamental investigative protocols in their analysis of this hole in the attic as potential evidence of a crime. In this regard, without limitation, GOODWATER failed to recognize, or, if he did recognize, to disclose: (1) there were several similar holes in Alix's walls – and all the walls in the house for that matter; (2) it would be nearly impossible to put one's face close enough to the hole in question to observe anyone in the room; (3) insulation covering the hole would leave glass rash on anyone who actually stuck their face on the wall; (4) in order to observe Alix, TONY would have to leave the residence, put a ladder up in the garage to the attic entrance, climb up the ladder, creep into position, spy on her through the hole in the wall, then climb back down the ladder, put the ladder away, and reenter the home, all without anyone noticing his absence or activity; (5) there were items of evidence found in the insulation – including part of an eyeglass frame that belonged to Alix.

4.57 Not surprisingly, Alix later changed her story about this hole. In the revised version, she stated the hole had always been covered by a poster. Images of her bedroom confirmed this. She stated the hole was only uncovered by said poster for a day or two – and her parents were gone during that period. She also stated she was not aware of TONY ever looking through the hole or anyone taking photos through said hole. This contradicted what GOODWATER and MORALES had presented to the Court. As this Complaint suggests, this was just one of many, many examples of Alix changing her stories in this case. Despite this obvious problem, GOODWATER and MORALES pressed on with related criminal claims ignoring the growing mountain of evidence that suggested Alix was not credible . . . and TONY was innocent.

4.58 Although fully aware of the new contradiction created by Alix's ever changing story, MORALES failed to come forward and notify the Court.

4.59 After executing the search warrant, GOODWATER interviewed a handful of witnesses whom Alix had said may have credible information to support her allegation of being molested and raped.

4.60 Not a single witness with actual personal knowledge of any relevant issue of circumstance supported Alix's story – not one. Despite this fact, GOODWATER and MORALES pressed on with related criminal claims for eighteen months before Walla Walla withdrew from the case – which was thereafter dismissed with prejudice for lack of probable cause.

4.61 One of the witnesses Alix initially told GOODWATER to speak with was a male friend from high school whom Alix said she spent time with the morning after the alleged rape. Alix told GOODWATER she went with this witness to the witness' grandparents' farm, where he did chores; and thereafter they talked, and she cried, and she said he knew she was upset. GOODWATER never interviewed this witness, but Sgt. Warren did during his Internal Affairs investigation for Pasco P.D.; as did TONY's attorneys. The witness reported: Alix was lying; his grandparents did not own a farm; he never did chores; and he recalls no such incident where he and Alix talked in his truck and Alix cried.

4.62 When the above was reported to GOODWATER and MORALES, GOODWATER called the witness and actually argued with him about what he recalled. Despite this contradicting witness information,

GOODWATER and MORALES pushed forward with the case.

4.63 Another witness that GOODWATER failed to interview early in the case was a prior boyfriend of Alix. This young man dated Alix for approximately two years after the alleged rape and was very familiar with the Haworth family. After being interviewed by the TONY's attorneys, this witness provided a sworn declaration wherein he stated:

4.63.1 "While we were dating, and even for a period after we were no longer dating, Alix would regularly send me "selfie" pictures of herself posing naked, and sometimes masturbating, or doing other provocative things in front of the camera."

4.63.2 "I also photographed Alix a few times while we were dating. In this regard, it is my understanding that a question has arisen about a photograph that was found on the home computer in Alix' family's house. I have been provided a copy of the photograph and have been asked if I can identify it. The photograph at issue is attached to my declaration as exhibit A. To clear up any confusion about that picture, I took that photograph with Alix's phone while we were dating."

4.63.3 "I am aware that Alix has made allegations that her step-father, Tony, molested her. At one point in our relationship, Alix and I were having some difficulty and she told me that the reason she was struggling is because she had been sexually assaulted – But it was not by Tony. She told me she was molested or assaulted by a guy who was the son of a friend of Tony's. She said when Tony found out he went directly to the offender's father and

confronted him. Alix said nothing else ever came of it, and she was unhappy about that."

4.63.4 "When I read the news articles about Tony being accused of molesting Alix, I was a shocked. Alix had never mentioned anything to me, and I had never personally observed any inappropriate behavior on the part of Tony Haworth."

4.63.5 "When I was dating Alix we had some issues with trust. She was dishonest with me on a few occasions. Ultimately this was part of the reason the relationship ended."

4.64 Neither GOODWATER nor MORALES ever made an effort to speak with the ex-boyfriend who provided the declaration. They just ignored the declaration and pushed forward with the case.

4.65 Another witness Alix told GOODWATER to interview was a close friend of Alix during the relevant period. Alix told GOODWATER she told this witness what happened the day after the event. GOODWATER called this witness before charges were filed. The witness denied Alix ever telling her that TONY had molested or raped her. When the witness began talking about credibility issues with Alix, GOODWATER cut the interview short; later explaining that he did so because the witness did not appear to be helpful, and he did not want the witness to tip TONY off about the investigation. GOODWATER, MORALES and NAGLE (MORALES' boss) pushed forward with the case despite the contradictions of this witness, and obvious concerns of credibility of the alleged victim.

4.66 One of the witnesses GOODWATER did interview was Erin McKever. Erin was a family friend. She was the person Alix and Christina first told the big story to. In interviews conducted by TONY's attorneys,

Alix confirmed that she believed Erin McKever to be an honest and trustworthy person.

4.67 When GOODWATER interviewed Erin, she told him that Alix is not credible. She told GOODWATER about the phone call in 2015 when Alix and Christina first revealed the rape allegation to Erin. Erin explained to GOODWATER that during that phone call, Alix couldn't keep her story straight. Erin gave GOODWATER examples of some of the variations of the stories Alix told during the phone call in October, 2015, including, without limitation: TONY had sex with Alix "a few times"; then, it "only happened once"; it happened in Alix's bedroom; then, it happened in the master bedroom suite; then, it happened in her sister's room and TONY thought she was her sister. It was a tangled mess of lies.

4.68 Erin McKever also told GOODWATER that during that October 2015 phone call, Alix said she was angry at TONY, and she was going to punish TONY for divorcing Christina. When Erin confronted Alix about why she hadn't said anything to anyone about this alleged rape / molestation, Alix told her she was going to report this "when the time is right". This added to Erin's concern that this entire story was about a vendetta, and had no merit whatsoever. Erin told GOODWATER she found the entire phone conversation to be suspect, and that she did not find Alix to be credible. Despite this damning evidence regarding the credibility of Alix and her stories, GOODWATER, MORALES, and NAGLE pushed forward with the case.

4.69 After the search warrant was executed on the Haworth residence on March 7, 2017, TONY agreed to be interviewed by GOODWATER. During this process, TONY provided GOOODWATER with a list of

witnesses whom TONY believed had relevant information that would help GOODWATER to complete his investigation and would exonerate TONY of any wrongdoing.

4.70 As was his pattern throughout the case, GOODWATER ignored most of the witnesses provided by TONY; including what turned out to be the most critical witnesses in the case, Michael Torrescano; who was with Alix the night she allegedly was raped by TONY.

4.71 After conducting the handful of interviews that contradicted Alix's story and called into question her credibility; and reviewing the data from the computers seized in the March 7, 2017 search warrant (the images), GOODWATER made a charging recommendation to the Walla Walla County Prosecutor's Office recommending that TONY be charged with multiple felonies.

4.72 Based solely on the unreliable story told by Alix, and a handful of images found buried in the backup of a phone drive on a tower computer used by the entire family, Walla Walla County charged TONY HAWORTH on May 25, 2017 with Rape (3rd Degree), Indecent Liberties, Incest in the First Degree, and Voyeurism.

4.73 Walla Walla County Prosecutor JAMES NAGLE personally signed the charging Information.

4.74 The charges were amended four times during the course of the case as a result of errors by Walla Walla County Prosecutors in their understanding of applicable statutes of limitation, and charging elements.

4.75 NAGLE is an experienced prosecutor; he knew or should have known when he filed the Information

that certain of the crimes charged were barred by the applicable statute of limitations, yet he pled the charges anyway.

4.76 When TONY was charged he was immediately suspended by Pasco P.D.. He was forced to give up his badge and his guns; told he could not communicate with anyone on his witness list – including family, friends, and coworkers; and was restricted to Franklin County.

4.77 Washington State Child Protective Services opened an investigation into the case and sent a special investigator to determine if the allegations had merit; and if the two younger girls residing with TONY were in any danger if they stayed with their father. After a thorough investigation, CPS determined there was no risk in leaving the young girls with TONY; which can be interpreted to mean that the CPS investigator did not believe the story Alix had told – otherwise he would never have left two young girl in a residence with a man he believed to be a child molester / rapist. GOODWATER and MORALES were aware of this fact, and ignored it.

4.78 When charges were filed, the media coverage was substantial. A story of a local police officer charged with heinous crimes, including incest, and rape of a child, was front page news.

4.79 Walla Walla County assigned deputy prosecutors, MICHELLE MORALES and Jill Peitersen to the case. MORALES was lead counsel. Peitersen was present at all hearings and interviews related to the case, but very obviously did not have decision making authority in the case – MORALES' was in charge.

4.80 During one of the first meetings with MORALES and Peitersen, TONY'S lead attorney told

the pair of prosecutors that if they could show him one piece of credible evidence that supported the charges pled, he would withdraw from the case. TONY's lawyers repeated this several times throughout the course of litigation, including letters addressed directly to WALLA WALLA COUNTY elected prosecutor JAMES NAGLE.

4.81 During the pendency of their control of the case, WALLA WALLA never did come forward with any credible evidence that TONY had committed the crimes charged. Instead, WALLA WALLA exercised some effort to make sure exculpatory evidence that TONY did not commit the crime was never turned over to TONY's attorneys.

4.82 After the Information was filed, GOODWATER went on what could best be described as a personal mission to convict TONY HAWORTH.[3]

4.83 In the opening weeks of the litigation of this case, GOODWATER instructed the alleged victim, Alix Skaggs, to delete evidence from her computer and the internet to prevent TONY's attorneys from getting said information.

4.84 Telling Alix Skaggs to delete evidence to prevent TONY's lawyers from getting their hands on it had the desired effect on Alix Skaggs. Thereafter, Alix recognized that if there was evidence that could prove she was lying, or help TONY in some way, she needed to get rid of it. Within a few months, a laptop

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[3] Of note here is a message that later surfaced wherein MORALES and GOODWATER are discussing the fact that TONY HAWORTH had hired two lawyers. MORALES commented that because he had hired two lawyers it meant TONY was guilty for sure.

computer, cell phone, and journal containing relevant evidence all disappeared.

4.85 In addition to statements from witnesses taken prior to the charging decision which called into question the veracity of Alix Skaggs' story, within a few weeks of the filing of the Information, GOODWATER received reports from family and friends of Christina Haworth and Alix Skaggs that neither Alix, nor Christina are trustworthy people.

4.86 One such report came via phone call from Alix Skaggs' maternal grandmother (Christina's mother), who reported that this entire story was a sham, and neither Alix, nor Christina could be trusted.

4.87 It was later discovered GOODWATER had passed this information on to NAGLE and MORALES, but neglected to record it in any follow-up report, or make sure the information was passed on to the TONY's attorneys.

4.88 Incredibly, GOODWATER secreted the exculpatory witness reports until it was discovered by TONY's attorneys that these witnesses had communicated with GOODWATER and JAMES NAGLE, at which time, TONY's attorneys confronted MORALES - and GOODWATER was forced to turn this evidence over. (It is important to note here that this potentially exculpatory evidence was not turned over until after the original trial date had been continued. Had trial not been continued, the evidence would not have been available to TONY HAWORTH at trial.)

4.89 This was GOODWATER's pattern throughout the case; he played hide and seek by failing to timely disclose witness interviews, investigative search warrants and warrant returns, and communications with Alix Skaggs.

4.90 On several occasions, GOODWATER and WALLA WALLA COUNTY Prosecutors withheld exculpatory information until after the scheduled trial date. On several occasions, after a continuance of the trial date, TONY's attorneys discovered the State was harboring this exculpatory information and called them out on the issue, forcing them to disclose the evidence.

4.91 When confronted under oath about one specific instance of secreting evidence, GOODWATER exclaimed that he did not believe the information was "evidence" and therefor he had no duty to preserve it, or disclose it. MORALES sanctioned this behavior.

4.92 On another occasion, GOODWATER explained his failure to timely disclose information favorable to TONY HAWORTH by stating that his investigation was incomplete. It was his position that he did not have to turn over witness interviews or evidence until his investigation into relevant matters was complete – regardless if the information was exculpatory, and regardless if holding it meant TONY HAWORTH would not have the evidence for trial.

4.93 Obviously, this is not the law – but appears to be a policy or sanctioned standard practice with Walla Walla P.D., and the Walla Walla County Prosecutor's office. There is no other logical explanation for this when MORALES and NAGLE were fully aware of GOODWATER's actions in this regard and did nothing to correct it, effectively sanctioning this behavior through their inaction.

4.94 The secreting or delaying disclosure of relevant evidence by MORALES and GOODWATER persisted throughout the case, and caused several trial delays,

prejudicing TONY HAWORTH and interfering with his due process rights and speedy trial rights.

4.95 In addition to the secreting or destroying of evidence, during the pendency of the case, Defendants engaged in repeated violations of TONY HAWORTH's constitutional rights.

4.96 In addition to violating the constitutional rights of TONY HAWORTH throughout the pendency of the criminal litigation, the Defendants named herein also violated the constitutional rights of witnesses involved in the criminal case.

4.97 As indicated above, Defendants executed an illegal search warrant on TONY's residence. The Trial Court initially found that officers exceeded the scope of the March 7, 2017 search warrant and suppressed certain evidence. The Court later determined that the warrant was overbroad on its face, and suppressed the search warrant in its entirety.

4.98 This particular constitutional violation was intentional, and was planned by GOODWATER prior to the execution of the warrant.

4.99 As indicated above, the March 7, 2017 search warrant allowed officers to search for, and seize, electronic devices capable of creation and storage of data. This would include computers, cell phones, and data storage devices.

4.100 Prior to executing the March 7, 2017 search warrant, CITY OF WALLA WALLA police detectives met and went over the search warrant and discussed how the warrant was to be executed. GOODWATER was in charge of the team of officers assigned to execute the warrant and search the residence.

4.101 During the planning meeting, GOODWATER advised officers to intentionally exceed the scope of the warrant. Specifically, GOODWATER advised officers to enter the attic of the garage, remove insulation, and search for holes in the walls which could be used for peeping into adjoining rooms. The search warrant did not authorize this search; GOODWATER was fully aware of this when he advised the officers to exceed the scope of the warrant.

4.102 When confronted about this under oath, GOODWATER and other officers testified, in essence, that it was their practice / policy that once the search warrant was issued, they understood the warrant to give them carte blanche authority to search the entire residence and curtilage for anything that may assist them in their investigation, regardless of what the four corners of the search warrant actually directed.

4.103 This policy / practice violates the constitutional rights of not only TONY HAWORTH, but also those of any citizen of the CITY of WALLA WALLA who becomes the target of a WALLA WALLA P.D. search warrant.

4.104 After exceeding the scope of the already overbroad March 7, 2017 search warrant, GOODWATER, under the direction of MORALES, violated TONY's Constitutional Rights again on January 4, 2018, when he sought a second search warrant to access TONY's Apple account information. . GOODWATER did not obtain this search warrant from the Franklin County trial judge, Judge Swanberg. He instead went to Judge Lohrmann in Walla Walla; the judge who signed the unconstitutionally overbroad March 7, 2017 search warrant.

4.105 The January 4, 2018 search warrant ordered Apple Corporation to turn over data it had in its possession regarding TONY's cell phones. This warrant was obtained two weeks before trial, and seven months after the original Information was filed. GOODWATER and MORALES kept the fact of the issuance of this warrant a secret until just before trial. As a result of this, trial was again delayed.

4.106 The January 4, 2018 search warrant was clearly a fishing expedition. The Government was two weeks out from trial and did not even have sufficient evidence to support charging TONY HAWORTH, let alone convict him. In desperation, GOODWATER and MORALES pulled out all the stops. Predictably, the search warrant resulted in no evidence of criminal activity.

4.107 By this point in the case, TONY's attorneys had repeatedly pointed out unethical and illegal conduct of MORALES and GOODWATER to the Court.

4.108 At one point, after a particularly heated Court appearance where TONY's attorneys raised concerns about the ethics of MORALES and GOODWATER, MORALES advised TONY's lead attorney that the case had now become "personal" for her, because the defense team had called into question her ethics.

4.109 The same stood true for GOODWATER. Defense Counsel called out GOODWATER on his ethics and credibility several times during the case; repeatedly embarrassing him by catching him prevaricating, or misrepresenting facts on the stand, under oath. This obviously angered GOODWATER.

4.110 At one such hearing, TONY's attorneys put the Court on notice that they intended to bring a *Brady* Motion[4] to address GOODWATER's misconduct.

4.111 GOODWATER was standing right next to MORALES when that issue was brought to the Court's attention. He was explicitly aware that TONY and his attorneys were calling him out – and seeking to have him listed as a *Brady* Cop; typically a career-ending scenario for a police officer. This obviously angered GOODWATER.

4.112 GOODWATER was also being told by numerous witnesses, including law enforcement officers, that: his investigation was flawed; his assessment of the case was erroneous; and, TONY was not guilty of any crime. GOODWATER refused to listen to any of this. He just bowed his neck and went on a personal mission to prove everyone wrong.

4.113 Adding an edge to MORALES and GOODWATER's personal agenda to make sure TONY was convicted, was the fact that they had been put on notice that if they continued prosecuting the case knowing they did not have sufficient evidence to support the charges, they, and their respective employers, would be the subject of a lawsuit when the

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[4] *Brady v. Maryland*, 373 U.S. 83 (1963) landmark United States Supreme Court case that established that the prosecution must turn over all evidence that might exonerate the defendant (exculpatory evidence) to the defense. Police officers who have been dishonest are sometimes referred to as "Brady cops". Because of the *Brady* ruling, prosecutors are required to notify defendants and their attorneys whenever a law enforcement official involved in their case has a confirmed record of knowingly lying in an official capacity.

case was dismissed. This gave them incentive, and escalated their malice for TONY. They pushed forward.

4.114 On July 18, 2018, the trial judge, Sam Swanberg, issued an order suppressing the March 7, 2017 and January 4, 2018 search warrants. The basis of the Courts' ruling was that the two warrants were unconstitutionally overbroad.

4.115 Incredibly, two days after Judge Swanberg held the March 7, 2017 and January 4, 2018 search warrants issued by Judge Lohrmann to be unconstitutional, and suppressed the warrants and fruits thereof, MORALES and GOODWATER went behind the Trial Court's back and obtained yet another search warrant from Judge Lohrmann in Walla Walla allowing them to re-seize all of the evidence that had just been suppressed by Judge Swanberg.

4.116 The subject warrant application filed on July 20, 2018 was completed and signed by Walla Walla P.D. Detective, Kathy Loney, under the direct supervision of MORALES; and with direct assistance from GOODWATER. At the time, GOODWATER, MORALES and Det. Loney were fully aware that Judge Swanberg had suppressed the March 7, 2017 and January 4, 2018 search warrants. MORALES, GOODWATER, and Det. Loney were also aware that the stated facts that served the basis for the July 20, 2018 search warrant affidavit were stale and in most instances had been proven to be inaccurate. They pushed forward with the warrant application using the stale and unreliable facts, and encouraged Judge Lohrmann to sign the search warrant – knowing full well it was based upon general misrepresentations, and was being used to circumvent the order issued by Judge Swanberg suppressing all of the seized evidence.

4.117 Astonishingly, MORALAS went so far as to personally involve herself in the investigative and warrant process by working with the officers in preparing the warrant application, and signing a declaration vouching for the process, facts, and validity of the search warrant affidavit.

4.118 Based, in part, on MORALES vouching for the warrant affidavit, Judge Lohrmann issued the warrant, and the government re-seized the evidence. The process of submitting an affidavit and obtaining the search warrant happened so fast that the suppressed evidence had not even left the police evidence locker before it was re-seized.

4.119 TONY's attorneys filed a motion before the Franklin County trial court to suppress the new search warrant, and requested an evidentiary hearing. The trial court denied the motion outright without the requisite evidentiary hearing. The issue was then appealed to Division III of the Washington State Court of Appeals. The criminal case was dismissed before the appeal was heard.

4.120 In addition to Fourth Amendment violations set forth above, the Defendants also went out of their way to intimidate exculpatory witnesses.

4.121 In March, 2018, a witness, Michael Torrescano, (the son of TONY HAWORTH's good friend, and Franklin County 911 dispatcher, Mark Torrescano) came forward with information that: (1) he was with Alix Skaggs at the Haworth residence the night of the alleged rape (November 5, 2011); (2) Christina Haworth was not home – she was out of town; (3) TONY and Michael Torrescano's father, Mark, left the residence to attend a party and did not return until well after midnight; (4) Michael and Alix were

drinking alcohol; (5) Michael and Alix became intoxicated to some extent; (6) Michael and Alix engaged in sexual relations - including sexual intercourse in the same manner, and in the same location as Alix had alleged she and TONY had engaged on the same night (i.e., the alleged rape); (7) Alix sent Michael hundreds of nude selfie images of herself over a period of several years; and (8) Michael had in his possession Facebook messages between himself and Alix that confirmed he was with her the night of the alleged rape.

4.122 Following Michael Torrescano's disclosure, Alix admitted she was with Torrescano the night of the alleged rape, that they had been drinking, and that they had engaged in sexual relations. She also produced Facebook messages between herself and Michael (identical to messages previously provided by Michael Torrescano, and filed with the Court) that verified they had been together on the night in question. This was the first time since the inception of the case that Alix had mentioned any of this to GOODWATER, or anyone else for that matter. Incredibly, GOODWATER and MORALES ignored the significance of this, and pushed forward with the case.

4.123 Also of significance here is the fact that this new evidence helped put the puzzle together in respect to the prior statements Alix Skaggs had made to an ex-boyfriend, that she had been sexually assaulted by the son of a good friend of TONY's. (See ¶4.61.4 supra) MORALES and GOODWATER completely ignored this, and pushed forward with the case.

4.124 More notably, these exculpatory messages were evidence that TONY's attorneys had specifically asked MORALES to produce earlier in the case. TONY's attorneys had asked MORALES to image Alix's electronic devices (phones and laptops) and to

produce the imaged copies for forensic examination. The request was refused.

4.125 In her initial interview with the TONY's lawyers, Alix Skaggs stated she still had the cell phone that contained relevant evidence. TONY's lawyers told her to make sure she did not lose that phone. A few months later, when TONY's lawyers requested the contents of the phone be imaged, they were told the phone had mysteriously disappeared. Which begs the question of how these Facebook messages were recovered from a phone that no longer existed.

4.126 Regardless, once this information was disclosed, MORALES and GOODWATER once again did just the opposite of what they should have done. Instead of challenging Alix about her failure to be forthright with what was obviously the source of her tale about being raped (the drunken sexual exploits with Michael Torrescano), and admitting the error in their investigation, GOODWATER and MORALES doubled down. They turned their focus to Michael Torrescano in an obvious attempt to intimidate him in the hope that he may not testify.

4.127 GOODWATER contacted Michael Torrescano's father, Mark Torrescano, and made subtle threats to Mark that his son may be charged with a crime if he testifies that he had sex with Alix on the night Alix had alleged TONY raped her. There was no factual or legal basis for this threat.

4.128 When confronted on the stand about why he had called Mark Torrescano, GOODWATER testified that he contacted Mark Torrescano in search of Michael's cell phone number. This was a blatant lie.

4.129 The assertion by GOODWATER that he called Michael's father to get Michael's phone number is completely unsupported by the evidence.

4.130 GOODWATER had been in possession of Michael Torrescano's cell phone number from the outset of his investigation. He was provided the phone number by TONY HAWORTH before he submitted his charging recommendation. TONY gave GOODWATER Michael's number and told him to call Michael and speak to him because Michael had information relevant to the case. GOODWATER obviously ignored this request.

4.131 Michael Torrescano's contact information had also been provided to MORALES by TONY's attorneys.

4.132 When confronted on the stand, under oath, about what crime Michael Torrescano could possibly be charged with, GOODWATER alleged that if Alix was intoxicated to the extent that she could not consent to the sexual acts, Michael could be charged with rape. TONY's lawyer confronted GOODWATER, pointing out that in order to believe he could, or may, charge Michael Torrescano with the crime of rape, GOODWATER would have to admit that he believed Michael Torrescano regarding his statement that he and Alix engaged in sexual intercourse on November 5, 2011; which would require him to disbelieve Alix Skaggs; which would nullify probable cause for charges against TONY HAWORTH. Recognizing the repercussions of this, GOODWATER agreed that he believed Alix and not Michael.

4.133 In simple terms, either GOODWATER believed that Michael raped Alix, which would exonerate TONY; or he did not believe Michael raped Alex, which would render his statements to Michael's father false,

and a form of witness intimidation. Either way, his conduct was improper.

4.134 In addition to the communications with Michael Torrescano's father, MORALES and GOODWATER had conversation(s) with Michael's mother, Heather Torrescano.[5] During these conversations, MORALES made subtle threats that Michael may be charged with a crime. Again, there was no reasonable basis for asserting such a threat to Michael's mother, other than to encourage her to engage with her son and suggest that he not say anything further in respect to the criminal prosecution of TONY HAWORTH.

4.135 Heather Torrescano was particularly sensitive to the pressure being exerted by MORALES and GOODWATER because her younger son, Tony Torrescano, had been convicted of a sex crime as a minor. She did not trust that the police would not come after Michael. This is also one reason why Michael did not come forward sooner with the truth about he and Alix having sex while drinking on the night Alix claimed TONY raped her – he was afraid. MORALES and GOODWATER used this to their advantage.

4.136 The threats had the desired effect. Mark Torrescano told his son to retain a lawyer before speaking to anyone about the case. Michael's mother tried to convince Michael to disengage from the case entirely, and not say anything at all.

4.137 There was absolutely no basis for the misrepresentations GOODWATER and MORALES made to Mark and Heather Torrescano in respect to possibly

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[5] Heather and Mark Torrescano are divorced. Heather was residing in Kentucky at the time.

charging their son Michael with a crime. Alix had admitted drinking with Michael, and that she was intoxicated; but denied she was "blacked out drunk". Alix denied sexual intercourse, but admitted she and Michael engaged in consensual oral sex and mutual masturbation. There was no evidence of a criminal act other than two minors drinking alcohol – a misdemeanor, for which the statute of limitation had long since passed.

4.138 The only reasonable explanation for this behavior from GOODWATER and MORALES was their desire to eliminate Michael Torrescano as a witness in the case. They wanted to convict TONY HAWORTH so bad, they were willing to lie and cheat to get that conviction.

4.139 The Torrescano incident was not the first time GOODWATER had threatened witnesses in the case. When Alix's maternal grandmother, Bonnie Najdowski, came forward in the first weeks of the investigation and informed GOODWATER that her daughter (Christina) and granddaughter (Alix) were not credible and could not be trusted, GOODWATER (1) documented the call and reported it to MORALES and NAGLE, but failed to document the call in a report and turn it over to TONY's attorneys; and (2) threatened to charge Bonnie if she had any further contact with her granddaughter, Alix Skaggs.

4.140 On June 14, 2018 Michael Torrescano was interviewed in Benton County, Washington with MORALES, GOODWATER, and Peitersen all present. Also present was Michael's lawyer, and one of TONY's lawyers.

4.141 During this interview, GOODWATER asked Michael Torrescano if he could look at the relevant

Facebook messages exchanged between Michael and Alix that were on Michael's phone. Michael opened his phone and passed it to GOODWATER. GOODWATER scrolled through the messages and continued asking questions with the phone in his possession.

4.142 Following the interview of Michael Torrescano, it was discovered that certain of the relevant Facebook Messages had been deleted. According to Michael, he believed the messages were on the phone before he handed the phone to GOODWATER. This raises the obvious rebuttable presumption that GOODWATER deleted the subject messages when he had the phone.

4.143 GOODWATER and MORALES were the only ones who would benefit from the deletion of these messages at this stage of the case. Copies of the originals were in the court file, and in the possession of the Government and Tony's attorneys. The only logical reason for deleting the messages would be to create a situation where the Government could call into question Michael Torrescano's veracity.

4.144 By July, 2018, the case against TONY was comprised of a handful of nude images of Alix that the Government could not authenticate, let alone explain; and Alix's statement(s) – which had now changed so many times, she was undeniably incredible.

4.145 In regard to Alix's statements, lay witnesses whom she had asserted would support her allegations - did not. In fact, not a single lay witness with actual personal knowledge supported Alix's stories that she had been spied upon, molested, or raped.

4.146 TONY's attorneys interviewed Alix four times. Each time she was interviewed her story changed. For example, without limitation:

4.146.1 Alix originally told GOODWATER the "touching" took place every day TONY was off work when he was employed as a detective with City of Pasco P.D.[6] Whereas, Alix told Sgt. Warren with Pasco P.D. that it happened perhaps once a month, at approximately age 15. Alix then told the Defense team she could not identify a specific time frame, and the alleged touching incidents stopped completely after the alleged November 5, 2011 "rape".[7]

4.146.2 During his initial interview, GOODWATER used some suggestive interview techniques to get Alix to say she believed TONY was photographing her during molestation sessions, and during the alleged rape. In her interview by Sgt. Warren, Alix never mentioned photographs, and never alleged that the Defendant took any pictures of her. If this was a consequential event in the context of these serious allegations, she certainly would have recalled this. Finally, when confronted on the photos issue in an interview by the Defense, she ultimately confirmed that she was not aware of any images being taken of her by TONY.

4.146.3 Alix initially described the alleged rape to Det. GOODWATER without getting into any real details, until GOODWATER began suggesting responses. Alix's story changed in the interview with Sgt Warren – and he called her out on the

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[6] TONY Haworth was not even employed by Pasco PD during this alleged relevant period – and he was never a detective with Franklin County.

[7] Despite being present during these interviews conducted by the defense, neither MORALES, nor GOODWATER ever changed their position on the alleged facts.

inconsistencies. When confronted on specific issues in a Defense interview she claimed "*I was blacked-out drunk*" and "*I can't recall*" over 100 times in a 4-hour interview. In that same interview she contradicted herself repeatedly – sometimes within minutes of her prior answer. She also contradicted statements she had previously made to Det. GOODWATER; and contradicted statements she had made to Det. Warren – which contradicted statements she made to GOODWATER. She simply could not keep track of her lies. This was the case with Alix throughout the litigation.

4.147 MORALES and GOODWATER were acutely aware of all of this, and yet they pressed on with the case.

4.148 In addition to the above, there is the glaring problem with the fact that Alix failed to even mention to GOODWATER that she had been with Michael Torrescano on the same night she alleged she was raped. She failed to tell GOODWATER, or anyone else who interviewed her, that she and Michael had been drinking, and engaging in sexual relations. She failed to mention that TONY was not even home that night until well after midnight. This completely dismantled every story she had told to date. If it wasn't clear to everyone in the room that Alix was lying before this point in the case, it was crystal clear when this information found its way to the surface. Regardless, MORALES and GOODWATER pressed on.

4.149 By the spring of 2018, it was painfully obvious that Alix Skaggs was lying. Throw in the fact that she had destroyed, deleted, or "misplaced" critical evidence on several occasions, and it doesn't take a brain surgeon to figure out this girl cannot be trusted. Yet GOODWATER and MORALES continued to push the

case forward . . . on a handful of photos they couldn't explain, and the statements of a proven liar - facing almost insurmountable evidence suggesting TONY HAWORTH was innocent. The only logical explanation for this was that they had an agenda.[8]

4.150 GOODWATER and MORALES clearly took things personally in this case and set out to convict TONY HAWORTH *no matter what the cost*. After Michael Torrescano came forward, MORALES and GOODWATER's *end justifies the means* crusade rocketed out of control.

4.151 On August 1, 2018, in an unbelievable move of desperation, MORALES and GOODWATER circumvented the Franklin County Trial Court for a fourth time, obtaining yet another illegal search warrant from Walla Walla County Superior Court Judge, John Lohrmann.

4.152 This search warrant was for Michael Torrescano's cell phone. The warrant was obtained under the guise that GOODWATER was seeking evidence that Torrescano had committed crimes of tampering with evidence, obstructing a police officer, and perjury - all related to Michael Torrescano's involvement in TONY's criminal case.

4.153 When GOODWATER submitted the warrant application it was undisputed that Michael Torrescano

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[8] MORALES would later argue with the Adams County Prosecutors who took over the case that she could not dismiss this case unless Alix recanted (and presumably subjected herself to prosecution for perjury, obstruction, etc.). Apparently this is a WALLA WALLA COUNTY / NAGLE policy, because it certainly is not the law.

was a resident of, and residing in, Camp Pendleton, California – not Washington State.

4.154 It was further known to GOODWATER that Michael Torrescano had not been in the City of Walla Walla, or Walla Walla County, Washington at any time during the period that GOODWATER was suggesting he had committed a crime.

4.155 Further, to the date of GOODWATER's request for the search warrant, Michael had not provided sworn testimony on any matter relevant to the Haworth criminal case, or otherwise; did not have access to original evidence in order to tamper with it; and, his only communication with law enforcement was an interview in which he cooperated 100%.

4.156 Despite the above known facts, GOODWATER, a City of Walla Walla police officer, sought and obtained a search warrant based upon crimes that allegedly occurred in Franklin County, from a Walla Walla County Superior Court judge, to seize a phone which he knew was in the possession of a witness residing in California.

4.157 GOODWATER has no jurisdiction in Franklin County outside of the case assigned – and he admitted this under oath.

4.158 GOODWATER certainly has no jurisdiction in California; and he admitted this under oath.

4.159 Judge Lohrmann, a Walla Walla County Superior Court judge, has no jurisdiction over a California resident who has committed no crime in Walla Walla County.

4.160 Unless GOODWATER is completely ignorant of the law, he was fully aware when he requested this search warrant that not only did he not have evidence

to support the warrant, but he had no authority or jurisdiction over Michael Torrescano – and neither did the court.

4.161 Unless he is absolutely incompetent, GOODWATER had to know that search warrant was invalid from its inception.

4.162 In respect to MORALES, she has no excuse whatsoever; as a deputy prosecutor, she is presumed to know the law.

4.163 To further exacerbate the issue, GOODWATER testified under oath that it is the policy and practice of the Walla Walla Police Department that an interviewee be read what he proclaimed to be a *Smith* affidavit.[9] It was GOODWATER'S understanding, based upon this policy / practice, that by advising an interviewee (at the close of the interview) that the interviewee could be charged with perjury if they had lied to him, he could then recommend perjury charges if he believed the witness had been dishonest. This policy / practice is not only premised on a gross misunderstanding of the caselaw – but its invocation also violates a witness' constitutional rights. It is absurd to even suggest such a thing – yet Walla Walla P.D. has this policy in play. A policy which GOODWATER understands is sanctioned by the WALLA WALLA COUNTY Prosecutor's office. This is the policy GOODWATER relied upon to suggest Michael Torrescano committed the crime of perjury.

4.164 Unethically obtained, constitutionally invalid search warrant in hand, GOODWATER and MORALES next intentionally circumvented the requisite process of obtaining and serving a valid non-resident court

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[9] *State v. Smith*, 97 Wn.2d 856, 651 P.2d 207 (1982)

order by surreptitiously engaging the Naval Criminal Investigation Service to execute the search warrant at Camp Pendleton. NCIS agents confiscated the phone, imaged it, and sent the phone, and the imaged copy of the phone's hard drive to GOODWATER.

4.165 Michael Torrescano's phone contained nothing of substance to an alleged criminal act; nor did it contain any evidence of material relevance to the Haworth criminal case. But it did contain a lot of personal information and communications between Michael and others not involved in any of this; as well as images and data that were personal and confidential.

4.166 The Torrescano search warrant, from application to execution, was a fraud – and GOODWATER and MORALES knew it.

4.167 Immediately upon learning of the Torrescano search warrant, TONY's attorneys, in conjunction with private counsel for Michael Torrescano, moved the Trial Court, Judge Swanberg, to quash the warrant, and issue a protection order requiring the state to return the phone, and destroy all data gathered in the unconstitutional seizure.

4.168 Remarkably, during the hearing on that motion, MORALES argued the search warrant was completely unrelated to the criminal charges against TONY HAWORTH. MORALES argued that because the Torrescano warrant was unrelated to the Haworth criminal case, Franklin County (Judge Swanberg) did not have jurisdiction to quash the warrant.

4.169 Unbeknownst to MORALES, while she was arguing this in Franklin County Superior Court in front of Judge Swanberg, her boss, JIM NAGLE, was making the exact opposite argument in front of Judge Lohrmann in Walla Walla County Superior Court in

response to a Writ of Mandamus and Prohibition filed by Michael Torrescano's lawyers.

4.170 While MORALES was arguing that Franklin County did not have jurisdiction because this search warrant had nothing to do with the Haworth case, NAGLE was arguing the search warrant was obtained specifically to seek evidence to use for impeachment of Michael Torrescano in the Haworth case.

4.171 NAGLE directly contradicted MORALES' statement to Judge Swanberg that the search warrant was obtained for reasons that had nothing to do with the HAWORTH case. Somebody was lying – and that somebody was obviously the person who had a personal investment in what was being said ... MORALES.

4.172 Notably, Det. GOODWATER was in Court throughout the hearing when MORALES made these misrepresentations, but he did nothing to correct the record when MORALES made these misrepresentations.

4.173 GOODWATER later testified that he had been directed by MORALES to use the Haworth case number to obtain the warrant signed by Judge Lohrmann. This testimony all but sealed MORALES' fate in respect to making intentional misrepresentations to the Court. Yet she made no effort to correct the record.

4.174 Once GOODWATER got his hands on the imaged copy of Michael Torrescano's phone, he went through the entire contents of the cell phone without limitation, fishing for anything that might help the State's case against HAWORTH. This was a clear violation of State and Federal law and violated Michael's Fourth and Sixth Amendment rights.

4.175 MORALES ultimately filed a handful of irrelevant text messages seized from the phone in the Haworth case. This triggered Appellant's 3rd motion to dismiss for Government misconduct. The motion argued that the procurement of a search warrant under false pretenses (abuse of process / 4th Amendment violations), intentional misrepresentations to the court, and intimidating a witness, along with the cumulative effect of prior misconduct, constituted government misconduct, and was grounds for dismissal.

4.176 In that hearing GOODWATER admitted that he was aware that he did not have jurisdiction to arrest someone in Franklin County. He admitted that he was aware that a Washington search warrant was not valid for a California residence. He admitted that he had searched Michael Torrescano's entire phone and found nothing incriminating. Then he astonishingly testified that it was his intent to seek charges against Michael Torrescano.[10] The only logical reason to make such a statement under the circumstances present, was to maintain the charade, and hope the intimidation tactic worked.

4.177 On November 28, 2018, after numerous trial continuances, brought about primarily by the unethical litigation tactics of MORALES and GOODWATER, WALLA WALLA COUNTY inexplicably filed a notice of withdrawal as special prosecutor. The withdrawal was effective December 10, 2018. Trial was scheduled to begin less than a month later, on January 7, 2019.

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[10] Charges have not been pursued to date, and Michael Torrescano has filed a claim for damages with WALLA WALLA COUNTY, and the CITY OF WALLA WALLA for damages and injuries he suffered as a result of the Constitutional violations.

4.178 At a pretrial conference scheduled the week following the withdrawal, Franklin County elected prosecutor, Shawn Sant, appeared and advised the Court that he was seeking a replacement for WALLA WALLA COUNTY as special prosecutor on the case. Judge Swanberg advised that he was not going to continue the trial date out again without a very good reason. The Judge then encouraged Defense Counsel to seek sanctions against WALLA WALLA COUNTY and MORALES.

4.179 On December 19, 2018, Franklin County moved to dismiss the case without prejudice. The decision to do so was based in part on an initial review of the file by Adams County Prosecutor, Randy Flyckt. Flyckt had made a cursory review of the file in anticipation of taking over the prosecution of the case. His preliminary assessment was that the government could not meet its burden at trial.

4.180 TONY stipulated to an order dismissing the case without prejudice, with the understanding that the entire file would be reviewed by the Adams County Prosecutor and evaluated for sufficiency of evidence to prosecute the case. If sufficient evidence was not found to support the charges, a dismissal with prejudice would be entered – with no objection from Franklin County.

4.181 The Adams County prosecutor was provided with the entire file from Walla Walla and was given carte blanche access to TONY HAWORTH's attorneys' file – including certain work product (with limited waiver). Adams County spent three months reviewing the entire file. After thorough review of the file, the Adams County Prosecutor provided a memorandum letter to Franklin County Prosecutor, Shawn Sant which stated in part:

> *Upon the conclusion of our review, we have determined that the totality of the evidence available to the State falls well short of any reasonable probability of meeting the State's burden of proof beyond a reasonable doubt. In fact, our analysis suggests that it would likely be impossible to prove the substance of the allegations by a preponderance of the evidence. We further determine that any additional litigation in this matter would not be in the interest of justice, and contrary to the best use of prosecutorial and judicial resources. As such, this office recommends that this matter not be re-filed, and that such be regarded as a declined investigation due to insufficient evidence.*

4.182 On April 16, 2019, the Court dismissed the case with prejudice. 4.183 By the time the Court ultimately dismissed the case, the case had been vetted by numerous investigators and attorneys with extensive background experience in police interview, investigation, and evidence gathering techniques, including, without limitation: The Defense team [comprised of two experienced attorneys (one with prior law enforcement experience), a police officer, a retired sergeant detective from the Washington State Patrol, and two computer forensic experts]; The City of Pasco Police Department internal affairs detective; the chief deputy prosecutor for Adams County Prosecutor's Office; and by a DSHS / CPS investigator. The result of each of these investigations has been a finding that the allegations were not credible, and/or insufficient evidence existed to support criminal charges from the outset. Which is precisely what TONY HAWORTH's attorneys had been telling

MORALES, and NAGLE from the inception of the case.

4.184 GOODWATER and MORALES ignored all of this. Despite overwhelming evidence that TONY HAWORTH was innocent, and no evidence to support a conviction, they moved forward with the case – pushing their own agenda.

4.185 Shockingly, Defendants did not stop with the dismissal of the case. After the CITY OF WALLA WALLA Police Department was put on notice that the charges were not going to be re-filed, GOODWATER and Chief BIEBER upped the ante in respect to the personal vendetta.

4.186 GOODWATER spoke to Franklin County Prosecutor Shawn Sant, and to Adams County Prosecutor, Randy Flyckt, arguing that the case was solid – despite the findings otherwise.

4.187 Chief BIEBER also spoke with Mr. Sant and Mr. Flyckt in an attempt to intervene, and force the prosecutors to re-file charges. BIEBER went even farther, publicly slandering TONY HAWORTH and announcing he was going to take his complaints to the "A.G." and the "Feds"; posting comments on social media about the case, and condemning the Adams County prosecutors who actually did their job, and looked at all of the evidence in the case – verses just what GOODWATER and MORALES wanted people to see.

4.188 MORALES also argued with Adams County about the propriety of the dismissal of the case. According to Adams County Prosecutors, DPA MORALES argued that Washington State law forbids a prosecutor from dismissing a rape / molestation case unless the victim recants. This is complete nonsense –

and further reveals the level of incompetence / negligence of the Walla Walla Prosecutor's office.

4.189 As noted *supra*, this is NOT the law in Washington State – or anywhere else for that matter. This policy or practice of WALLA WALLA COUNTY and JAMES NAGLE that requires an alleged victim of a sex crime to recant before the prosecutor will consider dismissing a case for want of probable cause violates the constitutional rights of citizens of Walla Walla County – and in this case violated the rights of TONY HAWORTH.

4.190 MORALES and GOODWATER were so personally invested in proving a case of criminal conduct against an innocent man, in order to salvage their own reputations, protect their personal interests, and satisfy a personal vendetta against TONY HAWORTH and/or his attorneys, that they completely lost touch with their professional and ethical obligations to protect the Constitution and serve the greater good. In so doing MORALES and GOODWATER violated state and federal law.

4.191 Likewise, the two policy makers who administer policy, procedure, practice or custom on the issues at bar, NAGLE and BIEBER, ignored the obvious and continued to encourage the prosecution of a case with insufficient evidence to support the charges because they were concerned about public opinion. Their policies, enacted for the purpose of making sure *alleged* sex offenders are brought to trial no matter what, violated state and federal law; violate the rights of citizens of WALLA WALLA COUNTY, and violated TONY HAWORTH's rights.

4.192 JAMES NAGLE, in his administrative and/or investigative capacity as a final policymaker for the

WALLA WALLA COUNTY Prosecutor's Office sanctioned the negligent, illegal, and unconstitutional conduct through policy by, without limitation:

4.192.1 Overseeing the charging process, and enforcing a policy which ultimately led to the charging of TONY HAWORTH with crimes that were not supported by probable cause, and were statutorily invalid due to the statute of limitations for said crimes. (NAGLE signed the original, and first amended Information);

4.192.2 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom of ALWAYS charging and pursuing crimes involving sexual assault absent a complete recantation by the alleged victim;

4.192.3 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom of improperly continuing a prosecution when there is no probable cause or reasonable justification to do so;

4.192.4 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom of improperly using the judicial process to obtain a search warrant under the guise of charging a witness with a crime in order to gain access to the witnesses private and personal communications and for the purpose of intimidating or harassing said witness;

4.192.5 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom of allowing deputy prosecuting attorneys to act independently beyond the scope of their prosecutorial function through advising police in investigative matters, and the conspiring to abuse process to obtain a warrant through nefarious means with no probable

cause or jurisdictional authority to do so – before the subject was charged with any crime;

4.192.6 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom of allowing deputy prosecuting attorneys to act independently beyond the scope of their prosecutorial function to use their position of power to settle personal vendettas;

4.192.7 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages Walla Walla police officers to make misrepresentations of law and fact to suspects and witnesses by inferring that their statements to interviewing police officers are somehow considered to be given under oath under penalty of perjury; to wit: the *Smith Affidavit*.

4.193 CITY OF WALLA WALLA Police Chief, SCOTT BIEBER, being the final policymaker for the CITY OF WALLA WALLA Police Department, sanctioned the negligent, illegal, and unconstitutional conduct through policy by, without limitation:

4.193.1 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to knowingly submit an unconstitutionally overbroad search warrant affidavit to the Court;

4.193.2 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to submit false, stale and unreliable assertions of fact to a judge in order to obtain a search warrant;

4.193.3 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or

encourages officers to direct witnesses to destroy or secret evidence;

4.193.4 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to ignore relevant exculpatory evidence;

4.193.5 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to intentionally secret relevant evidence from a defendant;

4.193.6 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to intimidate witnesses;

4.193.7 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to lie or make knowing sworn misrepresentations to the Court;

4.193.8 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to intentionally abuse their power and authority to obtain a search warrant without proper jurisdiction or legal authority to do so;

4.193.9 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to intentionally abuse the scope of their authority to interfere with the 4th, 6th, and 14th Amendments to the United States Constitution;

4.193.10 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to intentionally exceed the scope of a search warrant;

4.193.11 Initiating, enforcing, or sanctioning a policy, procedure, practice, or custom that allows, or encourages officers to make misrepresentations of law and fact to suspects and witnesses by inferring that their statements to interviewing police officers are somehow considered to be given under oath under penalty of perjury; to wit: the *Smith Affidavit*.

4.194 GOODWATER's improper investigation, shored up by an alleged victim's lies and hidden agendas was the cornerstone of this entire debacle. At some point, GOODWATER became a victim advocate, entrenched in his need to prove he is not an incompetent investigator, versus maintaining his sworn duty to act as a fact / truth seeker in upholding the laws of the State of Washington. In this regard, GOODWATER failed to follow even the most fundamental professional investigative guidelines and has inexplicably gone so far as to violate his legal and ethical obligations in an effort to thwart the defense of the case. Without limitation, the evidence suggests GOODWATER has:

4.194.1 Intentionally withheld evidence that was clearly exculpatory;

4.194.2 Advised an alleged victim to destroy potentially exculpatory evidence;

4.194.3 Intentionally ignored exculpatory evidence;

4.194.4 Misrepresented facts and testimony in interview notes and reports;

4.194.5 Misrepresented facts to witnesses in interviews;

4.194.6 Engaged in witness tampering;

4.194.7 Failed to follow up with witnesses alleged to have information relevant to the case;

4.194.8 Personally destroyed, or altered evidence;

4.194.9 Intentionally exceeded the scope of a search warrant;

4.194.10 Intentionally secreted information gleaned from conversations he has had with the alleged victim and witnesses;

4.194.11 Conspired with the Prosecutor in respect to each of the above.

4.195 Each of the above contributed to GOODWATER's violation of TONY HAWORTH's constitutional rights.

4.196 Additionally, the evidence indicates that the WALLA WALLA COUNTY Prosecutor's office was not only aware of GOODWATER's misconduct, but colluded with GOODWATER in secreting evidence, ignoring / violating the rights of TONY HAWORTH.

4.197 MORALES stepped out of her role as public servant and prosecutor when she turned the case into a personal vendetta to prove she was not unethical. It was her position that Alix Skaggs needed to be believed no matter what – that Skaggs' unreliable and discredited story was all the probable cause she needed to continue this prosecution. It was MORALES' belief, based upon what appears to be the policy of her office, that she could not dismiss this case unless the alleged victim recanted. It was also MORALES' belief that in her professional capacity as a deputy prosecutor she could do anything and everything she wanted as long as she got a conviction . . . because the end justifies the means. In this regard, MORALES acted beyond the scope of her prosecutorial function in initiating and pursuing a criminal prosecution by, without limitation:

4.197.1 Intertwining the exercise of her advocacy function with impermissible conduct by, without limitation: endorsing the filing of sworn affidavits containing false / misleading facts necessary to obtain a search warrant; conducting her own investigation and advising the police in their investigative function;

4.197.2 Knowingly acting in excess of her statutorily-conferred jurisdiction by, without limitation: conspiring to use the judicial process to obtain a search warrant for Michael Torrescano's phone when she was clearly aware that neither she, nor the Court had jurisdictional authority over Michael Torrescano – and then lying to the Court about the purpose of that warrant.

4.197.3 Administratively initiating, directing or enforcing policies, procedures, practices or customs that contradict state or federal law, and violate the Constitutional Rights of citizens – in this case, TONY HAWORTH.

4.197.4 Using her position to avenge a personal vendetta against attorneys in the case who challenged her ethics.

4.198 Each of the above contributed to MORALES's violation of TONY HAWORTH's constitutional rights.

4.199 Attorneys for TONY HAWORTH repeatedly put the WALLA WALLA COUNTY prosecutors on notice that what they were doing was a textbook example of malicious prosecution. The prosecutors ignored this.

4.200 Attorneys for TONY HAWORTH repeatedly put the WALLA WALLA COUNTY prosecutors on notice that what they were doing was violating TONY

HAWORTH's Constitutional Rights. The prosecutors ignored this.

4.201 Attorneys for TONY HAWORTH repeatedly put the WALLA WALLA COUNTY prosecutors on notice that their handling of this case constituted negligence . . . at best. The prosecutors ignored this.

4.202 Attorneys for TONY HAWORTH repeatedly put the WALLA WALLA COUNTY prosecutors on notice that GOODWATER was violating the constitutional rights of HAWORTH and individual witnesses in the case. The prosecutors ignored this.

4.203 Attorneys for TONY HAWORTH repeatedly pleaded with the WALLA WALLA COUNTY prosecutors to stop and look at the entire case. The prosecutors ignored this.

4.204 Attorneys for TONY HAWORTH wrote letters and emails directly to the elected prosecutor, JAMES NAGLE requesting that he personally review the entire file – and meet with them to discuss the case. These requests were ignored.

4.205 Attorneys for TONY HAWORTH repeatedly warned WALLA WALLA COUNTY prosecutors that they were going to be sued if they continued down this path of knowingly and intentionally violating TONY HAWORTH's constitutional rights when they knew they had no legal justification to continue with the charade. The prosecutors ignored this.

4.206 In the end, the Defendants here put their own personal agenda ahead of their duty to follow the law. In so doing they violated state and federal law, and repeatedly violated TONY HAWORTH's constitutional rights, and the constitutional rights of witnesses in the case.

4.207 The violation of TONY HAWORTH's constitutional rights subjects Defendants to individual liability pursuant to 42 U.S.C 1983, 1985, and common law principals of negligence.

4.208 WALLA WALLA COUNTY and the CITY OF WALLA WALLA are liable under 42 U.S.C. 1983, and 1985, and common law claims of negligence as well as being liable for the acts or omissions of MORALES, GOODWATER, and other employees or agents under the doctrine of respondent superior.

4.209 As a result of the intentional, malicious, or negligent actions of MARCUS GOODWATER, MICHELLE MORALES, JAMES NAGEL, SCOTT BIEBER, and other agents of Defendants WALLA WALLA COUNTY and CITY OF WALLA WALLA, TONY HAWORTH has sustained economic and emotional damages. The Defendants are now liable, jointly and severally, for the injuries and damages suffered by TONY HAWORTH as a result of their unlawful or negligent acts or omissions.

V. COUNT ONE

VIOLATIONS OF 42 U.S.C. §§ 1983
(ALL DEFENDANTS)

5.1 Plaintiff realleges Paragraphs 1 through 4.209 as if fully realleged herein.

5.2 The Defendants, acting under the color of law and in their capacity as officials and agents of WALLA WALLA COUNTY and / or the CITY OF WALLA WALLA, violated Plaintiff's civil rights under the United States Constitution, including, but not limited to, Amendments IV, V, and XIV.

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