

No. 25-

IN THE
Supreme Court of the United States

SAMUEL A. COX,

Petitioner,

v.

BRIAN D. THIE, INDIVIDUALLY AND AS BENEWAH
COUNTY PROSECUTOR; TRAVIS HUNTER AND
TRISHA HUNTER, HUSBAND AND WIFE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the *Franks v. Delaware* requirement that courts conduct a materiality analysis upon a substantial preliminary showing that the affiant deliberately or recklessly omitted material facts from a warrant affidavit must be applied when the affiant is a prosecutor claiming absolute immunity.

2. Whether a court may grant absolute prosecutorial immunity without conducting the functional analysis required by *Buckley v. Fitzsimmons* and *Kalina v. Fletcher* to determine whether the prosecutor's conduct in certifying facts under oath, while deliberately or recklessly withholding material information, constituted an advocacy function or a witness function.

INTRODUCTORY STATEMENT

This petition presents a question that transcends any individual immunity claim: Whether lower courts may enlarge prosecutorial immunity by declining to perform the very analyses this Court designed to define its boundaries. In this case, both courts below granted absolute immunity without conducting either the *Franks v. Delaware* materiality analysis or the *Imbler/Buckley/Kalina* functional analysis. Both were squarely raised, fully briefed, and supported by undisputed record evidence. Both were silently ignored. The result is that a prosecutor who personally investigated the underlying facts, withheld material information from the issuing magistrate, and certified under oath an incomplete warrant application, received absolute immunity without any court examining his conduct. Each time a court grants immunity without performing these analyses, the boundaries of prosecutorial immunity are effectively erased—not by any holding, but by silence. If it can happen in one case, it can happen every time a citizen is confronted with a claim of absolute prosecutorial immunity.

RELATED CASES

1. Cox v. Thie and Hunter, No. 2:22-cv-199, U.S. District Court for Idaho. Judgment entered September 3, 2024.
2. Cox v. Thie and Hunter, No. No. 2:22-cv-00199-AKB, Memorandum Decision Dismissing, October 24, 2025.
3. Cox v. Thie and Hunter, No. No. 2:22-cv-00199-AKB, Rehearing Denied, December 4, 2025.
4. Trisha Hunter, Petitioner v. Samuel Cox, Respondent, CV05-20-0060, First Judicial District, Benewah County, Idaho,, Civil Protection Order, March 11, 2020.

LIST OF ALL PARTIES

Petitioner Samuel A. Cox was the plaintiff-appellant below.

Respondent Brian D. Thie, individually and as Benewah County Prosecutor, was a defendant-appellee below.

Respondents Travis Hunter and Trisha Hunter, husband and wife, were defendants-appellees below.

No party is a corporation.

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OPINIONS BELOW¹

The memorandum disposition of the United States Court of Appeals for the Ninth Circuit (Pet. App. 1a-4a) is unpublished. The memorandum decision and order of the United States District Court for the District of Idaho (Pet. App. 5a-31a) is unreported. The order of the Ninth Circuit denying rehearing en banc was entered December 4, 2025. Pet. App. 34a.

BASIS FOR JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its judgment on October 24, 2025. A timely petition for rehearing en banc was denied on December 4, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is filed within ninety days of the denial of rehearing. See Sup. Ct. R. 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or

1. See Petitioner's briefing in the District Court, and Opening and Response briefing before the 9th Circuit, at Pet. App. 175a, 190a, and 208a, respectively.

affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

I. STATEMENT OF THE CASE

A. Factual Background

1. The protection order.

Petitioner Samuel Cox and respondents Travis and Trisha Hunter are neighbors in a rural area south of Fernwood, Idaho, where their properties are separated by approximately 800 feet. Pet. App. 83a, ¶ 4; Pet. App. 171a-172a (aerial photos of parties' properties). Access to both properties is provided by mutual easement roads, Poplar Drive and Sapling Lane, connecting to the main road, Carpenter Creek Road. The Hunters also used a secondary, non-easement road (the "Bypass Road") as an alternate route from Poplar Drive to their home. Pet. App. 84a, ¶ 7.

On March 11, 2020, Magistrate Douglas Payne issued a civil protection order prohibiting Cox from doing anything to “interfere with [the Hunters’] ingress or egress to their home” or to degrade their road access “to any significant degree.” Pet. App. 100a, ¶ 9.

2. The alleged violation and Deputy Vannatter’s investigation.

On April 23, 2020, Cox cleared a drainage ditch along Poplar Drive that rendered the Bypass Road (secondary road) impassable. Hunters had filled in the existing drainage ditch in order to create access to the Bypass Road for use as a second, alternate route to their home. 87a, ¶¶ 26-28. Mrs. Hunter reported Cox’s clearing of the ditch to the Benewah County Sheriff’s Office. Deputy Vannatter investigated and advised Cox he was being investigated for possible violation of the protection order. Cox’s restoration of the ditch rendered the Bypass Road impassable. Pet. App. 142a-143a, ¶¶ 4-9. Vannatter prepared a report, completed April 30, 2020, that included a referral for charges. Pet. App. 156a.

3. The prosecutor’s personal investigation and negotiated resolution.

On April 24, Cox’s attorney, Dennis Clayton, contacted Benewah County Prosecutor Brian Thie and suggested they meet at the property to discuss a possible resolution. Pet. App. 37a-38a, ¶¶ 12-17; Pet. App. 104a-105a, ¶¶ 6-10.

On April 28, Thie drove to the Cox and Hunter properties, a round trip of thirty to forty miles. He met with Cox and Clayton, walked the full distance of Poplar

Drive and the adjacent ditches, and personally observed the road conditions, including the ditch Cox had dug across the Bypass Road entrance. Pet. App. 39a, ¶¶ 18-23; Pet. App. 105a-106a, ¶¶ 10-13. Thie then left to speak with Travis Hunter at the Hunter residence. Upon returning, Thie reported that Hunter had a PVC pipe available that Cox could use as a culvert to repair the Bypass Road, and that Hunter would provide the pipe if Cox agreed to install it. Pet. App. 105a-106a, ¶ 13.

Cox agreed to make the repairs. Although Thie disputes whether Cox agreed while Thie was present, Thie acknowledges that by the time he returned to his office on April 28, he was aware Cox had agreed to repair the Bypass Road. Pet. App. 106a, ¶ 17.

Thie regarded himself as “an advocate for the Hunters.” Pet. App. 55a.

On April 29, Thie and Clayton exchanged emails regarding Cox’s progress. Thie wrote that he expected a report from the Sheriff’s Office that would include a “referral of charges, but hopefully these matters can be taken care of and charges won’t need to be filed.” Pet. App. 135a.

4. Cox repairs the Bypass Road.

Cox installed the PVC pipe as a culvert and restored access to the Bypass Road. Pet. App. 92a, ¶¶ 55. On May 3, 2020, Cox’s brother David photographed the completed repair and emailed the photograph to Clayton that evening. Pet. App. 80a, ¶¶ 16-17; Pet. App. 47a.

5. An eight-day gap and the events of May 6.

As noted above, on April 29, Thie had written to Clayton that he expected a referral of charges from the Sheriff's Office. Pet. App. 135a. Between April 28 and May 5, Thie received no complaints about Cox. Pet. App. 62a.

On the morning of May 6, Mrs. Hunter called the sheriff's dispatcher to report that five days earlier, on May 1, Cox had fired gunshots into the air while her sons and their friends were transporting the PVC pipe to the Bypass Road. Pet. App. 74a-75a. That same morning, Thie called Mrs. Hunter to check on the road's condition before filing a criminal complaint. From that conversation, Thie learned that Cox had in fact placed the culvert pipe and covered it with dirt. Pet. App. 59a. Mrs. Hunter nonetheless reported the road was "still impassable" and reported the gunshots. Pet. App. 108a, ¶¶ 23-24. However, David Cox's photograph of May 3, taken two days after the alleged gunshots and three days before Thie's call, shows the road repaired. Pet. App. 80a, ¶¶ 16-17; Pet. App. 47a.

That same day, Thie called Clayton and reported that Cox had fired gunshots while the Hunter boys were delivering the pipe, that things had "gone too far," and that Cox was going to be arrested. Pet. App. 44a, ¶¶ 28-31. Cox later explained that on May 1, he fired his gun several times to scare a coyote away from his chicken coup. App. Pet. 91a-92a, ¶¶ 52-4.

6. The warrant presentation and the prosecutor's omissions.

On May 6, Thie reviewed Vannatter's report and probable cause affidavit. Pet. App. 108a-109a, ¶¶ 23-26. Vannatter's affidavit was *technically* true: It described the ditch Cox had cleared/dug, as he had observed on April 23. The report contained no mention of Thie's April 28 site visit, his meetings with Cox, Clayton, and Hunter, the negotiated repair plan, Cox's agreement to make repairs, or the fact that Cox had placed the PVC pipe as agreed. Pet. App. 152a-156a. Prior to submitting his report requesting criminal charges against Cox, Vannatter was not aware that Thie had met with Cox. Pet. App. 144a-145a, ¶ 20.

Thie signed the criminal complaint under oath. He has acknowledged that his signature constituted a "certification of probable cause." Pet. App. 168a, ¶ 140.

Thie presented the complaint and Vannatter's affidavit to Magistrate Payne. He described his standard process in his deposition: "I go in. Judge swears me in and I sit down in case he has any questions. If he has no questions, I make no further statements. I don't volunteer anything." Pet. App. 126a.

It is undisputed that Thie did not inform Magistrate Payne of any of the following: (1) his April 28 visit to the Cox and Hunter properties; (2) his personal observation of the road conditions; (3) his meetings and conversations with Cox, Clayton, and Hunter; (4) the negotiated repair plan under which Hunter would provide pipe and Cox would install it; (5) Cox's agreement to make the repairs,

or (6) Cox's actual placement of the PVC pipe. Pet. App. 129a-130a.

7. The arrest and its consequences.

Cox was arrested on May 6, 2020, at approximately 5:30 p.m., within hours of Thie's telephone conversation with Mrs. Hunter. Pet. App. 162a.

At Cox's arraignment the following morning, Magistrate Payne stated: "That complaint was signed by Brian Thie on the 6th of May. As a result of that complaint, a warrant was issued for your arrest and bail was set in the amount of \$25,000." Pet. App. 71a.

Cox's bail was subsequently raised to \$200,000. Pet. App. 15a. He was involuntarily committed for psychiatric evaluation and treatment, and remained confined for approximately sixty days. Pet. App. 139a; Pet. App. 93a, ¶¶ 60-65. The charge was dismissed on December 4, 2020. Pet. App. 163a-164a.

B. Proceedings Below

1. District Court.

Cox filed this action on May 4, 2022, asserting claims under 42 U.S.C. § 1983 against Thie, and a state-law malicious prosecution claim against Mrs. Hunter. Cox alleged that Thie obtained the arrest warrant through judicial deception by omitting material facts from Magistrate Payne, and that Mrs. Hunter's false report to Thie on May 6 that the Bypass Road remained impassable caused Cox's prosecution.

Cox's opposition to Thie's summary judgment motion raised two grounds for denying absolute immunity. First, citing *Kalina v. Fletcher*, 522 U.S. 118 (1997), Cox argued that Thie functioned as a complaining witness, not an advocate, when he signed the complaint under oath and certified probable cause. Pet. App. 176a-178a. Second, citing *Liston v. County of Riverside*, 120 F.3d 965 (9th Cir. 1997), *Chism v. Washington*, 661 F.3d 380 (9th Cir. 2011), and *United States v. Stanert*, 762 F.2d 775 (9th Cir. 1985), Cox argued that Thie engaged in judicial deception by omitting material facts—facts within his personal knowledge—from the warrant presentation. In his briefing, Cox identified the specific facts omitted, argued they were material to the probable cause determination, and quoted Thie's own deposition testimony regarding his practice of not volunteering information to Magistrate Payne. Pet. App. 178a-183a.

The district court granted summary judgment to both defendants. On the immunity question, the court distinguished *Kalina*, reasoning that Thie “did not personally attest to the facts giving rise to probable cause” but instead “relied on Deputy Vannatter’s . . . probable cause affidavit.” Pet. App. 22a.² The court did not address the judicial deception argument. It did not conduct a materiality analysis under *Franks v. Delaware*, 438 U.S. 154 (1978), or its Ninth Circuit progeny. It did not discuss *Liston*, *Chism*, or *Stanert*, all of which were cited in Cox's briefing. Pet. App. 5a-31a.

2. Pet. App. 175a to 189a constitutes an excerpt of the Plaintiff's briefing filed in response to Thie's Motion For Summary Judgment. Therefore, the “ER” designations at the bottom of each page can be disregarded.

2. Ninth Circuit.

The Ninth Circuit affirmed in an unpublished memorandum disposition, without oral argument. Pet. App. 1a-4a. The panel (Judges Fletcher, Christen, and Hurwitz) disposed of the immunity question in a single paragraph, holding that Thie “was acting squarely within the scope of his prosecutorial duties in signing and submitting the complaint” and was “therefore entitled to absolute immunity regarding his decision to pursue criminal charges.” Pet. App. 3a.

The panel did not address the judicial deception argument. It did not mention *Franks*, *Liston*, *Chism*, or *Stanert*. It did not conduct a materiality analysis. It did not address the undisputed facts regarding Thie’s personal investigation, his negotiated repair plan, Cox’s compliance, or Thie’s omission of these facts from Magistrate Payne. Rehearing *en banc* was denied on December 4, 2025. Pet. App. 35a.

II. REASONS FOR GRANTING THE PETITION

A. This Case Is About Process: The Lower Courts Disposed of a Constitutional Claim Without Conducting the Analyses This Court’s Precedents Require

This case does not ask the Court to decide whether prosecutor Brian Thie is entitled to absolute immunity. It asks the Court to decide whether the lower courts here, and lower courts in the future, can be permitted to grant absolute immunity without first performing two analyses that this Court’s precedents require: the *Franks*

v. Delaware materiality analysis that determines whether a judicial deception claim is supported by a preliminary showing, and the functional analysis required by *Buckley v. Fitzsimmons* and *Kalina v. Fletcher* that determines whether the prosecutor's specific conduct qualifies for absolute or qualified immunity. Both courts below skipped both analyses. They granted blanket immunity and never addressed the judicial deception claim that was squarely presented at every level of this litigation.

The result is that a prosecutor who personally investigated the underlying facts, personally acquired material information bearing on probable cause, certified the warrant application under oath while deliberately withholding that information from the magistrate, and whose own testimony establishes materiality, received absolute immunity without any court examining what he actually did. That is not how this Court's immunity framework is supposed to operate. The functional approach established in *Imbler v. Pachtman*, 424 U.S. 409 (1976), *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993), and refined in *Kalina*, 522 U.S. 118 (1997), requires courts to analyze the prosecutor's conduct act by act. The *Franks* doctrine, 438 U.S. 154 (1978), requires courts to analyze the materiality of omissions from a warrant application when a substantial preliminary showing of deliberate or reckless falsehood has been made. Neither analysis was performed here.

B. The Lower Courts Were Required to Conduct a Franks Materiality Analysis and Failed to Do So

Under *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978), when a defendant makes a substantial preliminary showing

that the affiant deliberately, or with reckless disregard for the truth, included a false statement or omitted material facts from a warrant affidavit, the defendant is entitled to a hearing on the question of materiality. The court must determine whether the affidavit, once corrected and supplemented, would still establish probable cause. That determination is not discretionary; according to *Franks*, it is constitutionally required.

Every circuit has extended *Franks* to material omissions. The Ninth Circuit's own formulation asks whether "the affidavit, once corrected and supplemented, establishes probable cause." *Ewing v. City of Stockton*, 588 F.3d 1218, 1224 (9th Cir. 2009); see also *Liston v. County of Riverside*, 120 F.3d 965, 972-74 (9th Cir. 1997); *United States v. Stanert*, 762 F.2d 775, 782 (9th Cir. 1985). The Ninth Circuit's model jury instruction for judicial deception, Instruction 9.17A, requires materiality as an element. The panel below ignored its own circuit's framework.

The substantial preliminary showing was made here—and it was made on undisputed facts. Thie testified that on April 28, 2020, he drove to the Cox and Hunter properties, walked the roads, observed the conditions, met with Cox and his attorney Clayton, met with Hunter, and participated in devising a plan under which Cox would repair the Bypass Road. Pet. App. 55a-56a. He testified that by the time he returned to his office that day, he was aware Cox had agreed to perform the repairs. Pet. App. 106a, ¶ 17. He testified that on April 29, he and Clayton exchanged emails regarding Cox's progress. Pet. App. 107a, ¶ 18. He testified that on May 6, before filing the criminal complaint, he called Mrs. Hunter and learned that Cox had in fact placed the culvert pipe and covered

it with dirt. Pet. App. 59a; Pet. App. 62a (“It had been placed. It had dirt placed over it.”). He testified that he made this call because he “wanted to get information on whether the roadway had been restored before filing a criminal complaint.” Pet. App. 108a, ¶ 23. If the road’s condition was material to the prosecutor’s own charging decision, it was necessarily material to the magistrate’s probable cause determination. *Illinois v. Gates*, 462 U.S. 213, 240 (1983).

It is undisputed that none of this information was presented to Magistrate Payne. Pet. App. 129a-130a. The substantial showing is not based on contested testimony or inferences drawn against the prosecutor. It is based on what the prosecutor himself said, under oath, and chose not to disclose. *Illinois v. Gates*, 462 U.S. 213, 240 (1983) (inferences are to be drawn by neutral and detached magistrates). Thie withheld from Magistrate Payne the fact that he had personally investigated the matter, met with the parties, negotiated a repair plan, learned that the defendant had agreed to comply, and received evidence that the repairs were underway or complete. None of this information appeared in Vannatter’s affidavit, and Thie did not supplement it.

The materiality of Thie’s omissions becomes vivid when one considers what a truthful complaint might have looked like. Rather than the bare recitation that Cox “on or about April 23, 2020 . . . violated the protection order,” a truthful and complete presentation should have included language such as:

FURTHER, BRIAN D. THIE says: I met and conferred with Mr. Cox, his attorney Mr.

Clayton, and Mr. Hunter on April 28, 2020, at which time a plan was devised, that was agreed to by Mr. Hunter and Mr. Cox, that the bypass road to the Hunters would be restored. Mr. Clayton and I continued to discuss the road restoration by email, and David Cox subsequently reported that the road had been restored. I called Mrs. Hunter on May 6, 2020, to ask whether the road had been restored, and she told me she did not know if the road had been restored.

Pet. App. 200a-201a. Had Magistrate Payne received this or a similar truthful rendition, it would have put him “on notice of the possibility, if not the probability, that the Bypass Road problem had been resolved in the 13 days between the alleged offense and the warrant application.”

The protection order prohibited Cox from degrading the Hunters’ road access “to any significant degree.” That language describes a condition, not a single past act. Whether the condition persisted as of May 6 was central to probable cause. A magistrate informed that the defendant had agreed to repair the road, that a repair plan had been devised, and that evidence of repair had been submitted would have had, at minimum, material questions to ask before issuing the warrant. The *Franks* analysis requires asking whether the omitted facts would have been material to the probable cause determination. Neither court below discussed, much less asked, that question.

No decision of this Court holds that absolute prosecutorial immunity excuses a court from conducting the *Franks* materiality analysis. No circuit has so held in a

published opinion. Yet that is precisely what occurred here. The lower courts treated the immunity determination as dispositive of the entire case, including the judicial deception claim, without examining whether the omitted facts were material. Without guidance from this Court, every circuit remains free to use absolute immunity to bypass *Franks*—effectively enlarging prosecutorial immunity by declining to perform the analysis this Court designed to define its limits.

C. The Lower Courts Were Required to Conduct a *Imbler/Buckley/Kalina* Functional Analysis and Failed to Do So

This Court’s prosecutorial immunity doctrine requires a functional analysis before determining which form of immunity applies. *Imbler*, 424 U.S. at 430-31; *Buckley v. Fitzsimmons*, 509 U.S. at 269; *Kalina*, 522 U.S. at 127 (immunity depends on “the nature of the function performed, not the identity of the actor who performed it”). The analysis examines what the prosecutor actually did, *act by act*, and asks whether each act was an advocacy function (absolute immunity) or something else (qualified immunity). Neither court below performed this analysis.

Kalina is directly on point. There, a prosecutor who personally prepared a certification of probable cause and swore to the truth of the facts therein lost absolute immunity because she was “performing the function of a witness,” not an advocate. 522 U.S. at 129-31. The same analysis applies here. This signed the criminal complaint under oath. He acknowledged that his signature constituted a “certification of probable cause.” Pet. App. 168a, ¶ 140. He certified probable cause while personally

knowing that the factual basis for the complaint was materially incomplete. And that substantial events had occurred between the alleged offense and the warrant application that were nowhere reflected in the warrant materials presented to the magistrate.

The district court distinguished *Kalina* on the ground that Thie “did not personally attest to the facts giving rise to probable cause” but instead “relied on Deputy Vannatter’s . . . probable cause affidavit.” Pet. App. 22a. That distinction does not withstand factual scrutiny under *Kalina*’s functional approach. Thie did not merely forward Vannatter’s affidavit as a ministerial act. He personally reviewed the affidavit knowing it was incomplete. He possessed material facts, acquired through his own actions, that contradicted the affidavit’s implicit premise that the road remained impassable. He signed the complaint under oath and certified probable cause. Under *Kalina*, a prosecutor who certifies facts under oath while personally knowing those facts are materially incomplete is performing the function of a witness, not an advocate. The lower courts were required to conduct this functional analysis before granting absolute immunity: They did not.

The district court’s reliance on *Waggy v. Spokane County*, 594 F.3d 707, 713 (9th Cir. 2010), further illustrates the failure to realistically engage with the facts. In *Waggy*, the Ninth Circuit found absolute immunity where a prosecutor submitted a bench warrant application based on “facts alleged in supporting affidavits prepared by others.” The critical distinction is one the district court overlooked regarding Cox: in *Waggy*, the information flowed from the affiant witnesses to the prosecutor. The witnesses possessed the facts; the prosecutor presented

them. Here, the flow ran somewhat in the opposite direction. Thie possessed material facts that Vannatter did not. When Thie presented Vannatter's affidavit to the magistrate as sufficient, he was not relaying facts developed by others: He was withholding facts developed by himself. *Waggy* does not support absolute immunity under these circumstances; It distinguishes them.

Thie's investigative activity reinforces the need for functional analysis. His April 28 site visit—traveling to the parties' properties, walking the roads, observing conditions, interviewing parties on both sides, and negotiating a resolution—was investigative activity, not advocacy. *Buckley*, 509 U.S. at 273; see also *Burns v. Reed*, 500 U.S. 478, 492-96 (1991). When a prosecutor acquires material facts through such investigative work and then withholds them during a subsequent warrant presentation, the functional analysis must account for both phases of the prosecutor's conduct. A blanket grant of immunity based solely on the advocacy *label* of the warrant presentation ignores the investigative conduct that preceded it, the certification under oath that accompanies it, and distorts the advocacy conduct that follows it. The lower courts' error was not in applying the functional approach incorrectly but, rather, in failing to apply it at all. Describing the overall activity—presenting a warrant—and assigning it the label “advocacy” is not the act-by-act functional analysis that *Buckley* and *Kalina* require. The functional approach demands disaggregation of the prosecutor's conduct: Each act must be independently classified. When the lower courts treated Thie's conduct as a single undifferentiated transaction called “advocacy,” they applied a label where the law requires an analysis.

D. The Undisputed Facts Make This Case a Suitable Vehicle

The Court may be concerned that this case involves factual disputes that would make it a poor vehicle for addressing the legal questions presented. That concern is unwarranted. The facts that matter to the questions presented are undisputed, established by Thie's own deposition and declaration testimony, and his verified Answer to the Complaint.

The only significant factual dispute is whether Thie promised Cox he would not be arrested if repairs were made, and resolution of that dispute is clearly not necessary to the judicial deception claim. What matters under *Franks* is not whether a promise was made but whether material facts were withheld from the magistrate. That they were withheld is undisputed.

Furthermore, Thie's own Answer to the Complaint admits, in response to each of the four § 1983 counts, that "the right to be free from unreasonable seizure is a clearly established constitutional right that was in existence at the times alleged." Pet. App. 167a, ¶ 137. This concession is significant. Under *Pearson v. Callahan*, 555 U.S. 223 (2009), courts have discretion to bypass the constitutional merits in qualified immunity cases when the "clearly established" prong disposes of the claim. But where the defendant has conceded the right is clearly established, *Pearson's* rationale for bypassing the merits—that is, judicial economy when the alternative ground resolves the case—has no application. The courts below had no alternative ground for disposing of the judicial deception claim. They were required to address it.

E. The Unpublished Disposition Should Not Preclude Review

The Ninth Circuit's designation of its decision as unpublished does not diminish the importance of the questions presented. This Court has on occasion granted certiorari to review unpublished lower court decisions where important questions of federal law are at stake. See, e.g., *Jefferson v. Upton*, 560 U.S. 284 (2010) (per curiam) (vacating unpublished Eleventh Circuit decision and remanding where the court of appeals applied an incorrect analytical framework).

Indeed, the unpublished nature of lower courts' dispositions of immunity issues is part of the problem. Dismissing prosecutorial immunity and judicial deception claims through unpublished opinions that contain no analysis has the practical effect of expanding immunity *sub silentio*. No circuit split can become visible because the expansion occurs not through holdings that can be reviewed, but through the silence of courts that simply do not perform the analyses this Court designed to define immunity's boundaries. The Franks framework becomes a dead letter for prosecutorial omissions—not because any court has held it inapplicable, but because no court is required to apply it. Moreover, unpublished dispositions are unlikely to be reviewed at all—their very nature discourages citizens from seeking certiorari and, realistically, increases the skepticism with which such petitions are received by this Court.

This Court has recognized the danger that constitutional law stagnates when courts resolve cases on immunity grounds without addressing underlying

constitutional questions. In *Saucier v. Katz*, 533 U.S. 194, 201 (2001), the Court required lower courts to address the constitutional merits before reaching the immunity question, reasoning that failure to do so would prevent the law from developing. While *Pearson v. Callahan*, 555 U.S. 223 (2009), relaxed *Saucier*'s rigid sequencing, it reaffirmed the concern: Courts that routinely bypass constitutional analysis deprive the law of necessary development, and deprive citizens of constitutional protections without analyzing the applicable constitutional framework established by this Court. Here, both courts below went further than *Pearson* permits. Rather than exercising *Pearson* discretion to bypass a merits question in an immunity case, both courts declined to conduct any analysis at all of a claim that determines whether absolute immunity applies in the first instance.

F. The Decision Below Has Significant Practical Consequences

If the decisions below are correct—which they are not—a prosecutor may conduct a personal investigation, acquire material information bearing on probable cause, and then withhold that information from the magistrate, all without risk of liability, because absolute immunity attaches to the act of presenting the warrant *even before the court has examined what the prosecutor actually did*. Such a sequencing of the analytical framework regarding immunity avoids examining what the prosecutor or officer actually knew or failed to disclose.

That result would effectively eliminate the *Buckley/Kalina* exception in any case where the prosecutor possesses personal knowledge but does not draft

the affidavit himself. A prosecutor could investigate, negotiate, observe, and learn material facts—then walk into a magistrate’s chambers, present a stale and/or incomplete affidavit prepared by someone else, certify probable cause under oath, and claim absolute immunity for the entire transaction because the act of presenting the warrant was advocacy.

It would also render the *Franks* framework inapplicable to prosecutors as a practical matter. *Franks* requires that the warrant application present a truthful picture to the magistrate. If the prosecutor controls the flow of information to the magistrate but absolute immunity prevents inquiry into what information the prosecutor withheld, the “truthful showing” requirement has no enforcement mechanism when the person withholding facts is a prosecutor rather than a police officer.

The consequences for individuals are concrete. Samuel Cox spent approximately sixty days in confinement, including involuntary psychiatric commitment, on the basis of a warrant issued by a magistrate who was never told that the prosecutor had personally negotiated a resolution to the underlying dispute, that the defendant had agreed to comply, and that there was sound evidence the defendant had in fact complied. The charge against Cox was ultimately dismissed.

No court has properly evaluated whether This was functioning as a witness, whether Cox made a substantial showing meriting a materiality analysis, or whether, had Magistrate Payne been fully informed, he would have issued the warrant. Such a situation needs correction, not

only for Cox, but for citizens in the future confronted with claims of absolute prosecutorial immunity.

III. CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — MEMORANDUM OF THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT, FILED OCTOBER 24, 2025**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-5997

D.C. No. 2:22-cv-00199-AKB

SAMUEL A. COX,

Plaintiff-Appellant,

v.

BRIAN D. THIE, INDIVIDUALLY AND AS
BENEWAH COUNTY PROSECUTOR, HUSBAND
AND WIFE, AND THE MARITAL COMMUNITY
THEREOF; TRAVIS HUNTER, HUSBAND AND
WIFE, AND THE MARITAL COMMUNITY
COMPRISED THEREOF; TRISHA HUNTER,
HUSBAND AND WIFE, AND THE MARITAL
COMMUNITY COMPRISED THEREOF,

Defendants-Appellees,

and

JANE DOE THIE, HUSBAND AND WIFE, AND
THE MARITAL COMMUNITY THEREOF,

Defendant.

2a

Appendix A

Filed October 24, 2025

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho

Amanda K. Brailsford, District Judge, Presiding
Submitted October 22, 2025**
Portland, Oregon

Before: W. FLETCHER, CHRISTEN, and HURWITZ,
Circuit Judges.

Samuel Cox appeals from the district court's summary judgment in favor of defendants Brian Thie, Trisha Hunter, and Travis Hunter. We have appellate jurisdiction under 28 U.S.C. § 1291. "We review a district court's grant of summary judgment de novo and may affirm on any ground supported by the record." *CFPB v. Gordon*, 819 F.3d 1179, 1187 (9th Cir. 2016). We affirm.

1. Cox brought four claims under 42 U.S.C. § 1983 against Benewah County Prosecutor Brian Thie, alleging unreasonable seizure, false arrest, malicious prosecution, and false imprisonment in violation of the Fourteenth

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appendix A

Amendment. The district court correctly found these claims barred by absolute prosecutorial immunity.

It is undisputed that Trisha Hunter secured a state court protective order against Cox in March 2020, forbidding him from interfering with the Hunters' "ingress or egress to their home." In April 2020, despite the order, Cox resumed ditching the roads near the Hunters' property, including the Bypass Road. Cox concedes on appeal that his ditch "rendered the Bypass Road impassable," and admits that by April 28, 2020, "[i]t was obvious that Mr. Cox had violated the protection order." On May 6, 2020, Thie submitted a signed criminal complaint against Cox alleging violation of the protective order to Benewah County Magistrate Judge Douglas Payne.

Thie was acting squarely within the scope of his prosecutorial duties in signing and submitting the complaint. He is therefore entitled to absolute immunity regarding his decision to pursue criminal charges. *See Cousins v. Lockyer*, 568 F.3d 1063, 1068 (9th Cir. 2009) ("A state prosecuting attorney enjoys absolute immunity from liability under § 1983 for his conduct in 'pursuing a criminal prosecution' insofar as he acts within his role as an 'advocate for the State' and his actions are 'intimately associated with the judicial phase of the criminal process.'" (quoting *Imbler v. Pachtman*, 424 U.S. 409, 410, 430, 431 n.33 (1976))). Thie's immunity precludes all of Cox's § 1983 claims against him.

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2. The district court was also correct to reject Cox's claim of malicious prosecution against Trisha Hunter, acting on behalf of the marital community consisting of herself and her husband, Travis Hunter. Under Idaho law, a malicious prosecution claim requires, *inter alia*, a showing that there was no probable cause for claimant's prosecution. *Berian v. Berberian*, 483 P.3d 937, 944-45 (Idaho 2020). Here, the record clearly shows that there was probable cause for Cox's arrest and prosecution due to his violation of the protective order. Thie's complaint was accompanied by an affidavit of probable cause by Deputy Brandon Vannatter describing the damage Cox had done to the roads leading to the Hunters' residence in violation of his protective order. Upon receipt of the complaint and affidavit, Judge Payne found probable cause and issued a warrant for Cox's arrest that same day. As noted above, Cox concedes on appeal that it was "obvious" that he had violated the protective order. The existence of probable cause is fatal to the malicious prosecution claim.

The judgment of the district court is therefore **AFFIRMED**.

5a

**APPENDIX B — DISTRICT COURT
MEMORANDUM DECISION AND ORDER,
FILED SEPTEMBER 3, 2024**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Case No. 2:22-cv-00199-AKB

SAMUEL A. COX,

Plaintiff,

v.

BRIAN D. THIE, INDIVIDUALLY AND
AS BENEWAH COUNTY PROSECUTOR;
TRAVIS HUNTER AND TRISHA HUNTER,
HUSBAND AND WIFE, AND THE MARITAL
COMMUNITY COMPRISED THEREOF,

Defendant.

Filed September 3, 2024

MEMORANDUM DECISION AND ORDER

This case arises from two arrests of Plaintiff Samuel A. Cox, in Benewah County, Idaho, the first occurring in May 2020 and the second in August 2020. Cox alleges he was arrested and jailed without probable cause based on Defendant Trisha Hunter's complaints and that Defendant Benewah County Prosecutor Brian

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Thie engaged in judicial deception to prosecute Cox. Cox asserts the arrests violated his constitutional rights and alleges 42 U.S.C. § 1983 claims against Thie in his capacity as a prosecutor for the State of Idaho. In support, Cox contends the criminal complaints Thie filed omitted key facts and led to Cox's arrest without probable cause. Cox also brings a state law claim for malicious prosecution against Mrs. Hunter¹ based on her complaints about him to the Benewah County Sheriff's Department.

Both Thie and Mrs. Hunter move for summary judgment. The Court finds oral argument would not significantly aid its decision-making process and decides the motions on the parties' briefing. Dist. Idaho Loc. Civ. R. 7.1(d)(1)(B). *See also* Fed. R. Civ. P. 78(b) ("By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings."). For the reasons discussed below, the Court grants both Thie's and Mrs. Hunter's summary judgment motions.

1. Cox only asserts claims against Trisha Hunter, acting on behalf of the marital community comprising herself and her husband, Travis Hunter. Cox, however, does not allege any individual claims against Mr. Hunter.

*Appendix B***I. BACKGROUND****A. Factual Background²****1. 2020 Civil Protection Order**

The Hunters reside in Fernwood, Idaho with their sons, including D.H., who is a minor. (Dkt. 28-4, T. Hunter Decl. ¶ 2). In 2018, Cox acquired property adjacent to the Hunters' property. Around the same time, Cox's brother also acquired property adjacent to the Hunters' property. (Dkt. 35-4 at p. 2, D. Cox. Decl. ¶ 2). The parties access their respective properties via mutual easements across Poplar Drive, Sapling Lane, and the East Bypass Road.

In early 2020, a conflict arose between Cox and the Hunters concerning the use and maintenance of the roads subject to the mutual easements. (Dkt. 28-4, T. Hunter Decl. ¶ 5). Cox contends he was attempting to improve drainage on the roads by clearing ditches and raising the roadbeds to reduce flooding. (Dkt. 35-4 at p. 30, 03/09/2020 S. Cox Decl. ¶ 8). He claims "[t]he purpose and effect of his efforts was to eliminate flooding of the easement roads." (Dkt. 35 at p. 2). The Hunters, on the

2. Thie asks the Court to take judicial notice of court-certified documents filed in connection with the criminal complaints against Cox in the First Judicial District of the State of Idaho, in and for the County of Benewah. (Dkt. 27-1 at pp. 4-5). *See State of Idaho v. Samuel Allen Cox*, CR05-20-332; CR05-20-575. The Court finds these documents meet the criteria for judicial notice under Rule 201 of the Federal Rules of Evidence and grants Thie's request to judicially notice them.

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other hand, characterize Cox's conduct as "a pattern of agitating [them] and the neighboring property owners." (Dkt. 28-4, T. Hunter Decl. ¶ 8).

The conflict escalated between Cox and the Hunters, and in February 2020, Mrs. Hunter filed a sworn petition for a protection order, in which she asserted that "[Cox] is our neighbor and he is causing problems with our legal easement of the road leading to our residence." (Dkt. 28-3 at p. 22). In this same petition, Mrs. Hunter outlined a series of incidents involving Cox and his "run-ins" with the Hunters and his other neighbors. Some of the allegations included that: (1) in April 2019, Cox threatened the Hunters' children while they were four-wheeling; (2) in January 2020, Cox threatened Mr. Hunter based on the Hunters' use of the Sapling Road; (3) in January 2020, Cox "menacingly" drove by the school where Mrs. Hunter works; (4) in February 2020, Cox "followed" Mrs. Hunter from the school to a local pharmacy; (5) in February 2020, Cox sicced his dog on a neighbor, who was walking her dogs with her children; and (6) in February 2020, Cox told another neighbor Cox would "kill" the Hunters if he saw them working on or using the Poplar Drive and Sapling Lane roads. (*Id.* at p. 6, T. Hunter Dep. 33:12-19).

Cox denies that he threatened the Hunters' children or Mr. Hunter, "menacingly" drove by the school where Mrs. Hunter works, or followed her to the local pharmacy. (Dkt. 35-4 at 30-32, 03/09/2020 S. Cox Decl. ¶¶ 7-16). Cox admits, however, that he did attempt to sic his dogs on a neighbor and frightened her. (*Id.* at p. 6, ¶ (v)). Regarding his statement that he would "kill" anyone who messed with

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the roads, Cox does not recall saying it, but if he did, “it was totally meant as a figure of speech [he] would have used to describe [he] was upset.” (*Id.* at p. 30, ¶ 5).

In March 2020, a Benewah County Magistrate Judge, the Honorable Douglas Payne, entered a protection order against Cox after a full hearing. The protection order prohibited Cox from interfering with the Hunters’ ingress and egress to their property; in relevant part, it ordered that “[Cox] shall not do anything to interfere with [the Hunters’] ingress or egress to their home and shall not do anything to the road they use for that purpose which degrades their access to any significant degree.” (Dkt. 28-3 at p. 37, Trisha Hunter Deposition; Dkt. 27-4 at p. 7, Exhibit 1 to Fegert Declaration). Further, the order prohibited Cox from going within 100 feet of the Hunters and their children, except for “incidental, unintentional contact . . . so long as in the ordinary course and not intentionally extended or used to communicate.” (*Id.*).

2. May 2020 Arrest

In April 2020, Cox dug ditches along both sides of the East Bypass Road, piled dirt on the road, and plugged culverts along the roadway. Mrs. Hunter reported Cox’s conduct to the Sheriff’s Department, and Benewah County Sheriff’s Deputy Brandon Vannatter responded to Mrs. Hunter’s report. (Dkt. 27-3 at p. 2, Vannatter Decl. ¶¶ 4, 5). Deputy Vannatter was familiar with Cox “from responding to numerous previous incidents and other complaints” from the Hunters, other neighbors, and surrounding businesses. (*Id.* ¶ 7). According to Deputy

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Vannatter, the issues with Cox and his neighbors “had been ongoing for several years.” (*Id.*).

In response to Mrs. Hunter’s report, Deputy Vannatter initially spoke with Mrs. Hunter. (*Id.* at ¶ 5). She told him the Hunters had a protection order against Cox prohibiting him from interfering with the ingress or egress to their property. (*Id.*). Mrs. Hunter further explained Cox had been digging ditches along both sides of the road leading to their property and piling dirt on road. (*Id.*). Then, Deputy Vannatter viewed and photographed “the roads [Cox] had been damaging.” (*Id.* ¶ 6). In Deputy Vannatter’s view, Cox had made both Sapling Lane and the East Bypass Road impassable. (*Id.* at p. 44, Vannatter Dep. 53:2-20). Deputy Vannatter also spoke with Cox. According to Deputy Vannatter, Cox refused to speak with him in a civil manner and “became uncooperative and aggressive.” (Dkt. 27-3 at p. 3, Vannatter Decl. ¶ 5).

Based on Deputy Vannatter’s independent investigation into Mrs. Hunter’s complaint, Deputy Vannatter concluded Cox had violated the protection order. He prepared an incident report regarding his investigation and Cox’s violation of the protection order. (Dkt. 27-3 at p. 2, Vannatter Decl. ¶ 9). In his report, Deputy Vannatter requested that charges be brought against Cox for violating the protection order. In support, Deputy Vannatter also prepared a probable cause affidavit. (*Id.*).

On April 28, 2020, Dennis Clayton, an attorney who represented Cox, contacted Thie. (Dkt. 27-2 at p. 2, Thie Decl. ¶ 6). Clayton asked Thie if he would meet to

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discuss the conflict with the Hunters before charging Cox with any crimes. (*Id.*). Thie agreed to meet on-site with Cox and Clayton to observe first-hand the conditions of the roads and the Hunters' ingress and egress. Thie's understanding of the meeting's purpose was to gather information to determine whether to make a charging decision. (*Id.* ¶¶ 7, 10).

Thie met with Clayton to briefly discuss the issues involving Cox and the Hunters before proceeding to the property to meet with Cox and his mother. (Dkt. 27-2 at p. 2, Thie Decl. ¶ 6). While there, Thie observed Cox "had severely ditched along both sides of Poplar Road, cutting off access to the Hunters' secondary access road, and piled mud onto the roadway"; the road "had been ditched out crudely and deeply and there was deep mud along the sides of the road"; and the cattleguard at the intersection of Poplar and Big Carpenter Creek was packed full of dirt and rock. (*Id.* at ¶ 11). After observing the roads, Thie discussed with Clayton ways to restore the East Bypass Road to the Hunters' residence. (*Id.* at ¶ 12).

Then Thie spoke with Mr. Hunter about his discussion with Clayton. (Dkt. 27-2 at p. 4, Thie Decl. ¶ 13). Mr. Hunter offered to provide PVC pipe for a culvert if Cox agreed to install the culvert and repair the road, and Thie conveyed this offer to Clayton. (*Id.* ¶ 14). According to Thie, by the conclusion of his visit, nothing had been decided, and Cox had neither agreed nor offered to restore the road, except for spreading rock and gravel. (Dkt. 27-2 at p. 4, Thie Decl. ¶ 15). Thie described Cox as "uncooperative, agitated and aggressive" during the

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visit and said Cox “refused to have anything to do with cleaning up the mess he had made, putting in the culvert or cleaning out the cattleguard.” (*Id.*). Conversely, Cox contends he eventually agreed to fix the road. (Dkt. 39, Clayton Decl. ¶ 26). Regardless, when Thie returned to his office, he found a note stating Clayton had called to report Cox would install the PVC pipe if the Hunters provided it. (Dkt. 27-2 at p. 2, Thie Decl. ¶ 17). Thereafter, Thie exchanged emails with Clayton indicating Thie was expecting Deputy Vannatter’s report; it would include a referral for charges; but Thie hoped the matter could be resolved without charging Cox. (*Id.* at p. 113).

On or about May 6, 2020, Thie received Deputy Vannatter’s incident report and probable cause affidavit stating Cox interfered with the Hunters’ ingress and egress. (*Id.* at p. 5, Thie Decl. ¶ 20; Dkt. 35-2 at p. 123-26, Vannatter Report). Deputy Vannatter’s report also included several complaints by other individuals, about which Thie had previously been unaware, including complaints that Cox had damaged the roads and that he had harassed his neighbors and their children. (Dkt. 35-2 at p. 123-26, Vannatter Report). The report also stated Deputy Vannatter believed Cox had violated the order, requested that Cox be charged with violating the protective order, and requested a warrant for Cox’s arrest issue. (*Id.*). Deputy Vannatter testified he made this decision without any input from Thie. (Dkt. 27-3 at p. 16, Vannatter Dep. 17:3-23).

Between meeting with Clayton and Cox and receiving Deputy Vannatter’s report, Thie did not receive any

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information from Clayton or Cox about the status of the road repair. (Dkt. 27-2 at p. 5, Thie Decl. ¶ 22). After reviewing Deputy Vannatter's report and probable cause affidavit, Thie evaluated the case for charges and determined probable cause existed to file criminal charges. (*Id.* at p. 6, Thie. Decl. ¶ 23).

Thie then contacted Mrs. Hunter to get information regarding the road's condition. (*Id.* at p. 6, Thie Decl. ¶ 23). Mrs. Hunter reported the road was still impassable; the rocks had not been placed over the culvert; the intersection of Poplar and Sapling had not been graded; and there was more dirt in the cattleguard. (*Id.*). Mrs. Hunter also reported that when her son and his friends had taken the PVC pipe to the road, Cox stood on his property, while looking at them, and fired several gunshots into the air. (Dkt. 27-2 at p. 6, Thie Decl. ¶ 24).

Later that same day, on May 6, 2020, Deputy Vannatter provided Thie with a supplemental report regarding Mrs. Hunter's complaint about Cox's gunfire. (*Id.* ¶ 25). Thie maintains this supplemental report did not play a role in his decision to file charges against Cox because Thie had already determined probable cause existed to believe Cox had violated the protection order. (*Id.* at ¶ 26) Thie did not speak with Cox, who maintains that he had fixed the East Bypass Road and that it was passable by May 3. (Dkt. 35-3, David Cox, Decl. ¶¶ 16-17).

Based on Deputy Vannatter's initial report and his probable cause affidavit, Thie filed a criminal complaint against Cox for violating the protection order. (Dkt. 27-2

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at p. 6, Thie Decl. ¶ 26). Although Thie had talked with Clayton about Cox’s repairing and restoring the roads, Thie maintains he could not ignore the protection order. (*Id.* ¶ 27). Judge Payne received the criminal complaint after it was filed, but Thie did not inform Judge Payne that Thie had met with Cox and his attorney or that Cox had agreed to restore the road. (*Id.* at p. 77, Thie Deposition, 113:5-8;117:1-14). After reviewing Deputy Vannatter’s probable cause affidavit and the complaint, Judge Payne found probable cause to issue an arrest warrant and set bail in the amount of \$25,000. The criminal complaint did not contain any charges related to Cox’s gunfire near the Hunter children.

3. Cox’s Arraignment, Competency Evaluation, Commitment and Release

On May 6, 2020, Deputy Vannatter arrested Cox pursuant to the arrest warrant, and on May 7, Judge Payne arraigned him. During the arraignment, Cox launched into an expletive-laced tirade because he felt he “was ordered by the prosecuting attorney to do a physical crime.” (Dkt. 35-2 at p. 106, Tr. 30-33). Cox called Judge Payne a “dickhead,” a “cocksucker,” and a “motherfucker”; told Judge Payne to “[s]tick it up [his] ass” when Judge Payne asked if Cox understood his rights; threatened to sue Judge Payne; and concluded his rant by saying, “Fuck you, this conversation’s over . . . talk to my fucking lawyer, asshole.” (*Id.* at pp. 105-06, Tr. 9, 34-53). Cox attributes his “obnoxious” behavior at the arraignment to “Thie’s having apparently reneged on the Agreement struck April 28, 2020.” (Dkt. 1 at ¶ 74).

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At the hearing's conclusion, Judge Payne set Cox's bail at \$200,000. (Dkt. 35-2 at p. 107, Tr. 54-56). Additionally, Judge Payne entered an order modifying the protection order to prohibit Cox from going "within 1000' [feet] of any of the protected persons [the Hunters and their children] or their home unless necessary for the sole purpose of ingress or egress to his own home or while in it." (Dkt. 28-3 at p. 40).

Approximately, two weeks later, Thie and Cox's attorney, Michael Palmer, appeared before Judge Payne on Cox's motion to reduce his bond. At the hearing, Palmer reported to Judge Payne that the parties had reached a settlement agreement regarding bail and a civil compromise. Judge Payne rejected the parties' proposed settlement agreement, however. In doing so, Judge Payne expressed concern about Cox's "out of control" conduct, his "mental status," and "public safety." (Dkt. 27-2). Instead, Judge Payne signed an order for a competency evaluation of Cox and suspended all proceedings against Cox. (*Id.* at p. 8). After the evaluation, Judge Payne signed an order committing Cox to a State hospital for mental health treatment. (*Id.* at p. 122-23). A month later, Judge Payne ordered Cox released on his own recognizance and into the custody of his mother or brother. Cox returned to his home next to the Hunters upon his release. (*Id.* at p. 125-26).

4. August 2020 Arrest

On August 12, 2020, the Hunters' minor son, D. H., and his friend were driving to the Fernwood Mercantile on a four-wheeler when Cox followed them in his vehicle

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for several miles and approached within six feet of the four-wheeler. When the boys arrived at the Fernwood Mercantile, they entered the store, as did Cox. D. H. reported Cox stared at him and his friend while in the store - although the store's surveillance footage shows Cox was only in the store for eleven seconds while the boys were there. (Dkt. 28-3 at p. 54, D. Hunter Dep. 42:7-9). Later that day, Mrs. Hunter reported the incident to Sheriff's Department. (Dkt. 28-3 at p. 12-15, T. Hunter Deposition, 75:5-25; 78:18).

Benewah County Sherriff's Deputy Brad Hampton responded to Mrs. Hunter's report, visited with the Hunters at their home, and spoke to D. H. The next day, Deputy Hampton prepared an incident report requesting a warrant for Cox's arrest for his violating protection order and for reckless driving. In support, Deputy Hampton submitted his probable cause affidavit. Deputy Hampton did not interview Cox about the incident, however, before submitting his warrant request. (Dkt. 27-2 at p. 9, Thie Decl., ¶¶ 39-40; Dkt. 27-4 at pp. 29-32).

On August 19, 2020, Thie filed a criminal complaint against Cox for reckless driving and violating the protection order again, and Judge Payne signed a probable cause order and issued a warrant for Cox's arrest. Deputy Hampton arrested Cox at his home on August 21. (Dkt. 27-2 at p. 9, Thie Decl., ¶ 41; Dkt. 27-4 at pp. 34-40). Three weeks later, on September 10, Mrs. Hunter contacted Thie regarding the August 12 incident to report she had video evidence of Cox tailgating the children. Thie asked Mrs. Hunter for a copy of the video. Around the same time,

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Cox's attorney, Palmer, contacted Thie to report Palmer had surveillance video from the boys' August 12 encounter with Cox at the Fernwood Mercantile. Thie asked for a copy of that video too. (Dkt. 27-2 at p. 9, Thie Decl., ¶ 42).

After Thie reviewed both the videos, he concluded he could not prove beyond a reasonable doubt that Cox drove recklessly during the April 12 incident. (Dkt. 27-2 at p. 10, Thie Decl., ¶ 44; Dkt. 27-2 at pp. 96-101, Thie Dep., 153:19-25; 154:1-2; 155:5-12; 157:1-14; 157:20-25; 158:1-17). Eventually, Thie and Cox's attorney negotiated to resolve the issues between the State and Cox. Ultimately, the matters against Cox were dismissed per the parties' stipulation. On December 4, 2020, Judge Payne signed orders of dismissal in both criminal matters. (Dkt. Thie Decl., ¶ 44; Dkt. 27-2 at 100, Thie Dep., 157:16-18).

B. Procedural History

On May 4, 2022, Cox brought this action, alleging (1) claims against Thie under 42 U.S.C. § 1983 and asserting civil rights violations for unreasonable search and seizure, false arrest, malicious prosecution, and false imprisonment; and (2) a state law claim for malicious prosecution against Mrs. Hunter. Both Thie and Mrs. Hunter move for summary judgment. In his motion, Thie argues he has absolute immunity, or in the alternative, qualified immunity. Mrs. Hunter argues Cox cannot prove any of the elements of malicious prosecution.

II. LEGAL STANDARD

Summary judgment is appropriate where a party can show that, as to any claim or defense, "there is no genuine

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dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The mere existence of a scintilla of evidence is insufficient. *Id.* at 252. Rather, “there must be evidence on which the jury could reasonably find for the [nonmoving party].” *Id.*

In deciding a summary judgment motion, the court may consider evidence that can be judicially noticed under Rule 201 of the Federal Rules of Evidence. Under Rule 201, courts may take judicial notice of a fact which is not subject to reasonable dispute either because it: (1) is generally known within the trial court’s territorial jurisdiction, or (2) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. Fed. R. Evid. 201(b). The Court may take judicial notice of matters of public record and government documents available from reliable sources. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). A court may also take judicial notice of another court’s opinion, “not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity.” *Id.* at 690.

*Appendix B***III. ANALYSIS****A. Thie's Summary Judgment Motion**

Thie contends he is immune from liability under the doctrine of absolute immunity. Prosecutors are entitled to absolute immunity for their actions in “pursuing criminal conduct” if they were acting as “advocates for the state” and their conduct is “intimately associated with the judicial phase of the criminal process.” *Waggy v. Spokane Cnty. Wash.*, 594 F.3d 707, 710 (9th Cir. 2010) (quoting *Cousins v. Lockyer*, 568 F.3d 1063 (9th Cir. 2009)). Absolute immunity protects against claims of malicious prosecution, use of perjured testimony, and suppression of material evidence. *Imbler v. Pachtman*, 424 U.S. 409, 430, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976). “Without the promise of immunity from suit, a prosecutor would be distracted from his duties and timid in pursuing prosecutions rather than exercising the independent judgment and discretion that his office requires.” *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 912 (9th Cir. 2012). “At the same time, absolute immunity is an extreme remedy, and it is justified only where any lesser degree of immunity could impair the judicial process itself.” *Id.* (internal quotation marks omitted) (quoting *Kalina v. Fletcher*, 522 U.S. 118, 127, 118 S. Ct. 502, 139 L. Ed. 2d 471 (1997)).

Determining whether conduct is prosecutorial in nature is an “inexact science.” *Lacey*, 693 F.3d at 912. Courts take a “functional approach” to determine whether conduct is prosecutorial, *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S. Ct. 2606, 125 L. Ed. 2d 209 (1993),

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and consider the “nature of the function performed, not the identity of the actor who performed it.” *Forrester v. White*, 484 U.S. 219, 229, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988). Under this approach, the Supreme Court has held that prosecutorial conduct includes “initiating a prosecution and . . . presenting the State’s case.” *Imbler*, 424 U.S. at 431. As a result, absolute immunity can protect actions taken outside the courtroom and preliminary to trial. *Buckley*, 509 U.S. at 272; *see also Burns v. Reed*, 500 U.S. 478, 486, 111 S. Ct. 1934, 114 L. Ed. 2d 547 (1991) (recognizing “the duties of the prosecutor in his role as advocate for the State involve actions preliminary to the initiation of a prosecution and actions apart from the courtroom”).

Absolute immunity may protect many activities taking place before a prosecution is officially instituted. *Imbler*, 424 U.S. at 431 n.33. For example, appearing in court in support of an application for a search warrant, presenting evidence at a hearing, evaluating evidence, interviewing witnesses, and preparing charging documents are all acts subject to the protection of absolute immunity. *Kalina*, 522 U.S. at 130-31; *Buckley*, 509 U.S. at 273; *Burns*, 500 U.S. at 492. Giving legal advice to law enforcement, however, is not. *Burns*, 500 U.S. at 496. Rather, a prosecutor enjoys only qualified immunity, not absolute immunity, for investigatory, administrative, or investigative functions such as “gathering physical evidence and conducting interrogations to determine whether a crime has been committed and whether probable cause exists to arrest a suspect.” *Broam v. Bogan*, 320 F.3d 1023, 1031 (9th Cir. 2003). Likewise, “a prosecutor sheds absolute immunity

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when she acts as a ‘complaining witness’ by certifying that the facts alleged within an affidavit are true.” *Waggy*, 594 F.3d at 711 (citing *Kalina*, 522 at 132 (Scalia, J., concurring)).

Here, Cox asserts This is a “complaining witness,” not a prosecutor, when he sought and procured the warrants for Cox’s arrest. Citing the Supreme Court’s decision in *Kalina*, Cox contends that “a prosecutor who signs a criminal complaint under oath is functioning as a witness, and not a prosecutor.” (Dkt. 35-1, p. 13). This assertion, however, misconstrues the holding in *Kalina*.

In *Kalina*, the prosecutor initiated a criminal proceeding by filing three documents, each based on false facts: an information charging burglary; a motion for an arrest warrant; and a probable cause certification summarizing the evidence supporting the charge. 522 U.S. at 120-21. The Supreme Court held that absolute immunity protected the prosecutor’s “activities in connection with the preparation and filing of” the information and the motion for an arrest warrant. *Id.* at 129. It explained these activities were “the work of an advocate and [were] integral to the initiation of the prosecution.” *Id.* at 130. “Indeed,” the Court further explained, “except for [the prosecutor’s] act in personally attesting to the truth of the averments in the certification, it seems equally clear that the preparation and filing of the third document in the package was part of the advocate’s function as well.” *Id.* at 129.

Regarding the prosecutor’s personal attestation to the facts alleged in the probable cause certification, however,

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the Court found the prosecutor was functioning as a witness, not as an advocate:

Testifying about facts is the function of the witness, not of the lawyer. No matter how brief or succinct it may be, the evidentiary component of an application for an arrest warrant is a distinct and essential predicate for a finding of probable cause. Even when the person who makes the constitutionally required ‘Oath or affirmation’ is a lawyer, the only function that she performs in giving sworn testimony is that of a witness.

Id. at 130-31. At common law, absolute immunity did not protect the function of the complaining witness. *Id.* at 127. Because the prosecutor was acting as a “complaining witness” when she personally vouched for the veracity of the statements contained in the certification, the Court held the prosecutor did not have absolute immunity.

Here by contrast, Thie did not function as a “complaining witness” when he signed the criminal complaints against Cox. Unlike the prosecutor in *Kalina*, Thie did not personally attest to the facts giving rise to probable cause. Instead, Thie relied on Deputy Vannatter’s and Deputy Hampton’s probable cause affidavits and their reports, which were submitted to Judge Payne with the criminal complaints, to establish probable cause and to procure the arrest warrants. When Thie filed the two criminal complaints against Cox and presented the deputies’ probable cause affidavits, he functioned in his

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traditional role as an advocate initiating and presenting the State's case. He is, therefore, entitled to absolute immunity on all claims. *Id.* at 129; *see also Waggy*, 594 F.3d at 713 (concluding prosecutor acted "as a judicial advocate before the court" when she submitted "a motion for a bench warrant to the court applying the law to facts alleged in supporting affidavits signed by witnesses" and was entitled to absolute immunity); *Tanner v. Heise*, 879 F.2d 572, 578 (9th Cir. 1989) (concluding prosecutor had absolutely immunity for instituting prosecution).

B. Mrs. Hunters' Summary Judgment Motion

Cox also asserts claims of malicious prosecution against Mrs. Hunter, alleging that "Mrs. Hunter's sole purpose in calling the Sheriff's dispatcher about shots fired by [Cox] five days earlier was to maliciously and intentionally cause [Cox] to have more involvement with law enforcement authorities, and thereby cause him mental anguish." (Dkt. 40 at p. 3). Cox further alleges Mrs. Hunter's conversation with Thie on May 6, 2020, was also "motivated by malice." In response, Mrs. Hunter argues Cox cannot prove any of the elements necessary to establish malicious prosecution.

Malicious prosecution is a tort which "runs counter to obvious policies of the law in favor of encouraging proceedings against those who are apparently guilty, and letting finished litigation remain undisturbed and unchallenged." PROSSER & KEETON, TORTS (5th ed.), § 119, p. 876. The interests of persons wrongfully prosecuted, however, must also be protected. Balancing these interests,

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actions for malicious prosecution have historically been limited by restrictions making such claims difficult to maintain. *See Badell v. Beeks*, 115 Idaho 101, 765 P.2d 126, 127 (Idaho 1988) (“Actions for malicious prosecution are not favored in law and, thus are limited by requiring the plaintiff to establish several elements.”); *Clark v. Alloway*, 67 Idaho 32, 170 P.2d 425, 427 (Idaho 1946) (explaining “actions for malicious prosecution are not favored in law, hence have been hedged about by limitations more stringent than in the case of almost any other act causing damage to another”).

To recover for malicious prosecution under Idaho law, a plaintiff must prove that: (1) there was a prosecution; (2) it terminated in favor of the plaintiff; (3) the defendant was the prosecutor; (4) the defendant acted with malice; (5) probable cause was lacking; and (6) the plaintiff sustained damages. *Berian v. Berberian*, 168 Idaho 394, 483 P.3d 937, 944-45 (Idaho 2020). “To sustain an action for malicious prosecution, there must be a concurrence of malice and want of probable cause. Neither, however clearly established, will support an action in the absence of the other.” *Berian*, 483 P.3d at 995 (quoting *Clark*, 170 P.2d at 428).

Cox contends Mrs. Hunter acted as “the prosecutor” by “complain[ing] to law enforcement.” (Dkt. 38, 5:12-13). Although the Idaho Supreme Court has never expressly defined the term “prosecutor,” it has suggested the “prosecutor” must somehow cause the plaintiff’s arrest. *Berian*, 483 P.3d at 944. (“Galust and Julia asserted claims of malicious prosecution, alleging that Ovanes made a false

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police report that caused the two to be arrested.”); *see also Moore v. United States*, 213 F.3d 705, 710, 341 U.S. App. D.C. 348 (D.C. Cir. 2000) (“In order to find that a defendant procured a prosecution, the plaintiff must establish ‘a chain of causation’ linking the defendant’s actions with the initiation of criminal proceedings.”).

The Restatement (Second) of Torts § 653, comment g provides additional guidance for determining whether a private individual may be subject to liability for malicious prosecution for providing statements to law enforcement authorities:

A private person who gives to a public official information of another’s supposed criminal misconduct, of which the official is ignorant, obviously causes the institution of such subsequent proceedings as the official may begin on his own initiative, but giving the information or even making an accusation of criminal misconduct does not constitute a procurement of the proceedings initiated by the officer if it is left entirely to his discretion to initiate the proceedings or not. When a private person gives to a prosecuting officer information that he believes to be true, and the officer in the exercise of his uncontrolled discretion initiates criminal proceedings based upon that information, the informer is not liable . . . even though the information proves to be false and his belief was one that a reasonable man would not entertain. The exercise of the

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officer's discretion makes the initiation of the prosecution his own and protects from liability the person whose information or accusation has led the officer to initiate the proceedings.

If, however, the information is known by the giver to be false, an intelligent exercise of the officer's discretion becomes impossible, and a prosecution based upon it is procured by the person giving the false information.

RESTATEMENT (SECOND) OF TORTS § 653, cmt. g (1977). Thus, comment g distinguishes between situations in which a private individual merely provides information to an official who may initiate charges in his discretion versus those in which a private individual either provides knowingly false statements to an official or directs or pressures an official to initiate charges, thereby making the officer's intelligent exercise of discretion impossible. *Id.* See also *Dickerson v. Monroe Cnty Sheriff's Dep't*, 114 F. Supp. 2d 187, 190 (W.D.N.Y.2000) ("It is true that civilians who merely report a crime are generally shielded from liability for the tort of malicious prosecution.").

In this case, Mrs. Hunter did nothing to bring about Cox's prosecution other than truthfully report in April 2020 that Cox had unilaterally ditched the roads and interfered with their ingress and egress in violation of the protection order. Deputy Vannatter independently viewed the roads' conditions and concluded Cox's conduct violated the protection order. Deputy Vannatter testified that he—not Mrs. Hunter—made the decision to request charges

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against Cox in May 2020. (Dkt. 27-3 at p. 44, Vannatter Dep. 51:4-18). Additionally, Thie independently concluded probable cause existed to arrest Cox for violating the protection order.

By contrast, both Deputy Vannatter and Thie expressly disavowed that Mrs. Hunter's May 6, 2020, report of Cox's gunfire resulted in Cox's prosecution. Rather, Deputy Vannatter requested that charges be brought against Cox for violating the protection order in his April 30, 2020 report – a week before Mrs. Hunter's report of Cox's gunfire. Similarly, Thie testified he made the decision to file criminal charges against Cox after he reviewed Deputy Vannatter's report and probable cause affidavit. According to Thie, "Deputy Vannatter's report established probable cause to believe Cox was in violation of the Court's protective order." (Dkt. 27-2 at p. 6, Thie Decl. ¶ 26). In other words, Thie did not file charges against Cox for violating the protection order based on Mrs. Hunter's report of Cox's gunfire. Accordingly, Cox fails to provide any evidence Mrs. Hunter knowingly made any materially false statements resulting in his prosecution.

Cox also fails to establish Mrs. Hunter acted with malice for purposes of malicious prosecution. "[M]alice refers to 'the intentional commission of a wrongful or unlawful act, without legal justification or excuse and with ill will, whether or not injury was intended.'" *Bliss v. Minidoka Irrigation Dist.*, 167 Idaho 141, 468 P.3d 271, 286 (Idaho 2020) (quoting *Beco Constr. Co. v. City of Idaho Falls*, 124 Idaho 859, 865 P.2d 950, 955 (Idaho 1993)). In

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Bliss, the Idaho Supreme Court found the plaintiff failed to prove malice where “there were no materially false statements made to the Sheriff’s office which affected the crime charged.” *Bliss*, 468 P.3d at 286.

Likewise, here, Cox does not identify any materially false statements Mrs. Hunter made to the Sheriff’s Department that “affected the crime charged,” and Cox fails to show Mrs. Hunter’s report of Cox’s gunfire “affected the crime charged.” *See id.* To the contrary, as noted above, Thie denied Mrs. Hunter’s report of gunfire caused him to file criminal charges against Cox. Rather, both Thie and Deputy Vannatter concluded that probable cause existed to arrest and charge Cox for violating the protection order based on their independent investigation of Cox’s ditching the road in April 2020.

Even assuming Mrs. Hunter’s report of gunfire caused Cox’s arrest, Cox cannot show Mrs. Hunter made any material misrepresentations. The record shows that Deputy Vannatter interviewed Mrs. Hunter with her sons, who were present when Cox discharged his firearm. Mrs. Hunter’s sons described to Deputy Vannatter what occurred - not Mrs. Hunter. D. H. corroborated Mrs. Hunter’s report and testified he was “alarmed” and “kind of scared” due to Cox’s conduct. Moreover, Cox admits he discharged his firearm “several” times on his property to “scare” a coyote. Based on this evidence, Cox cannot prove Mrs. Hunter materially misrepresented her report of gunfire. Accordingly, Cox has failed to show Mrs. Hunter acted with malice.

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Finally, Cox's malicious prosecution claim fails because he cannot show that the prosecutions against him were initiated without probable cause. "[P]robable cause consists of a belief in the charge or facts alleged, based on sufficient circumstances to reasonably induce such belief in a person of ordinary prudence in the same situation." *Berian*, 483 P.3d at 945 (quoting *Clark v. Alloway*, 67 Idaho 32, 170 P.2d 425, 428 (Idaho 1946)). Under Idaho law, a magistrate judge's independent finding of probable cause, which was based on a full disclosure of the facts, precludes, as a matter of law, a finding in a malicious prosecution case that no probable cause existed. *Berian*, 483 P.3d at 945.

Here, Judge Payne found probable cause existed to issue the May and August 2020 warrants for Cox's arrest. Despite Judge Payne's probable cause finding, Cox contends that "on May 6, 2020, [Mrs. Hunter] had no reason to believe, and it can be reasonably inferred that she did not believe, that there was probable cause to think Mr. Cox firing gunshots five days earlier presented a potential danger or threat to her, her family, or her neighbors." (Dkt. 40 at p. 8). But, as Cox admits, Judge Payne did not consider Mrs. Hunter's report of gunfire to find probable cause to issue a warrant to arrest Cox for violating the protection order. Cox, therefore, cannot show there was any prosecution resulting from Mrs. Hunter's report of gunfire. Because Cox has failed to establish the requisite elements for a malicious prosecution claim against Mrs. Hunter, the Court grants Mrs. Hunter's summary judgment motion.

*Appendix B***C. Attorney Fees**

Both Thie and the Hunters request an award of attorney fees and costs under Idaho Code § 12-121, arguing Cox failed to advance a legitimate claim for relief. Section 12-121 provides in relevant part:

In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties, provided that this section shall not alter, repeal or amend any statute which otherwise provides for an award of attorney's fees.

Idaho courts have held that § 12-121 and Rule 54(e) (1) of the Idaho Rules of Civil Procedure provide for an award of attorney fees if the Court finds a party “frivolously, unreasonably or without foundation” pursued or defended against a claim. *Ortiz v. Reamy*, 115 Idaho 1099, 1101, 772 P.2d 737 (Ct. App. 1989). Whether to award attorney fees under § 12-121 is within the trial court's discretion. *Management Catalysts v. Turbo West Corpac, Inc.*, 119 Idaho 626, 809 P.2d 487 (Idaho 1991). In this case, the Court does not find Cox brought this action frivolously, unreasonably, or without foundation and denies Defendants' request for fees.

IV. ORDER**IT IS ORDERED that:**

1. Defendant Brian Thie's Motion for Summary Judgment (Dkt. 27) is **GRANTED**.

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2. Defendant Travis Hunter and Trisha Hunter's Motion for Summary Judgment (Dkt. 28) is **GRANTED**.

DATED: September 03, 2024

/s/ Amanda K. Brailsford
Amanda K. Brailsford
U.S. District Court Judge

**APPENDIX C — JUDGMENT OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF IDAHO, FILED SEPTEMBER 3, 2024**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Case No. 2:22-cv-00199-AKB

SAMUEL A. COX,

Plaintiff,

v.

BRIAN D. THIE, INDIVIDUALLY AND AS
BENEWAH COUNTY PROSECUTOR; TRAVIS
HUNTER AND TRISHA HUNTER, HUSBAND
AND WIFE, AND THE MARITAL COMMUNITY
COMPRISED THEREOF,

Defendants.

In accordance with this Court's September 3, 2024, Memorandum Decision and Order granting Defendant Brian Thie's Motion for Summary Judgment (Dkt. 27) and Defendant Travis Hunter and Trisha Hunter's Motion for Summary Judgment (Dkt. 28), IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered in Defendants' favor and that this case is DISMISSED WITH PREJUDICE.

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DATED: September 03, 2024

/s/ Amanda K. Brailsford
Amanda K. Brailsford
U.S. District Court Judge

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**APPENDIX D — ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT,
FILED DECEMBER 4, 2025**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-5997

D.C. No. 2:22-cv-00199-AKB District of Idaho, Boise

SAMUEL A. COX,

Plaintiff-Appellant,

v.

BRIAN D. THIE, INDIVIDUALLY AND AS
BENEWAH COUNTY PROSECUTOR, HUSBAND
AND WIFE, AND THE MARITAL COMMUNITY
THEREOF; *et al.*,

Defendants-Appellees,

and

JANE DOE THIE, HUSBAND AND WIFE, AND
THE MARITAL COMMUNITY THEREOF,

Defendant.

Filed December 4, 2025

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ORDER

Before: W. FLETCHER, CHRISTEN, and HURWITZ,
Circuit Judges.

Appellant filed a petition for rehearing or rehearing en banc on November 7, 2025 (Dkt. 55). The panel has unanimously voted to deny the petition for panel rehearing. Judge Christen has voted to deny the petition for rehearing en banc, and Judge W. Fletcher and Judge Hurwitz have so recommended.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for rehearing or rehearing en banc is DENIED.

**APPENDIX E — EXCERPTS OF DECLARATION OF
DENNIS W. CLAYTON, DATED NOVEMBER 27, 2023
(ER 58–61)**

* * *

- (2) I am an attorney, licensed to practice law in the State of Washington.
- (3) In 2019, I was contacted by David and Sam Cox about legal problems involving their recently purchased property in Benewah County, Idaho. I conferred with them and referred them to Idaho attorney Chris Montgomery.
- (4) In February, 2020, a Petition for Protection Order was filed against Sam Cox by his neighbor, Trisha Hunter.
- (5) Mr. Montgomery entered a notice of appearance and represented Sam Cox in that dispute, and I assisted Mr. Montgomery.
- (6) On March 11, 2020, Magistrate Douglas Payne granted Trisha Hunter's petition. Defendants' Joint Statement of Material Facts, ¶ 11.
- (7) In relevant part, the Protection Order provided that:

Respondent [Sam Cox] shall not do anything to interfere with Protected persons ingress or egress to their home and shall not do anything

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to the road they use for that purpose which degrades their access to any significant degree.

Id.

- (8) On May 6, 2020, Mr. Cox was arrested for violation of the protection order entered by Magistrate Payne on March 11, 2020. A few days after Mr. Cox was arraigned (May 7, 2020) Coeur d' Alene attorney Michael Palmer entered a notice of appearance on behalf of Mr. Cox.
- (9) The following paragraphs reflect in large part a Declaration I prepared the week of May 18, 2020, at the request of Michael Palmer.
- (10) From conversations with Mr. Palmer, it was my understanding he planned on using my declaration for Sam's bond hearing before Magistrate Payne on May 20, 2020. See Exhibit 1, attached hereto, Declaration of Dennis W. Clayton, which is a true and correct copy of the declaration I provided Mr. Palmer on or about May 19, 2020. Exhibit 1 was provided to defense counsel as part of Plaintiff's Initial Disclosures.
- (11) For reasons of which I am not aware, it is my understanding that the Declaration was not used by Mr. Palmer, and a bond was not set at the hearing.
- (12) Early in the morning on April 24, 2020, I received a call from Jackie Tomsha, the mother of Sam Cox,

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who advised me that Sam had been contacted by Deputy Vannatter, who told him that he was being investigated for violation of the Protection Order entered by Magistrate Payne on March 11, 2020.

- (13) In response, I called Sheriff Resser to inquire about the problem. We briefly discussed the matter, and he referred me to Benewah County Prosecutor Brian Thie.
- (14) I called Mr. Thie on April 24, right after talking to Sheriff Resser. Mr. Thie advised me that Deputy Vannatter had taken a report from Trisha Hunter on April 23, 2020, regarding damage Sam had allegedly done to the roads used by Mr. and Mrs. Hunter to get to and from their home from Carpenter Creek Road.
- (15) Mr. Thie advised me that, based on the foregoing matters, Deputy Vannatter determined that he would seek a warrant for the arrest of Sam Cox.
- (16) Mr. Thie advised me that his plan at the moment was to have Sam arrested. He said his most immediate concern was to make sure this whole conflict between Mr. Cox and the Hunters didn't result in somebody being injured.
- (17) I suggested that he and I meet with Sam Cox at his property, to inspect the scene and see if some alternative could be reached. We agreed to meet the following week.

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- (18) On April 28, 2020, I met Mr. Thie at his office, and after a brief conversation we proceeded to Sam's property south of Femwood.
- (19) Mr. Thie and I looked at the ditching along each side of Poplar Drive and the roadway surface, including the ditching in front of Hunters' secondary road, as well as the cattleguard near the Carpenter Creek Bridge at the east end of Poplar Drive.
- (20) It appeared that shortly before Mr. Thie and I arrived, 2 to 3-inch rock had been delivered and spread on Poplar Drive.
- (21) We also looked at various survey markers located along the south border of Sam's property, near the Potlatch bypass, trying to understand the probable location of boundary lines – which we were not able to do. Then Mr. Thie left us and drove up Sapling Lane to talk with the Hunters.
- (22) Fifteen or twenty minutes later, Mr. Thie returned, having just spoken to Mr. Hunter.
- (23) Standing at the east end of Poplar Drive with Mr. Thie, he advised me that Mr. Hunter had a PVC pipe available to place at the intersection of the secondary easement and Poplar Lane, which could be buried at the secondary road where it intersects with Poplar Drive in order to restore access to the Hunters' secondary road.

Appendix E

- (24) Mr. Thie and I decided to tell Mr. Cox what Mr. Hunter had said, and waived at him to join us from where he was standing at the other end of Poplar Drive, which he did.
- (25) At this point, Mr. Thie, Mr. Cox and I were standing together within a conversational distance. Thie Declaration, ¶ 16.
- (26) Mr. Thie and I asked Sam if he would place and cover the PVC pipe if Mr. Hunter brought it to the site, if he would repair the Potlatch bypass, and if he would agree to do nothing more to the roads or ditches without first getting permission from Mr. Thie and me. Mr. Cox briefly opposed fixing the secondary bypass, firmly expressing some concern about federal wetlands policy, and said he wouldn't do it because he did not want to violate federal law.
- (27) Mr. Thie said if Sam did not fix the Hunters' secondary access, he would be arrested. I urged Sam to reconsider, and while the three of us were standing on Poplar Drive, Sam agreed to fix Hunters' secondary road. See Exhibit 1, attached hereto, ¶¶ 21-23.
- (28) Mr. Thie said that if he did so, Sam would not be arrested.
- (29) Mr. Cox was somewhat loud when asked if he would fix the access to Hunters' secondary road, expressing some sort of concern regarding federal wetlands

Appendix E

policy. Other than that, Mr. Cox was not loud and obstinate during the viewing of the roadways on April 28, 2020. Nor was he acting in any way that could reasonably be interpreted as aggressive. Mr. Thie again said to me, while Mr. Cox was standing next to us, that if he did not fix the access to Hunters' secondary road, he would be arrested. At that point I reminded Mr. Cox that he would not want to go to jail when he could avoid it by fixing the access to the secondary road, and at that point he agreed to fix it if Mr. Hunter would provide the PVC culvert pipe.

- (30) On May 1, 2020, the Hunters' boys and some of their friends transported the culvert pipe to the intersection of Poplar Lane and the secondary road. Montgomery Declaration, Exhibit 8, Dakota Hunter Deposition, pp. 22-25.
- (31) On the evening of May 1, 2020, Sam Cox covered the pipe with dirt, making Hunters' secondary road accessible. Sam Cox Declaration, ¶ 55.
- (32) Dave Cox was visiting Sam that weekend, and I asked Dave to take pictures of the site, showing the covered pipe, and email them to me as soon as possible. Dave Cox Declaration, ¶17; Exhibit 1, attached hereto, ¶¶ 26-27.

* * *

**APPENDIX F — EXCERPTS OF AFFIDAVIT OF
DENNIS CLAYTON DATED MAY 19, 2020 AND
FILED NOVEMBER 28, 2023 (ER 68–70)**

* * *

17. On April 28, I met Mr. Thie at his office, and we proceeded to Sam's property south of Fernwood, located just off of Big Carpenter Creek Road, where we met up with Sam and his mother, Jackie Tomsha,
18. Mr. Thie and I inspected the ditching along each side of Poplar Lane and the roadway surface, including the ditching in front of Hunters' secondary easement road, as well as the cattle guard near the Carpenter Creek Bridge.
19. With Sam and his mother, we also inspected the portion of a turn-out that PotlatchDeltic had installed, which Sam had excavated as part of his drainage ditch project, as to which PotlatchDeltic had complained to law enforcement officials. We also inspected various survey markers located along the south border of Sam's property, near the PotlatchDeltic turn-out, trying to decipher the probable location of boundary lines.
20. Mr. Thie had learned that Mr. Hunter had a culvert pipe available to place at the intersection of his secondary easement and Poplar Lane, which could be buried at the intersection. thus providing a continuing drainage path coinciding with the drainage ditch Sam had dug in front of the secondary easement.

Appendix F

21. Mr. Thie and I asked Sam if he would place and cover the culvert pipe if Mr. Hunter brought it to the site, thereby providing passage over the ditch and onto Hunters' secondary easement. Sam agreed to do that.
22. Mr. Thie and I also asked Sam if he would agree to smooth out the surface of the turn-out near the south boundary of his property, so that it would again be suitable for vehicles to travel over. Sam agreed to do that.
23. Mr. Thie and I asked Sam if he would commit to making absolutely no additional alterations or excavations on or near the easement mads, pending further discussions with interested property owners. Sam agreed to that.
24. In our initial telephone conversation, Mr. Thie had mentioned other things he wanted done, such as cleaning out the cattle guard. I asked him to email to me a list of those things, which he did a day and a half later.
25. The following weekend, the Hunters' boys transported the culvert pipe (eight-inch PVC sewage pipe) to the intersection of Poplar Lane and the secondary easement.
26. On either Saturday or Sunday, Sam placed the pipe and covered it with dirt. Sam's brother Dave was present when this was done, and I had asked Dave to take pictures of the site, showing the covered PVC pipe, and send them to me as soon as possible.

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27. He sent a picture of the buried PVC pipe to my email address, as requested, the evening of May 3, 2020. See Exhibits G. I was relieved to see that Sam had fulfilled that part of the agreement, and that
28. On May 6, 2020, I received a call from Mr. Thie, advising me that although Sam had buried the pipe, as agreed, he did not Jay gravel underneath it, and so it was sinking.
29. Mr. Thie further advised me that when the Hunters' boys and some of their friends were down by the Carpenter Creek Bridge, delivering the PVC pipe to the ditch for Sam to bury, Sam was firing multiple gunshots from his property (approximately 800 feet away).
30. Finally, Mr. Thie said things had now just gone too far, and he was having Sam arrested, and just wanted to give me a heads-up. I thanked him for the information.
31. Sam was arrested May 6, 2020.
32. I called Chris Montgomery and advised him that Sam was going to be arrested, and asked if he would enter a notice of appearance on Sam's behalf.
33. Due to his caseload, Chris was unable to enter a notice of appearance on Sam's behalf, and I referred him to Michael Palmer.
34. Based on Mr. Thie's statements, I envisioned Sam physically intimidating the Hunters' boys and their

Appendix F

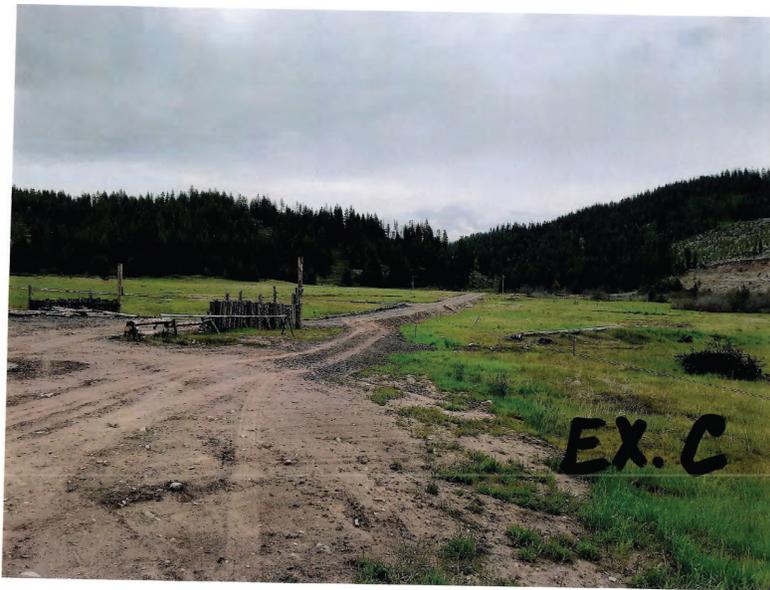
friends, and/or staring at them menacingly while firing his gun, or engaging in some similar conduct to frighten and harass the boys.

35. Upon reading the Supplemental Report of Deputy Vannatter, reflecting his conversations with the Hunter family on May 6, 2020, it was clear that Sam was not harassing or intimidating the Hunters boys or their friends, and that they apparently had no issues with Sam and did not believe the gunshots were fired for the purpose of harassment or intimidation.
36. It is my impression that the *acute* factors precipitating Sam's arrest are those facts summarized in paragraphs 28 and 29, above.
37. On May 12, 2020, I went to the property myself to inspect and photograph the condition of the passage way from Poplar Lane onto the Hunters secondary easement, as well as the PotlatchDeltic turn-out. See Exhibits C, D, and E.
38. I drove over the passage from Poplar Lane to Hunters' secondary easement with no problem. It is my impression that the passage had been further smoothed out after Sam placed and covered the PVC.
39. I drove over the PotlatchDeltic turn-out, and it too was passable, although it could use additional smoothing and leveling.

* * *

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**APPENDIX G — EXHIBIT A TO CLAYTON
AFFIDAVIT-PHOTOGRAPHS OF POPLAR LANE /
ROAD CONDITION (ER 74-76)**



47a

Appendix G



EX.D

48a

Appendix G



**APPENDIX H — EXCERPTS OF PLAINTIFF'S
RESPONSE OPPOSING MOTION FOR SUMMARY
JUDGMENT, DATED NOVEMBER 27, 2023
(ER 115–117)**

* * *

The foregoing principles discussed in *Chism* and *Stanert* are applicable to and determinative of the issue of judicial deception in this case.

First, Mr. Thie apparently believed that resolving the dispute between Mr. Cox and the Hunters was of sufficient importance to travel thirty or forty miles roundtrip to and from the disputants' property, talk with them, and devise a plan they agreed with.

Second, on May 6, 2020, Mr. Thie reported to Magistrate Payne such facts as existed on April 23, 2020 – *at the time* of Deputy Vannatter's talk with Mrs. Hunter and Mr. Cox – but omitted facts as they existed on April 28, 2020, or at the time he appeared before Magistrate Payne seeking an arrest warrant, that is, those facts set forth at PSOMF, ¶ 21.

Third, Mr. Thie knew that Deputy Vannatter's affidavit of probable cause – which was submitted by Mr. Thie to Magistrate Payne along with the complaint and the arrest warrant his office prepared – did not contain any reference to Mr. Thie's interaction with Mr. Cox, Mr. Hunter and Mr. Clayton on April 28, 2020. Based on the record developed so far in this case, as between Deputy Vannatter, Magistrate Payne and Mr. Thie, only Mr. Thie

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knew of his interaction with Mr. Cox, Mr. Hunter, and Mr. Clayton.

Fourth, like WSP Officer Gardner in the *Chism* case, the facts omitted by Mr. Thie in the course of pursuing a warrant for the arrest of Mr. Cox were facts of which he had personal, first-hand knowledge.

Fifth, not disclosing to Magistrate Payne his interactions on April 28, 2020 with Mr. Cox, Mr. Hunter, and Mr. Clayton guaranteed that Magistrate Payne would not ask questions.

Based on the foregoing principles and facts, Mr. Cox has made a substantial showing that Mr. Thie's conduct amounted to an intentional or reckless disregard for the truth.

As stated by the Court in *Chism*, Mr. Cox must also demonstrate that the omitted facts were material to Magistrate Payne's decision regarding probable cause. In that regard, the Supreme Court has instructed magistrate judges to determine probable cause by considering the "totality-of-the-circumstances." *Illinois v. Gates*, 462 U.S. 213, 235 (1983) (citing *Spinelli v. United States*, 393 U.S. 410, 419 (1969)).

Full disclosure to Magistrate Payne of material facts would have disclosed the facts as alleged by Deputy Vannatter in his probable cause affidavit as of April 23, 2020 *and* the facts as experienced by Mr. Thie on April 28, 2020. That is, Magistrate Payne would have been

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informed of the omitted facts listed in PSMOF ¶ 21. It may be reasonably concluded that fully informing Magistrate Payne of the omitted facts would have apprised him of the “totality-of-circumstances,” and have led him to ask “If Mr. Cox agreed to fix things, and Mr. Hunter provided the culvert, at this time do you really believe there is probable cause to believe he is violating the protection order?” Or “Shouldn’t you have a deputy go out and see if Mr. Cox fixed things, just in case Mrs. or Mr. Hunter might not tell the truth about it?”

It is clear that Magistrate Payne placed importance, at least to some significant degree, on the complaint submitted by Mr. Thie, explaining to Mr. Cox at his arraignment as follows:

That complaint was signed by Brian Thie on the 6th of May. As a result of that complaint, a warrant was issued for your arrest and bail was set in the amount of twenty five thousand dollars.

Montgomery Declaration, Exhibit 9, p. 2, lines 24-27.

By omitting material facts from Magistrate Payne’s consideration, Mr. Thie assumed for himself the task of determining probable cause, and deprived Magistrate Payne of the opportunity to function as a neutral and detached decision-maker. *See United State v. Barnes*, 845 F.3d 1194, at 1199: (discussing judicial abandonment – not asserted in the present case – but explaining the important function of neutral and detached magistrates in determining probable cause).

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Had Mr. Thie fully informed Magistrate Payne of the facts (see PSOMF ¶ 21), it can be reasonably concluded that he would not have signed the arrest warrant presented by Mr. Thie for his signature.

1. QUALIFIED IMMUNITY

Mr. Thie is entitled to qualified immunity unless: (1) Mr. Cox has “ma[de] out a violation of a constitutional right,” and (2) “the right at issue was ‘clearly established’ at the time of [the officers’] alleged misconduct.” *Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (citing *Saucier v. Katz*, 533 U.S. 194, 201(2001)). Thus, do the facts alleged by Mr. Cox, taken in a light most favorable to him as the party asserting the injury, show that Mr. Thie’s conduct violated a constitutional right? Mr. Cox alleges that Mr. Thie’s conduct violated his right to be free from seizure pursuant to a warrant obtained through judicial deception. A seizure conducted pursuant to a warrant obtained by judicial deception violates the Fourth Amendment. *Butler v. Elle*, 281 F.3d 1014, 1024 (9th Cir.2002). Evidence presented by Mr. Cox demonstrates that Mr. Thie was the functional proponent and moving force behind Magistrate Payne’s issuance of the arrest warrant on May 6, 2020, and in the course of obtaining the warrant, Mr. Thie intentionally or recklessly failed to apprise Magistrate Thie of material facts.

Finally, the right to be free from unreasonable seizure was a clearly established right in 2020. *Chism v. Washington*, 661 F.3d, at 383. Therefore, Mr. Thie is not entitled to qualified immunity.

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2. Plaintiff Cannot Prove All Elements of a 42 U.S.C. SECTION 1983 Malicious Prosecution Claim.

As discussed above, Mr. Thie is entitled to neither absolute nor qualified immunity.

a. Plaintiff Can, In Fact, Show That Prosecutor Thie Acted With Malice

Regarding the first arrest, Mr. Thie failed to fully disclose material facts regarding his interactions with Mr. Cox, Mr. Hunter and Mr. Clayton, as well as the fact that Mr. Cox agreed to restore, and did restore, access to the secondary road and the Potlatch bypass. Mr. Cox contends he had an agreement with Mr. Thie, that is, if he restored access to the secondary road and fixed the Potlatch bypass road he would not be arrested. Mr. Thie denies there was any such agreement. In any event, the eight days following his meeting with Mr. Cox were uneventful. Within a matter of hours after Mrs. Hunter called in a complaint about Mr. Cox firing gunshots that occurred *five days earlier*, Mr. Thie called her to get her views of things, and Mr. Cox was in jail by early evening on May 6, 2020.

* * *

**APPENDIX I — EXHIBIT 3 TO MONTGOMERY
DECLARATION DATED OCTOBER 20, 2023—
EXCERPTS OF TRANSCRIPT OF BRIAN D. THIE
DEPOSITION (ER 135–137) (ER 147–149) (ER 167–169)**

**Brian D. Thie—March 23, 2023
2:22-cv-199**

* * *

[11] recognize the topography of Exhibit No. 2. And I see on Exhibit No. 1 you have Fernwood marked.

Q. Correct. And it shows Highway 3.

A. Yes.

Q. So you're generally familiar with that area?

A. Yes.

Q. Would you say more or less than Exhibit 2, in terms of your familiarity?

A. I don't understand what your question is.

Q. Let me rephrase it. Are you more or less familiar with Exhibit 1 versus Exhibit 2?

A. This is the first time I've seen either exhibit. So I'm not more familiar with one or the other. Although I recognize the content on Exhibit 2 more than the content, of which there's less, on Exhibit 1.

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Q. Okay.

A. In other words, it's easier for me to orient myself on Exhibit 2 than it is on Exhibit 1.

Q. In the course of investigating this case, I've come across a number of names. And I'd like to know which names sound familiar with you—that you just recognize and then which names of people you are acquainted with and then the context in which you are familiar with any of them. So I'm just going to go

* * *

[25] Q. And what is your recollection?

A. It was the date that I met Dennis Clayton out at their property at Dennis Clayton's invitation. And after Dennis Clayton and I talked for a while, walked around, looked around, I went up to the Hunters' house and spoke with Travis Hunter. So in relationship to the April incident, that was the first time I spoke to the Hunters that I recall.

Q. And what was the nature of your discussion with Mr. Hunter?

A. My nature of my discussion with him would have been as what you might call victim's advocate, my role as victim's advocate, to get his view on what was going on out at the property in regards to the violation of a no-contact order.

Appendix I

Q. And what was your understanding of his perception?

A. He wasn't very happy with Sam Cox.

Q. Well, did he come—did you and he come up with any sort of plan of action after you spoke with him?

A. With?

Q. Mr. Hunter.

A. No.

Q. So your purpose of speaking to him was what?

[26] A. To get his input.

Q. Okay. And other than him being upset with—

A. Oh, one plan of action, yes. And that was for him to deliver—possibly deliver a piece of—not conduit—but culvert. That was the only plan of action that we would have—that he would have done. Otherwise, I was just interested in what his views of the situation were, to see if I could—or to see what I could do in the case to get it resolved one way or the other.

Q. Before that date had you ever gone out to the Hunters' residence to talk with Trisha or Travis Hunter about Sam Cox?

A. Nope. That date that I went out there with Dennis Clayton was the first and only time I've been out there.

Appendix I

Q. So in April of 2020, either before or after April 23rd, had you discussed Sam Cox with Sheriff Resser—is it Resser or Resser?

A. In January of '20—

Q. No. April.

A. I don't believe so.

Q. Well, I did ask you either before or after April. So were you—did I interrupt you?

A. I spoke with him in January. He told me he

* * *

[80] Q. The 4th?

A. I don't believe so.

Q. And the 5th?

A. Somewhere around the 5th or 6th is when I got some complaints.

Q. In what form?

A. From Trisha Hunter. It was around the 5th or 6th. And it was right at the time when I was filing the complaint—when I was filing the criminal complaint in the matter.

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Q. So you had already made the decision to file the criminal complaint before you got the contact from Mrs. Hunter?

A. No.

Q. So was her contact with you before or after you made the decision to file a complaint?

A. It was at the time I was making the decision to file the complaint.

Q. So it was before you actually filed it? You were in the thought process of—

A. I believe so.

Q. And in your e-mail to Clayton, Exhibit 4, on April 30th you said you were hopeful that charges won't need to be filed.

A. Mm-hmm.

[81] Q. The morning of May 6, you were contacted regarding Sam Cox?

A. On or around the 6th.

Q. And by whom?

A. I believe I contacted Mrs. Cox—sorry—Mrs. Hunter.

Appendix I

Q. And what was the nature of that conversation?

A. To see what the nature of the road was. At that point I already had, at that point, my visit, my observations, the reports from Deputy Vannatter. And I wanted to get one final chat with her about what the conditions of the road were.

Q. And what was your understanding from speaking with her?

A. That at that time the—he had put down a culvert and he put some dirt over it. It was impassable. The intersection of Sapling and Poplar still had large—very large rocks in it making it somewhat impassable. That there was more dirt in the cattle guard than there was before. And that Sam had been shooting a gun into the air while the kids were down putting the culvert—laying it in that area.

Q. What was your understanding on the shooting?

A. That while the kids were down dragging the culvert down on the road for Mr. Cox to at some point [82] get buried out there, that he was up on the hillside. They could see him, and he was not shooting at them, but he was shooting up into the air.

(Whereupon, Deposition Exhibit No. 6 was marked for identification.)

Appendix I

BY MR. MONTGOMERY:

Q. Handing you Exhibit 6. I'm going to also give you 6.1. And 6.1 is the transcript of the dispatcher log.

A. Okay.

(Whereupon, Deposition Exhibit No. 6.1 was marked for identification.)

(Witness examining exhibits.)

THE WITNESS: Okay. I've reviewed 6.1 and 6.

BY MR. MONTGOMERY:

Q. Did somebody bring or transmit Exhibit 6 to you the morning of May 6?

A. Exhibit 6?

Q. Yes.

A. It was in my file. I don't know when it was brought. It would have had to be after May 6—on or after May 6.

Q. Did you discuss Sam Cox with Sheriff Resser on May 6?

A. I don't recall.

* * *

Appendix I

[129] complaint on the shooting of the gun.

Q. Okay. So based on the substance of the supplemental report, can you see any reason for Trisha Hunter to wait five days and then call law enforcement about the gunshots?

MS. FEGERT: Objection, calls for speculation. Go ahead.

THE WITNESS: Speculative. I don't know. I suppose you'd have to ask her that.

BY MR. MONTGOMERY:

Q. So to recap, you met with Sam on April 28th. He agreed to fix the secondary road entrance and the Potlatch turnout?

A. He stated he would. The agreement gets into kind of a fuzzy territory. He stated he would.

Q. And to the best of your knowledge he did that?

A. To the best of my knowledge—are we talking the culvert?

Q. And fixing the bypass. Yes.

A. I don't know about the bypass. That really wasn't on my radar. As far as the culvert goes, when I filed the complaint it had not been restored by Sam Cox.

Appendix I

Q. And when you say that, you mean—is that based on what Trisha Hunter had told you?

A. That's correct.

[130] Q. But in fact he had installed it; it just wasn't, based on her conversation with you, passable yet?

A. It had been placed. It had dirt placed over it. And it was not passable on the 6th—or that—at the moment that I was filing the complaint.

Q. But there weren't any complaints about Sam on April 29th, 30th, May 1st, 2nd, 3rd, 4th or 5th. We went over that before.

A. What days?

Q. From April 29th through May 5th, the day before you did this.

A. I told you I wasn't aware of any. That doesn't mean there weren't any. I think you're misstating what I answered before.

Q. And at 8:46 a.m. on May 6, Trisha Hunter calls the sheriff's dispatcher and complains about gunshots?

A. Are you referring to an exhibit?

Q. Exhibit 6.1. It's the narrative—the transcript of the call to the dispatcher.

Appendix I

MS. MARKHAM: It's also reflected in the event detail in Exhibit 6 as well.

MS. FEGERT: If you have questions in regard to the document, please ask him to read the specific part of the document into the record that you're

* * *

[143] A. It doesn't appear that he was interviewed.

Q. According to that report, Dakota Hunter told Deputy Hampton that Sam Cox tailgated him and was driving his—as he was driving his four-by-four on Carpenter Creek Road?

A. That's correct.

Q. Also according to that report, Dakota told him that while he, Dakota, was in the Fernwood Mercantile Sam Cox was also in the store and stared at Dakota the entire time he was in the store?

A. That's correct.

Q. Do you recall when you first saw this report?

A. I do not.

Q. Do you know whether or not it was within a few days of it being prepared of—I think we've established a date of August 13th?

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Appendix I

A. I don't know what day I received a report.

Q. Did you talk to Deputy Hampton about the report?

A. I don't believe I did.

Q. Did you have any conversations with Deputy Hampton regarding this report?

A. I don't believe I did. I don't remember any.

Q. So does it appear to you, based on Deputy Hampton's report, that Deputy Hampton never did

* * *

**APPENDIX J — EXHIBIT 7 TO MONTGOMERY
DECLARATION DATED OCTOBER 20, 2023 --
DISPATCH RECORDS (ER 209–211)**

**Trisha Hunter - February 18, 2023
Case No. 22:22-cv-199**

* * *

[69]gunshots to you?

A. I'm trying to find the paper that I . . .

(Witness examining documents.)

MS. MARKHAM: There the supplemental response.

(Witness examining document.)

THE WITNESS: So it looks like in the report it said Shaun stated when they were done, he and one friend rode the four-wheeler up into the rock pit and heard approximately six rapid gunshots coming from the Cox residence.

BY MR. MONTGOMERY:

Q. And none of the kids who had been down by the bridge delivering the PVC pipe were frightened or alarmed by the gunshots, correct?

MS. MARKHAM: She was --

Appendix J

THE WITNESS: I wasn't there. How am I going to know? They came up to the house after.

BY MR. MONTGOMERY:

Q. Well, you were there when they came up. Were they expressing --

A. Well, I called the sheriff. So I was probably alarmed, myself, for my children.

Q. Okay. So you don't know about the kids. But you were; is that correct?

A. Wouldn't you be?

[70]Q. Exhibit 7. Is that the one you're on?

A. 7.5.

Q. Yeah. We need the page before. Does that say 7? See the circled area? Could you read that. Tell me when you're done.

A. (Complying.) Okay.

Q. So according to the sheriff's dispatcher's log from May 6, 2020, there's an entry at 8:51 indicating that you called in and reported that your son and about seven high school kids were delivering a pipe to fix the road, at which time Sam decided to start shooting rounds into the air but didn't aim it at the kids. Is that what that says?

Appendix J

A. Yes.

Q. Is that correct to the best of your recollection?

A. Yes.

Q. Looking at the same Exhibit 7, did Deputy Vannatter previously tell you to call if you had any problems, as it reflects in the dispatcher log?

A. Well, it's said in there. So I guess yes.

Q. Okay. And the 7.5 which is the next one. And you read that already, correct?

A. Yes.

Q. And you didn't find any misstatements [71]in there; is that correct?

If you want to read it again, that's fine.

(Witness examining document.)

THE WITNESS: Yeah. Looks . . .

BY MR. MONTGOMERY:

Q. So no mistakes that you can identify relative to anything you might have said?

A. Not that I can see.

Appendix J

Q. So in your view, what was the problem that you were calling in to report to the sheriff?

A. I feel that Mr. Cox was trying to intimidate my children.

Q. And as had happened in the past, you expected to law enforcement would respond to your report on May 6, 2020, correct?

A. That's they're job to . . .

MS. MARKHAM: There's a protection order in place.

THE WITNESS: Yeah. A 300-foot protection order.

BY MR. MONTGOMERY:

Q. Well, I think the original protection order was a hundred feet. And then you had it modified to a thousand, correct?

A. Not until August I thought was a thousand.

* * *

**APPENDIX K — EXHIBIT 9 TO MONTGOMERY
DECLARATION DATED OCTOBER 20, 2023 --
ARRAIGNMENT TRANSCRIPT EXCERPTS
(ER 225–227)**

Filed: 12/23/2022 09:55:31
First Judicial District, Benewah County
Deanna Bramblett, Clerk of the Court
By: Deputy Clerk - Weaver, Sheena

IN THE DISTRICT COURT OF THE FIRST
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BENEWAH

Case No. CR05-20-332

STATE OF IDAHO,

Plaintiff,

vs.

SAMUEL COX,

Defendant.

Filed November 27, 2023

TRANSCRIPT OF ARRAIGNMENT HEARING

Transcript of the Arraignment Hearing in the above-entitled matter, taken before the Honorable Douglas Payne, Magistrate on May 07, 2020, at the Courthouse, City of St. Maries, County of Benewah, State of Idaho, commencing at the hour of 09:33 a.m.

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Appendix K

APPEARANCES:

DOUGLAS PAYNE, Judge

SAMUEL COX, Defendant

October 07, 2020

9:33 A.M.

PROCEEDINGS

JUDGE: All right, uh Mr. Cox can you hear me?

COX: Yeah.

JUDGE: Can you see, can you see a camera?

COX: I can see you just fine, dickhead.

JUDGE: All right Mr. Cox.

COX: I'm not gonna be nice to ya, you broke my fucking constitutional rights.

JUDGE: Mr. Cox you're here in case number CR05-20-332 entitled State versus Samuel Allen Cox, that case was initiated by criminal complaint from the prosecutor's office. That complaint reads as follows; it's alleged that you committed the crime of violating a protection order, a misdemeanor, a violation of Idaho Code 18 7907 uh, sub paragraph 8. And that you on or about the 23rd of April, 2020 in Benewah County Idaho did then and there having been restrained by a civil protection order dated

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March 11th 2020 and have you given, been given notice of that hearing, of that order that you violated that order by ditching across your neighbor, the Hunter's road which is contrary to the statute in such case and against the peace and dignity of the people of the state of Idaho. That complaint was signed by Brian Thie on the 6th of May. As a result of that complaint, a warrant was issued for your arrest and bail was set in the amount of twenty five thousand dollars. First of all, do you have any questions? I'm not- I'm not asking you to admit it or deny it but do you have any uh- do you understand what the charge is against you?

COX: Yeah, I- I was ordered by the prosecuting attorney to do a physical crime. I was ordered to do that. I was ordered by prosecuting attorney to dig that out and put back all that dirt like that so if it's already on- that's on the prosecuting attorney.

JUDGE: All right, before you respond, let me explain your rights to you a little bit. First of all, have you read the rights form that explains the rights to you?

COX: I don't give a fuck about my rights. All I know about my rights is that they were violated by you cocksuckers when I have not broken one fucking law yet, you mother fucker.

JUDGE: All right so uh Mr. Cox, did you read the rights form?

COX: Stick it up your ass.

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JUDGE: All right well Mr. Cox I'm going to explain your rights to you.

COX: You will be sued by my lawyer right now for fucking what you have done, you cock sucker.

JUDGE: Uh, Mr. Cox you have a right to an attorney if you can't afford one, I'll be glad to appoint one for you.

COX: I don't need to be given (inaudible yelling) I will give you no fucking respect, you gave me no respect. You fucking violated my constitutional rights.

JUDGE: All right so-

COX: Fuck you, this conversations over. You want to talk to somebody, talk to my fucking lawyer, asshole.

* * *

**APPENDIX L — EXHIBIT 14 TO MONTGOMERY
DECLARATION DATED OCTOBER 20, 2023 --
DAVID COX DECLARATION AND EXHIBITS
(ER 247-252)**

EXHIBIT 14

05/06/2020 08:55:52 CAD023 BENEWAH
COUNTY SHERIFF Event #: 117215
PAGE 1 Status: CLOSED

EVENT DETAIL

Nature of Call: MALICIOUS INJURY
Reported Date/Time: 01/02/2020 16:46:24

NOC Type: MALICIOUS INJ

Location: 123 SAPLING LN FERNWOOD
Reported By: HUNTER, TRAVIS RODNEY
Cross St: 123 SAPLING LANE
District: Phone 1: (208)582-3753
Reported to: MWARNER Phone 2: (208)862-3763
Respond to:
Disposition: BCSO REPORT TAKEN

Event Names

HUNTER, TRAVIS RODNEY	REPORTING PARTY
COX, SAMUEL ALLEN	SUSPECT
POTLATCH LAND & LUMBER, LLC	OTHER
DICKISON, RYAN ROBERT	OTHER

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Event Remarks

RP ADV HIMSELF AND THE NEIGHBORS HAS AN EASEMENT THROUGH EMERALD CREEK TO GET TO THEIR RESIDENCES. THE NEIGHBOR SAM COX DESTROYED THE ROAD. ADV HE HAS PUT SO MUCH MUD ON THE ROAD HE CANT EVENT GET IN AND OUT WITH HIS 4 WHEEL DRIVE PICKUP AND NEW TIRES. ADV NO WAY CAN THE KIDS GET OUT TO THE BUS AND NO EMERGENCY VEHICLES WOULD BE ABLE TO GET IT. ADV HE SPOKE TO EMERALD CREEK AND THEY ADV HIM TO CONTACT THE SO. ADV IF THE DEPUTY NEEDS THEY CAN CONTACT EMERALD CREEK AS WELL REP ADV HE IS NOT AT HOME HE WILL BE IN TOWN FOR WORK TONIGHT AND CAN RECEIVE A CALL BACK AT THE BELOW NUMBER ONLY WHEN HES IN TOWN

****SEE EVENT 118938****. CPUGH

04/24/2020 @0940 DENNIS CLAYTON CALLED. ADV HE IS COX LAWYER.

ADV HE WOULD LIKE TO KNOW WHAT ALL IS GOING ON OUT THERE. ADV THE DEPUTY HANDLING IS NOT ON DUTY AT THE MOMENT BUT THE SHERIFF MIGHT BE ABLE TO ASSIST HIM. 509-994-9482. TRANSFERED CLAYTON TO 20G/DERESSER. MWARNER

5/6/2020 @0851 TRISHA HUNTER CALLED AND ADV 2011 TOLD HER TO CALL WITH ANY PROBLEMS. ADV HER SON AND ABOUT 7 HIGH SCHOOL KIDS WERE PUTTING PIPE IN THE ROAD THAT HER HUSBAND BOUGHT TO FIX THE ROAD. ADV SAM

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WAS WATCHING THEM AND THEN DECIDED TO START SHOOTING ROUNDS INTO THE AIR. ADV HE DIDN'T AIM IT AT THE KIDS BUT WAS SHOOTING IN THE AIR. ADV SHE WOULD LIKE 2011 ADV AND IF HE NEEDS CALL AND LEAVE HER A VOICEMAIL AND SHE WILL CALL WHEN SHE CAN. MWARNER

Event Agencies			
	Notified	Dispatched	Parents
BENEWAH COUNTY SHERIFF			
2000 RESSER, DAVE			
2010 PETERSON, ANTHONY			
2011 VANHATTER, BRANDON			

On Scene	Clear
	04/24/2020 22:30
04/24/2020 14:11	04/24/2020 14:27
04/23/2020 17:07	04/24/2023 17:15
02/20/2020 15:10	02/20/2020 15:13

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<u>Officer/Unit</u>	<u>Date</u>	<u>Time</u>	<u>Activity</u>
2000	04/24/2020	14:11:31	23
	04/24/2020	14:21:52	04
	04/24/2020	14:37:34	08
	04/24/2020	22:39:33	OS
2010	04/23/2020	17:07:35	23
	04/23/2020	17:15:17	08
2011	02/20/2020	10:47:33	20
	02/20/2020	10:52:10	08

Location \ Comments

123 SAPLING LN FERNWOOD
TAKING PICTURES OF THE ROAD
123 SAPLING LN FERNWOOD

123 SAPLING LN FERNWOOD
2000 ADV HE SPOKE WITH PROSECTUUTOR
AND COX'S ATTORNEY TODAY
123 SAPLING LN FERNWOOD
123 SAPLING LN FERNWOOD
SAM COX RESIDENCE
SAM COX RESIDENCE
NEG CONTACT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

No: 2:22-cv-199

SAMUEL A. COX,

Plaintiff,

vs.

BRIAN D. THIE, INDIVIDUALLY AND AS
BENEWAH COUNTY PROSECUTOR; BRIAN D.
THIE AND JANE DOE THIE, HUSBAND AND
WIFE, AND THE MARITAL COMMUNITY
THEREOF; TRAVIS HUNTER AND TRISHA
HUNTER, HUSBAND AND WIFE, AND THE
MARITAL COMMUNITY COMPRISED THEREOF,

Defendants.

Filed November 27, 2023

DECLARATION OF DAVID G. COX

I, David G. Cox, declare under penalty of perjury under the laws of Idaho that the following statements are true and correct.

- (1) I am over the age of 18 years, competent to testify herein, and do so based on personal knowledge of the matters stated.

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- (2) I am aware that Sam Cox has been accused by Mr. and Mrs. Hunter of working on Poplar Drive just to harass and irritate them. I want to explain the reasons we (Sam mostly) have done work on Poplar Drive – in an effort to improve it.
- (3) In 2018 my brother, Sam Cox, and I purchased two parcels of land south of Fernwood, Idaho, each one being approximately five acres, identified by the Benewah Assessor's office as Tract 4 and Tract 11. See Exhibit 1, attached hereto: Certified copy of Assessor's Map, SE ¼ of Section 24, Township 43 North, Range 1 WBM.
- (4) Each parcel is labeled by the Assessor's office as to the tract number, e.g., "Tr. 1" and so on.
- (5) The two tracts we originally purchased are Tract 4 and Tract 11. In late 2020, we conveyed these tracts to the Cox Living Trust.
- (6) Travis and Trisha Hunter own Tract 7.
- (7) In 2020 and 2021, I purchased from Emerald Creek Gamet Corporation (ECG) and Bud McCall a portion of the surrounding properties, those being Tracts 8-10 and Tracts 12- 23.
- (8) The mutual easement roads by which we and the Hunters and other neighbors access their tracts from Carpenter Creek Road are known as Poplar Drive and Sapling Lane.

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- (9) The relative locations of the Tracts and surrounding environs can be seen on Exhibits 1 and 2 of the Montgomery Declaration.
- (10) When the snow began to melt in early 2019, Sam and I noticed that the easement road (Poplar Drive) leading from big Carpenter Creek Road to our property was flooded, and had deep ruts, appearing to be caused by vehicle travel. See Exhibits 2 and 3, attached hereto, which are pictures I took of Poplar Drive on January 9, 2019, which show the poor condition Poplar Drive.
- (11) In buying the two parcels (Tract 4 and Tract 11), it was our plan to develop our retirement home there, and to do so we would need to move heavy equipment onto our parcels.
- (12) It was clear that Poplar Drive, in the condition it was in in 2019, could not very well handle the weight of big trucks, a bulldozer or a large excavator - all of which we were planning on using to build a home and outbuildings.
- (13) We decided to clear and enlarge what appeared to be the existing but overgrown and caved-in ditches along Poplar Drive, so that in the following year or two there would be sufficient drainage into Carpenter Creek to prevent water flooding over Poplar Drive.

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- (14) Additionally, we planned to raise the level of Poplar Drive and put down 3” rock and gravel to provide a firm, stable surface, able to withstand the weight of heavy equipment, while also providing a good roadway for smaller vehicles as well.
- (15) Since 2019, I have purchased thousands of dollars of rock and gravel, and the surface of Poplar Drive has been greatly improved, as reflected in photos taken by Dennis Clayton on May 12, 2020. See, e.g., Clayton Declaration, Exhibit 1, Exhibit B thereof. Poplar Drive has been greatly improved even since 2020.
- (16) On May 3, 2020 (Sunday), I visited Sam at the property. He had fixed the access to Hunters’ secondary road on Friday, and fixed the Potlatch bypass road on Saturday, May 2. Both were passable by vehicle when I was there on May 3, 2020.
- (17) Dennis Clayton asked me to take a photo of the repair of Hunters’ secondary road and email a copy to him, which I did on the evening of May 3, 2020. That photo is attached to the Clayton Declaration, Exhibit 1, as Exhibit G thereof.
- (18) Additionally, the ditches are now well developed and kept cleaned out, so that winter runoff goes into Carpenter Creek instead of over the surface of Poplar Drive.

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- (19) So, those are the reasons Sam was doing maintenance on Poplar Drive. It is regrettable that actions we hoped would be helpful to our project and the neighborhood have led to such conflict.

SIGNED this 27th day of November, 2023, at Spokane, Washington.

/s/ David G. Cox
David G. Cox

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**APPENDIX M — DECLARATION OF SAMUEL
COX, DATED OCTOBER 20, 2023 (ER 259–263) AND
(ER 267–273)**

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

No: 2:22-cv-199

SAMUEL A. COX,

Plaintiff,

vs.

BRIAN D. THIE, INDIVIDUALLY AND AS
BENEWAH) COUNTY PROSECUTOR; BRIAN
D. THIE AND JANE DOE THIE, HUSBAND
AND WIFE, AND THE MARITAL COMMUNITY
THEREOF; TRAVIS HUNTER AND TRISHA
HUNTER, HUSBAND AND WIFE, AND THE
MARITAL COMMUNITY COMPRISED THEREOF,

Defendants.

DECLARATION OF SAMUEL A. COX

I, Samuel A. Cox, declare under penalty of perjury under the laws of Idaho that the following statements are true and correct.

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- (1) I am over the age of 18 years, competent to testify herein, and do so based on personal knowledge of the matters stated.

A. FIRST ARREST

- (2) In 2018 my brother, Dave Cox, and I purchased two parcels of land approximately four miles southwest of Fernwood, Idaho. These two parcels are referred to as Tracts 4 and Tract 11 on the County Assessor's records. See Dave Cox Declaration, Exhibit 1, 2, 3, which provide a visual perspective of the area.
- (3) I live in a camper on Tract 11, where I also have a dog kennel, a chicken coop, and our construction equipment, such as a bulldozer, an excavator, a tractor, snow removal implements/attachments for the tractor, and trucks.
- (4) Tract 11 is about 800 feet from the property of Mr. and Mrs. Hunter (Tract 7) where they live with their two teenage sons, Shaun and Dakota.
- (5) Access from Big Carpenter Creek Road (hereafter referred to simply as Carpenter Creek Road) to my home and that of the Hunters is by a mutual easement road, which the County has designated as Poplar Drive, which comes immediately off of Carpenter Creek road onto Poplar Drive, which leads westerly to my home driveway.

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- (6) Before Poplar Drive reaches my driveway, however, it forks to the right in a northerly direction, becoming what is called Sapling Lane. About 500 feet up Sapling Lane is the driveway leading to the home of Mr. and Mrs. Hunter, as well as the home of Terry (Brock) Rodriguez and Lawrie Davis – just northerly of the Hunters’ property.
- (7) Also, as a secondary route to their home, Hunters used an alternate road, frequently referred to in this litigation as the “secondary road” or, as the Defendants have recently designated it, the “East Bypass Road.” See Defendant’s Joint Statement of Material Facts, ¶¶ 3-4.
- (8) In early 2019, during the winter snowmelt, I (and my brother) saw that Poplar Drive was flooded over in places, because it’s elevation was level with the low-lying surface of the meadow which it crosses. See Exhibit 1, attached hereto, which is a photo I took on March 4, 2020, showing the elevation of Poplar Drive in relation to the surface of the meadow it passes through, as well as pools of standing water on the roadway.
- (9) My brother and I planned to bring heavy equipment to our properties in the near future, which would be difficult if the surface of Poplar Drive wasn’t raised and the ditches alongside were not restored, in order to build a solid roadbed.

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- (10) For that reason, we planned to clear the ditches along Poplar Drive, raise its surface, and put down layers of 3-inch rock, covered by gravel and, over time resulting in a solid roadbed.
- (11) In early January of 2020, I was excavating a ditch adjacent to Poplar Drive with our tractor, and I was approached by Mr. Hunter (Travis), who was angry and asked me “What the hell are you doing?”
- (12) We had a brief argument which lasted a minute or two, and that was the end of it. I didn’t threaten him, and he didn’t threaten me.
- (13) Over the following weeks I continued to work on cleaning out and reconstructing the ditches, by removing dirt, which I would then deposit on the surface of the road and spread out, this being done from the junction of Poplar Drive and Sapling Lane, eastward the length of Poplar Drive toward Big Carpenter Creek Road.
- (14) In February 2020, Mrs. Hunter filed a petition for protection order, alleging that I was harassing her by:
 - (a) Creating mud on Poplar Drive and the Poplar Drive/Sapling Lane junction, and
 - (b) Digging a ditch that prevented her family from using the secondary road to get to and from their home, and

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- (c) Harassing her by following her as she drove through St. Maries and parked at a pharmacy, and
 - (d) Harassing her by driving by the school where she worked.
- (15) In response, my attorney, Chris Montgomery, filed my declaration, a true and correct copy of which is attached hereto as Exhibit 3.
- (16) Again, the reason I was working on the ditches and road was to try and improve drainage and build up the road surface, and I definitely was not doing it to harass the Hunters.
- (17) On March 11, 2020, Magistrate Douglas Payne granted Mrs. Hunter's petition, ordering in relevant part as follows:
- Respondent [Sam Cox] shall not do anything to interfere with Protected persons ingress or egress to their home and shall not do anything to the road they use for that purpose which degrades their access to any significant degree.
- (18) The protected persons included Mr. and Mrs. Hunter, and their two teenage sons, Shaun Hunter and Travis Dakota Hunter. Additionally, the order stated that I was not to be any closer than 100 feet from the Hunters or their residence. Fegert Declaration, Exhibit 1, at pp 11-14.

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- (19) Mr. and Mrs. Hunter reported to the Benewah County Sheriff's Department that my work on the roads and ditches prevented them from getting to and from their residence simple solution to that problem would have been to clean the cattleguard, not call the Sheriff.
- (26) Also, Mrs. Hunter alleged that I had dug a ditch across the entry from Poplar Drive to the "East Bypass Road" (secondary road) which they used as an alternate route to get to their home – and that the ditch prevented them from using it.
- (27) What I had done was clear existing ditches on both sides of Poplar Drive, including across the front of the secondary road, so that water could flow into Carpenter Creek instead of overflowing onto Poplar Drive.
- (28) Additionally, I was preparing the Poplar easement roadbed and the Poplar/Sapling intersection for the delivery of 2-3 inch rock in the next few days, which my brother, Dave had bought, to take care of any problems with mud and as part of our ongoing plan to stabilize and build up Poplar Drive.
- (29) I believe Hunters broke down the walls of their secondary road by driving their vehicles over/through it and blocking the drainage ditch, or also by just filling the drainage ditch with dirt and rocks so they could cross from Poplar Drive to the secondary road. But at no time was Sapling Lane "degraded"

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to the point that Hunters or the neighbors north of them, Rodriguez and Davis, were ever unable to use Sapling Drive.

- (30) Deputy Vannatter's report dated April 30, 2020, states that Sapling Lane was "almost" impassable. Montgomery Declaration, Exhibit 13.
- (31) I have seen photos taken by Deputy Vannatter on April 23, 2020, which were provided by the defendants, although the photos are in black and white and so no detail showing mud on the road can be seen in those photos. Montgomery Declaration, Exhibit 4 (Vannatter photos taken April 23, 2020).
- (32) On April 23, 2020, I took several photos of the easement roads, which show Poplar Drive (including the intersection of Poplar Drive and Sapling Lane), because I was going to visit my mother the next day and wanted to show her (and my brother) the progress made on the road and improving the drainage ditches. See Exhibit 2, attached hereto, which are true and correct copies of photos I took on the afternoon of April 23, 2020.
- (33) Again, it had rained the night of April 22, 2020, so there was mud on the easement roads, but they were certainly passable by vehicle.
- (34) On April 23, 2020, Deputy Vannatter contacted me at my home and advised me that he was investigating

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a possible violation of the Protection Order signed by Magistrate Payne on March 11, 2020.

- (35) On the evening of April 23, 2020, I called my mother, Jackie Tomsha, who lives in Spokane. I asked her to call my attorneys, Chris Montgomery and/or Dennis Clayton, and let them know that Deputy Vannatter had told me he was investigating whether I had violated the protection order entered on March 11, 2020. She called Dennis Clayton the next morning.
- (36) Some time the next day, I spoke with Dennis Clayton, who told me he had talked to Sheriff Resser and the Prosecutor, Brian Thie, and that as things presently stood, I was probably going to be arrested for violation of the Protection Order.
- (37) He asked me if I would be willing to meet with him and the Benewah County Prosecutor, Brian Thie, at my property to see if we could find a solution to the problems between me and Mr. and Mrs. Hunter. I told him I would be glad to do that.
- (38) On the morning of April 28, 2020, my mother came to my place, and in the afternoon Mr. Clayton and Mr. Thie arrived.
- (39) Mr. Clayton, Mr. Thie and I, along with my mother from time to time, looked at various survey markers and tried to figure out where property lines were near the south end of my and Tract 11 (west end

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of Poplar Drive), near a bypass Potlatch had constructed (Potlatch bypass).

- (40) After that, Mr. Thie went up to the Hunters' house to speak with the Hunters.
- (41) When he returned fifteen or twenty minutes later, Mr. Clayton and Mr. Thie walked eastward on Poplar Drive down to the place where the secondary road (East Bypass Road) connects with Poplar Drive. After several minutes, they waived at me to come join them, which I did.
- (42) Mr. Clayton said that he and Mr. Thie had been talking and wanted to know if I would agree to do some things in order to resolve the issues between me and Mr. and Mrs. Hunter. I said I would.
- (43) Mr. Thie, Mr. Clayton and I were standing about five to six feet apart – within a conversational distance.
- (44) Mr. Clayton told me that Mr. Hunter had a plastic pipe that could be used for a culvert to fill in the ditch and provide access to the secondary road, then he asked if Mr. Hunter brought the pipe from his house down to the ditch, would I be willing to place it in the ditch and cover it in order to provide passage onto the secondary road (East Bypass Road).
- (45) I objected to placing the pipe and covering it, and told Mr. Clayton and Mr. Thie that if I did that I would

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be violating federal wetlands laws, and so I wouldn't do it.

- (46) Mr. Thie said that if I did not do it, I would be arrested for violating the protection order, and Mr. Clayton said I really should do it.
- (47) Therefore, I said I would do it if Mr. Hunter brought the pipe down to the ditch.
- (48) Mr. Clayton also asked me if I would be willing to repair Potlatch's bypass down by the south end of my Tract 11, and I said I would do that also.
- (49) Mr. Clayton also asked me if I would be willing to leave the easement roads alone and not do anything more without clearing it with him and Mr. Thie and I agreed to that.
- (50) Mr. Thie said if I was agreeing to fix the culvert, he would call Mr. Hunter and have him bring it down to the ditch. I again said I would do it.
- (51) Mr. Thie was standing right with me and Mr. Clayton while Mr. Clayton was asking me to place and bury the culvert, fix the Potlatch bypass and leave the easement roads alone. Mr. Thie said if I would fix the roads and leave them alone, I would not be arrested.
- (52) On Friday, May 1, while standing on my property up by my camper, about 700 or 800 feet from where the secondary road (East Bypass Road) meets Poplar

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Drive, I heard what sounded like a couple of ATV's, but I didn't go to look to see who it was.

- (53) A few minutes after I heard what sounded like ATV's, I heard what I thought to be a coyote in the brush around the chicken coop. I looked and saw that there was a coyote there.
- (54) I went to my camper, got my gun and shot at the coyote several times to scare it away. Where I was shooting from in the bushes near the chicken coop is not visible from Poplar Drive.
- (55) In the early evening on May 1, 2020, I was walking my dog on Poplar Drive and saw that there was a PVC pipe in the ditch. I finished walking the dog, got my tractor and went down to the ditch and covered the pipe, making the secondary road so Hunters could use it.
- (56) The next day, I also filled in the drainage ditch I had dug near the Potlatch bypass, so that it was restored and passable.
- (57) On Sunday, May 3, 2020, my brother, Dave, came down to our property from Spokane to visit and to do repair work on some of our machinery.
- (58) Over the next five days or so, everything was fine.
- (59) Then, on the afternoon of May 6, 2020, Deputy Vannatter came out to the property and arrested me for violation of the Hunters' protection order.

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- (60) I was shocked for Vannatter to be there to arrest me, because Mr. Thie had said that if I fixed the culvert at the Hunters' secondary road and the Potlatch bypass and did nothing more to the easement roads, he would not have me arrested. And that is why I had quickly done the repair work.
- (61) After being arrested and put in jail, I was really angry and confused because I had done what I had been asked and told to do, including not doing anything more with the easement roads.
- (62) When I appeared on video before Magistrate Payne I was extremely angry and confused, because I had done what Mr. Thie and Mr. Clayton had asked me to do, and I yelled and swore at Magistrate Payne. I couldn't understand why I was arrested when I'd done what the prosecutor told me to do. Montgomery Declaration, Exhibit 9 (May 7, 2020, transcript of proceedings).
- (63) Over the next many days, I went in and out of a mental breakdown, experiencing hallucinations, night-horror nightmares and really bad depression.
- (64) Judge Payne ordered that I have a mental health competency evaluation. Thie Declaration, Exhibit 5.
- (65) On June 3 or 4, 2020, Judge Payne had me committed to Idaho Hospital North for mental health treatment. Thie Declaration, Exhibit 6.

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- (66) Around the first week of July it was decided that I was recovered enough to be released, and was released from hospital custody on July 6, 2020. This Declaration, Exhibit 7.
- (67) My mother picked me up on at the hospital on July 8th and I went to Spokane and stayed with her for 3 or 4 days, then a few days later I went back to my home on our property near Fernwood.
- (68) On December 4, 2020, the protection order violation charge of May 6, 2020, was dismissed. Fegert Declaration, Exhibit 6.

B. SECOND ARREST

- (69) On August 12, 2020, I decided to go to the Fernwood Mercantile to have my propane tank refilled.
- (70) As I proceeded a little way on Carpenter Creek Road heading for Fernwood, I came up behind a four-wheeler with a driver and one passenger. I could not tell who was on the four-wheeler.
- (71) I followed about 40 or 50 feet behind the four-wheeler, and we were going approximately 15 to 20 mph at most. I did not tailgate the four-wheeler, nor did I get any closer than 40 or 50 feet to it.
- (72) When the four-wheeler and I got to Highway 3 we both stopped, then the four-wheeler proceeded across Highway 3 and into the residential area of

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Fernwood. I took a left and went on to the Fernwood Mercantile and parked my truck near the propane refilling station.

- (73) I then went inside the Mercantile and asked the lady at the counter if she would have somebody help me refill my propane tank. I was only in the Mercantile for a few seconds, then returned to the propane refilling station. Montgomery Declaration, Exhibit 3, This Deposition, 150:7-17; Montgomery Declaration, Exhibit 12 (surveillance video inside Fernwood Mercantile, August 12, 2020).
- (74) While I was in the Mercantile to get assistance, I did not see Mr. and Mrs. Hunters' teenage son, Dakota Hunter.
- (75) After ten or fifteen minutes, when my propane tank was filled, I went back into the store and paid for the propane. I did not see Dakota Hunter then either.
- (76) On Friday, August 21, 2020, I was again arrested and jailed, charged with violation of the protection order entered by Judge Payne on March 11, 2020, and also charged with reckless driving for allegedly tailgating the four-wheeler driven by D. Hunter that was ahead of me on my way to the Fernwood.
- (77) At no time during his "investigation" of the tailgating and harassment complaints by Hunters – before my arrest – did Deputy Hampton talk to me or try to find out from me what really happened.

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- (78) I did not tailgate the four-wheeler driven by Dakota Hunter, I didn't know he was driving it, and I did not even see him at the Fernwood Mercantile, much less stare at him while he was there.

- (79) I remained in jail until Monday, August 24, 2020, when I was released on personal recognizance.

* * *

**APPENDIX N — EXHIBIT 1 TO LAURA
K. MARKHAM DECLARATION, DATED
SEPTEMBER 29, 2023 — MAGISTRATE JUDGE
DOUGLAS P. PAYNE’S PROTECTION ORDER,
DATED MARCH 11, 2020 (ER 376–378)**

* * *

3. Move-out Order and/or Law enforcement assistance. Does Not Apply

[03] Respondent is ordered to move from the residence at _____ immediately upon service of this order and take from the residence only items needed for employment and necessary personal effects (at peace officer’s discretion).

Law enforcement officers are ordered to:

Remove the Respondent from the residence listed above upon service of this order.

Place the Protected Person in possession of the residence at _____

Supervise the removal of Protected Person’s Respondent’s items (at peace officer’s discretion) from the residence.

Peace officers are instructed to enforce this Court order by all necessary means, including arrest.

4. Child custody. Does Not Apply

[09] Respondent shall NOT have the child/ren until further order of the Court.

OR

Custody of the minor child/ren is awarded:

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[06] as provided in the existing child custody order/
divorce decree (Case #, County, Judge, Date
Entered): _____

as follows:

Name of Child (first, middle initial, last)	Birth Date	Sex	Custody Awarded To

Protected Person Respondent

shall have the child/ren as follows (*list days, times and conditions*): _____

supervised by: _____

neutral drop off/pick up location: _____

child/ren to be transported by: _____

Neither party shall remove the child/ren
from _____

Other: _____

5. Conflicting Orders.

If any term of another civil or criminal order conflicts with any term of this order you must follow the more restrictive term. Dismissal of any other order will not result in a dismissal of this order.

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6. **Order on Renewal.** **Does Not Apply**
- IT IS FURTHER ORDERED that if Respondent wants a hearing to object to the renewal of this order, Respondent must file a request for such a hearing with the Court within 14 days.
7. **Treatment/Counseling.**
- Attend an approved Domestic Violence Offender Intervention Program
- Attend counseling that focuses on _____
- Within ___ days of this order, Respondent shall report to _____
_____ and participate and complete all scheduled treatment or counseling. A written report shall be submitted to the Court within ___ days of this order.
8. **Change in Address and Future Service.**
- The parties shall, at all times, keep the Court informed of their current mailing addresses.
- Petitioner has waived the right to personal service and agreed that all future notices of hearing, orders, or modifications may be served by certified mail Protected Person
- Respondent has waived the right to personal service and agreed that all future notices of hearing, orders, or modifications may be served by certified mail.

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9. **Other.** Respondent shall not do anything to [07] interfere with Protected persons ingress or [08] egress to their home and shall not do anything to the road they use for that purpose which degrades their access any significant degree. .

10. **Order to [Illegible].**

It is further ordered that the clerk of the court shall forward a copy of this order to the Sheriff's Office In the county in which this order was originally issued, or _____, for immediate entry into record systems and to facilitate service in the jurisdiction in which the Respondent resides if not previously served. The clerk shall deliver or mail a copy of this order to the Petitioner.

Dated: Signed 3/11/2020 03 54 PM

Signed: /s/ Judge Douglas P. Payne
Judge Douglas P. Payne

NOTICE:

It is a misdemeanor under Idaho Code § 39-6312 for the Respondent, after notice of this order, to violate the provisions of this order. Further, it is a crime under Idaho Code §18-204 for any person to aid and abet a crime, or, not being present, to advise and encourage a crime. In addition, under Idaho Code §18-304, any person who counsels, aids, solicits or incites another to commit a misdemeanor is guilty of a misdemeanor. Therefore, it may be a crime for any person to encourage or invite contact between the Respondent and the Petitioner, except such contact as is expressly permitted by the above order.

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APPENDIX O — DECLARATION OF BRANDON D. THIE, DATED SEPTEMBER 27, 2023 (ER 429–435)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Case No. 2:22.cv-199-AKB

SAMUEL COX,

Plaintiff,

vs.

BRIAN D. THIE AND JANE DOE THIE,
INDIVIDUALLY AND AS BENEWAH COUNTY
PROSECUTOR; TRAVIS HUNTER AND TRISHA
HUNTER, HUSBAND AND WIFE, AND THE
MARITAL COMMUNITY COMPRISED THEREOF,

Defendants.

Dated September 27, 2023

DECLARATION OF BRIAN D. THIE

I, BRIAN D. THIE, make the following declaration under the penalty of perjury and pursuant to the laws of the State of Idaho, and state as follows:

1. I am a named defendant in the above-entitled matter. I am over the age of eighteen (18) and I am competent to testify as a witness in this matter.

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2. At all times relevant to this matter, I was the Benewah County Prosecutor and was acting within the course and scope of my employment and in the capacity as the prosecutor. I began working as the prosecutor for Benewah County in October 2015, and I served in that capacity until I retired in November 2021.

3. Attached to my declaration as Exhibit 1 is a true and correct copy of the relevant portions of my deposition transcript, taken on March 23, 2023, at the law office of Lake City Law Group, PLLC, 435 West Hanley Ave., Suite 101, Coeur d'Alene, Idaho, by certified court reporter and notary public Patricia L. Pullo. I hereby incorporate into this declaration the testimony contained in the deposition transcript as if fully set forth herein.

4. On or about January 29, 2020, I was first contacted by Travis and Trisha Hunter. They had complaints about their neighbor, Samuel Cox ("Sam Cox"), who was disrupting their access to a secondary road leading to their home. It was my understanding, after speaking with the Hunters, that Mr. Cox was ditching next to the roadway and was limiting their ability to cross off the main access road and on to the secondary road leading to the Hunters' home.

5. After speaking with the Hunters, it appeared as though the issues they were having with Mr. Cox were civil in nature. I referred them to the Benewah County Sheriff's Office to report their concerns. I did not have any further contact with the Hunters until in or around the end of April, 2020.

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6. On or about April 28, 2020, I was contacted by Dennis Clayton, who represented to me that he was Sam Cox's attorney. Mr. Clayton asked if I would meet with him and Sam Cox at the Cox property to discuss the issues Mr. Cox was having with the Hunters regarding the access road.

7. Mr. Clayton indicated to me that a sheriff's deputy with the Benewah County Sheriff's Office had been out to speak with Mr. Cox about damage Mr. Cox was causing to the access roads. Mr. Clayton wanted to meet with me to discuss the deputy's visit and talk before any decisions were made regarding whether or not charges would be brought against Mr. Cox for violating a civil protection order. Mr. Clayton wanted to give Sam's side of the issues and give me information that I could consider when and if charges needed to be filed.

8. It was my knowledge and understanding that the Hunters had a civil protection order against Sam Cox that prohibited Mr. Cox from going within one hundred feet of Travis and Trisha Hunter and their children. The protection order also prohibited Mr. Cox from doing anything to interfere with the Hunters' ingress and egress to their home or the roads they used for that purpose.

9. Around that same time, I had a brief conversation with Deputy Brandon Vannatter regarding Sam Cox. Deputy Vannatter indicated to me that some sort of conflict was happening between the Hunters and Mr. Cox regarding the roadways and that he would be preparing an incident report. I asked Deputy Vannatter to get me a copy of his report after he had prepared it.

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10. On or about April 28, 2020, Dennis Clayton and I met at the prosecutor's office. We briefly discussed the issues the Hunters and Mr. Cox were having, then proceeded to the property to look at the roadways and the work Mr. Cox was doing.

11. When I arrived at the location, Sam Cox and his mother, Jackie, were present. While observing the roadways, I could see that Mr. Cox had severely ditched along both sides of Poplar road, cutting off access to the Hunters' secondary access road, and piled mud onto the roadway. The road had been ditched out crudely and deeply and there was deep mud along the sides of the road. I also noticed that the cattleguard at the intersection of Poplar and Big Carpenter Creek was packed full of dirt and rock.

12. Mr. Clayton and I walked the roadway, looking at the mess that Mr. Cox had created near the intersection of Sapling and Poplar. Mr. Cox had also ditched along the Potlatch bypass road. While the destruction to the Potlatch bypass road was not an issue with regard to the Hunters' complaint, Dennis Clayton and I discussed the work Mr. Cox had done along the Potlatch bypass. As we viewed the mess on the roadways, Mr. Clayton and I talked about a way to restore the bypass road and the secondary access road to the Hunters' residence.

13. After my conversation with Dennis Clayton, I went to the Hunters' residence to talk to Travis Hunter and to get his input, as the complainant, on the things Mr. Clayton and I discussed. Travis Hunter indicated that

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he had PVC pipe available for Mr. Cox to use to repair the culvert along the roadside. Mr. Hunter agreed that, in the event Sam Cox agreed to install the culvert and repair the roadway, Mr. Hunter would provide the pipe.

14. After speaking with Travis Hunter, Dennis Clayton and I discussed what Mr. Hunter had suggested with regard to the pipe, specifically that the Hunters would supply the pipe if Mr. Cox would bury it and restore the condition of the roads.

15. At the conclusion of our visit, nothing had been decided upon and Mr. Cox had not agreed or offered to do any work to the roadways to restore access aside from spreading rock and gravel, which he had already planned on doing. During the site visit, Mr. Cox had been uncooperative, agitated and aggressive and refused to have anything to do with cleaning up the mess he had made, putting in the culvert or cleaning out the cattleguard.

16. During my conversations with Dennis Clayton, Sam Cox was present and standing close enough to hear our conversations. I had very little direct communication with Sam Cox. Most of the conversation was with his attorney, Dennis Clayton.

17. After the site visit with Dennis Clayton and Sam Cox, I returned to the prosecutor's office. When I returned, there was a note on my desk indicating that Dennis Clayton had called. The note indicated that Sam Cox would install the PVC pipe if the pipe was provided by the Hunters.

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18. On April 29, 2020, I received an email from Dennis Clayton asking me to provide a summary of the issues we had discussed. On April 30, 2020, I responded to Mr. Clayton's email, letting Mr. Clayton know that I was expecting a report from a sheriff's deputy, which would include a referral for charges. I indicated to Mr. Clayton that "hopefully these matters can be taken care of and charges wont (sic) need to be filed." However, there "may be other matters beyond what we spoke about, but hopefull (sic) this takes care of it."

19. Attached hereto as Exhibit 2 is a true and correct copy of the email I received from Dennis Clayton and my response email. This email is a document of record that is kept in the normal course and scope of the Beneway Prosecutor's Office regularly conducted business and has been provided to all parties in discovery.

20. On or about May 6, 2020, I received an incident report and Affidavit of Probable Cause from Deputy Vannatter. Deputy Vannatter's report stated that Sam Cox had been doing work to the bypass road and interfering with the Hunters' ingress and egress. His report also included several other complaints by other individuals that I was not aware of, where Mr. Cox had damaged the roadways or harassed the neighbors and/or their children.

21. Deputy Vannatter's report stated his belief that Sam Cox was in clear violation of the civil protection order issued by Judge Payne. Deputy Vannatter requested a warrant for the arrest of Sam Cox.

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22. Between May 1st and May 5th I did not receive any information from Dennis Clayton regarding the status of the road work or whether Mr. Cox was working toward repairing the roadways.

23. On May 6, 2020, after reviewing Deputy Vannatter's report and affidavit, I evaluated the case for charges and determined there was probable cause to file criminal charges. I contacted Trisha Hunter to get information on the condition of the roadways and find out whether or not Sam Cox had done any repairs to the secondary access road. I wanted to get information on whether the roadway had been restored before filing a criminal complaint. Mrs. Hunter indicated to me that the road was still impassable. She indicated that rock had not been placed over the culvert and the intersection of Poplar and Sapling had not been graded. She also stated that that there was more dirt in the cattleguard.

24. During my conversation with Trisha Hunter, she reported to me that when her son and his friends had taken the culvert pipe down to the roadway for repair to the culvert, Sam Cox had stood on his property and fired several rapid gunshots into the air while looking at them.

25. On or about that same day, May 6th, I received a supplemental report from Deputy Vannatter regarding the incident of the gunshots fired by Mr. Cox.

26. Based on the information received from Deputy Vannatter in his reports and his determination of probable cause, I filed a criminal complaint against Sam Cox for

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violation of the civil protection order, pursuant to Idaho Code § 39-6312. Deputy Vannatter's report established probable cause to believe that Sam Cox was in violation of the Court's protective order.

27. Although I had talked with Dennis Clayton on-site and we had discussed ways in which Mr. Cox could repair or restore the roads, our discussions did not negate the fact that Sam Cox had violated a valid court order. As the prosecutor for Benewah County, I did not have authority to ignore Judge Payne's civil protection order. Furthermore, the Hunters had sought protection from Sam Cox and their concerns demanded a great deal of respect and consideration.

28. The criminal complaint was presented to Judge Payne after it was filed with the clerk of the court. Based upon Deputy Vannatter's affidavit of probable cause and the sworn complaint, the Honorable Judge Douglas Payne found probable cause to issue an arrest warrant and set bail in the amount of \$25,000.

29. The criminal complaint contained charges for violation of the civil protection order based upon Sam Cox's ditching of the roadway and the damage caused to the access roads. I did not file charges for Mr. Cox's possible violation of the protection order when he shot his gun in the air near the Hunter children.

30. On May 7, 2020, I appeared on behalf of the State of Idaho as the prosecutor for Sam Cox's arraignment in the matter of the *State of Idaho v. Sameul Allen*

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Cox, CR0S-20-332, in the First Judicial District, in and for the County of Benewah. Mr. Cox was arraigned by Judge Payne. During the arraignment, Mr. Cox became extremely belligerent, shouting and cursing at Judge Payne. Judge Payne increased Mr. Cox's bail and set it at two-hundred thousand (\$200,000) dollars.

31. Attached hereto as Exhibit 3 is an audio recording of the arraignment hearing on May 7, 2020. I was present at the hearing and can attest that the recording is a true and accurate recording of the hearing and accurately depicts what was said by Sam Cox and Judge Payne during the arraignment.

32. On or about May 20, 2020, I again appeared on behalf of the State of Idaho at a hearing on a motion to reduce the bond, filed by Sam Cox. Mr. Cox was represented by his criminal defense attorney, Michael Palmer. Judge Payne denied the motion to reduce bond and rejected a stipulation by the parties that included a civil compromise and to release Mr. Cox on his own recognizance.

* * *

**APPENDIX P — EXHIBIT 1 TO THE
DECLARATION — EXCERPTS OF DEPOSITION
TRANSCRIPT OF BRIAN D. THIE (ER 462–464)**

* * *

[44]Vannatter had interviewed Trisha Hunter and inspected the easement roads and so on, on or about April 23rd?

MS. FEGERT: Object to the form of the question.

THE WITNESS: I had a very short conversation with Vannatter, where he indicated that something was going on up there with the roads. I don't know who he talked -- I didn't know at that point who he talked to or the nature or beyond that what the extent was.

BY MR. MONTGOMERY:

Q. Did you know when you talked to Deputy Vannatter that he was in the process of preparing a report describing his interview of Trisha Hunter and his inspection of the vicinity that he had done on or about April 23rd?

A. I don't know if it was going to be Trisha Hunter or who.

Q. But you knew there was a report being prepared?

A. That's correct.

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Q. What things did you inspect at the property on or about April 28th?

A. We walked up and down the road. We looked at the big muddy mess that he had created at the end of Poplar. It really isn't germane to this. You had asked

* * *

[49]Mr. Hunter about that was on the day of the site visit?

A. That's correct.

Q. How did the topic of the culvert come up?

A. With who?

Q. Mr. Hunter.

A. Dennis Clayton had suggested, and I agreed, that would be the correct restoration for that cutoff road. The one that goes up to their house, not the one that goes out to Potlatch. And that would likely be a scenario that would work to repair the ditch that was across the road. And I suggested that to Mr. Hunter and he said, I've got a piece of -- I've got a piece of the culvert that would work for that. I said, okay, I'll let you know.

Q. Do you know if Mr. Hunter was in favor of you meeting with Sam?

A. No.

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Q. No, he wasn't or you don't know?

A. I don't know.

Q. Okay. And it was agreed that Hunter would have that pipe taken to the drainage ditch in front of the entry to the secondary road?

A. If in the event that Sam agreed to install it, then he would make sure that it got down there -- then he, Travis Hunter, would make sure that it got down to [50] the road.

Q. And that was part of your conversation when you went up to the home during the visit?

A. Correct.

Q. Do you know if the Hunters actually had an easement over the secondary road on Exhibit 2?

A. Did I see an easement or what?

Q. Were you aware whether or not one existed?

A. No.

Well, ask your question again.

Q. Do you know if Hunters actually had an easement over the secondary road?

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A. I don't believe they had an easement over it. I believe they had a license.

Q. And why is it that you think they had a license?

A. Based upon their conversations with me in which they indicated they had permission from the landowner to cross the property on that road.

Q. And just for clarity, a permission equates to license?

MS. FEGERT: Object to the form of the question to the extent it calls for a legal conclusion. I know he's a former prosecutor and an attorney. But I'm stating that objection for the record. You get to

* * *

[56]A. Tell you what?

Q. What you told him.

A. Sam Cox? I don't think I told Sam Cox anything. I spoke with Dennis Clayton.

Q. Okay. You've said that a couple of times. But you also said Mr. Cox was within speaking distance?

A. That's correct.

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Q. And I'm understanding from your statement that you're directing your conversation at Mr. Clayton. But Mr. Cox could hear you; is that correct?

A. Correct. That's -- well, sometimes. Some of the times, that's correct.

Q. And you reported back to Mr. Clayton that Mr. Hunter had this pipe available that could be used as a culvert?

A. That is correct.

Q. And you also report to him that he was willing to donate that to the cause if Mr. Cox would bury it with his equipment?

A. That's correct.

Q. And if that happened, it would restore usage of the secondary road for the Hunters?

A. That is incorrect.

Q. What would be correct?

A. That this road would be restored if it were -- [57] if -- my recollection was restored to Potlatch road design conditions or something to that effect.

Q. You mean what the road was before he started ditching it?

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A. I didn't mean anything beyond that.

Q. Well, what do you mean by Potlatch design conditions?

A. It had to be a passable road -- a usable, passable road.

Q. You asked Sam if he'd be willing to do that?

A. I don't recall if I asked Sam that or not.

Q. Was that in your discussion with Mr. Clayton?

A. It was.

Q. And did that include if Mr. Hunter provided the culvert --

A. It did not.

Q. -- and Sam agreed --

A. No.

Q. -- to put it in?

MS. FEGERT: Let him finish his question.

THE WITNESS: At the time Sam was there, no, I don't believe it was.

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BY MR. MONTGOMERY:

Q. And when you say you don't believe it was, since I think we're both confused, I just want clarity [58] on what it was you didn't think.

A. Do you have a question?

Q. I do. What was the gist of your conversation with Mr. Clayton, with Sam present, after you came back from talking to Mr. Hunter?

A. I don't believe I had a conversation with Dennis Clayton with Sam present after I came back from speaking with Mr. Hunter.

Q. Okay. Then tell me your understanding of the conversation you had with Mr. Clayton.

A. After I came back from Mr. Hunter's?

Q. Yes.

A. That there was a culvert that was up there. I really don't have a good recollection of that.

Q. I think you said earlier that Mr. Hunter told you he would be willing to provide it if Mr. Cox would put it in the ground and cover it over.

A. That's correct.

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Q. Did you come to an understanding on the day of your visit whether or not Mr. Cox was willing to do that?

A. It was not at the time of the visit. It was not during the pendency of the visit that Mr. Cox agreed to do that.

Q. When did you first become aware that Mr. Cox [59]agreed to do that?

A. After I got back to my office.

Q. And how did you become aware of it?

A. I just saw a note on my desk. I believe Dennis Clayton initially had called the office because there's a note, like a sticker note in there, saying Sam will -- Sam will install the pipe, or something to that effect.

Q. Was there a discussion about Sam being willing to clean out the cattle guard as well?

A. I don't recall that.

Q. As part of the --

A. Let me back up. May I back up and answer?

Q. Yes.

A. When we were talking and Sam was there initially, Sam wasn't going to have anything to do with putting a culvert in, cleaning out the cattle guard,

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anything else. So that discussion did take place. I don't recall any further discussion with Sam present regarding the culvert, installation of the culvert or the cattle guard.

Q. Did you have any discussion about maintenance of the road, further maintenance?

A. When?

Q. During this meeting.

[60]A. Yes. Dennis said that there was going to be a plan to put gravel down over the rock to have it -- or maybe Sam had said that, that he was planning on -- one of the two said they were planning on having it spread out. The rock was on there really rough. I get it had just been dumped. Spread that out and then get some gravel put on over the top of it.

Q. Was there an agreement that he would or could do that?

A. Agreement. I don't know if we had an agreement of any sort.

Q. Was there an understanding that he was going to finish the rough rock with this gravel that you mentioned?

A. There's an understanding that that's what he was going to do, yes.

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Q. Was there any understanding about whether or not beyond that gravel there would be any other work on the road by Mr. Cox?

A. Mr. Cox's plan was to take the -- take the rock, smooth it off and put the gravel on and then make sure that it was -- the intersection was all cleared out as well. (Indicating).

He had talked about some things down at the Potlatch end. I don't recall what that was. It really,

* * *

[81]Q. The morning of May 6, you were contacted regarding Sam Cox?

A. On or around the 6th.

Q. And by whom?

A. I believe I contacted Mrs. Cox -- sorry -- Mrs. Hunter.

Q. And what was the nature of that conversation?

A. To see what the nature of the road was. At that point I already had, at that point, my visit, my observations, the reports from Deputy Vannatter. And I wanted to get one final chat with her about what the conditions of the road were.

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Q. And what was your understanding from speaking with her?

A. That at that time the -- he had put down a culvert and he put some dirt over it. It was impassable. The intersection of Sapling and Poplar still had large -- very large rocks in it making it somewhat impassable. That there was more dirt in the cattle guard than there was before. And that Sam had been shooting a gun into the air while the kids were down putting the culvert -- laying it in that area.

Q. What was your understanding on the shooting?

A. That while the kids were down dragging the culvert down on the road for Mr. Cox to at some point [82] get buried out there, that he was up on the hillside. They could see him, and he was not shooting at them, but he was shooting up into the air.

(Whereupon, Deposition Exhibit No. 6 was marked for identification.)

BY MR. MONTGOMERY:

Q. Handing you Exhibit 6. I'm going to also give you 6.1. And 6.1 is the transcript of the dispatcher log.

A. Okay.

(Whereupon, Deposition Exhibit No. 6.1 was marked for identification.)

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(Witness examining exhibits.)

THE WITNESS: Okay. I've reviewed 6.1 and 6.

BY MR. MONTGOMERY:

Q. Did somebody bring or transmit Exhibit 6 to you the morning of May 6?

A. Exhibit 6?

Q. Yes.

A. It was in my file. I don't know when it was brought. It would have had to be after May 6 -- on or after May 6.

Q. Did you discuss Sam Cox with Sheriff Resser on May 6?

A. I don't recall.

[83]Q. In summary, at some point on the morning of May 6, 2020, you learned that Trisha Hunter had called the sheriff's dispatcher to report about Sam Cox having fired gunshots on May 1, 2020, while her kids and their friends were down by the bridge.

A. Is there a question?

Q. Do you agree or disagree with that?

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A. I believe it was on the 6th when I talked to her, Trish Hunter, that I found out about the shooting. And this report came in at around the same time. I don't know which came in first.

Q. You don't know if you called her first or --

A. I don't know if I got the information about the shooting from her first or from this report first.

Q. But they both happened on that day, May 6th?

A. That's my recollection.

Q. Okay. Now that we've discussed this some more and studied the exhibits more, do you have an approximate distance from the access of the secondary road to Sam's driveway?

A. No. I don't think this shows it. I don't see Sam's driveway from these pictures.

Q. And you were looking at Exhibit 5?

A. Yes.

Q. Well, do you have an ability to give us

* * *

Q. Okay.

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A. All I know is I file it with the court clerk and then the judge calls -- contacts me and asks -- you know, puts me under oath -- quick oath; did you sign it; yep. And then so I don't know if they log these in beforehand or afterward.

Sorry. It's been a while. It's been a year and a half since I've been a prosecutor.

Q. So you don't coordinate --

A. Can I clarify my some of answers?

MS. FEGERT: Let him --

THE WITNESS: It has to do with the process.

MS. FEGERT: Let him ask the questions.

BY MR. MONTGOMERY:

Q. Well, that's where I was headed. So if you want to explain to me the process, that's really what I'm trying to get at. What's the process -- step by step process?

A. As my memory is refreshed, I think what happens is we take these over to the court clerk -- we file them with the court clerk. The court clerk assigns a number to the case, prepares the packet for the judge, and then after the judge signs it, it gets returned to the court clerk and that's when they file everything.

Q. Okay.

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* * *

[112]cause. He reviews your complaint.

A. Mm-hmm.

Q. He has you sworn under oath?

A. Correct.

Q. And then he tells you that he's going to be signing the arrest warrant?

A. Sometimes.

Q. Well, would he tell you, no, I'm not going to sue this; it's not good enough?

A. He would tell me that.

Q. Okay.

A. I don't think that ever happened.

Q. Okay. So you understood that he would be signing this at the end of your conversation with Judge Payne?

A. Okay.

Q. Well, it's -- you had asked for{dots3}

A. The deputy asks for a warrant.

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Q. And you back that up by filing your complaint?

A. I filed a complaint. I can file a complaint without a request for a warrant.

Q. Okay.

A. Or a report. But the judge can't do a warrant without a probable cause affidavit. The judge cannot issue that without probable cause affidavit.

[113]Q. So did you ask Judge Payne to issue a warrant?

A. I don't recall.

Q. Was that your expectation after filing the complaint and talking this over with Judge Payne?

A. You're saying too much when I talked it over with him. I go in. Judge swears me in and I sit down in case he has any questions. If he has no questions, I make no further statements. I don't volunteer anything.

Q. But would he say, Mr. Prosecutor, I'm going to sign your warrant?

A. Sometimes he would. I don't recall as I sit here.

Q. Who prepares this document?

A. We would draft it. And the judge would fill it all in.

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Q. So the typewritten part of Exhibit 8.1 would have been prepared by your office?

A. It appears to be by my office, yes.

Q. Is 8.1 part of the packet that's delivered to the clerk's office?

A. Yes.

Q. And that's in the judge's hands when he talks to you?

A. That's correct.

Q. So when you leave the courtroom --

[114]A. I didn't say I was in the courtroom.

Q. Let me rephrase that. When you leave your conversation, whether by phone or in person, with Judge Payne, you have an understanding of whether or not he's going to grant the request?

A. I know that he has signed the complaint. I don't always know that he's done the warrant.

Q. Why would you not know?

A. Because he would give that directly back to the court clerk.

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Q. Wouldn't you be interested in knowing if he did?

A. Well, that's a different question.

Q. Okay. But my specific question is: Did you know whether or not Judge Payne signed the warrant at the end of your conversation with him on May 6th?

A. I don't recall. I knew the warrant was issued. I'm telling you I don't recall if I knew at the time -- at that time or how much the bail was or any of that. At the time, I was leaving the appearance.

Q. Let's talk about the bail. Who would address bail?

A. Judge does it. I don't address bail.

Q. You don't make a recommendation?

A. Nope. The judge might ask me. But I don't [115] make a recommendation.

Q. Do you recall if the judge asked you in this case?

A. I do not.

Q. And did you learn of the warrant on May 6th at some time?

A. I'm going back from my memory here. And I don't -- I just remember when I saw the warrant for that first time I was surprised that the judge put \$25,000 there. I

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just have this memory of being surprised like, holy cow, 25,000, that's a lot.

Q. What would you normally expect?

A. For something like this?

Q. Yes.

A. Maybe 5,000.

Q. Was Deputy Vannatter involved in this process at all that we just discussed on the processing of --

A. Nope.

Q. Okay.

A. Well, finish your question.

Q. (Continuing.) -- the processing of your criminal complaint, the probable cause affidavit and the warrant arrest?

A. Yes.

Q. Where would he have been?

* * *

[117]Q. Did Magistrate Payne ask any questions regarding the probable cause affidavit or your criminal complaint?

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A. I do not recall.

Q. Did you tell Magistrate Payne that you had met, talked with and inspected the scene of the easements with Sam Cox and Dennis Clayton on April 28th?

A. Nope.

Q. Did you tell Magistrate Payne that Sam Cox had agreed not to do anything more to the easement roads without your prior approval?

A. I don't recall having a conversation with Judge Payne. So the answer would be, no, I don't have a recollection of that.

Q. Did you tell Magistrate Payne the ditching referenced in the criminal complaint had been repaired by Sam several days earlier and that the secondary road was now passable?

A. Well, that would have been a lie and I certainly wouldn't have told him that. That's not the information I had at the time I even filed the complaint.

MS. FEGERT: Do you need to take a break?

THE WITNESS: Sure.

MS. FEGERT: Is that all right?

[118]MR. MONTGOMERY: Yeah.

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MS. FEGERT: All right. Let's take about a ten-minute break.

(A short break was taken.)

BY MR. MONTGOMERY:

Q. Did you tell Deputy Vannatter that you had met with and talked with Sam Cox on April 28, 2020?

A. I think I did. But I don't recall the conversation.

Q. Did you ask --

A. At some point I would have talked to him.

Q. Okay. Did you ask Deputy Vannatter to investigate the gunshots reported by Travis Hunter on May 6th?

A. No. I don't believe I did.

Q. At any time?

A. No, not at any time.

(Whereupon, Deposition Exhibit No. 9 was marked for identification.)

BY MR. MONTGOMERY:

Q. Handing you Exhibit 9, which is a supplemental report by Deputy Vannatter. Could you read that and then let me know when you're ready or done.

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A. (Complying.) Okay.

Q. At what time and from whom did you first learn

* * *

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**APPENDIX Q — EXHIBIT 2 TO THE
DECLARATION -- THE EMAIL TO CLAYTON
(ER 538–542)**

From: Dennis Clayton
To: bthie@benewahcounty.org
Subject: Cox Property - Carpenter Creek Rd.
Date: Wednesday, April 29, 2020 1:40:59 PM

Brian,

I just spoke to Sam's mother, and she says he has cleared the trench and accumulated pile of fill dirt there, in preparation for installing the 10" culvert. He is calling me at 4 p.m. to provide an update. I'm hoping Mr. Hunter will deposit the culvert down there this afternoon, so that part of the project is completed right away.

Send me that summary list of topics when you can. Also, thanks for getting together with me yesterday.

Dennis Clayton

CLAYTON LAW FIRM, PLLC

DENNIS W. CLAYTON SPOKANE:
423 WEST FIRST AVENUE #210
SPOKANE, WA 99201
PH: 509-838-4044

COLVILLE:
287 E. ASTOR/P.O. BOX 269
COLVILLE, WA 99114
PH: 509-684-2519

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Appendix Q

From: Dennis Clayton
To: bthie@benewahcounty.org
Subject: Re: Cox Property - Carpenter Creek Rd.
Date: Thursday, April 30, 2020 11:09:48 AM

Brian,

Sam excavated the ditch in preparation for installing the 10" culvert, as I mentioned yesterday. In terms of priority, he will next smooth out the area ease of the vertical logs, so vehicles can traverse there.

As to the other things, I will instruct Sam to get them done in a reasonable time frame, which would seem to me to be a couple of weeks. I have not yet mentioned the cattle guard, so I'll have to address that this weekend or the first of next week. As you said, the 10" culvert is the first thing that needs to be done. If Mr. Hunter can't get the culvert down there until tomorrow or so, that will get done as soon as the culvert is there.

Let me know if anything seems to be going haywire. You or the sheriff can call me anytime, day or night, weekdays or weekends. I'll drive down there again soon if that's what it takes.

Thanks,

Dennis

CLAYTON LAW FIRM, PLLC

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Appendix Q

DENNIS W. CLAYTON
SPOKANE:
423 WEST FIRST AVENUE #210
SPOKANE, WA 99201
PH: 509-838-4044

COLVILLE:
287 E. ASTOR/P.O. BOX 269
COLVILLE, WA 99114
PH: 509-684-2519

On Thu, Apr 30, 2020 at 10:51 AM Brian Thie <bthie@benewahcounty.org> wrote:

Nice meeting you the other day. I spoke with Mr. Hunter this morning, and he will have the culvert down there tonite or sometime tomorrow morning (hopefully). Hes at work today.

I am expecting a report from the Sheriff tomorrow, investigated by a Deputy, that his going to be for the referral of charges, but hopefully these matters can be taken care of and charges wont need to be filed. There may be other matters beyond what we spoke about, but hopefull this takes care of it.

The list of issues we discussed is as follows:

1. Fill and and regrade to Potlatch standards the cutoff road the bypasses Mr. Cox's property comer (ie put it back in its original condition)

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Appendix Q

2. Grade all new rock that was being placed by Mr. Cox.
3. Install the culvert under Mr. Hunters alternative route, rock and grade appropriately.
4. Replace small culvert, under road that the ditches divert water below from now, with a larger culvert. Not necessary, from my perspective, but seems to make sense, especially since there will only be a 10" culvert farther down the ditch.
5. Clean out the fill from the cattle guard. I have a report from Ron Moore, who works for the Cavanaugh Ranch. Either the Ranch or Potlatch, own the cattle guard, and they want it cleaned out also. It was placed as an alternative to a gate at that location, and filling it in may be a functional equivalent to leaving a gate open. I am hoping that Mr. Cox cleans it out so we do not have to find that out.

I got a flat on the way back. That road really had some sharp rocks in it! Talk to you again soon,

Brian Thie

On 4/29/2020 1:40 PM, Dennis Clayton wrote:

Brian,

I just spoke to Sam's mother, and she says he has cleared the trench and accumulated pile of fill dirt

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there, in preparation for installing the 10" culvert. He is calling me at 4 p.m. to provide an update. I'm hoping Mr. Hunter will deposit the culvert down there this afternoon, so that part of the project is completed right away.

Send me that summary list of topics when you can. Also, thanks for getting together with me yesterday.

Dennis Clayton

CLAYTON LAW FIRM, PLLC

DENNIS W. CLAYTON
SPOKANE:
423 WEST FIRST AVENUE #210
SPOKANE, WA 99201
PH: 509-838-4044

COLVILLE:
287 E. ASTOR/P.O. BOX 269
COLVILLE, WA 99114
PH: 509-684-2519

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**APPENDIX R — EXHIBIT 6 TO THE
DECLARATION -- COMMITMENT AND
CONFINEMENT RECORDS (ER 547–550)**

Filed: 06/04/2020 10:45:52
First Judicial District, Benewah County
Deanna Bramblett, Clerk of the Court
By: Deputy Clerk - Medley, Angela

BRIAN D. THIE #4817
Prosecuting Attorney
Benewah County Courthouse
St. Maries, Idaho 83861
Telephone: 208-245-2564
Email: prosecutor@benewahcounty.org

**IN THE DISTRICT COURT OF THE FIRST
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BENEWAH**

Case No. CR05-20-332

STATE OF IDAHO,

Plaintiff,

vs.

SAMUEL ALLEN COX,

Defendant.

Filed June 4, 2020

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Appendix R

ORDER FOR COMMITMENT

The Court having reviewed the Psychological Evaluation of James R. Phillips, Ph.D. and neither party contesting the report,

FINDINGS: pursuant to Idaho Code Section 18-212 that the defendant lacks capacity to make informed decisions about treatment and the defendant lacks fitness to proceed, now, therefore,

IT IS HEREBY ORDERED that the proceedings against the defendant shall be suspended and the defendant is hereby committed to the custody of the Director of the Department of Health and Welfare, for a period not to exceed ninety (90) days, for care and treatment at an appropriate facility pursuant to Idaho Code Section 18-212.

DATED this Signed: 6/3/2020 10:56 AM.

/s/ DPPayne
Magistrate

I hereby certify that a true and correct copy of the foregoing was delivered/mailed, postage prepaid, on the _____ day of Signed: 6/4/2020 10:46 AM, 2020, to:

Brian D. Thie
Prosecuting Attorney
Email: prosecutor@benewahcounty.org

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Michael Gerald Palmer
Personal Delivery

Region 1 Director
Idaho Department of Health & Welfare
Email: dave.jeppesen@dhw.idaho.gov

By /s/ [Illegible]

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**APPENDIX S — DECLARATION OF BRANDON
VANNATTER DATED SEPTEMBER 25, 2023
(ER 556–558, 560)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Case No. 2:22.cv-199-AKB

SAMUEL COX,

Plaintiff,

vs.

BRIAN D. THIE AND JANE DOE THIE,
INDIVIDUALLY AND AS BENEWAH COUNTY
PROSECUTOR; TRAVIS HUNTER AND TRISHA
HUNTER, HUSBAND AND WIFE, AND THE
MARITAL COMMUNITY COMPRISED THEREOF,

Defendants.

Filed September 25, 2023

DECLARATION OF BRANDON VANNATTER

I, BRANDON VANNATTER, make the following declaration under the penalty of perjury and pursuant to the laws of the State of Idaho, and state as follows:

1. I am over the age of eighteen (18) and I am competent to testify as a witness in this matter.

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2. At all times relevant to this matter, I was a deputy sheriff with the Benewah County Sheriff's Office and was acting within the course and scope of my employment and in the capacity as a patrol deputy. I was employed as a deputy sheriff with the Benewah County Sheriffs Office from 2010 until 2022.

3. Attached hereto as Exhibit 1 is a true and correct copy of the relevant portions of my deposition transcript, taken on March 8, 2023, at the law office of Lake City Law Group, PLLC, 435 West Hanley Ave., Suite 101, Coeur d'Alene, Idaho, by certified court reporter and notary public Julie McCaughan. I hereby incorporate into this declaration the testimony contained in the deposition transcript as if fully set forth herein.

4. On or about April 23, 2020, I was advised by Benewah County Dispatch of a possible violation of a civil protection order by Samuel Allen Cox ("Sam Cox"). Dispatch advised me that Trisha Hunter had called in and reported that the Hunters had a protection order against Sam Cox and that he was in possible violation of that order by blocking access to their residence.

5. I responded to the call and spoke with Trisha Hunter who advised that she had a civil protection order against Sam Cox that prohibited Mr. Cox from interfering with the ingress or egress to their property or doing anything to the road that degrades their access to any significant degree. Mrs. Hunter further advised that Mr. Cox had been digging ditches along both sides of the road and piling dirt on the road.

Appendix S

6. I responded to the area of Big Carpenter Creek Road and Poplar Lane to view the roadway and the bypass roads that the Hunters used for ingress and egress onto their property. I photographed the roads that Sam Cox had been damaging. I noticed that the bypass road leading to the Hunter residence was impassable.

7. I was familiar with Mr. Cox from responding to numerous previous incidents and other complaints. Mr. Cox had been the subject of multiple complaints from the Hunters, neighbors and surrounding businesses. The problems with Sam Cox and his neighbors had been ongoing for several years. Please see attached Exhibit 7.

8. On April 23, 2020, I went and spoke to Mr. Cox about violation of the protection order. Mr. Cox was unwilling to speak to me in a civil manner and became uncooperative and aggressive. During my contact with Mr. Cox I had my body camera activated and recording. Attached hereto as Exhibit 2 is a copy of my body camera video showing the conversation I had with Mr. Cox on April 23, 2020. I have reviewed the video recording attached hereto and can attest that it is a true and accurate depiction of that event.

9. On or about April 30, 2020, I prepared an incident report related to the complaint I had received by the Hunters. In my report, I requested that charges be brought against Mr. Cox for violation of the Hunters' civil protection order. I also prepared an Affidavit of Probable Cause to send to the prosecutor's office along with my report.

Appendix S

10. On or about May 6, 2020, I was advised by dispatch that Trisha Hunter had called and stated that while her sons and some friends were putting a pipe on the road to help with the repairs, Sam Cox shot a firearm into the air. She reported that he did not fire at the kids, but into the air like a warning.

11. I responded to the Hunter residence and spoke with Trisha and Travis Hunter and their sons. Mrs. Hunter reported that when her sons and their friends took a culvert pipe down to the road, Sam Cox was standing near his property watching them. The kids then heard gunshots coming from on or near his property. Mrs. Hunter stated that Mr. Cox wasn't aiming at them but probably did it to scare them. Mrs. Hunter stated that she was extremely worried for her safety and the safety of her children.

19. During my investigation into the incidents complained of by the Hunters, I was not assisted, directed or instructed in any way by the prosecutor or the prosecutor's office. Prosecutor Brian Thie did not participate in my investigation in any way or give me legal advice of any kind. I conducted an independent investigation and, based on the information I had received from the Hunters and my view of the damage done to the roads, I requested that charges be filed against Sam Cox for violation of the protection order and an arrest warrant be issued.

20. I was not aware that Prosecutor Thie had met with Sam Cox prior to my request for criminal charges and

Appendix S

an arrest warrant. However, I would have sought charges and a warrant for Mr. Cox's arrest regardless of whether or not Prosecutor Thie had met with Sam Cox and discussed repair work to the roads. My work as a sheriff's deputy, and my duty to investigate and pursue charges, was separate and apart from those of the prosecutor. Based on my investigation, and the terms and conditions of the Hunter's civil protection order, there was probable cause to believe that Mr. Cox violated that order. I requested charges based on his clear violation of the law.

21. I was aware and familiar with multiple complaints filed against Mr. Cox from surrounding neighbors and businesses. Mr. Cox had a history of confrontational behavior that worried the neighbors and caused them concern for their safety and the safety of their children. Attached as Exhibit 7 are copies of the incident detail reports connected with those complaints that I responded to, that evidence the complaints of the reporting parties.

DATED this 25 day of September, 2023.

/s/ Brandon Vannatter
BRANDON VANNATTER

**APPENDIX T — EXHIBIT 1 TO VANNATTER
DECLARATION - EXCERPTS OF DEPOSITION
OF BRANDON VANNATTER (ER 585–587, 601)**

* * *

**[35]Brandon Vannatter - March 8, 2023
Cox v. Thie, et al.**

Shaun and Travis. So the first Travis is the dad?

A. Senior.

Q. Senior.

A. Yeah.

Q. And the second Travis is one of the sons?

A. Yeah.

Q. Did anybody leave the home while you were there?

A. I don't remember.

Q. Do you have an independent recollection of your conversation with the Hunters that night?

A. Vaguely.

Q. Did you talk primarily to Shaun Hunter regarding hauling the pipe down to the road and the gunshots?

Appendix T

A. I don't -- I think I spoke with all of them, but I don't recall for sure.

Q. Can you tell from your report?

A. According to this, I just spoke with Shaun.

Q. And did Shaun state that, while they were hauling the culvert down to the road, Sam Cox was watching them?

A. I believe so. That's what -- yeah, that's what I wrote.

Q. And would this report be the best [36] recollection that you would have of that event?

A. Yes.

Q. Now, isn't it true that Shaun reported to you that Sam caused no issues that day?

A. It says he caused no issues when he was standing at the end of his driveway.

Q. Is there any indication from your report that Sam Cox caused any issues at any other time on that day?

MS. FEGERT: I'm just going to object to the form of the question. Document speaks for itself. But you get to answer.

Appendix T

THE WITNESS: My report doesn't say he didn't cause any issues that day. It said while he was standing at the end of his driveway, he wasn't causing any issues.

BY MR. MONTGOMERY:

Q. Had he caused issues, would you have likely put that in your report?

A. I put in my report that he was no longer at the end of his driveway when they were up into the rock pit. They heard gunshots, but that's all it says. I'm not saying that's an issue. I'm just saying that's what I was reported.

Q. Right. But my question was: If there were [37] other issues that caught your attention, would you have likely written them down in your report?

A. Other issues that they told me about?

Q. Correct.

A. Yeah.

Q. So if it were not written in your report, nobody told you that there were other issues?

A. Not in this incident.

Q. Correct. I'm just focusing on your supplemental report.

Appendix T

A. Yes.

Q. Based on your conversation with Shaun Hunter, I take it that it was your understanding that the boys would haul a culvert down to Poplar Drive and Sam Cox would bury it?

A. That's what Travis said that he was told.

Q. That's what you just read in your report.

A. So in the other incident, in regards to when Sam dug the culverts out, my understanding was they went down to take those culverts to have him replace them.

Q. Well, does your report say that he dug culverts out or he dug the road approach out?

A. Not this one. But there's other incidents that says he did. Other incidents in here.

Q. Well, you're looking in Exhibit 1, and I

* * *

[54]there was a culvert there before Sam Cox dug it out?

A. I believe there was, but I can't say for sure.

Q. Okay. Were you aware on May 6, 2020 that Brian Thie had met with Sam Cox at his property the week before?

Appendix T

A. I don't remember.

Q. Going back to that exhibit, Exhibit 1, page 5, you have a label of "victim" and you have listed there five names. Correct?

A. Yes.

Q. And I take it you listed Trisha and Travis Hunter in the victim list as a result of mud on the easement roads and the dirt and rocks having been dug out at the ditch at the entry to the secondary road?

A. Yes.

Q. And why did you list Potlatch Land & Timber as a victim?

A. Because the report I got from Potlatch where they had -- where he had messed with the access to their property, as well.

Q. Did you actually see Sam Cox damage anything belonging to Potlatch?

A. I saw the damage that they reported on this date.

* * *

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**APPENDIX U — EXHIBIT 3 TO VANNATTER
DECLARATION - VANNATTER PROBABLE
CAUSE AFFIDAVIT (ER 606–611)**

IN THE DISTRICT COURT OF THE FIRST
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BENEWAH
MAGISTRATE DIVISION

CR05-20-332
Case No. 01-2020-01836

STATE OF IDAHO

(Plaintiff)

VS.

COX, SAMUEL ALLEN

(Defendant)

Redacted May 6, 2020

AFFIDAVIT OF PROBABLE CAUSE

I, Brandon R. Vannatter, A PEACE OFFICER
COMMISSIONED BY THE BENEWAH COUNTY
SHERIFF'S OFFICE, ST. MARIES, IDAHO, DO
SOLEMNLY SWEAR THAT THE ATTACHED
REPORTS ARE TRUE AND CORRECT COPIES OF
MY ORIGINAL REPORTS AND FURTHER THAT THE
ATTACHED REPORTS ARE TRUE AND CORRECT

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Appendix U

ACCOUNT OF THE INCIDENT LEADING TO THE
ARREST OF THE ABOVE-NAMED DEFENDANT.

**I certify and declare under penalty of perjury pursuant
to the law of the State of Idaho that the foregoing is
true and correct.**

Dated this 6th day of May, 2020.

SIGNED: Deputy Vannatter

(Signature of Declarant)

PRINT NAME: Brandon R. Vannatter

DATE: 04-30-2020

OFFICER: DEPUTYY VANNATTER 2011

VICTIM: HUNTER, TRISHA RASCHELL
HUNTER, TRAVIS RODNEY
POTLATCH LAND & LUMBER
MOORE, RONALD LYLE
DAVIS, ELISHA LAWRIE

SUSPECT: COX, SAMUEL ALLEN

SUBJECT: VIOLATION CIVIL PROTECTION
ORDER (IC 39-6312)

ON 04-23-2020 AT APPROXIMATELY 1541
HOURS I (DEPUTY VANNATTER) WAS ADVISED
BY DISPATCH OF A CIVIL PROTECTION ORDER

Appendix U

VIOLATION THAT OCCURRED AT 123 SAPLING LN. IN BENEWAH COUNTY IDAHO. DISPATCH ADVISED TO MAKE CONTACT WITH TRISHA HUNTER. AT 1716 HOURS I ARRIVED AT 123 SAPLING LN. AND SPOKE TO TRISHA. TRISHA STATED SHE HAS AN ACTIVE PROTECTION ORDER AGAINST HER NEIGHBOR SAM COX. THE PROTECTION ORDER ISSUED MARCH 11TH 2020 AND EFFECTIVE UNTIL MARCH 11TH 2021 STATES RESPONDENT SHALL NOT DO ANYTHING TO INTERFERE WITH PROTECTED PERSONS INGRESS AND EGRESS TO THEIR HOME AND SHALL NOT DO ANYTHING TO THE ROAD THEY USE FOR THAT PURPOSE WHICH DEGRADES THEIR ACCESS IN ANY SIGNIFICANT DEGREE. TRISHA STATED SAM HAS BEEN DOING WORK TO THE EASEMENT ROAD THAT PASSES BY HIS DRIVE WAY BY DIGGING OUT DITCHES ALONG BOTH SIDES OF THE ROAD AND PILING THE DIRT AND SPREADING IT OUT ON THE ROAD, TRISHA STATED WHILE SAM HAS BEEN DOING THIS WORK IT HAS BEEN INTERFERING WITH THEIR COMING AND LEAVING FROM THEIR RESIDENCE. TRISHA STATED HER FAMILY AND NEIGHBORS HAVE BEEN USING A SECONDARY EASEMENT ROAD TO BYPASS SAMS WORK. TRISHA STATED SAM WENT DOWN AND DUG OUT THE SECONDARY ROAD SO THEY COULD NO LONGER USE THE SECONDARY RD. TRISHA STATED THIS IS THE SECOND TIME SAM HAS DONE THIS TO STOP THEM FROM USING THE SECONDARY RD. TRISHA STATED HE DUG IT

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Appendix U

OUT ONCE BEFORE AND THEY FILLED IT BACK IN SO THEY COULD USE IT AND NOT HAVE TO DEAL WITH SAM AND SAM WENT DOWN AND IMMEDIATELY DUG IT OUT AGAIN.

I WENT OUT AND PHOTOGRAPHED BOTH EASEMENT ROADS THAT ARE THROUGH EMERALD CREEK PROPERTY. I PHOTOGRAPHED THE SECONDARY ROAD THAT HAS BEEN DUG OUT WITH AN EXCAVATOR. THE SECONDARY ROAD IS NO LONGER PASSABLE BY VEHICLE. THE OTHER EASEMENT RD. THAT SAM CLAIMS TO BE MAINTAINING WAS ALMOST IMPASSABLE IN MY PATROL VEHICLE IN TWO WHEEL DRIVE AS IT WAS APPROXIMATELY 8 INCHES DEEP IN MUD.

THE SHERIFF'S OFFICE HAS BEEN INVOLVED WITH THE COMPLAINTS BETWEEN SAM COX AND TRISHA AND TRAVIS HUNTER AS WELL AS OTHER NEIGHBORS FOR THE LAST COUPLE YEARS. I HAVE INCLUDED A FEW CALLS FROM THIS YEAR TO SHOW A HISTORY.

01-02-2020 WE RECEIVED A COMPLAINT OF COX PLACED AN AMOUNT OF MUD ON THE ROAD THAT MADE IT UNPASSABLE FROM TRAVIS HUNTER.

02-14-2020 WE RECEIVED A CALL FROM ELISHA DAVIS STATING SHE WAS WALKING WITH HER CHILDREN AND DOGS ON SPARROW LN. WHEN SHE WAS APPROACHED BY COX WHO WAS GIVING

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Appendix U

HIS DOG ORDERS TO ATTACK AND KILL HER DOGS. DAVIS STATED COX WAS SCREAMING AND YELLING TO THE POINT SHE WAS TERRIFIED FOR HER AND HER CHILDRENS SAFETY AND UNSNAPPED HER HOLSTER IN FEAR SHE MIGHT HAVE TO USE HER WEAPON.

04-18-2020 WE RECEIVED A COMPLAINT FROM POTLATCH LAND AND LUMBER ABOUT COX DESTROYING THE EASMENT RD. AFTER THEY FIXED IT TO HAVE PLANTING CREWS ACCESS THEIR PROPERTY TO WORK. POTLATCH ALSO ADVISED COX HAS CONTINUOUSLY BEEN TAMPERING WITH THEIR LOCKS ON THEIR GATE BY PACKING IT FULL OF STICKS AND DIRT CAUSING POTLATCH TO HAVE TO CUT AND REPLACE THEIR LOCKS EACH TIME THEY USE THE GATE.

04-24-2020 WE RECEIVED A COMPLAINT FROM RON MOORE WHO WORKS FOR CAVANAUGH RANCH STATING COX BLADED THE ROAD AND PACKED THE CATTLE GUARD FULL OF ROCKS AND MUD MAKING IT UNEFFECTIVE TO KEEP THE CATTLE OUT.

ON 04-23-2020 I SPOKE TO COX ABOUT THE CPOR VIOLATION AND COX WAS UNWILLING AND TO SPEAK CIVILLY ABOUT THE EVENT AND IMMEDIATELY BECAME AGGRESSIVE AND UNCOOPERATIVE. I HAVE INCLUDED THESE OTHER INCIDENTS TO SHOW A PATTERN AND

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Appendix U

HISTORY OF AGGRESSIVE BEHAVIOR AND UNWILLINGNESS TO WORK AND COOPERATE CIVILLY WITH NEIGHBORS. I HAVE INCLUDED PHOTOS FROM NUMEROUS DIFFERENT DATES TO SHOW THE CONSTANT DESTRUCTION TO THE EASMENT ROADS USED BY SEVERAL NEIGHBORS AND POTLATCH LAND CREWS CLEARLY VIOLATING THE ORDER ISSUED BY JUDGE PAYNE.

I AM REQUESTING A WARRANT FOR THE ARREST OF SAM COX FOR VIOLATION OF A CIVIL PROTECTION ORDER PER IDAHO CODE 39-6312. A COPY OF THIS REPORT ALONG WITH PHOTOS AND VIDEO WILL BE FORWARDED TO THE BENEWAH COUNTY PROSECUTOR.

SEE ATTACHED COPIES:

DRIVERS STATUS FOR COX
CRIMINAL HISTORY FOR COX
PRIOR INCIDENTS
CIVIL PROTECVTION ORDERS
STATEMENTS FORM VICTIMS
PHOTOS

/s/ Deputy Vannatter

Officer Signature

_____ Date

_____ Reviewed By

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Appendix U

Filed:03/11/2020 16:01:20
First Judicial District, Benewah County
Deanna Bramblett, Clerk of the Court
By: Deputy Clerk -Weaver, Sheena

Protection Order

- Original Amended Renewed
- Domestic Violence (I.C. § 39-6304)
- Stalking and/or Threats (I.C. § 18-7907)

Case No: CV05-20-0060
Court: First Judicial District
County: Benewah
State: Idaho

PETITIONER

PETITIONER IDENTIFIERS

Trisha	R	Hunter	
First	Middle	Last	Date of Birth (DOB) of Petitioner

PROTECTED PERSON(S):

- Petitioner
- Minor family member(s): (list name and DOB)

Name: Shaun Hunter DOB: _____

Name: Travis Hunter DOB: _____

- Family, household member(s), or other
Protected Person(s): (list name and DOB)

Name: Travis R. Hunter DOB: _____

Name: _____ DOB: _____

*Appendix U***RESPONDENT**

Samuel	Allen	Cox
First	Middle	Last

RESPONDENT IDENTIFIERS

SEX	RACE	DOB	HT	WT
Male			6 Ft. 0 In.	220 Lbs.
EYES	HAIR	DISTINGUISHING FEATURES		
Hazel	Brown			
DRIVERS LICENSE #			STATE	
WA-COX**SA356Q9				

123 S Sapling Ln. Fernwood, ID 83830

Respondent's Address

Respondent's Relationship to Protected Person(s):

(Check all that apply):

- spouse; former spouse;
 residing together; previously resided together;
 child in common; intimate partner;
 parent; related by blood, adoption or marriage;
 are in, or have been in, a dating relationship;

other: Neighbor CAUTION: Weapon Alleged to be Involved.

This order shall be effective until March 11, 2021 at 11:59 P.M. /unless terminated earlier by another court order.

Appendix U

WARNINGS: This order meets all “full faith and credit” requirements of the VAWA, 18 U.S.C. § 2265 (1994) upon notice of the Respondent. This court has jurisdiction over the parties and the subject matter; the Respondent has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.

As a result of this order, it may be unlawful for the Respondent to purchase or possess a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8). If you have any questions whether these laws make it illegal for the Respondent to possess or purchase a firearm, you should consult an attorney.

Violation of any provision of this order by the Respondent, after actual notice of its terms, is a misdemeanor and may result in arrest and sentencing for up to one year in jail and a \$5,000 fine, even if the Protected Person(s) consents to the violation. Only the Court can change this order.

* * *

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**APPENDIX V — EXHIBIT 5 TO VANNATTER
DECLARATION -- ARREST WARRANT
AND RETURN (ER 627–629)**

Benewah County Sheriff's Office
Repon # 2001836

DATE: 05-06-2020

OFFICER: DEPUTY VANNATTER 2011

VICTIM: HUNTER, TRISHA RASCHELL
(1975-07-12)

SUSPECT: COX, SAMUEL ALLEN (1965-11-29)

SUBJECT: VIOLATION OF A PROTECTION
ORDER (IC 18-7907) M

ON 05-06-2020 AT APPROXIMATELY 1640 HOURS I (DEPUTY VANNATTER) RESPONDED TO 213 POPLAR DR. IN BENEWAH COUNTY, IDAHO TO SERVE A WARRANT TO SAMUEL COX. I SPOKE TO SAM AND ADVISED HIM HE HAS A WARRANT FOR HIS ARREST. I PLACED SAM IN HANDCUFFS, CHECKED FOR PROPER FIT AND DOUBLE LOCKED THE HANDCUFFS. I SEARCHED SAM FOR ANY WEAPONS AND PLACED HIM IN THE BACK SEAT OF MY PATROL CAR. I SECURED SAM'S DOG IN THE RESIDENCE AT SAM'S REQUEST AND LOCKED THE RESIDENCE. I TRANSPORTED SAM TO THE BENEWAH COUNTY JAIL WHERE I SERVED

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Appendix V

THE WARRANT TO HIM. I TURNED SAM OVER
TO THE ON DUTY DETENTION DEPUTY.

VIDEO IS AVAILABLE THROUGH THE SHERIFF'S
OFFICE.

SEE ATTACHED COPIES:
WARRANT# CR05-20-332
DRIVERS STATUS FOR SAM
CRIMINAL HISTORY FOR SAM
BOOKING SHEET

/s/ Deputy Vannatter
Officer Signature

Date

/s/ [Illegible]
Reviewed By

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**APPENDIX W — EXHIBIT 6 TO JENNIFER FEGERT
DECLARATION FILED SEPTEMBER 28, 2023 -
ORDER OF DISMISSAL BY HONORABLE DOUGLAS
P. PAYNE (ER 659–661)**

IN THE DISTRICT COURT OF THE FIRST
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BENEWAH

Case No. CR05-20-332

STATE OF IDAHO,

Plaintiff,

vs.

SAMUEL ALLEN COX,

Defendant.

ORDER

Based upon the Stipulation for Restitution filed herein,
and good cause appearing, now, therefore,

IT IS HEREBY ORDERED that the defendant,
SAMUEL ALLEN COX, pay Travis and Trish Hunter,
P.O. Box 254, Fernwood, Idaho \$1000. The cash bail posted
herein in the amount of One Thousand Dollars (\$1000) is
forfeited and shall be paid as above. This case is dismissed.

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DATED this ____ day of Signed: 12/4/2020 09:03 AM,
2020.

/s/ [Illegible]
Magistrate

I hereby certify that on the _____
day of Signed: 12/4/2020 10:46 AM, 2020, a true
and correct copy of the foregoing
was delivered/mailed, postage prepaid to:

Brian D. Thie
Prosecuting Attorney
Email: prosecutor@benewahcounty.org

Michael G. Palmer
Attorney at Law
Email: amber@cdalawoffice.com

By _____ AM _____

**APPENDIX X — THIE'S ANSWER TO
COMPLAINT FILED JUNE 6, 2022 (ER 737-740)**

* * *

119. Paragraph 119 does not contain factual allegations against Defendant Thie and therefore no response is required. If a response is required, Defendant Thie avers that the content of the video speaks for itself.

120. Paragraph 120 does not contain factual allegations against Defendant Thie and therefore no response is required. If a response is required, Defendant Thie avers that the content of the video speaks for itself.

121. Paragraph 121 does not contain factual allegations against Defendant Thie and therefore no response is required. If a response is required, Defendant Thie avers that the content of the video speaks for itself.

122. Paragraph 122 does not contain factual allegations against Defendant Thie and therefore no response is required. If a response is required, Defendant Thie avers that the content of the video speaks for itself.

123. Paragraph 123 does not contain factual allegations against Defendant Thie and therefore no response is required. If a response is required, Defendant Thie avers that the content of the video speaks for itself.

124. Upon information and belief, Defendant Thie admits the allegations in paragraph 124 of the complaint.

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125. Defendant Thie denies the allegations in paragraph 125 of the complaint.

126. Defendant Thie denies the allegations in paragraph 126 of the complaint.

127. Defendant Thie denies the allegations in paragraph 127 of the complaint.

128. Paragraph 128 does not contain factual allegations against Defendant Thie and therefore no response is required. If a response is required, upon information and belief, Defendant Thie admits the allegations in paragraph 128 of the complaint.

129. Paragraph 129 does not contain factual allegations against Defendant Thie and therefore no response is required. If a response is required, upon information and belief, Defendant Thie admits the allegations in paragraph 129 of the complaint.

130. Defendant Thie admits that he received a report from Chris Sullivan, dated September 9, 2020.

131. Defendant Thie admits the allegations in paragraph 131 of the complaint.

132. Defendant Thie admits the allegations in paragraph 132 of the complaint.

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**COUNT 1: FOURTH AMENDMENT VIOLATIONS-
42 U.S.C. § 1983**

133. Defendant Thie realleges and incorporates by reference the above paragraph as if fully set forth herein.

134. Paragraph 134 of the complaint contains legal argument for which no response is required. If a response is required, Defendant Thie avers that the content of the Fourth Amendment speaks for itself

135. Paragraph 135 contains legal argument for which no response is required. If a response is required, Defendant Thie avers that the content of the criminal complaint speaks for itself

136. Paragraph 136 contains legal argument for which no response is required. If a response is required, Defendant Thie denies the same. Defendant Thie specifically denies any wrongful acts or omissions.

137. Paragraph 137 contains legal argument for which no response is required. If a response is required, Defendant Thie admits that the right to be free from unreasonable seizure is a clearly established constitutional right. Defendant Thie denies any wrongful acts or omissions.

138. Upon information and belief, Defendant Thie admits the allegations in paragraph 138 of the complaint.

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139. Defendant Thie denies the allegations in paragraph 139 of the complaint.

140. Paragraph 140 contains legal argument for which no response is required. If a response is required, Defendant Thie admits that he certified probable cause of the crimes committed by Plaintiff Defendant Thie denies the remaining allegations in paragraph 140 of the complaint. Defendant Thie specifically denies any wrongful acts or omissions.

141. Defendant Thie denies the allegations in paragraph 141.

142. Paragraph 142 contains legal argument for which no response is required. If a response is required, Defendant Thie admits that the right to be free from unreasonable seizure is a clearly established constitutional right. Defendant Thie denies any wrongful acts or omissions.

143. Defendant Thie admits that on December 4, 2020, the Court entered an Order to Dismiss case CR05-20-575.

**COUNT 2: FOURTH AMENDMENT VIOLATIONS-
42 U.S.C. § 1983**

144. Defendant Thie realleges and incorporates by reference the above paragraph as if fully set forth herein.

145. Defendant Thie denies the allegations in paragraph 145 of the complaint.

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146. Defendant Thie denies the allegations in paragraph 146 of the complaint.

147. Paragraph 147 contains legal argument for which no response is required. If a response is required, Defendant Thie admits that the right to be free from unreasonable seizure is a clearly established constitutional right. Defendant Thie denies any wrongful acts or omissions.

148. Again, Defendant Thie admits that on December 4, 2020, the Court entered an Order to Dismiss case CR05-20-575.

**COUNT 3: FOURTH AMENDMENT VIOLATIONS –
42 U.S.C. § 1983**

149. Defendant Thie realleges and incorporates by reference the above paragraph as if fully set forth herein.

150. Defendant Thie denies the allegations in paragraph 150 of the complaint.

151. Defendant Thie denies the allegations in paragraph 151 of the complaint.

152. Paragraph 152 contains legal argument for which no response is required. If a response is required, Defendant Thie admits that the right to be free from unreasonable seizure is a clearly established constitutional right. Defendant Thie denies any wrongful acts or omissions.

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153. Again, Defendant Thie admits that on December 4, 2020, the Court entered an Order to Dismiss case CR05-20-575.

**COUNT 4: FOURTH AMENDMENT VIOLATION-
42 U.S.C. § 1983**

154. Defendant Thie realleges and incorporates by reference the above paragraph as if fully set forth herein.

155. Defendant Thie denies the allegations in paragraph 155 of the complaint.

156. Defendant Thie denies the allegations in paragraph 156 of the complaint.

157. Paragraph 157 contains legal argument for which no response is required. If a response is required, Defendant Thie admits that the right to be free from unreasonable seizure is a clearly established constitutional right. Defendant Thie denies any wrongful acts or omissions.

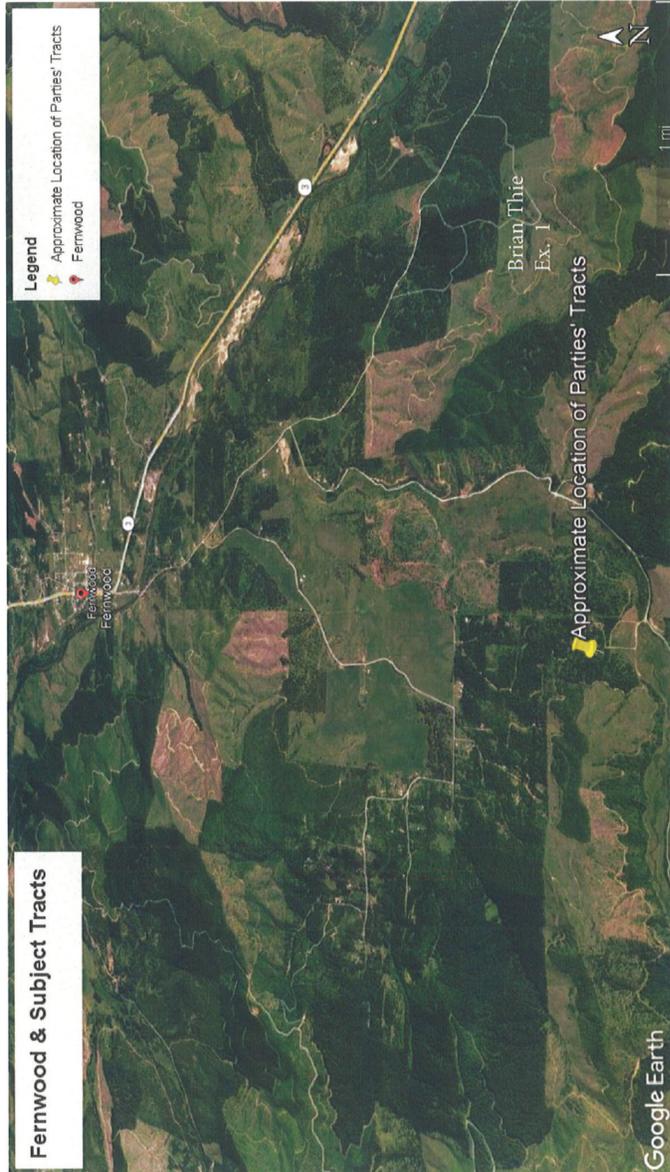
**CLAIMS BROUGHT UNDER THE LAW OF IDAHO
COUNT 5: TRISHA HUNTER- MALICIOUS
PROSECUTION**

158. Defendant Thie realleges and incorporates by reference the above paragraph as if fully set forth herein.

159. Paragraph 159 does not contain factual allegations against Defendant Thie and therefore no response is required.

* * * *

**APPENDIX Y — EXHIBIT 1 TO MONTGOMERY
DECLARATION — AERIAL VIEW, DISPUTE
LOCATION, ECF NO. 35-2**



MONTGOMERY DECLARATION
EXHIBIT 1

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**APPENDIX AA — CRIMINAL COMPLAINT
IN THE DISTRICT COURT OF THE FIRST
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BENEWAH,
FILED MAY 6, 2020 (ER 650-651)**

IN THE DISTRICT COURT OF THE FIRST
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BENEWAH

Case No. CR05-20-332

STATE OF IDAHO,

Plaintiff,

vs.

SAMUEL ALLEN COX,
DOB: 11/29/65

Defendant.

Filed May 6, 2020

CRIMINAL COMPLAINT

STATE OF IDAHO)
) ss.
County of Benewah)

Personally appeared before me this 6th day of May,
2020, BRIAN D. THIE, who, being first duly sworn on
oath, complains and says: That the crime of VIOLATION

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OF A PROTECTION ORDER, a misdemeanor, in violation of Idaho Code Section 18-7 907(e) has been committed by the said defendant as follows, to-wit: that the said SAMUEL ALLEN COX, on or about April 23, 2020, at and in the County of Benewah, State of Idaho, he, then and there being, was restrained by a certain Civil Protection Order dated March 11, 2020, was given notice of that Order and violated that Order by ditching across the Hunter's road, all of which is contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

WHEREFORE, complainant prays that the said defendant be dealt with according to law.

/s/ B. D. Thie
Complainant

SUBSCRIBED AND SWORN to before me this 6th day of May, 2020.

/s/ [Illegible]
Magistrate

**APPENDIX AB — EXCERPT FROM PLAINTIFF’S
MEMORANDUM OPPOSING THE MOTION FOR
SUMMARY, FILED NOVEMBER 27, 2023
(ER 111-120)**

* * *

obtained through judicial deception and, therefore, violated his 4th Amendment right to be free from unreasonable seizure. Dkt. 1, ¶ 134; Dkt. 8, ¶ 59.

III. SUMMARY JUDGMENT STANDARDS

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). Material facts are those that may affect the outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). “The mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmoving party].” *Id.* At 252.

In deciding whether there is a genuine dispute of material fact, the Court must view the facts in the light most favorable to the nonmoving party. *Id.* at 255; *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (“Viewing evidence in the light most favorable to the nonmoving party, we must determine whether there any genuine issues of material fact and whether the district court correctly applied the relevant substantive law.”)

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(citing *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000)). The court is prohibited from weighing the evidence or resolving disputed issues in the moving party's favor. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014).

IV. ARGUMENT

A. PURSUANT FEDERAL RULE OF EVIDENCE 201, THIS COURT MAY TAKE JUDICIAL NOTICE OF COURT CERTIFIED PLEADINGS FILED IN BENEWAH COUNTY, IDAHO

Plaintiff does not dispute Defendant Thie's points made regarding the operation of Federal Rule of Evidence 201.

B. PROSECUTOR THIE IS NOT ENTITLED TO ABSOLUTE IMMUNITY ON PLAINTIFF'S 42 U.S.C. S. 1983 CLAIMS

Mr. Thie asserts that he was performing prosecutorial functions in connection with pursuing criminal charges against Mr. Cox and, therefore, he is entitled to absolute prosecutorial immunity. Mr. Thie sets forth a long line of cases in support of that proposition, e.g., *Imbler v. Pachtman*, 424 U.S. 409 (1976); *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993); *Scheuer v. Rhodes*, 416 U.S. 232 (1974); *Kalina v. Fletcher*, 522 U.S. 118, 129 (1997).

The Supreme Court has established several principles for analyzing a prosecutor's claim of absolute immunity.

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First, immunity decisions are based on “the nature of the function performed, not the identity of the actor who performed it.” *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997). “[T]he actions of a prosecutor are not absolutely immune merely because they are performed by a prosecutor.” *Buckley*, 509 U.S. at 273.

Second, the official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question. *Id.* at 269. *Burns*, 500 U.S. at 486, 111 S.Ct. 1934. “The presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties.” *Burns v. Reed*, 500 U.S. 478, at 486-487(1991).

Third, acts undertaken by a prosecutor “in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State,” are entitled to the protections of absolute immunity. *Kalina*, 522 U.S. at 126.

Fourth, a prosecutor who signs a criminal complaint under oath is functioning as a witness, and not a prosecutor. *Kalina*, 522 U.S. at 131.

In *Kalina*, a prosecuting attorney commenced criminal proceedings by filing a “certification for determination of probable cause,” in which she swore under oath to the truth of the alleged facts under penalty of perjury. The Court held that having signed the certification of probable cause under oath, Ms. Kalina was functioning as a witness, not a prosecutor: “Even when the person who makes

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the constitutionally required “oath or affirmation” is a lawyer, the only function that she performs is that of a witness.” *Id.*, at 119; *see also, Morley v. Walker*, 175 F.3d 756, 760 (9th Cir. 1999), in which a prosecutor signed the probable cause affidavit: (“Like the prosecutor in *Kalina*, Walker was acting as a witness in securing an arrest warrant for Morley. The parties do not disagree on this characterization. Such conduct falls outside the ambit of absolute immunity.”).

Just as did the prosecutors in *Kalina v. Fletcher* and *Morley v. Walker*, Mr. Thie swore as a witness under oath as to the facts alleged in the criminal complaints, as well as facts presented in the affidavits of probable cause. Just as in *Kalina*, Mr. Thie was functioning as a witness, not a prosecutor. Therefore, Mr. Thie is not entitled to absolute immunity regarding either arrest of Mr. Cox.

C. PROSECUTOR THIE IS NOT ENTITLED TO QUALIFIED IMMUNITY ON PLAINTIFF’S 42 U.S.C. SECTION 1983 CLAIMS.

1. JUDICIAL DECEPTION

Mr. Cox contends Mr. Thie violated his Fourth Amendment rights through judicial deception. To survive summary judgment, Mr. Cox “must 1) make a substantial showing of [Mr. Thie’s] deliberate falsehood or reckless disregard for the truth and 2) establish that, *but for* the dishonesty, the [searches and arrest] would not have occurred.” *Liston v. Cnty. of Riverside*, 120 F.3d 965, 973 (9th Cir. 1997).

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In *Chism v. Washington*, 661 F.3d 380 (2011), Plaintiffs Todd and Nicole Chism brought an action in federal court under 42 U. S. C. § 1983, pertaining to an internet child pornography investigation by Washington State Police (WSP) Officers Rachel Gardner and John Sager (“the officers”). As a result of information the officers acquired, Todd Chism became the focus of their investigation. Gardner prepared an affidavit in support of a search warrant application, which Sager reviewed. On the basis of that affidavit, a magistrate judge a warrant to arrest Todd for violating Washington’s child pornography laws.

The defendants moved for summary judgment, claiming qualified immunity as to the constitutional claim. The district court granted the motion, concluding that the defendants’ conduct did not violate a clearly established constitutional right of which a reasonable officer would have known. On appeal, the 9th Circuit reversed the district court, finding that the Chisms established their claim of judicial deception (intentional or reckless disregard for the truth), that the deception was material to the issue of probable cause, and that the defendants were not entitled to qualified immunity.

Regarding judicial deception in the *Chism* case, the 9th Circuit found that the defendants affirmatively misrepresented material facts and omitted material facts. The Court noted that “[T]he most commonsense evidence that the officers acted with at least a reckless disregard for the truth is that the omissions and false statements contained in the affidavit were all facts that were within Gardner’s personal knowledge” and, further, “[T]he

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fact that the affidavit did not report important factual information that was within the officers' knowledge *at the time* Gardner prepared her affidavit would allow a reasonable factfinder to conclude that the officers acted with at least a reckless disregard for the truth." [Emphasis added].

In *United States v. Stanert*, 762 F.2d 775 (9th Cir. 1985), amended by 769 F.2d 1410 (9th Cir. 1985), an officer's affidavit stated that the suspect had been arrested in Panama, but failed to state that he hadn't been convicted of any offense. The Court held that the Fourth Amendment "mandates that a defendant be permitted to challenge a warrant affidavit *valid on its face* when it contains deliberate or reckless omissions of facts that tend to mislead." *Stanert*, 762 F.2d at 781. [Emphasis added]. In that same vein, the Court articulated an obvious but important factor: "[by] reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw. To allow a magistrate to be misled in such a manner could denude the probable cause requirement of all real meaning." *Id.*

The foregoing principles discussed in *Chism* and *Stanert* are applicable to and determinative of the issue of judicial deception in this case.

First, Mr. Thie apparently believed that resolving the dispute between Mr. Cox and the Hunters was of sufficient importance to travel thirty or forty miles roundtrip to and from the disputants' property, talk with them, and devise a plan they agreed with.

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Second, on May 6, 2020, Mr. Thie reported to Magistrate Payne such facts as existed on April 23, 2020 — *at the time* of Deputy Vannatter’s talk with Mrs. Hunter and Mr. Cox — but omitted facts as they existed on April 28, 2020, or at the time he appeared before Magistrate Payne seeking an arrest warrant, that is, those facts set forth at PSOMF, ¶ 21.

Third, Mr. Thie knew that Deputy Vannatter’s affidavit of probable cause — which was submitted by Mr. Thie to Magistrate Payne along with the complaint and the arrest warrant his office prepared — did not contain any reference to Mr. Thie’s interaction with Mr. Cox, Mr. Hunter and Mr. Clayton on April 28, 2020. Based on the record developed so far in this case, as between Deputy Vannatter, Magistrate Payne and Mr. Thie, only Mr. Thie knew of his interaction with Mr. Cox, Mr. Hunter, and Mr. Clayton.

Fourth, like WSP Officer Gardner in the *Chism* case, the facts omitted by Mr. Thie in the course of pursuing a warrant for the arrest of Mr. Cox were facts of which he had personal, first-hand knowledge.

Fifth, not disclosing to Magistrate Payne his interactions on April 28, 2020 with Mr. Cox, Mr. Hunter, and Mr. Clayton guaranteed that Magistrate Payne would not ask questions.

Based on the foregoing principles and facts, Mr. Cox has made a substantial showing that Mr. Thie’s conduct amounted to an intentional or reckless disregard for the truth.

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As stated by the Court in *Chism*, Mr. Cox must also demonstrate that the omitted facts were material to Magistrate Payne's decision regarding probable cause. In that regard, the Supreme Court has instructed magistrate judges to determine probable cause by considering the "totality-of-the-circumstances." *Illinois v. Gates*, 462 U.S. 213, 235 (1983) (citing *Spinelli v. United States*, 393 U.S. 410, 419 (1969)).

Full disclosure to Magistrate Payne of material facts would have disclosed the facts as alleged by Deputy Vannatter in his probable cause affidavit as of April 23, 2020 *and* the facts as experienced by Mr. Thie on April 28, 2020. That is, Magistrate Payne would have been informed of the omitted facts listed in PSMOF ¶ 21. It may be reasonably concluded that fully informing Magistrate Payne of the omitted facts would have apprised him of the "totality-of-circumstances," and have led him to ask "If Mr. Cox agreed to fix things, and Mr. Hunter provided the culvert, at this time do you really believe there is probable cause to believe he is violating the protection order?" Or "Shouldn't you have a deputy go out and see if Mr. Cox fixed things, just in case Mrs. or Mr. Hunter might not tell the truth about it?"

It is clear that Magistrate Payne placed importance, at least to some significant degree, on the complaint submitted by Mr. Thie, explaining to Mr. Cox at his arraignment as follows:

That complaint was signed by Brian Thie on the 6th of May. As a result of that complaint,

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a warrant was issued for your arrest and bail was set in the amount of twenty five thousand dollars.

Montgomery Declaration, Exhibit 9, p. 2, lines 24-27.

By omitting material facts from Magistrate Payne’s consideration, Mr. Thie assumed for himself the task of determining probable cause, and deprived Magistrate Payne of the opportunity to function as a neutral and detached decision-maker. *See United State v. Barnes*, 845 F.3d 1194, at 1199: (discussing judicial abandonment — not asserted in the present case —but explaining the important function of neutral and detached magistrates in determining probable cause).

Had Mr. Thie fully informed Magistrate Payne of the facts (see PSOMF ¶ 21), it can be reasonably concluded that he would not have signed the arrest warrant presented by Mr. Thie for his signature.

1. QUALIFIED IMMUNITY

Mr. Thie is entitled to qualified immunity unless: (1) Mr. Cox has “ma[de] out a violation of a constitutional right,” and (2) “the right at issue was ‘clearly established’ at the time of the officers] alleged misconduct.” *Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (citing *Saucier v. Katz*, 533 U.S. 194, 201(2001)). Thus, do the facts alleged by Mr. Cox, taken in a light most favorable to him as the party asserting the injury, show that Mr. Thie’s conduct violated a constitutional right? Mr. Cox alleges that Mr.

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This's conduct violated his right to be free from seizure pursuant to a warrant obtained through judicial deception. A seizure conducted pursuant to a warrant obtained by judicial deception violates the Fourth Amendment. *Butler v. Elle*, 281 F.3d 1014, 1024 (9th Cir. 2002). Evidence presented by Mr. Cox demonstrates that Mr. Thie was the functional proponent and moving force behind Magistrate Payne's issuance of the arrest warrant on May 6, 2020, and in the course of obtaining the warrant, Mr. Thie intentionally or recklessly failed to apprise Magistrate Thie of material facts.

Finally, the right to be free from unreasonable seizure was a clearly established right in 2020. *Chism v. Washington*, 661 F.3d, at 383. Therefore, Mr. Thie is not entitled to qualified immunity.

2. Plaintiff Cannot Prove All Elements of a 42 U.S.C. SECTION 1983 Malicious Prosecution Claim.

As discussed above, Mr. Thie is entitled to neither absolute nor qualified immunity.

a. Plaintiff Can, In Fact, Show That Prosecutor Thie Acted With Malice

Regarding the first arrest, Mr. Thie failed to fully disclose material facts regarding his interactions with Mr. Cox, Mr. Hunter and Mr. Clayton, as well as the fact that Mr. Cox agreed to restore, and did restore, access to the secondary road and the Potlatch bypass. Mr. Cox

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contends he had an agreement with Mr. Thie, that is, if he restored access to the secondary road and fixed the Potlatch bypass road he would not be arrested. Mr. Thie denies there was any such agreement. In any event, the eight days following his meeting with Mr. Cox were uneventful. Within a matter of hours after Mrs. Hunter called in a complaint about Mr. Cox firing gunshots that occurred *five days earlier*, Mr. Thie called her to get her views of things, and Mr. Cox was in jail by early evening on May 6, 2020.

Having gone to the effort to meet Mr. Cox and devise a plan to resolve conflict between Mr. Cox and the Hunters, then being told by a person who had a long history of conflict with Mr. Cox that Mr. Cox had done little or nothing as agreed to on April 28, 2020, Mr. Thie was, in all probability, angry. Additionally, he was told, and didn't question, that Mr. Cox had fired gunshots in the vicinity and in the view of children. Moreover, he viewed himself as an advocate for the Hunters. Based on those facts, jurors could reasonably infer that he expedited the arrest of Mr. Cox, and failed to fully inform Magistrate Payne, based on malice — the desire to retaliate against Mr. Cox by putting him in jail and stripping him of his freedom.

Regarding the second arrest, Mr. Thie accepted the word of Mrs. Hunter and her son, both of whom he knew, or reasonably should have known, were extremely biased against Mr. Cox. Mr. Thie asserts that he relied on Deputy Hampton's investigation of and report on the alleged incident in making his decision to prosecute Mr. Cox. The reality is, however, that Deputy Hampton did

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no investigation, but merely acted as a conduit between Hunters and Mr. Thie by putting their accusations on paper or in digital storage. That is not an investigation. Mr. Thie remained angry at Mr. Cox, and repeated his prior conduct by submitting to Magistrate Payne “evidence” consisting of nothing more than accusations lodged by Mr. Cox’s angry neighbors.

**a. Probable Cause Was Not Established
in the Underlying Criminal Matters**

Mr. Cox has presented evidence that, if proven, demonstrates that Mr. Thie obtained a warrant for the arrest of Mr. Cox on May 6, 2020, through judicial deception, i.e., an intentional or reckless disregard for the truth. As noted above, a seizure conducted pursuant to a warrant obtained by judicial deception violates the Fourth Amendment and is not based on valid probable cause. *Butler v. Elle*, 281 F.3d 1014, 1024 (9th Cir. 2002).

Mr. Cox has presented evidence regarding the second arrest which, if proven, demonstrates that Mr. Thie obtained a warrant for the arrest of Mr. Cox on August 21, 2020, through judicial deception, i.e., an intentional or reckless disregard for the truth — that truth being that the sole “evidence” supporting probable cause consisted of accusations lodged by Mr. Cox’s angry and biased neighbors — evidence unverified by any independent investigation, such as talking to the readily available defendant.

*Appendix AB***b. Prosecutor Thie Did Not Act For the Purpose of Denying Mr. Cox his Constitutional Rights**

As discussed above, Mr. Cox has presented evidence regarding both arrests from which reasonable jurors could infer that Mr. Thie was motivated by malice in pursuing the arrest of Mr. Cox. Of course, Mr. Thie denies that he was motivated by malice, and asserts that pursuing the arrest of Cox in both instances was based solely on reports submitted by Deputies Vannatter and Hampton — and/or accusations leveled at Mr. Cox by Mrs. Hunter.

The issue of whether Mr. Thie was motivated by malice in pursuing the arrest of Mr. Cox is a matter of disputed material fact, rightly to be decided by jurors.

D. DEFENDANT THIE IS ENTITLED TO ATTORNEY FEES AND COSTS PURSUANT TO IDAHO CODE SECTION 12-121

In any action or proceeding to enforce a provision of § 1983, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee. However, "[a] prevailing defendant may recover an attorney's fee *only* where the suit was vexatious, frivolous, or brought to harass or embarrass the defendant." *Henley v. Eckerhart*, 461 U.S. 424, 429 (1983).

"A frivolous case is one that is groundless . . . with little prospect of success; often brought to embarrass or annoy the defendant." *United States v. Manchester*

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Farming P'ship, 315 F.3d 1176, 1183 (9th Cir. 2003). A case is frivolous when the plaintiff's position was foreclosed by binding precedent or so obviously wrong as to be frivolous. *Id.* In determining whether this standard has been met, the district court must assess the claim at the time the complaint was filed, and avoid "post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." *Warren v. City of Carlsbad*, 583 F.3d 439, 444 3 (9th Cir. 1995).

Mr. Thie asserts that Mr. Thie is immune from lawsuit and, therefore, the lawsuit filed by Mr. Cox is frivolous and/or was "unreasonably without foundation."

Mr. Thie's assertion is without merit. While Mr. Thie denies any wrongdoing (e.g., Dkt. 8, ¶¶ 1-3, 5, 7, 59, 60-61, 63, 74, 83, 85, 136-137, 140, 142, 147, 152, 157), Mr. Cox has alleged particularized facts and presented detailed evidence supporting his § 1983 claims. In other words, Mr. Cox may or may not prevail, but it cannot be seriously argued that his lawsuit against Mr. Thie is frivolous and without foundation. Moreover, if Mr. Thie truly believed this lawsuit to be frivolous, the time to raise that argument was at the outset, in May or June, 2022.

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V. CONCLUSION

The Court should deny Mr. Thie's motion for summary judgment and request for attorney fees.

SIGNED this 27th day of November, 2023 at Colville, Washington.

/s/ Chris A. Montgomery
ISB No. 8829
Attorney for Plaintiff Samuel A. Cox

**APPENDIX AC — EXCERPT FROM
APPELLANT’S NINTH CIRCUIT
OPENING BRIEF**

* * *

V. Standard of Review

An appellate court reviews the district court’s grant of summary judgment *de novo* to determine whether there is any genuine issue of material fact and whether the substantive law was correctly applied. *Darring v. Kincheloe*, 783 F.2d 874, 876 (9th Cir. 1986). In reviewing a summary judgment ruling, an appellate court is to assume the version of the material facts asserted by the non-moving party to be correct. *A. K. H. by & through Landeros v. City of Tustin*, 837 F.3d 1005, 1010 (9th Cir. 2016).

VI. Argument

A. Mr. Thie’s Motion For Summary Judgment

**1. Absolute Prosecutorial Immunity—
Generally**

Prosecutors performing their official prosecutorial functions are entitled to absolute immunity against constitutional torts. The Supreme Court has held that this rule follows for the same reason that prosecutors were given immunity at common law—without it, resentful defendants would bring retaliatory lawsuits against their prosecutors, and because a prosecutor “inevitably makes

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many decisions that could engender colorable claims of constitutional deprivation[, d]efending these decisions, often years after they were made, could impose unique and intolerable burdens upon a prosecutor.” *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 425-26 (1976)).

Without the promise of immunity from suit, a prosecutor would be distracted from his duties and timid in pursuing prosecutions rather than exercising the independent judgment and discretion that his office requires. *See id.* Moreover, “the judicial process is available as a check on prosecutorial actions,” and it reduces the need for private suits for damages to keep prosecutors in line. *Burns v. Reed*, 500 U.S. 478, 492 (1991); *see also Mitchell v. Forsyth*, 472 U.S. 511, 522-23 (1985) (“[T]he judicial process is largely self-correcting: procedural rules, appeals, and the possibility of collateral challenges obviate the need for damages actions to prevent unjust results.”).

At the same time, absolute immunity is an extreme remedy, and it is justified only where “any lesser degree of immunity could impair the judicial process itself.” *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997) (quoting *Malley v. Briggs*, 475 U.S. 335, 342 (1986)). Immunity attaches to “the nature of the function performed, not the identity of the actor who performed it.” *Id.* (quoting *Forrester v. White*, 484 U.S. 219, 229 (1988)). The prosecutor thus “bears the burden of showing that... immunity is justified for the function in question.” *Burns*, 500 U.S. at 486.

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Determining what functions are prosecutorial is an inexact science. The true functions of a prosecutor are those “intimately associated with the judicial phase of the criminal process,” in which the prosecutor is acting as “an officer of the court.” *Van de Kamp*, 555 U.S. at 342 (quoting *Imbler*, 424 U.S. at 430-31 & n. 33).

Absolute immunity also protects those functions in which the prosecutor acts as an “advocate for the State,” even if they “involve actions preliminary to the initiation of a prosecution and actions apart from the courtroom.” *Burns*, 500 U.S. at 486 (quoting *Imbler*, 424 U.S. at 431 n. 33) These actions need not relate to a particular trial and may even be administrative in nature, yet are connected to the trial process and “necessarily require legal knowledge and the exercise of related discretion.” *Van de Kamp*, 555 U.S. at 344 (holding that “determining what information should be included in the training or the supervision or the information-system management” regarding prosecutors’ duties to defendants was an administrative function to which absolute immunity attaches).

Functions for which absolute prosecutorial immunity have been granted include the lawyerly functions of organizing and analyzing evidence and law, and then presenting evidence and analysis to the courts and grand juries on behalf of the government; they also include internal decisions and processes that determine how those functions will be carried out. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 273.

Absolute prosecutorial immunity has been denied, however, where prosecutors have stepped out of the role

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of one “intimately associated with the judicial phase of the criminal process,” in which the prosecutor is acting as “an officer of the court.” *Van de Kamp*, 555 U.S. at 342 (quoting *Imbler*, 424 U.S. at 430-31 & n. 33).

2. Mr. Thie Functioned As A Witness, Not A Prosecutor.

Mr. Thie denies he was acting as a witness by certifying the truth of the facts set forth in Deputy Vannatter’s affidavit of probable cause. Mr. Cox has presented undisputed facts, however, demonstrating that Mr. Thie was functioning as a witness, not a prosecutor.

First, Mr. Thie admits that he signed the complaint under oath. 5-ER-729, ¶ 54; 5-ER-735, ¶ 109.

Second, Mr. Thie correctly equates his signature on the complaint to a *certification* of probable cause. 5-ER-738, ¶ 135; 5-ER-739, ¶ 140.

Third, the criminal complaint states facts underlying the charge, i.e., “ditching across the Hunter’s [sic] road.” 4-ER-650.

Fourth, Mr. Thie himself investigated the facts surrounding the dispute between Cox and the Hunters. On April 28, 2020 he visited the Cox and Hunter properties, observed the easement roads and the secondary Bypass Road, and conferred with Mr. Cox, Mr. Clayton and Mr. Hunter. On May 6, 2020, he investigated the condition of the secondary Bypass Road by calling Mrs. Hunter.

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In other words, just as prosecutor Kalina certified and vouched for the truth of facts alleged in the complaint against Mr. Fletcher, Mr. Thie certified and vouched for the truth of the facts underlying the charge as stated in the complaint and as described in Deputy Vannatter's probable cause affidavit. Magistrate Payne himself told Mr. Cox "That complaint was signed by Brian Thie on the 6th of May. *As a result of that complaint*, a warrant was issued for your arrest and bail was set in the amount of \$25,000." 2-ER-226. [Emphasis added].

Fifth, although Mr. Thie was apparently unconcerned with the condition of the secondary Bypass Road during the seven days since he had met with Mr. Cox, on May 6 the condition of the Bypass Road apparently arose as a matter of urgent concern. Rather than asking a sheriff's deputy to check on the condition of the Bypass Road, he investigated that matter himself: He called Mrs. Hunter.

Mrs. Hunter told Mr. Thie the secondary Bypass Road was still impassable. 4-ER-434, ¶¶ 23-24. By calling Mrs. Hunter, Mr. Thie was not acting within the scope of his duties "intimately associated with the judicial phase of the criminal process," in which the prosecutor is acting as "an officer of the court." *Van de Kamp*, 555 U.S. at 342. He was investigating facts related to the probable cause affidavit about to be presented to Magistrate Payne. The investigation of facts is akin to police and detective functions. Absolute immunity may not apply when a prosecutor is not acting as an officer of the court, but is instead engaged in investigative or administrative tasks. *Imbler*, 424 U.S. 428, at 431, n. 33.

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Citing *Kalina v. Fletcher*, 522 U.S. 118 (1997), Mr. Cox contended that a prosecutor who signs a criminal complaint under oath is functioning as a witness, not as a prosecutor. 2-ER-90, ¶ 15.

The district court determined, however, that Mr. Cox's contention "misconstrues the holding in *Kalina*." 1-ER-15. The court pointed out that in *Kalina* the prosecutor submitted three documents, each based on false facts: An information charging burglary; a motion for an arrest warrant; and a probable cause certification summarizing the evidence supporting the charge. The district court further noted that in *Kalina* the Supreme Court's explained that "except for [the prosecutor's] acts and personally attesting to the truth of the averments in the certification, it seems equally clear that the preparation and filing of the third document and the package was part of the advocate's function as well." *Id.*

Next, the district court set forth the Supreme Court's explanation in *Kalina* of the transformation from prosecutor to witness:

Testifying about facts is the function of the witness, not of the lawyer. *No matter how brief or succinct it may be*, the evidentiary component of an application for an arrest warrant is a distinct and essential predicate for a finding of probable cause. Even when the person who makes the constitutionally required 'Oath or affirmation' is a lawyer, the only function that she performs in giving sworn testimony is that of a witness.

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[Emphasis added]. 1-ER-16. The district court then asserted:

Here by contrast, Thie did not function as a as a “complaining witness” when he signed the criminal complaints against Mr. Cox. Unlike the prosecutor in *Kalina*, *Thie did not personally attest to the facts giving rise to probable cause.* Instead, Thie relied on Deputy Vannatter’s . . . probable cause affidavit

[Emphasis added.]

The evidence in this case, however, does not support the district court’s assessment. As noted above, Mr. Thie himself acknowledges that in signing the complaint, he was personally certifying the existence of probable cause. 5-ER-738, ¶ 135; 5-ER-739, ¶ 140. In summary, the district court was simply wrong in granting Mr. Thie summary judgment as to whether he was functioning as a “complaining witness” when he signed the complaint: undisputed material facts show otherwise.

Next, the district court held that Mr. Thie “relied” on Deputy Vannatter’s probable cause affidavit and report to establish probable cause, and when he presented Vannatter’s probable cause affidavit “he functioned in his traditional role as an advocate initiating and presenting the State’s case.” 1-ER-14.

Mr. Cox disputes that Mr. Thie “relied” on Deputy Vannatter’s probable cause affidavit in reaching his

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decision that day to file the charge and obtain an arrest warrant. More specifically, Mr. Cox contends that Mr. Thie was *provoked* to file the complaint and seek an arrest warrant by Mrs. Hunter's call to the Sheriff's Dispatcher the morning of May 6, 2020, punctuated later that day by her false report to Mr. Thie that the Bypass Road remained impassable. 5-ER-753, ¶ 53; 5-ER-751-752, ¶¶ 40-45.

More to the point, however, is the fact Mr. Thie was already aware of the allegations pertaining to Mr. Cox's road maintenance activities, including ditching of the Bypass Road, *before* he read the probable cause affidavit submitted by Deputy Vannatter. E.g., 4-ER-91:13-25; 4-ER-92:15-22; 2-ER-154:6-12.

In support of its ruling that Mr. Thie was entitled to absolute prosecutorial immunity, the district court cited, among other cases, *Waggy v. Spokane County*, 594 F.3d 707, 713 (9th Cir. 2010) and *Tanner v. Heise*, 879 F.2d 572, 578 (9th Cir. 1989). Neither *Waggy* nor *Tanner* involved a prosecutor, such as Mr. Thie, who had signed the related complaint under oath, vouching for the truth of the facts supporting probable cause, nor a prosecutor who had done so knowing that material facts had been omitted from the complaint and probable cause affidavit. Both cases are inapposite.

As discussed in the next section of this brief, Mr. Thie—and only Mr. Thie—knew that Deputy Vannatter's probable cause affidavit and attached report regarding "ditching," was incomplete because Deputy Vannatter was

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not aware of, and therefore did not include in his report, Mr. Thie's interactions with Mr. Cox, Mr. Clayton, and Mr. Hunter eight days earlier on April 28, 2020.

3. Mr. Thie Engaged In Judicial Deception And, Therefore, The Warrant Issued On May 6, 2020, Was Not Supported By Probable Cause

To survive summary judgment, Mr. Cox must (1) make a substantial showing of Mr. Thie having advanced a deliberate falsehood or displayed a reckless disregard for the truth and (2) establish that, but for the falsehood or reckless disregard for the truth, the arrest of Mr. Cox would not have occurred. *Liston v. Cnty. of Riverside*, 120 F.3d 965, 973 (9th Cir.1997) (citing *Hervey v. Estes*, 65 F.3d 784, 788-89 (9th Cir.1995); *Chism v. Washington*, 661 F.3d 380, 386 (9th Cir. 2011)).

Additionally, Mr. Cox must show that any intentional falsehood or reckless disregard for the truth was material to Magistrate Payne's probable cause determination. *Liston v. Cnty. of Riverside*, 120 F.3d 965, 973 (9th Cir.1997) (citing *Hervey v. Estes*, 65 F.3d 784, 788-89 (9th Cir.1995)).

It is appropriate at this point to examine the nature of "probable cause" and the difference between the affiant's function and the magistrate's function in determining probable cause. That difference is well described in the following lengthy but enlightening excerpt from *State v. Arregui*, 44 Idaho 43 (1927):

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But ‘probable cause’ does not include or measure up to satisfaction ‘beyond a reasonable doubt.’ They are widely different. ‘Beyond a reasonable doubt’ may be likened to the summit of a high mountain, and ‘probable cause’ to a halfway station on the mountain side,” he who sits in judgment at the halfway station as to the existence of “probable cause” must be the magistrate, and not the affiant who must bear the burden of facts up the mountain to that station, rather than his conclusions. He cannot leave at the foot of the mountain his load of facts, and with lightened and easy steps recite at the halfway station his conclusions as to facts which he does not choose to carry so far. The affiant’s eyes, ears and other senses and powers are the mere instruments for securing and conveying to the magistrate the facts which these senses have observed or recorded, and his mind is not the place for the conclusion to be reached, but the mind and brain of the magistrate must form and draw the conclusions from facts.

Mr. Thie does not dispute that he met with Mr. Cox, Mr. Clayton and Mr. Hunter. Mr. Thie does not dispute that Mr. Hunter agreed to provide a PVC pipe to use as a culvert to repair the Bypass Road, nor that Mr. Cox agreed to repair and restore access to the Bypass Road. And he does not dispute that he failed to disclose the foregoing facts to Magistrate Payne

The essence of what Mr. Thie is claiming is that his duty to the court and duty to Mr. Cox ended at the bottom

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of the hill. I.e., he believes he had no obligation to disclose *all* the surrounding facts to Magistrate Payne, but, rather, only those facts that *he* concluded were important. He left material facts at the bottom of the hill rather than carrying them half way up the hill for Magistrate Payne to examine for himself.

In the present case, probable cause to arrest Mr. Cox rested entirely on the probable cause affidavit submitted by Deputy Vannatter and endorsed by Mr. Thie's sworn certification. Material facts are those that may affect the outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).

An affidavit of probable cause that included all the facts surrounding the Bypass Road would have said something along the following lines:

BRIAN D. THIE, who, being first duly sworn on oath, complains and says: That the crime of VIOLATION OF A PROTECTION ORDER, a misdemeanor, in violation of Idaho Code Section 18-7907(8) has been committed by the said defendant as follows, to-wit: that the said SAMUEL ALLEN COX, on or about April 23, 2020, at and in the County of Benewah, State of Idaho, he, then and there being, was restrained by a certain Civil Protection Order dated March 11, 2020, was given notice of that Order and violated that Order by ditching across

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the Hunter's road, all of which is contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

FURTHER, BRIAN D. THIE says: I met and conferred with Mr. Cox, his attorney Mr. Clayton, and Mr. Hunter on April 28, 2020, at which time a plan was devised, that was agreed to by Mr. Hunter and Mr. Cox, whereby Mr. Hunter would provide a PVC pipe to use as a culvert to repair and restore the Bypass Road, and Mr. Cox would repair and restore the secondary Bypass Road. Mr. Cox agreed to repair and restore the Bypass Road using the PVC pipe provided by Mr. Hunter.

FURTHER, BRIAN D. THIE says: I have no reliable information as to whether Mr. Cox did or did not complete the repair as agreed.

OR

FURTHER, BRIAN D. THIE says: I have been advised by Mrs. Hunter that the Bypass Road is still impassable.

An affidavit of probable cause stating the foregoing facts would have put Magistrate Payne on notice of the possibility, if not the probability, that the Bypass Road problem had been resolved. It does not require a great leap of the imagination to envision Magistrate Payne, prompted

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by either innate curiosity and/or a concern for fairness,⁷ to have asked Mr. Thie a few simple but important questions. For example: (1) Did you send out a Deputy to determine whether the Bypass Road has in fact been repaired? (2) Do you have any direct or indirect information as to whether the Bypass Road has been repaired? (3) If Mr. Thie responded “Yes, Mrs. Hunter told me that it was not yet repaired,” Magistrate Payne—already knowing the acrimonious relationship between Mr. Cox and Mrs. Hunter—may very reasonably have asked Mr. Thie if, under the circumstances, he believed Mrs. Hunter was a reliable source of information on this topic.⁸

Apparently, Mr. Thie’s interactions with Mr. Cox, Mr. Clayton, and Mr. Hunter were, in his mind, irrelevant to the issue of probable cause. But as noted by the Idaho Supreme Court in *Arregui*, it is not the place of an affiant, or Mr. Thie as the affiant’s messenger, to determine whether the facts surrounding an arrest warrant request are relevant. The serious consequences of obtaining and effectuating

7. Noting the harm caused by false allegations of criminal conduct, the Court in *Berian v. Berberian*, 168 Idaho 394 (Idaho 2020) quoted from *Fridovich v. Fridovich*, 598 So. 2d 65, 67 (Fla. 1992) as follows: “[t]here is no benefit to society or the administration of justice in protecting those who make intentionally false and malicious defamatory statements to the police. The countervailing harm caused by the malicious destruction of another’s reputation by false accusation can have irreparable consequences.”

8. As also noted by the Court in *Berian*: “Given the strained relationship between the brothers, there is a genuine issue of material fact whether Ovanes’ statements were made maliciously.”

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an arrest warrant merits repeating the following words from the *Arregui* case: “The affiant’s eyes, ears and other senses and powers are the mere instruments for securing and conveying to the magistrate the facts which these senses have observed or recorded, and his mind [the affiant’s] is not the place for the conclusion to be reached, but the mind and brain of the magistrate must form and draw the conclusions from facts.”

Mr. Thie’s interactions with Mr. Cox, Mr. Clayton, and Mr. Hunter on April 28, 2020, including a plan to repair the Bypass Road, and the agreement of Mr. Cox to carry out that repair, were material to the determination of probable cause and, therefore, should have been disclosed to Magistrate Payne.

4. Mr. Cox Made A Substantial Showing That Mr. Thie’s Failure To Inform Magistrate Payne Of His Interactions With Mr. Cox, Mr. Clayton And Mr. Hunter On April 28, 2020, Constituted A Reckless Disregard For The Truth

In *Chism v. Washington*, 661 F.3d 380 (9th Cir. 2011), plaintiffs brought a civil rights action under 42 U.S.C. § 1983 that arose from an internet child pornography investigation by Washington State Police (WSP) Officers Rachel Gardner and John Sager (“the officers”). As a result of information the officers acquired, Todd Chism became the focus of their investigation. Gardner prepared an affidavit in support of a search warrant application, which Sager reviewed. On the basis of that affidavit, a

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magistrate judge issued a broad search warrant to search Todd Chism's home and business office. Relying on the same information contained in Gardner's affidavit, Deputy Prosecuting Attorney Christian Peters obtained from the same magistrate judge a warrant to arrest Todd for violating Washington's child pornography laws.

It turned out that the affidavit of probable cause contained materially false statements and omissions of fact.

The officers filed motions for summary judgment on the issue of qualified immunity as to the constitutional claim. The district court granted the officers' motion, concluding that the officers' conduct did not violate a clearly established constitutional right of which a reasonable officer would have known. The Chisms timely appealed.

The Court of Appeals reversed. Viewing the evidence in the light most favorable to the Chisms, as it must, the Court concluded that the Chisms made a substantial showing of the officers' deliberate falsehood or reckless disregard for the truth and established that, but for the dishonesty, the searches and arrest would not have occurred. The Court also concluded that the officers were not entitled to qualified immunity because the Chisms' right to not be searched and arrested as a result of judicial deception was clearly established at the time Gardner prepared and submitted her affidavit.

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In addressing the issue of intentional or reckless disregard for the truth, the Court first noted that in their appeal from a grant of summary judgment, they need only make a “substantial showing” of the officers’ deliberate or reckless false statements and omissions.. “Clear proof of deliberat[ion] or reckless[ness] is not required” at the summary judgment stage. Citing *United States v. Stanert*, 762 F.2d 775, 781 (9th Cir.).

The Court held that if the Chisms made a substantial showing of intentional or reckless conduct, then “the question of intent or recklessness is a factual determination” that must be made by the trier of fact. *Liston*, 120 F.3d at 974.

Viewing the evidence in the light most favorable to the Chisms, the Court concluded that the Chisms made a substantial showing that the officers’ deception was intentional or reckless. Importantly, the Court found that the most commonsense evidence that the officers acted with at least a reckless disregard for the truth was that the omissions contained in the affidavit were all facts that were *within Gardner’s personal knowledge*, noting that Gardner’s false reference to “images downloaded by Todd Chism” was a statement that Gardner *knew to be false* when she drafted her affidavit.

In that same vein, and as pointed out above, Mr. Thie was, as between himself, Deputy Vannatter, and Magistrate Payne, the only “link” in the arrest warrant “chain” who knew of his interactions with Mr. Cox, Mr. Clayton, and Mr. Hunter, including the details of the plan

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that had been agreed to by Mr. Cox and Mr. Hunter. Mr. Thie was the only person who knew of a possibility or a probability that Mr. Cox had repaired the Bypass Road, and that the Hunter's use of the Bypass Road had been restored. And had Mr. Thie fully disclosed the facts to Magistrate Payne, there was the the probability that he would have asked questions and sought more information, which would have led to the discovery that Mr. Cox had indeed restored access to the Bypass Road. And, most importantly, Mr. Cox would have been spared 60 days of involuntary confinement and mental torment that he ultimately experienced.

Unfortunately, Mr. Thie chose deprive Magistrate Payne of full disclosure and the opportunity to render a neutral and unbiased determination regarding probable cause. In doing so, Mr. Thie displayed a reckless disregard for the truth, as did officers Gardner and Sager in the Chism case.

B. Mrs. Hunter's Motion For Summary Judgment**(1) Malicious Prosecution—Elements**

Mr. Cox brought this state-based claim against Mrs. Hunter alleging malicious prosecution arising from her communications with the Benewah County Dispatcher and Benewah County Prosecutor Brian Thie on May 6, 2020. 1-ER-751-752, ¶¶ 40-47. Mrs. Hunter moved for summary judgment. 3-ER-304. The The district court granted the motion, concluding that Mr. Cox failed to establish the requisite elements for malicious prosecution. 1-ER-21.

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To recover under a malicious prosecution claim, a plaintiff must prove (1) [t]hat there was a prosecution; (2) [t]hat it terminated in favor of the plaintiff; (3) [t]hat the defendant was the prosecutor; (4) [m]alice; (5) [l]ack of probable cause; and (6) [d]amages sustained by the plaintiff.” *Taylor v. McNichols* , 149 Idaho 826, 843, 243 P.3d 642, 659 (2010) (italics removed) (quoting *Badell v. Beeks* , 115 Idaho 101, 102, 765 P.2d 126, 127 (1988)). “To sustain an action for malicious

* * *

**APPENDIX AD — EXCERPT FROM
APPELLANT’S NINTH CIRCUIT
RESPONSE BRIEF**

* * *

A. COX v. THIE

I. INTRODUCTION

The district court erroneously determined that: (1) Thie did not attest to the facts underlying probable cause, and therefore (2) was not a complaining witness, but, instead, (3) relied on Vannatter’s affidavit of probable cause to establish proximate cause. Additionally, the district court erroneously failed to analyze whether Thie’s meeting with Cox, Clayton and Hunter on April 28, 2020, or Mr. Cox’s repair of the Bypass Road by May 3, 2020, constituted material facts that Thie should have disclosed to Magistrate Payne on May 6, 2020. The district court erroneously concluded, therefore, that Thie is entitled to absolute prosecutorial immunity.

Thie clearly *did* attest under oath to the facts underlying probable cause and, therefore, functioned as a complaining witness. Additionally, Thie had firsthand knowledge of material facts¹ that he omitted from the criminal complaint, and he knew those material facts

1. Although noted elsewhere in Appellant’s briefing, it bears repeating that as between Thie, Vannatter, and Magistrate Payne, *only* Thie knew of his interactions with Cox, Clayton, and Hunter on April 28, 2020, and that Cox had, in fact, installed the PVC pipe at the Bypass Road by May 3, 2020—three days before he was arrested and jailed.

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were also omitted from Vannatter's affidavit of probable cause. A Fourth Amendment violation occurs where "the affiant intentionally or recklessly omitted facts required to prevent *technically true statements* in the affidavit from being misleading." *United States v. Stanert*, 762 F.2d 775, 781 (9th Cir. 1985). [Emphasis added].

As discussed below, the ruling of the district court regarding Mr. Thie's entitlement to absolute prosecutorial immunity should be reversed.²

There are multiple reasons for this Court to reject Mr. Thie's theory. First, all facts are to be construed most favorably to the non-movant, Mr. Cox. Second, there are sound reasons, which are well-illustrated by the present case, underlying the principle that probable cause must be decided by a *disinterested* neutral party. In essence, probable cause was decided by Mr. Thie, not a fully informed disinterested neutral party, inasmuch as Mr. Thie kept material facts to himself that he should have shared with Magistrate Payne.

Mr. Thie submitted his own sworn complaint and the sworn affidavit of Deputy Vannatter to Magistrate Payne,

2. Mr. Thie mistakenly contends that Mr. Cox "limited his judicial deception argument to whether Prosecutor Thie was entitled to qualified immunity. Thie's Answering Brief, p. 20. On the contrary, Mr. Cox stated the reasons Mr. Thie is not entitled to absolute immunity. Appellant's Opening Brief, p. 3. Mr. Cox further explained why Mr. Thie was a complaining witness and how he deceived Magistrate Payne. Appellant's Opening Brief, p. 28 and p. 29, respectively.

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knowing full well that both documents omitted all mention of his interactions with Cox, Clayton, and Travis Hunter on April 28, 2020 (“April 28 Events”).

II. ARGUMENT**(1) Disputed Material Facts**

In reviewing the district court’s decision, this Court views the evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in that party’s favor. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

(2) Thie Attested Under Oath To The Facts Underlying Probable Cause

The district court concluded that “Unlike the prosecutor in *Kalina*, Thie did not personally attest to the facts giving rise to probable cause. Instead, Thie relied on Deputy Vannatter’s . . . probable cause [affidavit] . . . submitted to Judge Payne with the criminal [complaint], to establish probable cause and to procure the arrest [warrant].” 1-ER-14.

Mr. Thie acknowledged that he signed the criminal complaint under oath, 4-ER-497: 12-18. Mr. Thie acknowledges that he did not inform Magistrate Payne that he had met and conferred with Mr. Cox, Mr. Clayton, and Mr. Hunter on April 28, 2020. 4-ER-505: 6-8; 4-ER-508: 1-22.

Significantly, the criminal complaint alleged the index crime in very specific terms: “[Cox] violated that

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Order by ditching across the Hunter's [sic] road” 4- ER-650. These were *the* predicate facts underlying probable cause to arrest Mr. Cox: Mr. Thie attested to them under oath. Indeed, Mr. Thie has acknowledged that by signing the complaint he “certified probable cause of the crimes committed by Plaintiff.” 5-ER-739, ¶ 140. The district court's denial that Mr. Thie attested to the facts underlying probable cause does not erase, either literally or legally, the reality that he did so and has acknowledged such to be the case.³

For several reasons, Mr. Thie's attesting to the facts underlying probable cause has special significance in this case.

First, Mr. Thie was not simply assembling facts of which he had no personal knowledge and was reliant on others to inform him. More than a week earlier, he had met with Mr. Cox, his attorney Mr. Clayton, and the neighbor, Mr. Hunter (The Meeting) to discuss and attempt resolution of the conflict between Mr. Cox and the Hunters.

Second, Mr. Thie did not merely go out to the Cox and Hunter properties, observe the scene and leave. Rather, he actively participated in formulating a plan to resolve the central point of conflict between Cox and Hunter, i.e., obstructing access to the Bypass Road.

3. Mr. Thie adopted the district court's denial of reality: “Prosecutor Thie did not personally attest to the facts giving rise to probable cause.” Thie's Answering Brief, p. 18.

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Third, Mr. Thie knew on April 28, 2020, or the next day, that Mr. Cox had agreed to carry out repair the Bypass Road. 4-ER-432, ¶ 17.

Fourth, Mr. Thie informed Mr. Clayton on May 6, 2020, *before* he sought the arrest warrant, that Mr. Cox had installed the PCV pipe. 2-ER-69, ¶ 28.

Fifth, Mr. Thie had reviewed Deputy Vannatter's Report of April 30, 2020, before he sought the arrest warrant. 4-ER-434, ¶ 26; 2-ER-148:1-12. Therefore, Mr. Thie knew Vannatter's probable cause affidavit (which included his incident report prepared April 30, 2020) said nothing about Thie's interactions with Mr. Cox, Mr. Clayton, and Mr. Hunter, Mr. Cox agreeing to repair the Bypass Road, or that Mr. Cox had already installed the PVC pipe at the Bypass Road by May 3, 2020.

Sixth, Mr. Thie apparently believed repairing the Bypass Road was material to his decision to file a criminal complaint, because he called Mrs. Hunter and inquired about it. 4-ER-484: 7-12. "I wanted to get information on whether the roadway had been restored *before filing a criminal complaint.*" 4-ER-434, ¶ 23. [Emphasis added]. If repair of the Bypass Road was material to Mr. Thie's decision to file criminal charges, as appears to be the case, it follows that that information would be equally if not more material to Magistrate Payne, since his duty was to act as a neutral party in deciding whether to have Mr. Cox arrested and jailed.

*Appendix AD***(3) Whether Mr. Thie Actually Relied On Vannatter's Probable Cause Affidavit Is A Disputed Material Fact**

Mr. Thie claims his decision to file a criminal complaint was based solely on Deputy Vannatter's probable cause affidavit and attached incident report. 3-ER-434, ¶ 26. Mr. Thie argues Mr. Cox "cannot show that the prosecution was initiated for a reason *other than* the results of Deputy Vannatter's investigation." Thie's Answering Brief, p. 22. [Italics in original].

Mr. Cox contends that Mr. Thie's decision to charge Mr. Cox was based on and motivated and caused by Mrs. Hunter's report the morning of May 6, 2020, regarding Mr. Cox firing gunshots on May 1, 2020, not by Vannatter's probable cause affidavit describing ditching across the Bypass Road. Appellant's Opening Brief, pp. 28-29. Again, Mr. Thie did not learn any new facts relating to probable cause by virtue of anything in Deputy Vannatter's probable cause affidavit or incident report. Appellant's Opening Brief, p. 17. The only *new facts* pertaining to the conflict between Mr. Cox and the Hunters came to Mr. Thie the morning of May 6, 2020, when Mrs. Hunter called the Benewah County Dispatcher to complain about gunshots fired by Mr. Cox five days earlier.

Based on the following facts, jurors could reasonably infer that Mr. Thie initiated the prosecution of Mr. Cox for reasons *other than* Deputy Vannatter's incident report and probable cause affidavit, namely, Mrs. Hunter's call on May 6, 2020, reporting gunshots fired by Mr. Cox on May 1, 2020.

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First, Mr. Thie was well aware of the facts establishing probable cause on April 28, 2020, when he personally investigated the Bypass Road. He saw for himself and knew, on that day, that Mr. Cox had ditched across the Bypass Road entrance and, therefore, he knew probable cause existed to file a complaint and either summon Mr. Cox to court or have him arrested and jailed—but he did not do so.

Second, Mr. Thie knew on April 24, 2020, when he first spoke to Mr. Clayton, that an incident report would soon be filed, and that the report would include a “referral” for charges. 2-ER-67, ¶¶ 13-15; 4-ER-431, ¶ 9; 4-ER-476:10-19.

Third, between April 28, 2020, and May 5, 2020, Mr. Thie took no steps to prosecute Mr. Cox even though, based on his *personal investigation*, he knew Mr. Cox had ditched across the Bypass Road entrance.

Fourth, on May 6, 2020, Mr. Thie learned that Mrs. Hunter had called to report that *five days earlier*, on May 1, 2020, Mr. Cox had fired gunshots either while or following the Hunter boys’ delivery of the PVC pipe to the Bypass Road entrance.

Fifth, on May 6, 2020, before deciding to file a complaint against Mr. Cox, Mr. Thie called Mrs. Hunter, who reported that the Bypass Road remained impassable.⁴

4. Mrs. Hunter’s report on May 6, 2020 that the Bypass Road remained impassable is disputed by David Cox. 2-ER-251, ¶¶ 16-17. See photograph taken by David Cox May 3, 2020, and produced as an Exhibit to Mr. Clayton’s affidavit a mere thirteen days after Mr. Cox was arrested and jailed. 2-ER-81.

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Jurors could reasonably infer that Mr. Thie was less than pleased, or disgruntled, or even angered—believing that Mr. Cox had failed to make the Bypass Road accessible as he had agreed to do.

Sixth, on May 6, 2020, Mr. Thie called Mr. Clayton, but reported no new information—other than that Mr. Cox had fired gunshots on May 1, 2020, and stated that things had now gone “too far.” 2-ER-69, ¶¶ 28-31.

Seventh, Mr. Thie viewed himself as an “advocate” for the Hunters. 4-ER-447: 9-15.

Eighth, there is a temporal component raising a reasonable inference that Mrs. Hunter’s report of gunshots, not Vannatter’s probable cause affidavit, led to Mr. Thie seeking the arrest of Mr. Cox. Mrs. Hunter called the Benewah County Dispatcher on the morning of May 6, 2020, to report that five days earlier Mr. Cox had fired gunshots while her boys and their friends were down by the Carpenter Creek Bridge. 2-ER210:7-17. Mr. Thie filed the criminal complaint on May 6, 2020, within a matter of hours following Mrs. Hunter’s morning report of Mr. Cox firing gunshots.

Ninth, as reflected in Mrs. Hunter’s petition seeking a protection order, she harbored longstanding animosity toward Mr. Cox. *See, e.g.*, 3-ER-366-370.

*Appendix AD***(4) Thie’s Omission Of Material Facts Compromised Magistrate Payne’s Function As An Impartial And Neutral Arbiter**

The Fourth Amendment explicitly commands that “no Warrants shall issue, but upon probable cause.” *Delaware v. Prouse*, 440 U.S. 648, 654 n. 11(1979). This requirement is not a mere formality. “The very purpose of the warrant requirement . . . is to place a neutral magistrate between the public and police conduct.” *United States v. Allard*, 634 F.2d 1182 at 1187 (9th Cir. 1980).

In *Liston v. County of Riverside*, 120 F.3d 965, at 973-74 (9th Cir. 1997), the Court addressed the omission of material facts in an affidavit submitted for the search of the home of one James “Rocky” Hill, who was suspected of manufacturing and selling methamphetamines. Although the affidavit appeared valid on its face, material facts were omitted (For Sale/Sold sign in the front yard) indicating that the house had recently been sold—raising the possibility that Mr. Hill no longer resided there. Based on a probable cause affidavit that omitted material facts, a search warrant was issued, and “officers went to the subject house, broke down the front door with a battering ram, tackled and injured Jim Liston, ransacked the house and yard, willfully destroying property, and detained the entire family for approximately an hour and a half.” *Id.*, at 967.

Analyzing the omission of material facts, the *Liston* Court concluded that had the affidavit included a description of the For Sale/Sold sign observed by the police several days earlier, such information would have

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put a reasonable magistrate on notice that a change in occupancy would be occurring in the near future, if it had not already occurred, and that special consideration must be given both to the timeliness of the evidence supporting the warrant application and the timeliness of the execution of the warrant itself. The Court concluded that a reasonable magistrate presented with the omitted information would not simply have issued a warrant. At the least, a reasonable magistrate would have required further information regarding the time of the detective's observation of the property and the actual or prospective change in occupancy.

(5) Materiality—The Omitted Facts Were Material To Magistrate Payne's Probable Cause Decision

Material facts are those that may affect the outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). In the present case, there is sufficient evidence demonstrating that the omitted facts were material facts.

In Appellant's Opening Brief, at pp. 31-33, Mr. Cox described what Mr. Thie's criminal complaint would have said had he chosen to include all the extant facts he was aware of at the time.⁵ Summarizing, Mr. Thie's complaint,

5. Accordingly, Mr. Thie would have arranged for Deputy Vannatter to investigate the condition of the Bypass Road to see if, as Mr. Thie told Mr. Clayton on May 6, 2020, (2-ER-69, ¶¶ 28-30) Mr. Cox had installed the culvert pipe. Based on evidence

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signed under oath, would have informed Magistrate Payne that: (1) he (Mr. Thie) conferred with Mr. Cox, Mr. Clayton, and Mr. Hunter; (2) a plan was established to repair the Bypass Road by installing a culvert in the ditch; (3) Mr. Hunter agreed to provide and did provide a culvert pipe to repair the Bypass Road; (4) Mr. Cox agreed to use the culvert pipe to effectuate the repair; and (5) Mr. Cox had, in fact, installed the culvert pipe. Magistrate Payne would have been informed that the condition of the Bypass Road was no longer as it was when Deputy Vannatter observed it on April 23, 2020, or when he (Mr. Thie) observed it on April 28, 2020, and that Hunter's use of the Bypass Road had been restored by Mr. Cox.

Mr. Cox submits that Magistrate Payne would have found the foregoing five facts to be material to his consideration of probable cause and, at the very least, declined to issue the arrest warrant and requested more information. In short, if the central issue giving rise to the warrant request, i.e., damage to the Bypass Road, had in fact been repaired by Mr. Cox—pursuant to a plan facilitated, if not originated, by Mr. Thie himself—what possible reason could there be for arresting Mr. Cox?

(6) Thie's Omission Of Material Facts Misled Magistrate Payne

Addressing omissions of material fact in probable cause affidavits, the Court stated in *Liston* as follows:

submitted by Mr. Cox (2-ER-69, ¶ 27; 2-ER-81), Deputy Vannatter would have found the Bypass Road fully restored and would have updated his affidavit of probable cause to accurately reflect the restoration by Mr. Cox.

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In *Stanert*, we reasoned that by “reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw.” To allow a magistrate “to be misled in such a manner could denude the probable cause requirement of all real meaning. Accordingly, a Fourth Amendment violation occurs where “the affiant intentionally or recklessly omitted facts required to prevent technically true statements in the affidavit from being misleading.”

[Citations omitted]. *Liston*, 120 F.3d, 973. By omitting the five facts listed in the preceding section, Mr. Thie misled Magistrate Payne, leaving him to believe that Hunters’ access to their road was still obstructed by Mr. Cox’s ditching when, in fact it was not. Additionally, and maybe most importantly, Mr. Thie denied Magistrate Payne of the knowledge that Mr. Cox had repaired the damage, just as requested by Mr. Thie. In short, by withholding material facts from Magistrate Payne,⁶ Mr. Thie improperly manipulated the inferences Magistrate Payne could draw regarding the *present* condition of the Bypass Road, as well as Mr. Cox’s involvement with that *present* restored condition. Mr. Thie was well aware of the material facts he omitted, and was undoubtedly concerned that if Magistrate Payne was made aware of

6. Mr. Thie reviewed Vannatter’s incident report attached to his probable cause affidavit. Therefore, Mr. Thie knew that it too omitted, at the least, the five material facts listed above. And, most importantly, Mr. Thie had total discretion whether to move forward with presenting incomplete information to Magistrate Payne in his sworn criminal complaint and in Vannatter’s affidavit of probable cause.

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those material facts, he may very well deny issuance of the arrest warrant.

(7) Reckless Disregard For The Truth

Mr. Thie denies that he acted in a reckless manner regarding the arrest of Mr. Cox. Plaintiff's Complaint, 5-ER-754, ¶¶ 60-62; Defendant Thie's Answer, 5-ER730, ¶¶ 60-62.

In *Stanert*, this Court ruled that the Fourth Amendment mandates that a defendant be permitted to challenge a warrant affidavit valid on its face when it contains deliberate or reckless omissions of facts that tend to mislead. *Stanert*, 762 F.2d at 781. Additionally, if Mr. Cox can make a "substantial showing" that Mr. Thie's omissions of material facts were reckless, then the issue of recklessness must be decided by the trier of fact. *Stanert*, 762 F.2d at 791. Clear proof of deliberate or reckless omission is not required. *Stanert*, 762 F.2d at 781. Mr. Cox has made a "substantial showing" that Mr. Thie's conduct constituted a reckless disregard for the truth.

First, Mr. Thie was well aware of the *five* material facts listed above, prior to seeking the arrest warrant the afternoon of May 6, 2020.

Second, Mr. Thie knew there was no emergent reason to have Mr. Cox arrested: There had been no report of any incident involving Mr. Cox between April 28, when Mr. Thie met and conferred with Mr. Cox, and May 5, 2020—the day before Mrs. Hunter reported gunshots. 2-ER-146: 8-25; 2-ER 147: 1-10.

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Third, when Mr. Thie heard about the gunshots from Mrs. Hunter on May 6, 2020, he knew that that event had occurred five days earlier, that it was over, and that nothing further came of it.

Fourth, and most importantly, Mr. Thie knew that if he had Mr. Cox arrested he would lose his freedom, handcuffed, taken from his home, jailed, and be subjected to the humiliation and degradation that always accompanies incarceration—despite the fact he had installed the culvert, as requested by Mr. Thie

III. CONCLUSION REGARDING BRIAN THIE

Mr. Thie's omission of material facts constituted judicial deception and a reckless disregard for the truth. Mr. Thie engaged in judicial deception, and therefore the arrest warrant issued by Magistrate Payne was unsupported by probable cause and invalid. The right of Mr. Cox to be free of arrest pursuant to an invalid warrant was clearly established in 2020. Therefore, Mr. Thie is entitled to neither absolute nor qualified immunity. The district court's summary judgment in Mr. Thie's favor should be reversed.

B. COX v. HUNTER

I. INTRODUCTION

Mrs. Hunter states that “This Court should affirm the District Court’s dismissal of Mr. Cox’s malicious prosecution claim . . . because, *inter alia*, Mr. Cox admits

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he violated the Protection Order as independently confirmed by the Deputy Sheriff and Prosecutor.” Hunter’s Answering Brief, p. 6.

It is not disputed that Mr. Cox ditched across the Bypass Road on or about April 23, 2020. However, significant events occurred *after* April 23, 2020. Accordingly, Mr. Cox’s claims focus on events that occurred on April 28, May 3, and May 6, 2020. That is: (1) Mr. Thie’s interactions on April 28 with Mr. Cox, Mr.

* * *