

APPENDIX + 20SC292

20CA0853-St George v EE 02-03-2022

COLORADO COURT OF APPEALS

DATE FILED: February 3, 2022

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Court of Appeals No. 20CA0853  
Jefferson County District Court No. 17CV413  
Honorable Russell Klein, Judge

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Eric St. George,

Plaintiff-Appellant,

v.

E.E.,

Defendant-Appellee.

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ORDERS AFFIRMED

Division IV  
Opinion by JUDGE RICHMAN  
Tow and Grove, JJ., concur

**NOT PUBLISHED PURSUANT TO C.A.R. 35(e)**  
Announced February 3, 2022

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Eric St. George, Pro Se

No Appearance for Defendant-Appellee

¶ 1 Eric St. George, pro se, appeals the district court's orders dismissing his case. We affirm.

## I. Background

¶ 2 On St. George's thirty-ninth birthday, he hired defendant, E.E., to perform a striptease and lap dance at his residence.<sup>1</sup> During E.E.'s performance, St. George touched her inappropriately, so she stopped dancing and left the residence, keeping the money St. George had paid her. This upset St. George, who began following E.E. as she walked back to her car. Then St. George fired a gun into the air and, it is alleged, at E.E. E.E. fled and called 911. Later that night, police officers wounded St. George in a shootout. As a result of his actions, St. George was charged with numerous criminal offenses; he took his case to trial. *See People v. St. George*, (Colo. App. No. 18CA0962, Dec. 16, 2021) (not published pursuant to C.A.R. 35(e)).

¶ 3 Before his criminal trial began, St. George sued E.E., claiming that she had robbed him and lied to the police. His pro se complaint, which is not in a standard form setting forth specific

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<sup>1</sup> The facts in this section are gleaned from an arrest affidavit that is part of the record on appeal.

claims for relief and therefore is difficult to interpret, nonetheless includes the following requests for relief:

- (1) a demand that E.E. produce a signed affidavit “recanting her materially false statements” and “rescinding her spurious allegations”;
- (2) a demand that the district court compel the local district attorney to file various criminal charges against E.E.;
- (3) a “demand for judgement in the form of financial renumeration [sic] for the injuries sustained resultant from [E.E.’s] conduct”;
- (4) a “demand for judgement in the form of financial renumeration [sic] for the economic damages suffered as a result, namely loss of income”; and
- (5) a “demand for judgement in the form of fiscal renumeration [sic] for economic damages sustained as a result of . . . libel and slander.”

¶ 4 E.E. answered the complaint and filed counterclaims for, among other things, intentional infliction of emotional distress. Later, she filed a C.R.C.P. 12(b)(5) motion to dismiss St. George’s claims, and the court granted her motion.

¶ 5 St. George appealed the court's order dismissing his claims, but that appeal was dismissed for want of a final, appealable order because E.E.'s counterclaims had not yet been adjudicated.

¶ 6 Once the appeal was dismissed, St. George asked the district court to do two things: (1) vacate its order dismissing his claims and (2) permit him to amend his complaint. The court denied the motion in its entirety.<sup>2</sup> Months later, St. George moved for the same relief. Again, the court denied his request.

¶ 7 Now St. George appeals for the second time, asserting that the district court erred when it dismissed his case.<sup>3</sup>

## II. Analysis

¶ 8 A motion to dismiss for failure to state a claim upon which relief can be granted tests the formal sufficiency of a plaintiff's complaint. *Allen v. Steele*, 252 P.3d 476, 481 (Colo. 2011). We review such motions *de novo*, applying the same standards as the

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<sup>2</sup> Technically, the district court lacked jurisdiction to issue this order, as it was issued before the court of appeals issued — or even could issue — its mandate. *People v. Jones*, 631 P.2d 1132, 1133-34 (Colo. 1981); C.A.R. 41. Nonetheless, the district court explicitly incorporated the order into a different order that was issued after it was formally reconstituted with jurisdiction.

<sup>3</sup> He does not appeal the court's denial of his motion to amend.

district court. *Begley v. Ireson*, 2017 COA 3, ¶ 7. When reviewing a C.R.C.P. 12(b)(5) motion to dismiss, a court must accept all averments of material fact as true and view the allegations in the light most favorable to the plaintiff. *Allen*, 252 P.3d at 481. In so doing, the court may not consider information outside the confines of the pleading. *Id.* To survive summary dismissal for failure to state a claim, “a party must plead sufficient facts that, if taken as true, suggest plausible grounds to support a claim for relief.” *Patterson v. James*, 2018 COA 173, ¶ 23.

¶ 9 When a party moves for dismissal under C.R.C.P. 12(b)(5) after the pleadings have closed, the reviewing court should treat the motion as a C.R.C.P. 12(c) motion for judgment on the pleadings. *Barnes v. State Farm Mut. Auto. Ins. Co.*, 2021 COA 89, ¶ 19. “Judgment on the pleadings is appropriate if, from the pleadings, the moving party is entitled to judgment as a matter of law.” *City & Cnty. of Denver v. Qwest Corp.*, 18 P.3d 748, 754 (Colo. 2001).

¶ 10 We liberally construe a pro se party’s pleadings. *See Jones v. Williams*, 2019 CO 61, ¶ 5 (“Pleadings by pro se litigants must be broadly construed to ensure that they are not denied review of

important issues because of their inability to articulate their argument like a lawyer.”).

¶ 11 In this case, E.E.’s motion to dismiss was filed after the pleadings had closed. Thus, the district court should have construed the motion as a motion for judgment on the pleadings, not as a motion to dismiss. But as we will explain, St. George’s claims lack merit under either rule, and we “disregard any error or defect in [a] proceeding which does not affect the substantial rights of the parties.” C.R.C.P. 61.

¶ 12 Turning to St. George’s claims, we begin with his request that the district court compel the local district attorney to file criminal charges against E.E. Pursuant to section 16-5-209, C.R.S. 2021, someone may ask a court to compel a district attorney to file criminal charges against another person, but the request must be accompanied by an affidavit alleging that the district attorney unjustifiably refused prosecution. St. George’s complaint neither includes the required affidavit nor alleges that the district attorney refused prosecution. Therefore, his claim is legally deficient, and the district court properly dismissed it.

¶ 13 Moving to St. George's other claims, they all relate to his allegation that E.E. repeatedly made a "materially false statement," i.e., lied, to the police. But the complaint does not specify the contents of the allegedly false statement or explain why it is false. And that, we conclude, is fatal because no matter whether we construe St. George's claims as defamation claims or fraud claims, both causes of action require that the allegedly false statement be spelled out.

¶ 14 With respect to defamation, "[d]efamation is a communication that holds an individual up to contempt or ridicule thereby causing him to incur injury or damage," *Keohane v. Stewart*, 882 P.2d 1293, 1297 (Colo. 1994), and the plaintiff must prove that the statement complained of is both false and material, *SG Ints. I, Ltd. v. Kollenschlag*, 2019 COA 115, ¶ 22. One cannot satisfy these elements without identifying the statement at issue.

¶ 15 With respect to fraud, C.R.C.P. 9(b) requires that fraud claims be pleaded with particularity, meaning "the complaint must sufficiently specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiff contends the statements were fraudulent, state when and where the

statements were made, and identify those responsible for the statements." *State Farm Mut. Auto. Ins. Co. v. Parrish*, 899 P.2d 285, 288 (Colo. App. 1994) (citation omitted). St. George's complaint contains only some of these requirements.

¶ 16 Having concluded that St. George's complaint fails to state any claims upon which relief can be granted, we decline to address any of the district court's alternative bases for dismissing the complaint.

### III. Conclusion

¶ 17 The district court's orders are affirmed.

JUDGE TOW and JUDGE GROVE concur.

Notice of Appeal - filed on April 27, 2020, Note

DISTRICT COURT, JEFFERSON COUNTY, COLORADO

Court Address:

100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002

Plaintiff(s) ERIC ST GEORGE

v.

Defendant(s) EMILY ELLIOTT

DATE FILED: April 2, 2020

△ COURT USE ONLY △

Case Number: 2017CV413

Division: 8 Courtroom:

**Order of Dismissal**

This matter is before the Court on two separate but related issues. Both stem from the Court of Appeals order dismissing the appeal on December 20, 2019.

On January 23, 2020 the Court issued an order addressing a Motion to Vacate Order of Dismissal from December 2018 asking the Court to set aside its dismissal of Plaintiff's complaint and the opportunity to amend the Complaint. The Court denied that motion on the grounds that Plaintiff/Counterclaim Defendant, Eric St. George (Mr. St. George) had failed to show that there were changed circumstances, legal or factual error, an intervening change in the law, or manifest injustice, and that Mr. St. George had likewise failed to show that amendment of the Complaint would be futile.

In light of the instructions from the Court of Appeals, the Court directed Defendant/Counterclaim Plaintiff, Emily Elliott (Ms. Elliott) to file a status report within twenty-eight days indicating how she intends to proceed with her counterclaims. No status report or other filings were received by Ms. Elliott.

On February 26, 2020, this Court issued an Order to Show Cause directing Ms. Elliott to show cause pursuant to C.R.C.P. 121 s. 1-10 as to why the remaining counterclaims should not be dismissed and giving thirty-five (35) days for Ms. Elliott to respond. No response or other filings have been received by the Court from Ms. Elliott. Ms. Elliott has not taken action in this case since her counsel filed a motion to withdraw in February of 2019. Ms. Elliott has not appeared to taken any action in the appeal of this case (2019CA53) with the exception of her counsel withdrawing from the appeal on June 27, 2019.

In the interim, Mr. St. George filed his Motion to Vacate Dismissal (March 2020); Order of Dismissal from Dec 2018, essentially re-arguing his prior motion that he filed on January 14, 2020, which itself is a longer version of his Motion to Vacate Dismissal and Give Leave to Amend (that motion was denied due to the filing of the Notice of Appeal, which divested the trial court of jurisdiction).

This Court has already addressed the merits of the complaint in both the Order re: Motion to Dismiss issued on December 27, 2018, and the Order re: Motion to Vacate Order of Dismissal from Dec 2018 issued on January 23, 2020. In the former, the Court adopted the reasoning of the Motion to Dismiss filed by Ms. Elliott. In the latter, the Court addressed the procedural history and the standard necessary for Mr. St. George to meet in order to receive a different outcome with the dismissal order. The Court adopts and reincorporates those orders here in this motion.

The crux of this case is a Complaint filed by Mr. St. George alleging criminal violations by Ms. Elliott in connection with Mr. St. George's criminal case, 2016CR2509, which resulted in numerous convictions against Mr. St. George. Mr. St. George alleges that Ms. Elliott made materially false statements to a police officer and in an official proceeding (her interviews with the district attorney) in 2016 and 2017, and demands that this Court (1) require defendant to recant her prior statements and rescind her allegations, (2) compel the Jefferson County District Attorney or appoint a special prosecutor to bring criminal charges against defendant, and (3) financial relief against Ms. Elliott. Mr. St. George's motion has not changed the analysis in this case as to whether he has a viable complaint or that amendment would be futile. In fact, to the contrary, the law prohibits retaliatory litigation against a witness or victim in a criminal case; harassment or retaliation or retribution against Ms. Elliott on the basis of her being a victim or a witness in a criminal proceeding appears to be the specific intent of the legislature by enacting s. 18-8-706, C.R.S. See *Grynberg v. Arkansas Oklahoma Gas Corp.*, 116 P.3d 1260, 1267 (Colo. App. 2005) ("the supreme court, in construing s. 18-8-706, observed that 'the legislature's intended purpose is to protect people who are or who are thought to be actual or potential witnesses to criminal proceeding.' The court also held that the

"the statute applied to one with 'the specific intent to retaliate or to seek retribution against a person protected by the statute because of that person's relationship to a **criminal proceeding**" (emphasis in original)). This is notwithstanding whether the principles of collateral estoppel would even permit Mr. St. George to assert in this case that he was not guilty or would permit the Court to find that Mr. St. George was not guilty. Either way, Colorado law does not permit litigation of this type that appears to be an effort to pressure Ms. Elliott into recanting her testimony. Mr. St. George's avenues and tools have been available to him in his criminal proceeding under the Colorado Rules of Criminal Proceeding, and through his appeal in that case.

For the reasons stated above, the counterclaims filed by Ms. Elliott against Mr. St. George are **dismissed**.

For the reasons stated above, the Motion filed by Mr. St. George seeking to vacate the dismissal is **denied**.

Based on the foregoing, all claims in this case are **dismissed**.

Issue Date: 4/2/2020



RUSSELL BRENT KLEIN  
District Court Judge

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 26, 2022
Certiorari to the Court of Appeals, 2020CA853 District Court, Jefferson County, 2017CV413	
<b>Petitioner:</b>	
Eric St. George,  v.	Supreme Court Case No: 2022SC292
<b>Respondent:</b>	
E. E.	
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, SEPTEMBER 26, 2022.

10 October 2022: NOTICE OF INTENT TO PETITION FOR WRIT OF CERTIORARI  
The Plaintiff-Petitioner Eric St. George, pro-se herewith gives notice to thei honorable Court of his intent to Petition for a Writ of Certiorari. Pursuant to Supreme Court Rule 10(b) the Petition is made from Colorado Suprem Court case no. 22SC292. The Petitioner will proceed in forma pauperis and requires any proprietaryu forms used in this Court in order to so proceed. The order denying Certiorari in the Colorado Supreme Court issued on 26 September 2022. Pursuant to Rule 13 Petitioner shall file his Petition for Writ of Certiorari no later than 26 December 2022 in order to be dimely filed.

Colorado Court of Appeals  
2 East 14th Avenue  
Denver, CO 80203

Jefferson County 17CV413  
Judge Russell Klein

Plaintiff-Appellant:  
Eric St. George

v.

Defendant-Appellee:  
Emily Catherine Elliott

Case No. 20CA853  
Opinion by Richman, Tow and Grove

**PETITION FOR REHEARING PURSUANT TO C.A.R. 40(a)**

The Plaintiff-Appellant Eric St. George, pro-se petitions this Court for a rehearing on Case No. 20CA853 St. George v. Elliott and argues in support of his petition as follows:

On 31 July 2016, Emily Catherine Elliott, AKA "Effy" DOB: 19 Aug 1993, a 22 year old adult woman and no victim (Plaintiff-Appellant St. George takes exception to this Court's use of "EE" to designate the Defendant in an attempt to suggest otherwise) used the Lakewood Police as a deadly weapon against St. George. She committed an act of fraud and felony; she called 911 and she fabricated an attempt to murder her, a lie. The fact of her lie is incontrovertible, it was adjudicated by a jury to be a lie and the jury acquitted St. George on this false charge. Her false report sicced the violence of the Lakewood Police Department against Eric St. George; culminating in an attempt to murder St. George by the Lakewood PD. This fact is incontrovertible, the 10th Cir. Court of Appeals opined on 20 Aug 2021 that Agt. Trimmer of the Lakewood PD did use excessive force against St. George, violating his 4th Amendment rights when Trimmer shot him while attempting to murder him. This false 911 report by Emily Elliott is an act known as SWATTING, a dangerous act that utilizes police as a weapon, conduct that is almost certain to result in violence, assault and often death where police are overzealous and not properly trained to be wary of SWATTING.

Our police rely on "citizen reporters." (People v. Glaubman 485 P.2d 711 (Colo. 1971) When Emily Elliott abused the trust of police, misleading them, lying to them, using them as a violent weapon, that act must be prosecuted. Because this court refuses to hold Emily Elliott to account this Court gives a mandate to others to commit the same crime. Because this Court chooses to abuse its discretion to abet, ultimately the violent attempt to murder St. George by LPD

in a zealous response to Emily Elliott's false 911 report, St. George's blood is on this Court's hands. Anyone who seeks the cause of Colorado's lawlessness need look no farther than its Courts, particularly and instantly judges Richman, Tow and Grove. These judges have permitted Emily Elliott and Lakewood's dangerous, bloody and violent conduct to occur through their ratification of the conduct. These judges choose to advocate for the Defendant-Appellee, representing Emily Elliott on appeal *sua sponte* in their opinion as no appearance is made by her or by a counsel on her behalf.

These judges appear to be completely blind to the consequences of permitting Elliott to make a false report to police without any repercussions. The judges likely believe they are insulated from the risks of police reaction to a false report that leads to police violence. This judges must imagine themselves, or a loved-one as a victim of SWATTING like that committed by Elliott in order that they may gain perspective. Perhaps these judges would never hire the services of a prostitute exactly as in the instant case, but instead could fall victim to a jilted spouse or partner. Maybe it isn't the judge but instead a family member, friend or co-worker? Facts are simple: Encounters with police are violent, dangerous, and regularly result in injury or death. (Hutchins, Corey, "Colorado police shoot people more than almost anywhere else--and local news orgs ask why." Colorado Independent, 7 FEB 2020) Police acting on false information are known to be overzealous and react with aggression and violence; so common is this that "SWATTING" is defined in Black's Law Dictionary. Life isn't fair, and it is innocent Coloradans who will reap what this Court has sown.

So long as these judges act as rubber-stampers, upholding the wrong-headed rulings of local District Court judges who act to protect the misconduct of their local police, one might expect this scenario to keep playing out over and again. This Court must rehear this Appeal in order that an accurate Opinion may be rendered; these judges must render an opinion that is consistent with the relevant case-law and with the facts of this case. This Court must allow for justice, remand this case back to the District Court such that a jury may render a verdict on the merits of this case.

**FACTS AND POINTS OF LAW:**

I. Facts are facts, and these judges may not engage in recasting the facts to suit their fancies. The Court must accept the facts as they are.

Emily Catherine Elliott is not a "striptease artist" or a "lapdancer." She is a

prostitute. Elliott tells investigators on 1 Aug 2016, "...I had told him the name of the company and it didn't sound familiar to him... I believe that he probably found me on Backpage." [Interview 1 Aug 2016, p4] "I was only ever advertised on Denver Ladies and Backpage to my knowledge." [Trial X-script 1 Feb 2018, p 235, ln 12-14] (...advertisement on Backpage.com ("Backpage"), a website where prostitutes solicit clients..." U.S. v. Roach 896 F.3d 1185, 1187 (CA 10 (NM) 2018)) ("Backpage.com is a website known for posting disguised advertisements for prostitution services." U.S. v. Carty 617 Fed.Appx 630, 631 n.1 (8th Cir. 2015)) ("Backpage.com's adult services section overwhelmingly contains advertisements for prostitution... the majority of the advertisements there are for sex." Backpage.com v. Dart 127 F.Supp.3d 917, 922 (ND Ill 2015)) ("Backpage listed each ad featuring Jane Doe No. 1 as an offer of 'escort' services, a common euphemism for prostitution." Doe v. Backpage.com LLC 104 F. Supp.3d (D.Mass 2015)) The repeated attempts at recasting Elliott as anything other than a prostitute who was "catfishing," "hustling," or otherwise swindling St. George and ultimately robbing him is disingenuous at best, more likely a deliberate misrepresentation of the facts in the record. Further, this court must stop asserting that St. George's firing of his gun into the air was anything but a response to Elliott holding a weapon in her hand, and that there may have been a "second gunshot." The record reflects the facts, incontrovertible, that St. George did not threaten Elliott with a weapon prior to her drawing a weapon from her purse. (Q: So, you were not aware of me having a gun prior to that? A: No.) [Trial 2 Feb 2018, p64, ln 17-19] (Q: And you had that bottle of mace in your hands? A: No, in my purse. Q: Did you have your keys in your hands when you went to the car? A: Yeah. Q: Okay, and at that point you had that bottle of mace and your keys in your hands? A: Yes,...) [Trial 2 Feb 2018, pp 69-70, ln 23-25 & 1-5] As to the false "second gunshot," the jury acquitted St. George of that false charge of attempted murder against Elliott. That this court continues to obliquely suggest that perhaps it may have happened runs contrary to the principle of res judicata. It is a slander. There can be no question that Elliott definitely lied about there ever having been a gunshot fired at her and she always knew that she was lying.

II. St. George incorporated by reference ample evidence of Emily Elliott's fraud beginning in the Complaint from the very beginning of this action. St. George points to Elliott's cell phone calls at 10:09PM on 31 July 2016 to 911, and to

Daundrea Bryant at 9:52PM on 31 July 2016. ("We consider only the facts alleged in the Mellons' amended complaint, the documents they attached as exhibits or incorporated by reference, and matters proper for judicial notice." Miller v. Bank of New York Mellon 379 P.3d 342 (Colo. App. 2016)) ("A document that is referred to in the Complaint even though not formally incorporated by reference or attached to the Complaint, is not considered a 'matter outside the pleadings,'" Walker v. Van Lanningham 148 P.3d 391 (Colo. App. 2016)) These incorporated phone calls fully specify the contents of Elliott's lie. The calls are short, only a minute or two each. In the 9:52 call to Bryant, Elliott describes one gunshot, "a fire into the air," and only minutes later tells a 911 operator that there were two, "in the air and then at me." St. George calls this a "spurious allegation" in his Complaint, and a "materially false statement." St. George has particularized the incident of fraud with exceptional specificity. Yet, Richman, Tow and Grove suggest in paragraphs 13 & 15 of their opinion that St. George has failed to state his claim and that the District Court's order to dismiss was proper. There can be no question that these judges are willful in their misapprehension of the facts.

III. Motions to Dismiss are supposed to be disfavored, and yet it is the favorite weapon of courtrooms against pro-se litigants seeking justice and used with alacrity and relish by the courts of Colorado. Indeed, it has been used against St. George 5 times in Colorado's state District Courts, and 3 times in the Federal District of Colorado. Not once has the Colorado Court of Appeals overturned one of these false dismissals and remanded in order that St. George may be heard on the merits of his case. However, the 10th Circuit Court of Appeals has done just that. Are we to be persuaded that St. George's pleadings were so different from one venue to the next, or perhaps the difference lies in the venues themselves. The Colorado Court of Appeals does not conform itself to the disfavor of dismissals, quite to the contrary it loves dismissals. Dismissals are not "rarely granted"... they are constantly granted. (Motions to Dismiss are disfavored, see: Bly v. Story 241 P.3d 529 (Colo. 2010); Begley v. Ireson 399 P.3d 777 (Colo. App. 2017); Marks v. Koch 284 P.3d 118 (Colo. App. 2011); Giduck v. Niblett 408 P.3d 858 (Colo. App. 2014); Rigg v. City of Lakewood 896 F.Supp.2d 978 (D.Colo. 2012); Davidson v. Dill 503 P.2d 157 (Colo. 1972))

IV. On pg. 3 of the Opinion, in a footnote, the judges state, "[St. George] does not appeal the court's denial of his motion to amend." This is factually inaccurate. St. George plainly states in his Provisional Opening Brief on the fourth page of his Argument I, under C. Applicable Law and analysis, "The Plaintiff has never been

given an opportunity to amend. 'Draconian' dismissal was the first action invoked." This is sufficient to liberally preserve review of the District Court's denial of St. George's Motion to Amend. St. George has argued that his Complaint has always stated a claim upon which relief could be granted; because the truth was brought into question St. George ought to have been permitted to give, "a more definite statement of any matter not averred with sufficient definitions or particularity." St. George filed a motion for leave to amend, and he's presented the issue on appeal.

V. St. George is not an attorney. His pleadings are entitled to a level of deference; legal precedent states a pro-se litigant is entitled to have his pleadings liberally construed. (Liberal Construction means, "a less stringent standard than formal pleadings drafted by lawyers." Hall v. Bellmon 935 F.2d 1106, 1110 (10th Cir. 1991)) Colorado has adopted the Twombly standard of pleading in Warne. ("...plaintiffs need not provide 'detailed factual allegations' to survive a motion to dismiss, they must provide more than 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action.'" Bell Atl. Corp. v. Twombly 550 US 544, 124 S.Ct. 1955 (US 2007); Warne v. Hall 373 P.3d 588 (Colo. 2016)) St. George's Complaint is plausible, and he has provided plenty "more," pointing directly at the incident which was the fraud. That is a "set of facts consistent with the allegations in the Complaint." Moreover, St. George's complaint has been outrightly proven since he filed it. This Court has construed St. George's Complaint in a way that is more strict, and more narrow than even the standard a lawyer would be construed, when St. George's Complaint was entitled to be broadly and liberally construed. Why the prejudice? It is bias against the Plaintiff that drives the prejudice, deliberate and wanton.

VI. St. George is the non-moving party. He is entitled to the benefit of all favorable inferences that may be reasonably drawn from the undisputed facts.

(Peterson v. Halstead 829 P.2d 373 (Colo. 1992)) There's been no dispute as to the contents of Emily Elliott's phone call to 911, or the prior statement against interests that proves that she knew she was lying. These judges have nonetheless been incapable of inferring an act of fraud from those facts. That is incredible! A jury of lay-people were capable of figuring out that Emily Elliott was a liar and committed fraud--a jury that went on to wrongfully convict St. George on other charges--clearly not a jury friendly to St. George. It is plain that these judges have misapprehended the facts and the law.

VII. St. George asserts that the real cause for these judges' abuse of their

benches is to avoid making a ruling on Judge Klein's erroneous dismissal on "retaliatory litigation" grounds. St. George's argument as contained in his Provisional Opening Brief in Section II, was 100% correct. These judges are terrified that if District Courts who capitalize on false reports and perjury of witnesses to gain illicit convictions against their defendant victims can have the court activities exposed through civil actions against the perjurors. Judge Klein was erroneous, and St. George has proven it. Emily Elliott is a liar, and the government has profitted from her lie.

These judges have ruled in a manner that is shameful. These judges have deliberately abused their power to protect this defendant, and by extension the City of Lakewood's police department that acted with aggression and violence; they attempted to murder the Plaintiff as an overzealous and mis-led response to the Defendant's criminal fraud. ("In about 1% of [exonerations], police officers falsely testified that they themselves had been assaulted by the defendants, usually to cover up their own violence." Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement, pg. 72, University of Michigan Law School, Samuel R. Gross, et al (1 Sept 2020)) St. George prays that these judges have the humility to acknowledge that their poor judgment is dangerous, it promotes violence and degrades the public's safety. These judges have a responsibility to permit St. George to seek justice and vindication, to uphold the laws of the State of Colorado which apply equally to all. Emily Elliott broke the law when she called in her false report to 911, and Lakewood Police broke the law when they laid seige to St. George's house and tried to murder him in response.

Court Address:

Colorado Supreme Court  
2 East 14th Avenue  
Denver CO 80203

Certiorari to the Court of Appeals, 2020CA853  
District Court Jefferson County, 2017CV413

Petitioner:  
Eric St. George

v.

Respondent:  
E.C.E.

▲COURT USE ONLY▲

Attorney or Party Without Attorney (Name and Address):  
Eric St. George, pro-se  
c/o BVCF--180161  
PO Box 2017  
Buena Vista, CO 81211

Case No:

2022SC292

**PETITION FOR A WRIT OF CERTIORARI**

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of CAR 28 or CAR 28.1, and CAR 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in CAR 28(g) or CAR 28.1(g)

It contains less than 3800 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of CAR 28 or CAR 28.1 and CAR 32.

Supplimental copy

E. F. Seng

## TABLE OF CONTENTS

Caption Page  
Certificate of Compliance  
Table of Contents  
Table of Authorities  
Statement of the Case and Facts  
Issue Presented for Review  
Statement on Time  
Summary of the Argument  
Argument  
    A. Consideration Governing Review  
    B. Relevant Law  
    C. Analysis  
Conclusion

## AUTHORITIES

A Good Time Rental v. First American Title, 259 P.3d 534, 541 (Colo. App. 2011)  
Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937 (2009)  
Begley v. Ireson, 399 P.3d 777 (Colo. App. 2017)  
Bell At. Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1965 (2007)  
Bly v. Story, 241 P.3d 529 (Colo. 2010)  
Bryson v. Gonzales, 534 F.3d 1282, 1286 (10th Cir. 2008)  
Cloverleaf Golf Course, 2011 U.S.Dist.LEXIS 76658 \*12  
Davidson v. Dill, 503 P.2d 157 (Colo. 1972)  
Depp v. Heard, 108 Va.Cir. 382 (Fairfax Co., VA 2022)  
Fidelity Nat'l v. Intercounty Nat'l, 412 F.3d 745, 749 (7th Cir. 2005)  
Giduck v. Niblett, 408 P.3d 858, 872 (Colo. App. 2014)  
Haines v. Kerner, 404 U.S. 519, 520-21 (1972)  
Marks v. Koch, 284 P.3d 118 (Colo. App. 2011)  
People v. St. George 16CR2509  
Rigg v. City of Lakewood, 896 F.Supp.2d 978, 979 (D. Colo. 2012)  
Robbins v. Oklahoma, 519 F.3d 1242, 1248 (2008)  
St. George v. City of Lakewood, 2021 U.S.App.LEXIS 24934  
St. George v. Larson, Jefferson County 17CV416; COA 19CA52; 20SC368  
State Farm v. Parrish, 899 P.2d 285, 288 (Colo. App. 1994)  
Warne v. Hall, 373 P.3d 588, 591, 595 (Colo. 2016)  
  
Bogart, J., Living with Twombly, Utah Bar Journal Vol. 22 No. 2 Pg. 24  
Garcia and Bach, Iqbal is not a game changer, 42 N.M.L.Rev. 329, 345 (2012)  
Wexler, L., 2018 Symposium Lecture, 22 Rich.Pub.Int.L.Rev. 181, 189 (2019)

C.A.R. 49(a)(4)  
C.A.R. 53  
CRCP 9(b)  
CRCP 12(b)(5)  
CRCP 12(e)  
CRCP 15(a)

APPENDIX - Photo copy of OPINION to be reviewed  
pursuant to 53(a)(4)(A)  
- Phone transcripts

## STATEMENT OF THE CASE AND FACTS

(taken directly from Appellate Opening Brief)

On July 31, 2016, Defendant E---- C----- E----- was hired by the Plaintiff, responding to an ad posted to Backpage.com, a website that marketed "Escorts," a euphemism for prostitutes. At 9:46 PM, [Defendant] took money from the Plaintiff by use of force, an act of Robbery and Theft. At 10:09 PM [Defendant] made a spurious allegation in a recorded 911 telephone call. [Complaint, pg 1, para. 1] [Defendant] says to Lakewood Police, "He was firing the gun in the air and then at me..." "He fired it twice." [911 telephone call, 31 July 2016, 10:09 PM] See Appendix (of the Appellate Opening Brief). She makes similar, Materially False Statements in a 10:17 PM phone call with Agent Eric Brennan of the Lakewood Police Department, and again in an August 10, 2017 interview with Kimberly Gallerani of the Jefferson County District Attorney's Office, and also the August 1, 2016 interview with Sergeant (sic) Jeff Larson of the Lakewood Police. [Complaint, pg 1, para. 1] Prior to those false allegations, at 9:52 PM on July 31, 2016, in a recorded phone call the Defendant makes a statement wherein she demonstrates that her later statements are false and she knows them to be false. [Complaint, pg. 1, para. 2] [Defendant] says to Daundrea Bryant, "He shot a fire into the air." Asked, "[D]id he shoot at your car or anything after that?" Responds, "No." [Daundrea Bryant, 31 July 2016, 9:52 PM] See Appendix (of the Appellate Opening Brief). The Plaintiff learns of the contents of these recordings of phone calls and interviews beginning June 9, 2017, after he is given access to Discovery in the criminal case against him. [Jefferson Co. 16CR2509] [Complaint, pg 3, Time] The Materially False Statements are criminal and represent acts of Perjury and Slander. The instant Complaint was filed December 18, 2017. This Court shall take judicial notice that during the pendency of the instant case, the Plaintiff has been acquitted of the allegation of firing his gun at [Defendant] despite her having been suborned to Perjury by Michael Freeman and Katherine Decker of the First Judicial District. [Defendant's] was a dangerous lie that sicced the Lakewood Police on the Plaintiff, resulting in Plaintiff's nearly being murdered by those Police. Plaintiff suffered gunshot wounds, and an illicit cover-up of the LPD's murder attempt initiated by [Defendant's] false reporting.

(addition to facts section not in the Appellate Opening Brief)

The Colorado Court of Appeals' invocation of "an arrest affidavit that is part

of the record on appeal," [OPINION, 3 FEB 2022, pg. 1, n. 1] opens the door to consideration of the arrest affidavit. Authored by Detective Jeff Larson, and subject of Mr. St. George's suit for fraud that ran parallel to the instant suit, [17CV416, 19CA52, 20SC368] that Affidavit contained the exact same fraudulent statement that is the subject of this suit. (St. George was denied any justice in St. George v. Larson, that defendant was granted immunity. The case was never decided on its merits) Detective Larson stated, "...in the middle of the street, raise (sic) his left arm and she [E.C.E.] saw a flash and heard what she believed to be a gunshot into the air. She got to her car and looked back again, and the male had leveled (sic) his hand towards her and another flash was seen with the sound of a gunshot where she felt he had shot at her." [Jefferson County Warrant Arrest Affidavit 16-03418, 2 AUG 2016, pg 1] Larson testifies to the exact same fraudulent statement at St. George's Preliminary Hearing [Jefferson Count 16CR2509, 9 SEP 2016, TR p 3] yet in response to a jury question in the criminal trial Larson capitulates and admits, "...but based on the evidence that we found, I didn't find evidence of a second shot at [E.C.E.]." [Trial JeffCo 16CR2509, 8 FEB 2018, p 58, Ln 17-18] The Affidavit was a fraud, and the Colorado Court of Appeals knows that it is a fraud.

#### ISSUE PRESENTED FOR REVIEW

- I. Colorado's Court of Appeals and District Courts below abuse their power to dismiss the complaints of pro-se litigants. Colorado's Court of Appeals and District Courts below abuse their power in not permitting pro-se litigants to amend complaints that the judge or defendant allege to be deficient.

#### STATEMENT ON TIME

The judgment that the petitioner seeks to be reviewed was entered 3 FEB 2022. On 24 MAR 2022, the COA denied rehearing. On 26 MAY 2022 this Court responded to petitioner's expansion of time request, granting up to and including 23 JUN 2022. C.A.R. 53(a)(3)(A) & (B)

#### SUMMARY OF THE ARGUMENT

St. George repeatedly sought to amend his complaint base upon the allegations that it was deficient. Dismissals are disfavored. Leave to amend is to be freely given. Pro-se litigants are to be held to a less stringent standard in their pleadings. St. George ought to have been given at minimum one good-faith opportunity to amend as justice demands it.

## ARGUMENT

I. Colorado's Court of Appeals and District Courts below abuse their power to dismiss the complaints of pro-se litigants. Colorado's Court of Appeals and District Courts below abuse their power in not permitting pro-se litigants to amend complaints that the judge or defendant allege to be deficient.

A. The Court of Appeals departed so far from accepted and usual course of judicial proceedings as to call for Supreme Court power of supervision. C.A.R. 49(a)(4)

### B. RELEVANT LAW

"A complaint that alleges all of the elements of the claim necessarily is sufficient. But a complaint which omits some essential elements may still succeed so long as the missing elements are plausibly inferred from what is alleged." Bryson v. Gonzales, 534 F.3d 1282, 1286 (10th Cir. 2008) as quoted in Bogart, J., Living with Twombly, Utah Bar Journal Vol. 22 No. 2 Pg. 24.

"Stating a claim requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made." Bell Atl. Corp. v. Twombly, 550 US 544, 127 S.Ct. 1955, 1965 (2007) "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of an illegal agreement." Id. \*replacing "agreement" with "fraud" for relevance\* Explicitly adopting Iqbal in Colo. in Warne v. Hall 373 P.3d 588 (Colo. 2016) "plausible standard" and "beyond mere speculation" Warne @ 591, 595. "specificity necessary to establish plausibility and fair notice... depends on context." Robbins v. Oklahoma, 519 F.3d 1242, 1248 (2008) In State Farm v. Parrish, 899 P.2d 285, 288 (Colo. App. 1994) defines in fraud cases particularity is "...the respect in which the plaintiff contends the statements were fraudulent,... when and where the statements were made,... those responsible for the statements." Motions to Dismiss are Disfavored.

"Motions to dismiss are generally viewed with disfavor." Rigg v. City of Lakewood, 896 F.Supp.2d 978, 979 (D. Colo. 2012) "Motions to dismiss under CRCP 12(b)(5) for failure to state a claim are disfavored in Colorado." Giduck v. Niblett, 408 P.3d 858, 872 (Colo. App. 2014) see also: Bly v. Story, 241 P.3d 529 (Colo. 2010); Begley v. Ireson, 399 P.3d 777 (Colo. App. 2017); Marks v. Koch, 284 P.3d 118 (Colo. App. 2011); Davidson v. Dill, 503 P.2d 157 (Colo. 1972) "Where a motion for a more definite statement is justified and an effort is made to comply with the order of the court granting it, the insufficiency of the

Those phone calls were fully incorporated by reference into St. George's Complaint. Those phone calls only contain one statement in each of them. The calls are 1 - 2 minutes long. The calls contain only a few hundred words apiece.

In the context of a fraud claim, a Defendant telling her employer's secretary one thing, and only minutes later telling a 911 operator another is a more than plausible act of fraud -- she's caught red-handed.

In the Federal District of Colorado's Court, and in the 10th Circuit, it is still the case that Motions to Dismiss are disfavored, even after Twombly and Iqbal.

Is it the case that in Colorado's corresponding State-level districts and in the Colorado Court of Appeals, after Warne, motions to dismiss are no longer disfavored?

Is it no longer rare to dismiss a case without affording the Plaintiff the opportunity to amend? In this State, St. George has been dismissed 100% of the time. In the Federal District of Colorado, when St. George was dismissed, he was given the opportunity to amend (sua sponte, even.) That amended complaint was dismissed and the 10th Circuit appellate court overturned the erroneous dismissal. (see: St. George v. City of Lakewood, 2021 U.S.App.LEXIS 24934)

A Plaintiff has a right to bring his claims to court. Judges ought not be permitted to dismiss claims that they don't want to hear because they are biased against the Plaintiff who brings them. (The inference of bias is made based upon the panel below's OPINION that says, "As a result of his actions, St. George was charged with numerous criminal offenses," which is a reassertion of a false narrative. Also, reference to the "arrest affidavit," a fraudulent document authored by Jeff Larson, a defendant to State and Federal fraud suits.)

Dismissal is being abused. Leave to amend should be freely given. If a Complaint is not "particular" enough, and a more definite statement is needed to meet the rules 12(b)(5) or 9(b), an opportunity to amend must be afforded. This is especially so with pro-se litigants. What ever happened to liberal construction and the deference for pro-se litigants afforded by Haines v. Kerner, 404 US 519, 520-21 (1972)? Also CRCP 12(e)?

When courthouses do to pro-se litigants what's been done to St. George instantly, the public is apt to believe that courtrooms are illegitimate. Are courtrooms the exclusive private club for bar members only to litigate claims; or are

courtrooms a place where members of the public are capable of bringing their complaints on their own behalf? The ruthless dismissal of pro-se authored complaints will ultimately have a chilling, deterrent effect on their filings. The public likely already believes this is the case.

In the event the Plaintiff had been contumacious in his filing, or the case were frivolous, or if the Complaint contained scandalous immaterial language-- a rare dismissal without leave to amend may have been appropriate. That is not the case here.

The Defendant here capitalized on the contemporary #MeToo movement, knowing that zero legitimate examination of her fraud would occur. This civil action is critical to insure that these types of fraud are kept in check.

Granting this Writ will signal that pro-se litigants will be heard in Colorado courthouses and that courtrooms are not the exclusive dominion of bar members. The right to amend afforded by rule will be maintained. Motions to dismiss will continue to be disfavored. Motions to dismiss will be granted rarely without an opportunity to amend afforded. Draconian dismissal will be a last resort, not the first.

#### **CONCLUSION**

St. George's Complaint was dismissed over repeated objections, amendment requests, appeals, & motion to vacate. The dismissal was erroneous owing to St. George never once being given an opportunity to amend his complaint to meet the standards of the judge.

The merits of this case are especially of interest in the public sphere. The #MeToo movement's maxim of "believe all women" left unscrutinized has and will run amok. To elucidate just how interested the public is in these matters, one need look only to the recent live television coverage of Depp v. Heard in Fairfax County, VA. A slander and fraud case between a man and woman that was broadcast nationwide to a large audience. No doubt due to the celebrity status of the litigants, and the salacious details exposed; but this Plaintiff believes also because of the outcome. The liar, a woman, was found culpable for her public slander of a man, despite her appeals to #MeToo ideology.

## APPENDIX

Incorporated by reference in the Complaint, the following appendices are included here for the convenience of the Court. Appellant is not readily able to provide "clean, unmarked copies" of the other documents additionally referenced in the Complaint. Upon this Court's Order, Appellant will provide copies of his marked-up copies with redactions to cover work-product and to be filed under seal of the Court.

Transcript of telephone call  
July 31, 2016 9:52PM  
Daundrea Bryant to Emily Elliott

<<transcribed directly from recording>>

(ELLIOTT) hello  
(BRYANT) hey  
(BRYANT) okay, so I have April taking care of, um, all of that  
(ELLIOTT)(Laughs) Uh, yeah, oh my God it gave me a heart attack, I was like "oh my God"  
(Talking over one another, unintelligible) go get Effy like my Mom  
(ELLIOTT) no, I was like, (unintelligible) fuckin', and then I don't know if you heard it or not over the phone he shot a fire into the air.  
(BRYANT) I didn't hear it (unintelligible) All I heard was like "oh my God he shot" and that's when I told you just to run (laughing)  
(ELLIOTT) Yeah, no, (unintelligible) Yeah, I mean he's standing right by my car, I almost hit him with my car, like it into reverse  
(BRYANT) Oh my goodness, did he shoot at your car or anything after that?  
(ELLIOTT) No... I think maybe because I was like call the fuckin' police, call the fuckin' police. (laughs)  
(BRYANT) Ohh myy godd. That's insane.  
(ELLIOTT) Like, Holy shit.  
(BRYANT) Oh my God, my heart is just still beating so fast, I sound super calm right now, but my heart is like, beating out of its chest. Like it's freaky...  
(ELLIOTT) Yeah, like, no no (unintelligible)  
Both: (laughing together)  
(ELLIOTT) Why is it always me?  
(BRYANT) Oh my goodness, you're not the only one, trust me. (unintelligible)  
(ELLIOTT) Last week it was the guy with a machete tried to pull me while I was (unintelligible)  
(BRYANT) Oh my god that was my call too, I was like, what the heck is his problem?  
(unintelligible) Yeah we blacklisted him and had security go up there it was a mess, so whhh, this guy is definitely going on the blacklist make sure never, ever, ever (unintelligible) again.  
(ELLIOTT) Yeah, that was so dangerous, he like acted like he didn't know he did anything wrong, like, I warned you three times and then I was like "fuck you" like it (unintelligible) super rough and everything like that, you need to like calm down

(BRYANT) Oh my gosh, uh, just wow, uh... okay April's asking I have, I have pulled, let me go back and look at your call, that was a house, right?

(ELLIOTT) It was an apartment  
<<remainder of transcript taken directly from Discovery, not from recording>>  
(ELLIOTT) It was, um, building 7, apartment 103  
(BRYANT) Okay, Building 7, apartment 103. Um, and that was Eric I believe, yeah Eric.  
(ELLIOTT) Mhun.  
(BRYANT) Because I remember putting you over to Alex (unintelligible), um, that is like terrifying. April let me send April this info she's putting it on like the Black List system now so sure not to...  
(ELLIOTT) Yeah, like shit.

(BRYANT) Kay, no that my panic attack is over oh my goodness.  
(ELLIOTT) I'm probably going to have mine for like the rest of the night.  
(BRYANT) Oh Jesus Christ. Oh my goodness like.  
(ELLIOTT) Who fuck pulls out a gun? Like he, he followed me outside in his underwear like out, out of his apartment like so close like what the fuck? He did not give a shit.  
(BRYANT) People are crazy. Like I mean somebody else would have to heard that.  
(ELLIOTT) Yeah, I'm sure we're not the only ones that called the police like.  
(BRYANT) Oh my goodness. Okay, hold on I'm tryin' to get this info to April to while I have you on the phone okay (inaudible) Alright, alright so April has all the information and everything and she's handlin' that situation.  
(ELLIOTT) Yeah, no I'm goin' home, this scared the shit out of me, I nee (inaudible)  
(BRYANT) Hold on. April. Hold on, I think April wants to talk to you.  
(ELLIOTT) Okay.  
(BRYANT) Okay. Hold on one second.  
<<Discovery transcript ends>>

Transcript of telephone call  
July 31, 2016 10:09  
Emily Elliott to Lakewood 911

<<transcribed from recording>>

(Lakewood Police) Lakewood 911, what is the address of your emergency?  
(ELLIOTT) 8139 West Eastman Place, Lakewood  
(Lakewood Police) You're going to have to say that for me one more time please.  
(ELLIOTT) 8139 West Eastman Place  
(Lakewood Police) 8139 West Eastman Place. What's going on there?  
(ELLIOTT) Um, somebody tried to shoot me. He's still there, Building 7 Apartment 103, the guy's name is Eric.  
(Lakewood Police) What do you mean he tried to shoot you?  
(ELLIOTT) I work for "Denver Ladies" and we don't provide illegal services and he tried to touch me inappropriately several times so I left, and he ran after me outside the apartment and he tried to shoot me. And he ran after me to the car and I drove away.  
(Lakewood Police) Did you actually see a gun?  
(ELLIOTT) Yes, yes I did. He shot it, he shot it.  
(Lakewood Police) Okay, take a deep breath so you can tell me exactly what happened, OK?  
(ELLIOTT) Okay, sorry, sorry.  
(Lakewood Police) Was the party at the Windsor Apartments there?  
(ELLIOTT) Yes.  
(Lakewood Police) And you said he tried to touch you?  
(ELLIOTT) Yes, well basically when I walked in I let him know that I didn't offer any illegal services. He wanted to cancel and we ended up telling him there would be a slight charge then he said, "All right, that's fine, we'll do it anyway." and then he kept trying to touch me inappropriately and I was like alright I'm leaving, and he said, "You can't leave you still have my money." and I'm like, "Well, y'know the show's almost over, you touched me inappropriately, I'm leaving!" and he followed me outside with a gun.  
(Lakewood Police) Okay, was he showing you the gun, or pointing it at you, or what happened?  
(ELLIOTT) (histrionic) No, he was firing it.  
(Lakewood Police) He was firing the gun?  
(ELLIOTT) Yes.  
(Lakewood Police) In the air?  
(ELLIOTT) He was firing the gun, in the air and then at me.  
(Lakewood Police) (typing) Where are you now?  
(ELLIOTT) I'm at Ridgegate and I-25. I got out of there as fast as I fucking could.  
(Lakewood Police) Okay, where is the subject with the gun now?  
(ELLIOTT) I assume he is still at the apartment, because I left the complex and he didn't follow me in a car or anything.  
(Lakewood Police) Okay, What kind of gun was it, do you remember?  
(ELLIOTT) I didn't see it, it was dark. I only heard it fire. --  
(Lakewood Police) Okay, but you heard the shots? How many times did he fire it?

(ELLIOTT) He fired it twice.  
(Lakewood Police) (typing) Okay, do you know his name?  
(ELLIOTT) He gave the name Eric. I could be a fake name or it could be his real name.  
(Lakewood Police) You don't know last then?  
(ELLIOTT) No, no, they don't give me last names.  
(Lakewood Police) Okay, okay, tell me exactly where you are.  
(ELLIOTT) I'm getting off I-25 south exit to Ridgegate. I'm on my way back to my place.  
(Lakewood Police) When did this happen?  
(ELLIOTT) This happened, truly, like 20 to 25 minutes ago.  
(Lakewood Police) Okay, is this person, black, white, Asian, Hispanic?  
(ELLIOTT) He's white with brown hair. He's probably about 5'9"-5'10".  
(Lakewood Police) Okay, was heavy, slim, or average built?  
(ELLIOTT) He was average build.  
(Lakewood Police) What was he wearing? How old do you think he was?  
(ELLIOTT) Um, I'm thinking he was maybe mid 30's early 40's.  
(Lakewood Police) Okay, do you remember what he was wearing?  
(ELLIOTT) He chased me out of the house in black boxers.  
(Lakewood Police) I'm sorry ma'am, what did you say?  
(ELLIOTT) He chased me out of the house in black boxers and that was it.  
(Lakewood Police) Okay, and do you know what apartment you were in?  
(ELLIOTT) It was building 7, apartment 103.  
(Lakewood Police) Okay... and as far as you know, is he still there?  
(ELLIOTT) Yeah.  
(Lakewood Police) Was this his apartment?  
(ELLIOTT) Yeah, it was his apartment.  
(Lakewood Police) And, how do you know this person?  
(ELLIOTT) Like I said, I work for "Denver Ladies," it's a completely legal escorting service. We don't provide any sort of illegal activities at all, and that upset him I guess, hah-hah.  
(Lakewood Police) Okay.  
(ELLIOTT) But, yeah, in the beginning we gave him the option to cancel and he opted out of that. He decided he still wanted to do it, even though he would not be provided any illegal services.  
(Lakewood Police) Okay, and then when you refused the services, he got upset and chased you out with the gun?  
(ELLIOTT) Well, it's that, I have, because of Lakewood's law I have to keep on some sort of bottoms, like a G-string, or panties, or something and like he kept trying to touch me inappropriately, and I, and I just left. I felt really disrespected, so I just left.  
(Lakewood Police) Okay, and then that happened about 25 minutes ago, you said?  
(ELLIOTT) Yes.  
(Lakewood Police) Okay, what's your last name ma'am?  
(ELLIOTT) The last name is Elliott, E-L-L-I-O-T-T.  
(Lakewood Police) Okay, and what's your first?  
(ELLIOTT) Emily, E-M-I-L-Y  
(Lakewood Police) And what's a good phone number for you Emily?

17CV413

MOTION TO VACATE DISMISSAL (2020)

Timeline

District Court of Jefferson County 100 Jefferson County Parkway Golden, CO 80401	
Eric St. George (plaintiff) v. Emily Elliott (defendant)	Filed 3/21/2020
Plaintiff, pro se Eric St. George c/o BCCF--180161 11560 CR FF.75 Las Animas, CO 81054	Case No.: 17CV413 Div: 8 Ctrm: 4D
<b>MOTION TO VACATE DISMISSAL (MARCH 2020); ORDER of DISMISSAL from DEC 2018</b>	

**COMES NOW**, the Plaintiff, pro-se, does herewith move this court to vacate its order to dismiss and allow the Plaintiff leave to amend the Complaint.

**INTRODUCTION**

This Court is thoroughly apprised of the facts of this case. This Court is in possession of competent evidence that clearly demonstrates that the Defendant Elliott is guilty of every allegation that the Plaintiff has made. The Plaintiff has alleged that the Defendant committed perjury and false reporting in a 911 call particularly referenced in his Complaint, made on July 31, 2016 at 10:09 PM. This Court possesses the transcript of this call, along with a transcript of her statement against interest made immediately prior. This Court knows that she falsely alleges that the Plaintiff fired a gunshot aimed at her, a second of two; this is perjury. This Court knows that the Defendant repeats her perjury in her interview with a Lakewood Detective the following morning. This Court knows that the Defendant did use force to steal money from the Plaintiff, an act of robbery. This Court is capable of reasonably inferring that the Defendant's other allegations are also perjuries.

This Plaintiff is opposed to any dismissal of any claim to relief. This is inclusive of the Defendant's spurious counter-claims, as well as his own claims. To deny the Plaintiff of discovery and the inevitable failure of the Defendant's claims before a jury is to deny Plaintiff justice.

## THE TIMELINE

July 31, 2016 9:46 PM Defendant Elliott is hired by Plaintiff from Backpage.com, a website that is used to advertise for prostitution. The Defendant takes money from Plaintiff that she knows belongs to the Plaintiff, Defendant uses force in her theft. Defendant pulls a weapon from her purse and turns to confront the Plaintiff when he demands return of his money.

July 31, 2016 9:52 PM Defendant Elliott states irrefutably in a recorded phone call that the Plaintiff shot a gun into the air, and no gunshot at her car or anything after that. She does not report the theft, or her use of a weapon to confront the Plaintiff, a bottle of mace.

July 31, 2016 10:09 PM Defendant Elliott calls 911, and makes a spurious allegation. She tells the 911 operator that the Plaintiff has fired twice, once in the air and a second aimed at her.

July 31, 2016 10:17 PM Defendant Elliott repeats the allegation of 2 gunshots, once in the air and a second aimed at her, in a phone call with Agent Eric Brennan LPD.

August 1, 2016 Defendant Elliott repeats the allegation of 2 gunshots, once in the air and a second aimed at her, in a phone call with Detective Jeff Larson.

August 10, 2017 Defendant Elliott repeats the allegation of 2 gunshots, once in the air and a second aimed at her, in a phone call with Kimberly Gallerani.

June 9, 2017 The Plaintiff acquires Discovery in Criminal Case 16CR2509, wherein he discovers the content of the phone calls, and interviews. St. George was forced to declare pro-se status in order to obtain the discovery as it was kept from him by the Public Defenders office, despite written demands by St. George to obtain it. This is recorded in the ICON report of 16CR2509 and court record.

December 10, 2017 Plaintiff files the instant complaint; Plaintiff cites particularly the contents of the discovered documents.

2018 Motion to Dismiss is filed by counsel for the Defendant.

January 2019 Dismissal granted

January 2019 Appeal filed

January 2019 Motion to Vacate Dismissal filed by Plaintiff

February 2019 Motion to Vacate denied; lack of jurisdiction cited

December 2019 Appeal dismissed without prejudice; lack of jurisdiction cited

January 2020 Motion to Vacate Dismissal filed by Plaintiff

## CLAIMS

- 1) Demand for a true affidavit free of perjury
- 2) Demand for a Special Prosecutor to file criminal charges (theft, robbery, perjury, false reporting, reckless endangerment.)
- 3) Demand for damages, physical injury
- 4) Demand for damages, false reporting
- 5) Demand for damages, fraud (slander and libel)

## ARGUMENT

1. The Plaintiff acknowledges this is a repeated motion to vacate the dismissal.
2. This Plaintiff is unwilling to abandon his claims. His claims are genuine, brought in good faith, reasoned, and righteous.
3. *Warne v. Hall* 373 P.3d 588 (Colo. 2016) imposes the plausible standard for claims to relief. In the instant case, the Plaintiff made plausible claims.
4. This Court is within the bounds of its discretion to reverse its former denial of vacation pursuant to Plaintiff's motion. This Court's ruling to deny vacation of its dismissal order was erroneous and a manifest injustice both. A trial court may, in its discretion, reconsider and reverse a prior ruling if it determines that "its former ruling is no longer sound because of changed conditions, it needs to correct its previous ruling because of a legal or factual error, an intervening change in the law has occurred, or manifest injustice would result from its original ruling." *Janssen v. Denver Career Serv. Bd.*, 998 P.2d 9, 15 (Colo.App. 1999). see also *People v. Dunlap*, 975 P.2d 723, 758 (Colo. 1999); *People ex rel. Gallagher v. District Court*, 666 P.2d 550, 553 (Colo. 1983). *Warren* 55 P.3d 809
5. This case was filed in this Court in 2017, it is now 2020.
6. The appeal of this Court's dismissal was filed in January 2019, it is now January 2020.
7. An exceptional amount of judicial resources have been wasted in the attempt to frustrate and dissuade this Plaintiff from pursuing justice and relief as demanded in his Complaint.
8. The Plaintiff incorporates by reference as if fully set forth here his January 2019 MOTION TO VACATE DISMISSAL AND GIVE LEAVE TO AMEND.
9. The Plaintiff incorporates by reference as if fully set forth here his OPENING BRIEF in the appellate case 19CA53. (A courtesy copy is submitted instantly)
10. The Plaintiff states that this Court shall take judicial notice that this Defendant has not answered Plaintiff's OPENING BRIEF in appellate case 19CA53, or 19CA470.
11. Backpage.com is a website that was used to advertise prostitutes. *US v. Roach* 896 F.3d 1185, 1187 (CA 10 (NM) 2018), also *US v. Carty* 617 Fed.Appx. 630, 631 n.1 (8<sup>th</sup> Cir. 2105)
12. There is nothing frivolous about the Plaintiff's claims to relief. The Defendant perjured herself in making false allegations against the Plaintiff; most glaringly an allegation of attempted murder. This allegation has been proven false during the pendency of the instant case. The Defendant's vicious allegation was proven false in the face of the full force and complicity of the First Judicial District's Attorneys that abetted her in making that perjury, and suborned her perjury at trial right here in this Courthouse. (see 16CR2509)
13. The record shows that the Defendant made Materially False Statements about a "He was ~~fining the gun, in the air and then at me~~ [911 Call, 7-31-2016, 10:09PM]," in contrast to her statement against interest, "...did he shoot at your car or anything after that? No... I think maybe because I was like call the fuckin' police, call the fuckin' police [Denver Ladies Call, 7-31-2016, 9:54PM];" she lies also about not carrying a weapon (mace) [Larson interview, 8-1-2016] that she later confessed was in her hands [Jury trial, 2-1-2018, pg 246 ln 2-14], "he ran after me outside the apartment" [911 Call, 7-31-2016], where she later said he walking slowly "like a horror movie" [Larson interview, 8-1-

2016], her counter-claim alleges “false imprisonment” and yet when asked under oath at trial “Did he physically block you from leaving his bedroom?” She confesses “He stood in front of the doorway and I pushed past him. I wouldn’t say he got physical with me.” [Jury trial, 2-1-2018, pg 252, ln 12-18] … The reasoned inference is that the Defendant is a serial liar, and if probed further in these proceedings her additional lies will also be recanted.

14. The record shows that the Defendant did commit theft and robbery by admission. “Yeah, and in my mind, you know, the show is pretty much halfway over anyway and you’re inappropriate so I don’t care if that’s your money, it’s mine now.” [Jury trial, 2-1-2018, pg 251, ln 23-25] Was it a robbery? Did she use force? She tells the DA “He stood in front of the doorway and I pushed past him…” Asked, “So you didn’t have to use *a lot* of force to get by?” (*emphasis added*) [Id. @ pg 252, ln 16] Because force was used and the DA sought to mitigate it.
15. During the pendency of this case, the Plaintiff has filed an affidavit seeking the prosecution of this Defendant. The affidavit was sent to the Attorney General of the State of Colorado. The District Attorney of the First District was a participant in the Defendant’s perjury in subornation. The Attorney General has refused pursuant to CRS §16-5-209 and *Kailey v. Chambers*. Thusly, this Court has jurisdiction to order a special prosecutor.
16. To vacate the Court’s self-serving dismissal of the Plaintiff’s Complaint and permit him to amend is **not futile**. “Amendments are futile if they are legally insufficient, for example, when a proposed amendment fails to cure defects in previous pleadings, fails to state a legal theory, or would not withstand a motion to dismiss.” The Plaintiff has a legitimate claim to relief based on competent evidence; Plaintiff has never amended his Complaint in the instant case, and has nothing but justice as motive. Amended, the Plaintiff’s Complaint would withstand any Motion to Dismiss, even in a courtroom friendly to the Defendant. The Plaintiff will provide an exaggerated amount of particularity, over and above that which is minimally required.
17. It is the belief of this Plaintiff that his original Complaint was sufficient. The Particulars of the materially false statements were given as “who, when and where” pursuant to State Farm v. Parrish, 899 P.2d 285, 288 (Colo. App. 1994) the court defines particulars as, “...the respect in which plaintiff contends the statements were fraudulent, ...when and where the statements were made, ...those responsible for the statements.” The Appellant’s Complaint contains all of these “particulars.” Appellant states the respect of the fraudulency as being “materially false statement in the form of a spurious allegation against the plaintiff.” See OPENING BRIEF…
18. Properly contemplated, the Defendants Motion to Dismiss should have been construed a request for additional clarification. “CRCP 12(e) permits a party to request a more definite statement of any matter not averred with sufficient definiteness or particularity… the draconian remedy of dismissal of the action should be invoked only as a last resort.” (*emphasis added*) Giduck v. Niblett 408 P.3d 858 (Colo. App. 2014) The court was motivated to grant the dismissal to serve its own interests. That interest, plainly stated, was to frustrate the Plaintiff efforts in seeking justice.

19. Leave to amend should properly be "freely given." "Thus Polk is correct in observing that a motion to amend is entitled to a lenient examination." and "If the underlying facts or circumstances relied upon by a plaintiff may be proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc—the leave sought should, as the rules require, be 'freely given.'" *Polk v. Denver Dist. Court, 849 P.2d 23, 25 (Colo. 1993)*
20. This Plaintiff even opposes dismissal of the Defendant's counter-claims. If Elliott believes that her claims are legitimate, let her prosecute them; as such this Counterclaim-Defendant may be permitted to prove them to be the additional lies that they are through discovery and trial.

WHEREFORE, this Court shall GRANT this Plaintiff's **MOTION TO VACATE DISMISSAL (MARCH 2020); ORDER of DISMISSAL from DEC 2018** for good cause shown. Additionally, the Plaintiff opposes dismissal of the Counterclaim-Plaintiff's spurious claims. This Counterclaim-Defendant prefers to demonstrate the falsity of those claims on their merits.

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Eric St. George

#### CERTIFICATE OF SERVICE

On the date listed below, I hereby certify that I did place with the BCCF Legal Mail Clerk, postage prepaid, a copy of the **MOTION TO VACATE DISMISSAL (MARCH 2020); ORDER of DISMISSAL from DEC 2018**, addressed to the Court and Defendant's counsel as below:

Emily Catherine Elliott  
18159 E. Main St. #16-305  
Parker, CO 80134

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 26, 2022
Jefferson County 2017CV413	
<b>Plaintiff-Appellant:</b>	
Eric St George,  v.	Court of Appeals Case Number: 2020CA853
<b>Defendant-Appellee:</b>	
E.E.	
MANDATE	

This proceeding was presented to this Court on the record on appeal. In accordance with its announced opinion, the Court of Appeals hereby ORDERS:

**ORDERS AFFIRMED**

**POLLY BROCK**  
**CLERK OF THE COURT OF APPEALS**

DATE: SEPTEMBER 26, 2022

72

ORDER TO DISMISS

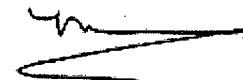
DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO. 100 Jefferson County Parkway, Golden Colorado 80401	DATE FILED: December 27, 2018
PLAINTIFF(S): ERIC ST. GEORGE  v.  DEFENDANT(S): EMILY ELLIOTT.	<b>^COURT USE ONLY^</b>
	<b>CASE NUMBER 17-CV-413</b> Div: 8 Ctrm: 4D
<b>ORDER RE: MOTION TO DISMISS</b>	

**THE COURT** having received the Defendant Emily Elliott's Motion to Dismiss, and the court having reviewed the Court file, and otherwise being advised in the premises hereby grants the Motion. The Plaintiff's claims are dismissed with prejudice. Even viewing the allegations in the light most favorable to the Plaintiff he has failed to state legal claims entitling him to civil relief.

Done in open court this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

December 27, 2018

BY THE COURT:



MARGIE L. ENQUIST, District Court Judge

72  
5/360

APPENDIX H