

**STATE OF MICHIGAN
IN THE SUPREME COURT**

APPEAL FROM THE COURT OF APPEALS
JUDGES K.F. KELLY, P.J., AND O'BRIEN AND ACKERMAN, JJ.

ROBERT REEVES,

Plaintiff-Appellant,

Supreme Court No. 168969

v

Court of Appeals Nos. 367444, 367447

COUNTY OF WAYNE, ET AL.,

Wayne County CC No. 23-003148-CZ

Defendants-Appellees.

ORAL ARGUMENT REQUESTED

PLAINTIFF-APPELLANT'S APPENDIX

INSTITUTE FOR JUSTICE

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APPENDIX A

Complaint for Declaratory, Injunctive, and Retrospective Relief with Exhibits

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ROBERT REEVES,

Plaintiff,

v.

Civil Action No. 23- CZ

COUNTY OF WAYNE; ASSISTANT CORPORATION COUNSEL DAVIDDE STELLA, sued in his individual and official capacity; and ASSISTANT PROSECUTING ATTORNEY DENNIS DOHERTY, sued in his individual and official capacity.

Defendants.

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**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND
RETROSPECTIVE RELIEF**

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

Plaintiff Robert Reeves hereby sues Wayne County, Assistant Wayne County Corporation Counsel Davidde Stella, and Assistant Wayne County Prosecuting Attorney Dennis Doherty (collectively, the "Defendants") for their deprivation of his rights under Sections 3 and 5 of Article I of the Michigan Constitution and the First

and Fourteenth Amendments to the United States Constitution, and for their malicious prosecutions and abuse of process against him.

INTRODUCTION

1. This lawsuit seeks to vindicate the constitutional rights of Robert Reeves to speak freely and petition the government for the redress of grievances without fear of retribution.

2. In July 2019, police seized Robert's car and over \$2,000 in cash and held it for more than six months. During that time, Robert was not arrested or otherwise accused of wrongdoing. In fact, no criminal charges were filed in connection with the seized property at all.

3. About seven months after the seizure, having tried diligently—but unsuccessfully—to get his property back, Robert joined other victims of Wayne County's vehicle forfeiture program as a named plaintiff in a federal class action lawsuit challenging the program's constitutionality.

4. For taking a stand, Robert became the object of a campaign of retaliation. Wayne County prosecutors filed baseless criminal charges against Robert twice—and Robert twice succeeded in having those charges dismissed in court.

5. Robert lived for nearly two years with felony prosecutions hanging over his head. In that time, the pending charges caused Robert to be disqualified for expungement of prior offenses at a free expungement clinic, to spend time imprisoned in a COVID-infested jail, and to lose at least one job, when a police-officer client

refused to allow Robert to work as a contractor at his home specifically because of the pending charges.

6. Throughout that period, Wayne County relied on its ongoing criminal proceedings as a defense to Robert's claims in the federal class action.

7. Wayne County's meritless criminal prosecutions against Robert were an unconstitutional effort to punish him for challenging the government in court, and a desperate attempt to defend the county's rapacious vehicle forfeiture scheme by any means necessary.

8. The First and Fourteenth Amendments of the United States Constitution, and Sections 3 and 5 of Article I of the Michigan Constitution, prevent government officials from retaliating against individuals for engaging in protected activity—including filing a lawsuit against the government. Robert files this lawsuit to protect those rights and to hold accountable government officials who have violated them.

JURISDICTION AND VENUE

9. This is a civil rights suit brought under Article I, Section 3 of the Michigan Constitution (Petition Clause); Article I, section 5 of the Michigan Constitution (Free Speech Clause); the First Amendment to the United States Constitution; the Fourteenth Amendment to the United States Constitution; MCL 600.2907 (Malicious Prosecution); MCL 600.611/MCR 2.605(A) (Declaratory Relief); and 42 USC 1983 (the Civil Rights Act of 1871).

10. This Court has jurisdiction over the subject matter pursuant to Article VI, Section 13 of the Michigan Constitution; MCL 600.601; and MCL 600.605.

11. Venue is proper in this Court pursuant to MCL 600.1615.

12. Robert seeks declaratory and injunctive relief, as well as any monetary damages this court deems just and proper.

PARTIES

13. Plaintiff Robert Terrell Reeves is a citizen of the United States and a lifelong resident of the City of Detroit, Wayne County, Michigan, where he lives with his wife and children.

14. Defendant the Charter County of Wayne, Michigan, is a local government organized under the laws of the State of Michigan. The county is headquartered in Detroit, where it can be served through its Corporation Counsel at 500 Griswold Street.

15. Defendant Davidde Stella is the Assistant Corporation Counsel for Wayne County's Department of Corporation Counsel ("DCC") and is representing Wayne County in the federal lawsuit in which Robert is a named plaintiff. He is sued in his official and individual capacity.

16. Defendant Dennis Doherty is an Assistant Prosecuting Attorney for the Wayne County Prosecutor's Office ("WCPO") and was the prosecutor assigned to Robert's criminal prosecutions. He is sued in his official and individual capacity.

FACTS

July 2019: Robert Loses His Car and Cash

17. Robert Reeves is 32 years old. He works in construction and car repair.

18. He has lived in Detroit his whole life. He lives with his wife and her four children, whom he is raising as his own, and with one child they have together.

19. In early 2019, Robert purchased a 1991 Chevrolet Camaro for \$5,500 and, over the course of several months, spent over \$9,000 in improvements to the car. He hoped to sell the car for a profit and use the proceeds to start another project.

20. In July of that year, Robert got a call from Javone Williams with whom he sometimes worked on various jobs. At Javone's request, Robert visited him at a job site. While there, Robert demonstrated to Javone that he knew how to operate a skid-steer loader and the two men agreed to meet the next day to begin work on a project clearing rubbish.

21. After his meeting with Javone, Robert drove to a nearby gas station to purchase a bottle of water. As he was leaving, officers suddenly surrounded Robert and demanded to know what he knew about the skid steer, which they alleged had been stolen from Home Depot.

22. Police detained Robert for several hours at a local jail, and then let him go.

23. Police did not release, however, Robert's Camaro, cell phones, or the \$2,280 that he had in his pocket (he had planned to go look at a car for possible purchase later in the day).

24. In fact, police did not release Robert's property for nearly six months. During that time, no forfeiture complaint was filed and Robert was given no opportunity to contest the seizure.

25. Robert tried for months to get his property back—or at least learn more about the circumstances of the seizure—including by calling the numbers listed on the seizure notice dozens of times and by hiring an attorney. His attempts were unsuccessful.

The Federal Lawsuit

26. Robert filed a federal class action lawsuit against Wayne County in early 2020. *Ingram, et. al. v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS (E.D. Mich. filed Feb. 4, 2020).

27. Along with two other named plaintiffs, Robert claimed that Wayne County's vehicle forfeiture program violated the United States Constitution for a variety of reasons, including that it failed to provide prompt, post-seizure hearings for car owners, that it did not provide adequate protections for innocent owners, and that it irrationally held cars ransom until owners could afford to fully pay fines and fees, regardless of the seriousness of the underlying offense.

Robert's Property Returned

28. On February 5, 2020, the day after Robert filed the federal lawsuit, the WCPO wrote to the state taskforce holding Robert's property instructing it to release the property.

29. A true and correct copy of the WCPO's letter is attached as Exhibit 1.

30. Upon receiving a copy of that letter, Robert called the Michigan State Police to secure return of his property. He was told that it would take time, and that he should wait for the police to contact him.

31. On February 19, 2020, the state police sent Robert a check for the amount of cash seized in July 2019.

32. The next day, February 20, 2020, Robert received a call from the tow yard where his car was impounded instructing him to come pick up his car.

33. Robert went to the tow yard, paid a \$100 fee, and picked up his car, which had sustained significant damage in the course of being towed and stored outside.

The First Prosecution

34. On March 12, 2020, just over a month after Robert joined the federal lawsuit, the Wayne County Circuit Court issued a warrant for Robert's arrest on two counts of felony receipt or concealment of stolen property. Ex. 4 to Mot. to Abstain or Stay, *Ingram, et. al. v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS, ECF 19-4 (E.D. Mich.).

35. Unbeknownst to Robert, the seizure of his car and cash had been part of an investigation by a Michigan State Police task force into a string of rental equipment thefts from Home Depot stores.

36. The task force had initially placed a warrant request to the WCPO on September 5, 2019 regarding several individuals, including Javone Williams and Robert.

37. For months, WCPO did not act on that warrant request and no charges were filed.

38. Five months later, however, the WCPO suddenly showed renewed interest in the task force's investigation. On February 5, 2020—one day after Robert filed a federal lawsuit against Wayne County—Defendant Dennis Doherty requested a “clarification” from the new officer-in-charge of the investigation. Ex. 4 to Mot. to Abstain or Stay, *Ingram, et. al. v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS, ECF 19-4 (E.D. Mich.).

39. Ten days later, on February 15, 2020, Defendant Doherty received a new warrant request from the officer-in-charge and formally recommended submission of the request. *Id.*

40. On information and belief, Defendant Doherty instructed or requested the officer-in-charge to file the revised warrant request.

41. The new warrant request named only Javone Williams and Robert Reeves. No request was made regarding the other individuals listed in the original September 2019 request.

42. Shortly after the Circuit Court issued the warrant for his arrest, on March 23, 2020, Robert attempted to turn himself in for arraignment, hoping to trigger a probable cause hearing and challenge the charging decision. The court was closed due to the COVID-19 pandemic.

43. Then, on May 8, 2020, Robert was taken into custody based on the outstanding warrant when he was pulled over for a broken taillight.

44. Robert was held in a Detroit jail, which was riddled with COVID-19 cases, from a Friday afternoon to a Sunday afternoon, when he was released on \$1,000 bond.

45. Due to delays caused by the COVID-19 pandemic, Robert was not able to get a hearing on the charges for nearly a year.

46. Finally, on February 8, 2021, Robert had a preliminary hearing before Judge Kenneth King of the 36th District Court.

47. Judge King dismissed the charges against Robert and against Javone Williams for insufficient evidence.

48. Attached as Exhibit 2 is a true and correct copy of the February 8, 2021 Order of Dismissal.

The Second Prosecution

49. Robert's reprieve from the County's retaliation was short-lived. On February 25, 2021, the WCPO refiled the two felony charges against Robert.

50. Attached as Exhibit 3 is a true and correct copy of that charging document.

51. Although Javone Williams, Robert's co-defendant in the first prosecution, had faced more serious and more numerous charges, the WCPO did not refile any charges against Javone.

52. On information and belief, to this day the WCPO has not sought to prosecute any of the other individuals named in the original September 5, 2019 warrant request, including individuals indicated in investigation documents as

having actually stolen the equipment Robert was alleged to have received or concealed.

53. Nearly another year later, Robert again appeared before Judge King in the 36th District Court on January 26, 2022.

54. Judge King once again dismissed Defendant Wayne County's criminal charges against Robert.

55. Attached as Exhibit 4 is a true and correct copy of Robert's criminal case docket, indicating dismissal on January 26, 2022.

Defendants' Pattern of Retaliation

56. While the WCPO pursued the criminal prosecutions against Robert, the DCC relied on the pending prosecutions as a defense in the federal lawsuit.

57. First, in their Motion to Abstain or Stay dated July 1, 2020, the DCC, through Defendant Davide Stella, argued that the federal court should abstain from hearing Robert's claims until the conclusion of the state criminal proceedings against him. Mot. to Abstain or Stay, *Ingram, et. al. v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS, ECF 19 (E.D. Mich.).

58. After Judge King dismissed the criminal charges against Robert the first time, on February 8, 2021, Robert promptly notified the federal court that same day. Pls.' Ltr. to Ct., *Ingram, et. al. v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS, ECF 47 (E.D. Mich.).

59. When the WCPO refiled the charges against Robert only two weeks later, on February 25, 2021, the DCC—again through Defendant Davide Stella—

informed the federal court that the charges had been refiled and again reiterated its position that Robert's claims could not be considered as long as the criminal case was pending. Def.'s Ltr. to Ct., *Ingram, et. al. v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS, ECF 48 (E.D. Mich.).

60. After Judge King once again dismissed the criminal charges on January 26, 2022, Robert immediately notified the federal court the same day. Pls.' Ltr. to Ct., *Ingram, et. al. v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS, ECF 58 (E.D. Mich.).

61. On information and belief, Defendant Davide Stella—alone or with others in the DCC—directed or requested Defendant Dennis Doherty—alone or with others in the WCPO—to pursue the first criminal prosecution, which was filed on February 15, 2020, against Robert.

62. On information and belief, when the charges were dismissed the first time, Defendant Davide Stella—alone or with others in the DCC—directed or requested Defendant Dennis Doherty—alone or with others in the WCPO—to pursue the second criminal prosecution against Robert, which was filed on February 25, 2021.

63. On information and belief, Defendants Davide Stella and Dennis Doherty—alone or with others in the DCC and WCPO—did so in retaliation for Robert's participation in the federal lawsuit in which Defendant Stella represents Wayne County.

64. On information and belief, the pattern of repeated retaliatory criminal prosecutions against Robert is part of a wider policy of retaliation pursued by

Defendant Davidde Stella, the DCC, and the WCPO—including against Stephanie Wilson, another named plaintiff in the same federal lawsuit.

65. As the federal lawsuit progresses, the WCPO is pursuing a state forfeiture case against Stephanie Wilson's car.

66. That forfeiture case was dismissed by Judge David Allen in the Wayne County Circuit Court on April 29, 2021.

67. Attached as Exhibit 5 is a true and correct copy of that order of dismissal.

68. The WCPO appealed, won a reversal from the Michigan Court of Appeals, and is now continuing to pursue that forfeiture case before the Michigan Supreme Court.

69. Similar to their arguments on Robert's claims, the DCC, through Defendant Davidde Stella, argued in the federal case that Stephanie Wilson's claims as to that car could not be heard because of the pending state forfeiture case against it.

70. At a hearing on May 13, 2021 at which Stephanie Wilson sought to enforce the Circuit Court's judgment in her favor, Judge Allen expressed surprise that the WCPO planned to appeal to pursue the forfeiture of a car worth very little money as the result of its tangential connection to a very minor alleged drug deal.

71. Attached as Exhibit 6 is a true and correct copy of the transcript from the May 13, 2021 hearing before Judge Allen.

72. Speaking to WCPO Attorney Sinah Hamdan, Judge Allen said, “Pick your battles man, you guys got bigger fish to fry than some lady who wants her thousand dollar car back so she can go buy groceries and get her kids around.”

73. In response, Ms. Hamdan said, “And Your Honor, as we have commented there is a federal case pending as well.”

74. On information and belief, Ms. Hamdan’s mention of the federal case in her response to Judge Allen’s criticism reflected WCPO’s policy of pursuing the forfeiture case against Stephanie Wilson’s car in retaliation for her participation in the federal lawsuit.

75. On information and belief, the WCPO’s pursuit of the forfeiture case against Stephanie Wilson’s car was part of a policy of retaliation pursued in concert with the DCC and Defendant Davidde Stella.

76. Because the charges against Robert have been dismissed both times without prejudice, Defendants remain free to continue to retaliate against Robert by bringing the criminal charges a third time.

INJURY TO PLAINTIFF

77. Because of Defendants’ malicious and retaliatory prosecutions in violation of Robert’s rights under the Michigan and United States constitution, Robert has suffered significant injury, including, but not limited to:

- a. Spending a weekend detained in a Wayne County jail in the early months of the COVID-19 pandemic;

- b. Spending two years living with the stress of facing felony criminal prosecutions, including facing the risk of prison time;
- c. The time and money spent defending himself in the criminal prosecutions, including consulting with his attorneys and attending court dates;
- d. Difficulty securing employment because the criminal charges show up on background checks conducted by employers;
- e. Specifically, Robert was hired to work as a driver at FedEx, but after a week and a half of training, he was terminated when a background check revealed the pending charges.
- f. Additionally, Robert lost work when a police officer was having his home renovated, performed a background check on the contractors assigned to do the work, discovered Robert's pending charges, and told his employer he was not to work on the project;
- g. The reputational damage of having these charges on his record;
- h. Living with the fear that he may at any time be subjected to further unconstitutional retaliation;
- i. Being forced to weigh whether exercising his constitutional right to sue the government for violating his constitutional rights was worth the retaliation he was facing.

CAUSES OF ACTION

Count I

**Article I, Section 3 and Article I, Section 5 of the Michigan Constitution
(State Retaliation Claim)**

78. Robert realleges and incorporates by reference the allegations in Paragraphs 1 through 77 of this complaint, as if fully stated herein.

79. Article I, Section 3 of the Michigan Constitution guarantees the right of the people to “petition the government for redress of grievances.” This includes by the filing of lawsuits against the government.

80. Article I, Section 5 of the Michigan Constitution guarantees each person’s right to “freely speak, write, express and publish his views on all subjects.” This includes expressing or publishing views in the course of a civil rights lawsuit.

81. Robert’s participation in a federal class action lawsuit challenging the constitutionality of Wayne County’s forfeiture program is protected activity under the Michigan Constitution.

82. Defendants did not have probable cause to criminally charge Robert in either prosecution.

83. On information and belief, Defendant Davidde Stella instructed or requested Defendant Dennis Doherty to pursue criminal charges against Robert in the first prosecution.

84. On information and belief, after the criminal charges were dismissed the first time, Defendant Davidde Stella instructed or requested Defendant Dennis Doherty to pursue criminal charges against Robert in the second prosecution.

85. On information and belief, as part of these retaliatory prosecutions, Defendant Dennis Doherty instructed or requested police officers to submit the February 2020 request for warrant for Robert’s arrest.

86. On information and belief, Defendants pursued the prosecutions against Robert in retaliation for his participation in the federal lawsuit challenging Wayne County's vehicle forfeiture program—constitutionally protected activity.

87. On information and belief, Defendants pursued multiple criminal prosecutions only against Robert—and not others named in the investigation documents and identified as more culpable parties—because, unlike the others, Robert was a plaintiff in a lawsuit against Wayne County.

88. For these violations of his rights under the Michigan Constitution, Robert is seeking declaratory and injunctive relief, as well as monetary damages.

Count II

42 USC 1983 – First and Fourteenth Amendments

(Federal Retaliation Claim)

89. Robert realleges and incorporates by reference the allegations in Paragraphs 1 through 77 of this complaint, as if fully stated herein.

90. The First Amendment of the United States Constitution guarantees freedom of speech and the right to petition the government for redress of grievances.

91. The filing of a civil rights lawsuit against the government is activity protected by the First Amendment.

92. These First Amendment guarantees are incorporated to the states through the Fourteenth Amendment.

93. A defendant violates the First Amendment if (1) the plaintiff was engaged in constitutionally protected activity, and (2) the defendant's actions caused

the plaintiff to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) the defendant's adverse actions were substantially motivated against the plaintiff's exercise of constitutionally protected conduct.

94. Robert was engaged in constitutionally protected activity when he filed a class action lawsuit against Wayne County, and when he publicly expressed criticism of Wayne County's vehicle forfeiture program in that litigation.

95. In retaliation for that constitutionally protected activity, Defendants twice brought criminal prosecutions against Robert.

96. The multiple prosecutions against Robert were part of an official policy or custom of retaliation on the part of Defendants that was deliberate, executed over the course of two years, and included retaliatory acts against another named plaintiff in the federal civil rights lawsuit filed by Robert.

97. The actions of Defendant Davide Stella and Defendant Dennis Doherty are attributable to Wayne County. They were policymakers with final authority, or were delegated final authority, and made a deliberate choice to adopt a course of retaliatory action against Robert.

98. Defendants did not have probable cause to criminally charge Robert in either prosecution.

99. On information and belief, Defendant Davide Stella instructed or requested Defendant Dennis Doherty to pursue criminal charges against Robert in the first prosecution.

100. On information and belief, after the criminal charges were dismissed the first time, Defendant Davidde Stella instructed or requested Defendant Dennis Doherty to pursue criminal charges against Robert in the second prosecution.

101. On information and belief, as part of these retaliatory prosecutions, Defendant Dennis Doherty instructed or requested police officers to submit the February 2020 request for warrant for Robert's arrest.

102. The felony criminal prosecutions against Robert—and the attendant threat of prison time—would chill a person of ordinary firmness from exercising First Amendment rights.

103. Defendants' retaliatory prosecutions against Robert were motivated by Robert's participation in a federal class action lawsuit against Wayne County—protected activity under the First and Fourteenth Amendments.

104. On information and belief, Defendants pursued multiple criminal prosecutions only against Robert—and not others named in the investigation documents—because, unlike the others, Robert was a plaintiff in a lawsuit against Wayne County.

105. For these violations of his rights under the First and Fourteenth Amendment, Robert is seeking declaratory and injunctive relief, as well as monetary damages.

Count III

Malicious Prosecution and Abuse of Process

(State Tort Claims)

106. Robert realleges and incorporates by reference the allegations in Paragraphs 1 through 77 of this complaint, as if fully stated herein.

107. An action for malicious prosecution arises where (1) a criminal proceeding is instituted or continued by the defendant against the plaintiff, (2) the proceeding terminates in favor of the accused, (3) there was no probable cause for the proceedings, and (4) the proceedings were brought with malice, or some other primary purpose other than bringing an offender to justice.

108. An action for abuse of process arises where the defendant has an ulterior purpose and commits an act in the use of process not proper in the regular conduct or prosecution of the proceedings.

109. Defendants twice instituted criminal proceedings against Robert.

110. Both times, those proceedings terminated in Robert's favor.

111. Defendants did not have probable cause to institute the criminal prosecutions against Robert.

112. The primary purpose of the criminal prosecutions was not to bring an offender to justice, but rather to deter Robert from pursuing his claims against Wayne County in federal court and to provide the county with legal arguments to defeat those claims.

113. Defendants worked together across departments—with the WCPO taking advice and direction from the DCC—in an irregular effort to pursue the criminal prosecutions against Robert to effect their retaliatory purposes.

114. As a result of Defendants' conduct, Plaintiff was damaged in amounts to be determined.

PRAYER FOR RELIEF

Plaintiff Robert Reeves therefore requests relief as follows:

- A. For an award of compensatory and punitive damages against all Defendants for the injuries Robert suffered due to Defendants' malicious prosecutions in violation of Robert's constitutional rights, including but not limited to damages for his arrest and detention; expenses incurred as a result of his criminal prosecutions; and lost employment opportunities caused by his criminal prosecutions.
- B. For an award of \$1 in nominal damages based on Defendants' violations of Robert's constitutional rights.
- C. For a judgment declaring that Defendants' pursuit of criminal prosecutions in retaliation for Robert's constitutionally protected activity violates Sections 3 and 5 of Article I of the Michigan Constitution and the First and Fourteenth Amendments of the United States Constitution.
- D. For an order permanently enjoining Defendants from prosecuting Robert with the crimes alleged in the first two meritless prosecutions, and from taking any further retaliatory action against him.
- E. For an award of reasonable attorney's fees and costs; and
- F. Such other relief that this Court deems appropriate.

Dated: March 9, 2023.

Respectfully submitted,

/s/ Kirby Thomas West

Kirby Thomas West (Penn. Bar No. 321371)*

Christian Lansinger (Md. ID No. 2211290007)*

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Attorneys for Plaintiff

* Motions for admission *pro hac vice*
will be filed

Exhibit 1

RECEIVED by MSC 3/13/2026 6:14:31 PM



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PROSECUTING ATTORNEY

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DONN FRESARD
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(Corrected) OMNIBUS FORFEITURE PROPERTY RELEASE LETTER

TO: Michigan State Police – Western Wayne Criminal Investigation, Forfeiture
FROM: Wayne County Prosecutor's Office - Forfeiture Unit (FFN: 17724)
RE: MSP WWCI Case WWC-77-19; Involving Seized Property 1991 Chevrolet Camaro (VIN: 1G1FP33E4ML144257) and \$2,280.00 U.S. Currency, 2019 Dodge Ram (VIN: 1C6RRFFG0KN882059) and \$1,422.00 U.S. Currency; and respective Claimant/owners Robert Terrell Reeves Jr. and Javone Lee Williams
DATE: Feb. 5, 2020

A case for omnibus forfeiture proceedings as to the above noted property and involving the above noted claimant/owners was submitted to the Wayne County Prosecutor's Office for review regarding possible omnibus forfeiture litigation involving seized property which included the following according to the Notices of Claim: **1991 Chevrolet Camaro (VIN: 1G1FP33E4ML144257) and \$2,280.00 U.S. Currency, 2019 Dodge Ram (VIN: 1C6RRFFG0KN882059) and \$1,422.00 U.S. Currency**, seized in seizing agency **Michigan State Police – Western Wayne Criminal Investigation Case WWC-77-19**, pursuant to MCL 600.4701, Et Seq. It is this office's belief that, although the police had/have probable cause to seize said property for omnibus forfeiture proceedings, the seized property should be returned/released at this time pursuant to MCL 600.4701, Et Seq., particularly 600.4706. Should a criminal warrant be issued or other evidence submitted, this office may re-evaluate this omnibus forfeiture position at that time.

Please have said property released from seizure/hold based on omnibus forfeiture purposes only and return the currency to the owners and notify the owners to obtain their vehicles, unless the property is to be held for evidentiary or other lawful purposes. If you have any questions, please call me at 224-5831.

Respectfully Submitted,

/s/ C. S. Davis

**Charles S. Davis (P51405), Lead Pros. Atty.
Forfeiture Unit , Wayne Co. Pros. Atty.'s Ofc.
1441 Saint Antoine St., 12th fl., Detroit, MI 48226**

Exhibit 2

STATE OF MICHIGAN 36TH DISTRICT COURT CRIMINAL DIVISION	ORDER OF DISMISSAL	CASE NO. <i>2025-00000</i>
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THE PEOPLE OF

The State of Michigan

City of Detroit

v.

Defendant name, address, telephone no. <i>[Handwritten]</i>	
SID <i>[Handwritten]</i>	DOB <i>[Handwritten]</i>

1. At a session on *1/10/25*, Judge _____, P- _____, Bar no. _____ presiding:

2. (Court) (Prosecutor) (Defense) moves for dismissal of this case on the following ground(s)

- Insufficient evidence
- Complaining witness has failed to appear
- Complaining witness cannot be located
- Complaining witness refuses to prosecute
- Suppress the evidence
- Quash the information
- Defendant was sentenced on File _____ for _____
- Other *Dismissed - No Trial Over*

By _____
Prosecuting Official
[Signature]

Defense Attorney

ORDER OF DISMISSAL

IT IS HEREBY ORDERED THAT the above case be dismissed (with) (without) prejudice.

Judge Bar no. *12345*

Exhibit 3

STATE OF MICHIGAN

CASE NO: 2021704813

INFORMATION
FELONY

36TH DISTRICT COURT DETROIT

3rd Judicial Circuit

The People of the State of Michigan

vs

ROBERT TERRELL REEVES, JR 82-21704813-01

Offense Information

Police Agency / Report No.

82MSP WWC-77-19

Date of Offense

7/24/2019 & 7/25/2019 wd

Place of Offense

93 Ford / 154 Ford (Highland Park) / Appleton St & Roxford St

18785 Glenhurst, DETROIT

Complainant or Victim

DET. JEFF MCPARLAND

Complaining Witness

DET. JEFF MCPARLAND

STATE OF MICHIGAN, COUNTY OF Wayne

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this county appears before the court and informs the court that on the date and at the location described above, the Defendant(s):

COUNT 1: STOLEN PROPERTY - RECEIVING AND CONCEALING - \$20,000.00 OR MORE

did buy, receive, possess, conceal, or aid in the concealment of Kubota tractor and trailer, stolen, embezzled, or converted property, knowing or having reason to know or reason to believe that the property was stolen, embezzled, or converted, and the value of the property was \$20,000.00 or more; contrary to MCL 750.535(2)(a). [750.5352A]

FELONY: 10 Years and/or \$15,000.00 or 3 times the value of the property, whichever is greater. To impose a fine of 3 times the value, the defendant must admit the amount, or it must be determined by the trier of fact at trial. See *Southern Union Co. v United States* 567 U.S. ___; No. 11-94 (2012). Court may order reimbursement to state or local government for expenses incurred in relation to the incident including but not limited to expenses for emergency response and prosecution. (MCL 769.1f).

COUNT 2: STOLEN PROPERTY - RECEIVING AND CONCEALING - \$20,000.00 OR MORE

did buy, receive, possess, conceal, or aid in the concealment of Gehl skid steer and trailer, stolen, embezzled, or converted property, knowing or having reason to know or reason to believe that the property was stolen, embezzled, or converted, and the value of the property was \$20,000.00 or more; contrary to MCL 750.535(2)(a). [750.5352A]

FELONY: 10 Years and/or \$15,000.00 or 3 times the value of the property, whichever is greater. To impose a fine of 3 times the value, the defendant must admit the amount, or it must be determined by the trier of fact at trial. See *Southern Union Co. v United States* 567 U.S. ___; No. 11-94 (2012). Court may order reimbursement to state or local government for expenses incurred in relation to the incident including but not limited to expenses for emergency response and prosecution. (MCL 769.1f).

HABITUAL OFFENDER - SECOND OFFENSE NOTICE

Take notice that the defendant was previously convicted of a felony or an attempt to commit a felony in that on or about 05/01/12, he or she was convicted of the offense of uttering and publishing in violation of 750.249 in the 16th Circuit Court for Macomb County, State of Michigan;

Therefore, defendant is subject to the penalties provided by MCL 769.10. [769.10] One and one-half times the maximum sentence on primary offense or a lesser term. The maximum penalty cannot be less than the maximum term for a first conviction.

Court shall order law enforcement to collect a DNA identification profiling sample before sentencing or disposition if not taken at arrest

and against the peace and dignity of the State of Michigan

Kym Worthy
P38875
Prosecuting Attorney

02/25/2021
Date

By _____
Bar Number

The undersigned certifies that on _____ a copy of this information was served on _____

Date

P _____, the attorney representing the defendant.

Print Defense Attorney's Name

Signed _____ P _____

APA's Signature

RECEIVED by MSC 3/13/2026 6:14:31 PM

Exhibit 4

36TH DISTRICT COURT



Return

Register of Action

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STATE OF MICHIGAN | CASE NO: 2105024901 181 FY |
 36TH JUDICIAL DISTRICT REGISTER OF ACTIONS |
 FOR: 1820365J | STATUS: CLSD 01/26/22 |
 PIN: WWC-77-19 |

JUDGE OF RECORD: KING, KENNETH J., P-54983
 JUDGE: KING, KENNETH J., P-54983

STATE OF MICHIGAN v

REEVES/ROBERT/TERRELL JR

CEN: 822170491301

TEN: DM21244969X

SID: 3286933P

ENTRY DATE: 03/03/21

OFFENSE DATE: 07/24/19 1130 AM

ARREST DATE:

VEHICLE TYPE: VIN:

YEAR OF BIRTH: 1990 SEX: M RACE: B CDL:

VEH YR: VEH MAKE: PAPER PLATE:

DEFENSE ATTORNEY ADDRESS BAR NO.
 TRUMMER, JOHN PETER, III P-75097
 900 S SAGINAW ST Telephone No.
 STE 102
 FLINT MT 48902 (810) 257-3876

OFFICER: BOWERMAN JON IDEPT: 0029092

PROSECUTOR: ELIZONDO, RALPH A., P-41463
 /JEFF

CNT: 01 C/M/F: F 7505352A PACCF750.5352A

STOLEN PROPERTY-RECEIVE & CONCEAL-\$20,000 OR MORE

ARRAIGNMENT DATE: 03/12/21 PLEA: MUTE & NGRC PLEA DATE: 03/12/21

FINDINGS: DISMISSED DISPOSITION DATE: 01/26/22

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT FEE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE: PROBATION:

VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

BOND HISTORY:

20,000.00 PERSONAL BOND CONTINUED

CNT: 02 C/M/F: F 7505352A PACCF750.5352A

STOLEN PROPERTY-RECEIVE & CONCEAL-\$20,000 OR MORE

ARRAIGNMENT DATE: 03/12/21 PLEA: MUTE & NGRC PLEA DATE: 03/12/21

FINDINGS: DISMISSED DISPOSITION DATE: 01/26/22

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT FEE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:	PROBATION:	VEH NUMBER:	START DATE:	NUMBER OF DAYS:	VEH FORFEITURE:
DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS			
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1	ORIGINAL CHARGE STOLEN PROP	774			
2	ORIGINAL CHARGE STOLEN PROP	774			
02/25/21					
1	AUTHORIZATION OF COMPLAINT DATE	774			
	PROB DEBERTY, DENNIS M.,	P-44875 774			
NAME: REEVES/ROBERT/TERRELL JK CASE NO: 2105624901 PAGE 2					
DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS			
03/03/21					
	FILING DATE 830321	774			
1	COMPLAINT ISSUANCE DATE	774			
	JUDGE SHERMAN, MILLECENT D	P-55767 774			
	WARRANT ENTRY REQUESTED 30321 414P	826			
	SYSTEMNO (204) GENERATED BY LETN				
	48245374	826			
	WARRANT ENTERED INTO LETN	826			
	LEIN 2ND PARTY CHECK DONE FOR WARRANT ENTRY	141			
03/12/21					
	WARRANT CANCELLATION REQUESTED				
	31221 1141A	826			
	WARRANT CANCELLATION ACCEPTED				
	31221 1141A	826			
	WARRANT CANCELED FROM LETN	826			
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	STD ADDED	437			
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	MISCELLANEOUS ACTION ALL COUNTS	061			
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	FROM: 39107 GILES, RONALD,	P6M			
	TO: 54983 KING, KENNETH J.,	P6M			
	REMOVED FROM CALENDAR 040921 830A GILES, RONALD,	P-39107 061			
	SCHEDULED FOR PROBABLE CAUSE CONFERENCE				
	040921 830A KING, KENNETH J.,	P-54983 061			
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04/09/21					

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 ALL COUNTS 035
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 072021 930A KING, KENNETH J., P-54983 035
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 VIRTUAL HEARING SCHEDULED 035

NAME: REEVES/ROBERT/TERRELL JR CASE NO: 2105624901 PAGE 3

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	PROS COOKE, MARVIN A.,	P-55351 073
	ATT NORMAN, MICHAEL EDWA	P-75844 073
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	COURT REPORTER: B. TOMAST CSR #3098	073
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PROS DEHERTY, DENNIS M., P-44375 085
 ATT NORMAN, MICHAEL EDWA P-75844 085
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 111921 900A KING, KENNETH J., P-54983 085
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 VIRTUAL HEARING HELD 085
 ADJOURNMENT REQUESTED BY PROSECUTOR'S OFFICE 085
 COURT REPORTER: A. PILLLOW CSR #5665 085

NAME: REEVES/ROBERT/TERRELL JK CASE NO: 2105624901 PAGE 4

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	PROS ELTZONDO, RALPH A., P-41463 085	
	ATT NORMAN, MICHAEL EDWA P-75844 085	
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	IN-PERSON HEARING HELD	085
	COURT REPORTER: A. CONNERS CSMR/CSR #5119 085	
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	PROS ELTZONDO, RALPH A., P-41463 085	
	ATT TRUMMER, JOEN PETER, P-75897 085	
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***** END OF REGISTER OF ACTIONS ***** 03/08/23 20:55

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Exhibit 5

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN
EX REL, KYM L. WORTHY, WAYNE
COUNTY PROSECUTOR,

Plaintiff,

v.

Case No. 19-014106-CF
Hon. David J. Allen

ONE 2006 SATURN ION,
VIN: 1G8AJ55F86Z101751,

Defendant Property,

and

STEPHANIE GRACE WILSON,

Claimant.

Kym L. Worthy (P38875)
Attorney for Plaintiff
Wayne County Prosecutor's Office
1441 Saint Antoine St.
Detroit, MI 48226
(313) 224-5777

Barton W. Morris, Jr. (P54701)
Attorney for Claimant
The Law Offices of Barton Morris
520 N. Main St.
Royal Oak, MI 48067
(248) 541-2600

**ORDER GRANTING CLAIMANT'S MOTION FOR
SUMMARY DISPOSITION**

At a session of said Court held
On this date of: April 29, 2021
In the Coleman A. Young Municipal Court, Detroit, Michigan

PRESENT: Hon. David J. Allen
Third Circuit Court Judge

THIS MATTER having come before this Court pursuant to Claimant's Motion for
Summary Disposition, and

WHEREAS, the Court having reviewed the motion, the People's response, the Claimant's reply, and the evidence submitted, and

WHEREAS, on April 29, 2021, the date and time set for the hearing regarding Claimant's Motion for Summary Disposition, the parties being present were provided opportunity to be heard and provide argument to the Court,

IT IS HEREBY ORDERED AND ADJUDGED that Claimant's Motion for Summary DISPOSITION is hereby GRANTED;

that JUDGMENT is entered in favor of Claimant; and

that the People are ORDERED to return Claimant's property immediately.

/s/ David J. Allen

HONORABLE DAVID J. ALLEN

Judge for the Third Circuit Court

Date: 4/30/2021

Prepared on April 29, 2021, by:

By: /s/Barton W. Morris, Jr.
Barton W. Morris, Jr. (P54701)
Attorney for Claimant
Law Offices of Barton Morris
520 North Main Street
Royal Oak, MI 48067
(248) 541-2600
barton@bartonmorris.com

Exhibit 6

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

CASE NO: 19-014106-CF

ONE 2006 SATURN ION and
STEPHANIE GRACE WILSON,

Defendants.

-----/

MOTION HEARINGS

Before the HON. DAVID J. ALLEN, Circuit Judge,
Detroit, Michigan on Thursday, May 13, 2021

APPEARANCES:

SINAH HAMDAN (P80462)
WAYNE COUNTY PROSECUTOR'S OFFICE
1441 Saint Antoine Street
Floor 12
Detroit, MI 48226
(313) 224-8528
shamdan@waynecounty.com

BARTON W. MORRIS, JR. (P54701)
THE LAW OFFICES OF BARTON W. MORRIS
Attorneys for Defendant
520 N Main Street
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(248) 541-2600
barton@bartonmorris.com

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May 13, 2021

WITNESSES:

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None called

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None marked

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Detroit, Michigan
Thursday, May 13, 2021
(10:32 a.m.)

-- -- --

THE COURT CLERK: People v 2006 Saturn, Case No. 19-014160-CF.

THE COURT: Ms. Hamdan.

MS. HAMDAN: Good morning, Your Honor, Sinah Hamdan on behalf of the People.

THE COURT: Good morning.

Is Mr. Morris or Ms. Miller here this morning?

MS. HAMDAN: That's what I'm looking for and I don't see them unfortunately.

THE COURT: Yeah, they filed a response.

MS. HAMDAN: Right.

THE COURT: Okay. Well look, I've got a response, I don't know where they're at. Can you try and, I hate to make you be the one that track them down.

Can we re-call them?

MS. HAMDAN: I can try, yeah.

THE COURT: Let Karen know we'll re-call you, okay.

MS. KAREN: They were here, they must've left, so just let me know when they come back.

MS. HAMDAN: Will do.

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MS. KAREN: Thank you.

- - -

(At 10:39 a.m. this matter was recalled)

THE COURT CLERK: People v 2006 Saturn, Case No. 19-014106-CF.

MS. HAMDAN: Good morning, Your Honor, Sinah Hamdan on behalf of the People.

THE COURT: Ms. Hamdan, welcome back.

MR. MORRIS: Good morning, Judge Allen, My name is Barton Morris appearing on behalf of the Claimant, Stephanie Wilson.

THE COURT: Mr. Morris, welcome, and I think Ms. Miller was here last time for the trial, so she did a nice job. You're pinch hitting today or was she pinch hitting for you?

MR. MORRIS: She was pinch hitting for me.

THE COURT: All right.

Okay, so Ms. Hamdan, what's up, you want -- where is the car by the way?

MS. HAMDAN: The car is at the tow yard, Your Honor, we filed a Motion for Reconsideration along with the Motion to Stay the Order just pending the appeal.

As you know we do have 21 days to appeal so we did ask that that order be stayed.

Your Honor, should the car be released during the

1 pendency of appeal we are asking that the Court instate a
2 bond in place of the vehicle.

3 THE COURT: I mean kind of comment then ruling,
4 Ms. Hamdan, I mean I get it, I know you're doing your job
5 and you've got people you report to. But, you know,
6 there's such a thing as picking your battles, this is a
7 2006 Saturn Ion, that thing ain't worth a thousand dollars.
8 Nothing personal, I get it it's business, but you appeal on
9 that.

10 Pick your battles man, you guys got bigger fish
11 to fry than some lady who wants her thousand dollar car
12 back so she can go buy groceries and get her kids around.

13 MS. HAMDAN: And Your Honor, as we have commented
14 there is a federal case pending as well.

15 Our biggest issue here is that the last hearing
16 was on a Motion for Summary Disposition filed by the
17 Claimants and with the car being returned based on there
18 being no drugs on the person, and our argument is that
19 there were no drugs on him because he had already injected
20 him.

21 THE COURT: I don't think I made my decision that
22 it was based on no drugs. I had a basic curiosity that I
23 was asking those questions, but that wasn't the basis for
24 the ruling, but anyway.

25 Mr. Morris.

1 MS. HAMDAN: Go ahead.

2 MR. MORRIS: Well first I'm sure the Court and
3 the People probably understand, Motions for Reconsideration
4 are not generally set for a hearing. Particularly they're
5 not even considered if they're just rehashing the same
6 issues that have been presented to the Court for which that
7 you already ruled upon.

8 Same thing with their Motion for Leave from
9 Judgment, they've somehow now achieved a hearing, which
10 when they're not entitled to one, so I don't even think
11 it's properly up for today.

12 Now as it relates to the Motion to Stay they
13 don't need the car to file an appeal and you're right,
14 you're absolutely right this car is worth probably less
15 than \$1000, it's been sitting in that yard since for the
16 last 22 months.

17 The paint has been aging on it and you can tell
18 it's been faded, there's flat tires. The car is I think
19 was just worth more to the Claimant than it is to the
20 People.

21 And as the People have argued or stated this is
22 really not about this case, they've filed these motions in
23 an effort to try to give themselves some type of advantage
24 or some type of play in the federal case which is simply
25 just not an appropriate basis to be filing these motions.

1 They're trying to try to like --

2 THE COURT: What's this federal case, there's a
3 federal case?

4 MR. MORRIS: Right. We've filed an action, a
5 class action I think in the federal court with respect to
6 the County's forfeiture practices, and so we've been
7 litigating this case independently with regard to the other
8 case, but they're separate cases and filing actions in this
9 case in an effort to try to gain some type of advantage or
10 try to like manipulate the other case is not appropriate.

11 MS. HAMDAN: And Your Honor, we're not trying to
12 manipulate anything if I could just state. Our issue is if
13 the car gets disposed of during the pendency of the appeal
14 that's what we have the issue with and that's what we're
15 trying to avoid.

16 Otherwise if something, you know, if things
17 change based on the appeal we're going to have to go try
18 and track down this car.

19 MR. MORRIS: Well that's not true.

20 First of all if it changes I mean listen, they're
21 entitled to have their appeal, they can go ahead and file
22 an appeal.

23 We have agreed in our Answer that we would agree
24 to not dispose of the car, so that would alleviate that
25 particular issue.

1 But I also want to point out that the Court had
2 signed an order, executed an order demanding that the
3 vehicle be returned and we went, and I hope the Court had
4 the opportunity to look at our Affidavit that spells out
5 the specifics as to what happened when we tried to get the
6 car.

7 The tow yard refused to give it to us without the
8 People's permission, and so when they contacted I think
9 Charles Davis Mr. Davis explicitly told them to violate the
10 Court's order and not give us the car because they were
11 going to appeal or they were going to file a Motion to
12 Stay.

13 Judge, again, this is, I mean they're violating a
14 court order, they're absolutely incorrect when it comes to
15 like the law that they cite with respect to them having
16 some type of entitlement to a bond when we're talking about
17 injunctive relief. Pursuant to Michigan Court Rule 2.612
18 there is no 21-day automatic stay period when it comes to
19 injunctive or equitable relief.

20 The car was supposed to be returned and it wasn't
21 and now we're here on Motions for Reconsideration with no
22 allegations of palpable error, no allegations of any
23 factual, like new factual evidence, simply just restating
24 the arguments that they had made for which they lost upon.

25 They can go ahead and file the appeal, but the

1 car should be returned as the Court has ordered it.

2 THE COURT: Let me be clear.

3 No. 1, the Motion for Reconsideration is denied.

4 No. 2, the Motion for Stay is denied.

5 No. 3, the car is to be released immediately upon
6 presentment by the Claimant for the automobile. If said
7 vehicle is not immediately removed I'll have a show cause
8 hearing not only for the tow yard, but for Mr. Davis or
9 anybody else who wants to interfere with a \$1000 vehicle
10 that was seized for \$10 worth of heroin at best period.

11 Release the vehicle, do what you're going to do
12 in the federal court. You want to go to the Court of
13 Appeals and try and get back a \$1000 car have at it.

14 That's it, no more editorial, no more order, car
15 is released.

16 Any questions?

17 MS. HAMDAN: No, Your Honor.

18 THE COURT: Mr. Morris, you and Ms. Hamdan can
19 work out the parameters of an order of 1, 2, 3. Go to the
20 tow yard, get the vehicle. If you have a problem I need to
21 know immediately, I'll schedule a show cause hearing for
22 anyone that interferes.

23 Now if Ms. Hamdan wants to run to the Court of
24 Appeals to stay the return of a \$1000 Saturn Ion, well I
25 guess this Court will have to abide by that if the Court of

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Appeals wants to stay it. That's their department, not mine.

Okay, folks, good lucks.

MS. HAMDAN: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

(At 10:47 a.m. this hearing was concluded)

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APPENDIX B

Transcript for Motion for Summary Disposition Hearing before
Hon. Susan Hubbard

STATE OF MICHIGAN
THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE
CIVIL DIVISION

ROBERT REEVES,

Plaintiff,

Case No. 23-003148-CZ

-v-

COUNTY OF WAYNE, et al,

Defendants.

_____ /

MOTION HEARING

BEFORE THE HONORABLE SUSAN L. HUBBARD, CIRCUIT JUDGE,

Detroit, Michigan - Tuesday, July 6, 2023

APPEARANCES:

For the Plaintiff: KIRBY THOMAS WEST, (Pro Hac Vice)
901 N. Glebe Rd., Suite 900
Arlington, VA 22203
(703) 682-9320

For the Defendant: KALI HENDERSON, (P76479)
210 E. 3rd Street, Suite 212
Royal Oak, MI 48067
(248) 733-3580

Transcribed By: Athalia Cargile, CSMR 6836
Official Court Reporter
(313) 224-5216

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EXHIBITS:

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None.

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Detroit, Michigan
Tuesday, July 6, 2023
Approximately: 9:44 A.M.

- - -

THE COURT: I understand the next case is Reeves versus Wayne County.

Your names, for the record, please, starting with Plaintiff counsel.

MS. WEST: Kirby Thomas West for Plaintiff, Your Honor.

MS. HENDERSON: Kali Henderson for the Defendants, Your Honor.

THE COURT: Did you want to make an appearance?

MR. LANSINGER: Christian Lansinger for the Plaintiff.

THE COURT: Okay. You may be seated.

Okay, very well. So this is Defendant's motion concerning governmental immunity and failure to state a claim, is that correct?

MS. HENDERSON: Yes.

THE COURT: Okay.

MS. HENDERSON: Several different immunities, Your Honor.

THE COURT: The case was filed March 9th of 2023. Plaintiff is an individual who had his vehicle and

1 other personal property impounded during a criminal
2 investigation into theft of rental equipment from Home
3 Depot.

4 Defendants are Wayne County Assistant
5 Corporation Counsel is Davidde Stella?

6 MS. HENDERSON: Davidde Stella, Your Honor, yes.

7 THE COURT: Davidde Stella and Assistant
8 Prosecuting Attorney Dennis Doherty. Are they both still
9 with the offices?

10 MS. HENDERSON: Yes, Your Honor.

11 THE COURT: Okay. The two individuals are sued
12 in their professional capacity, according to the Complaint
13 Plaintiff's property his car, cell phone and over \$2000 in
14 cash were impounded or confiscated in early 2019, when he
15 was determined by -- detained, excuse me, by police for
16 several hours at a local jail, which local jail was that?

17 MS. HENDERSON: I don't know, Your Honor, I
18 apologize.

19 THE COURT: You don't know, okay.

20 A warrant request was submitted on September 5th
21 of 2019 by MSP, who was investigating the Home Depot
22 thefts. Plaintiff filed a Class Action suit in
23 February of 2020, when his property still had not been
24 released, after this the Wayne County Prosecutor's Office
25 directed MSP to release the property and he received them

1 back shortly thereafter.

2 What happened to the federal case?

3 MS. WEST: Your Honor, the federal case is still
4 pending one of the aspects in the federal case was
5 recently heard in the Sixth Circuit and the rest of the
6 case is in the District Court, since it's still pending in
7 the District Court while we await this decision from the
8 6th Circuit on the one aspect of the case that was sent up
9 on appeal.

10 THE COURT: What was sent up on appeal?

11 MS. WEST: Whether the constitution requires a
12 (inaudible) hearing when the government intends to forfeit
13 the car.

14 THE COURT: But this involved other property too
15 correct, besides a car?

16 MS. WEST: That's right, Your Honor.

17 Well, Plaintiff's case involves other property.

18 THE COURT: Right.

19 MS. WEST: But the Class Action is about cars,
20 the Class Action involves other named Plaintiffs whose
21 also loss --

22 THE COURT: But he was a part in that, he was
23 one of the members?

24 MS. WEST: That's right. He's a named
25 Plaintiff.

1 THE COURT: And his issue was his car in that
2 case?

3 MS. WEST: That's right.

4 THE COURT: Okay. So on March 12th of 2020 a
5 warrant issued against Plaintiff on two felony counts of
6 receipt or concealment of stolen property. Defendant,
7 Doherty, reviewed the warrant request and recommended
8 submission of the request.

9 Plaintiff was picked up, spent a weekend in jail
10 and was released on bond.

11 Preliminary exam was held on February of 2021,
12 where the case was dismissed for insufficient evidence.
13 However, another warrant was issued on February 12th of
14 2021. A preliminary exam was held January 26th of 2022.
15 I imagine the delaying was due to COVID.

16 MS. HENDERSON: Your Honor, based on the
17 Register of Actions that Plaintiff filed. It appears
18 there was some different things going on, there was motion
19 practice. So, I don't --

20 THE COURT: Usually a preliminary exam is
21 required within weeks; right, a few weeks of the warrant?

22 MS. WEST: As far as I know, Your Honor --

23 THE COURT: No one knows what happened between
24 February 12th of '21 and January 26th of '22, almost a
25 year.

1 MS. HENDERSON: No, Your Honor, I don't know. I
2 mean, Plaintiff did attach the Register of Actions there
3 and I don't --

4 THE COURT: It's very unusual.

5 MS. HENDERSON: -- believe that there was any
6 contesting of that. It does say that there was a Motion
7 to Dismiss filed --

8 THE COURT: Okay, anyway the preliminary exam --
9 thank you -- was held on January 26th, '22, and the case
10 was dismissed, again. But this time it was dismissed
11 because the complaining witness failed to appear. I'm not
12 sure why it was dismissed the first time.

13 MS. WEST: Your Honor, for insufficient
14 evidence.

15 THE COURT: Okay. Oh, that's right. You did
16 say that.

17 MS. HENDERSON: Your Honor, that's -- Your
18 Honor, if I can. That's what the pleading state, it's my
19 understanding that both times it was because the officer
20 failed to show for the exam.

21 MS. WEST: That's incorrect actually, Your
22 Honor. The officer was there for the first exam and the
23 officer testified at that first exam about the contents of
24 the video --

25 THE COURT: Okay, so he was there, okay.

1 So, Plaintiff's Complaint states declaratory
2 relief, injunctive relief and retroactive relief. It
3 contains a Michigan constitutional challenge, a Federal
4 First Amendment retaliation claim and a malicious
5 prosecution abuse of process claim.

6 Okay, I'll let Defendant begin with her position
7 and then we can move on to the Plaintiff's defense.

8 MS. HENDERSON: Yes, Your Honor. Thank you.

9 I believe, our briefing thoroughly outlines, I
10 know we've raised several different defenses, there's at
11 least six immunity defenses raised. And the first
12 argument that is important to address 'cause, I believe,
13 it sets the tone for understanding of this lawsuit and
14 what Plaintiff is really trying to do and that's the
15 relief that he seeks, which to enjoin the state courts
16 from prosecuting him further --

17 THE COURT: Right. I was going to ask you to
18 address the injunctive relief requests first and that's
19 what you're doing?

20 MS. HENDERSON: Yes.

21 THE COURT: Okay. Go ahead.

22 MS. HENDERSON: Yes, and the case law is clear
23 on this that the Court can not enjoin another branch or
24 cannot enjoin another Court proceeding except for in a
25 rare exception and that's when the Plaintiff is

1 challenging the constitutionality of the law that is being
2 prosecuted in that prosecution.

3 And here, Plaintiff has not challenged the
4 constitutionality of the law under which he's being
5 prosecuted and that he seeks to enjoin. Therefore,
6 there's no grounds for this Court to issue an injunction
7 to stop another judge from reviewing the facts and the law
8 presented to them and making a decision, so there's no
9 grounds for that relief that is being sought.

10 THE COURT: Okay, let's stop there a minute.

11 MS. HENDERSON: Yes.

12 THE COURT: Just out of curiosity double
13 jeopardy wasn't argued because it didn't reach the merits,
14 is that --

15 MS. WEST: That's right, Your Honor.

16 THE COURT: Okay, go ahead.

17 MS. HENDERSON: Yes, and I believe, it each time
18 it's been dismissed without prejudice, Your Honor, such
19 that the law on that issue is very clear, we've not
20 misquoted or misstated anything. There's no jurisdiction
21 for this Court to prevent another Court from fulfilling
22 its duties.

23 THE COURT: Okay, so if you're done with that
24 argument I'll let Plaintiff respond just to the injunctive
25 relief request.

1 MS. WEST: Y our Honor, the primary concern is
2 the Michigan Saltworks case, which is nearly 100 years
3 old. And what that case says is, if a Plaintiff can show
4 irreparable injury, then injunctive relief may be
5 available and there's nothing that contradicts that.

6 The Jeffrey case that Defendants cite --

7 THE COURT: You mean Jefferson vs Clinton
8 Township?

9 MS. WEST: No, I believe it's -- I have to pull
10 it up.

11 THE COURT: That's okay, go ahead.

12 MS. WEST: It's the later case. It involves a
13 case in which the statute is being alleged to be
14 unconstitutional and so that's why that language is there.
15 But, again, that's a case from the Court of Appeals. The
16 Michigan Supreme Court spoke nearly hundred years ago and
17 later courts have similarly said, where a Plaintiff can
18 show irreparable injury injunctive relief is appropriate.

19 And I have another case that we didn't cite, but
20 I today, it's People v Seder 139 Michigan Court of Appeals
21 380 from 1984 and I have a copy for Your Honor.

22 In which, the Court talked about that it wasn't
23 the case here but that if prosecutions were being brought
24 for harassment. It may be appropriate to enjoin those
25 prosecutions.

1 And when you think about irreparable injury
2 we've certainly pleaded that in the Complaint and here
3 where you have to take the allegation -- Your Honor has to
4 take the allegations as true and view them in the light
5 most favorable to the Plaintiff. There's extensive -- an
6 extensive summary of the injuries that Robert incurred in
7 the Complaint at paragraph 77. And he has good reason to
8 think this will happen again. It's happened to him twice
9 already. It's not happened to any of the other people
10 that were involved in this alleged theft ring, but it has
11 happened to Robert twice, he's been the focus.

12 And, again, they allege that he received or
13 concealed stolen property. And what about the people who
14 were actually doing the stealing of the property, you
15 might wonder, and those people are not being prosecuted by
16 the Wayne County Prosecutor's office and the reason is
17 because those people are not Plaintiffs in a Civil Rights
18 lawsuit against Wayne County.

19 And so here where Robert has pleaded injuries --
20 and again, this is the Complaint at paragraph 77 and he's
21 pleaded irreparable injury. He is entitled to injunctive
22 relief going forward.

23 THE COURT: Reply.

24 MS. HENDERSON: Yes, Your Honor.

25 Counsel is misrepresenting the Jeffrey v Clinton

1 Township 195 Mich App 260 opinion. In which, that case is
2 not over a hundred years old. It's actually from 1992,
3 Saltworks may be older. But Jeffrey, the Michigan Court
4 of Appeals in a published decision stated that, the
5 irreparable injury referred to must result from the acts
6 of the public officials in enforcing the allegedly invalid
7 law. Such that, if this Court is to enjoin another Court
8 it must only do so when the underlying prosecution, the
9 law that it is based on is being challenged. That's the
10 rare exception. That is still the only exception
11 recognized within the state. And the -- I'm not familiar
12 nor did Plaintiff previously cite that other case. So,
13 I'm sorry, I can not address it at this time, but the law
14 that I'm aware of states that this Court does not have
15 jurisdiction to enjoin a criminal proceeding.

16 MS. WEST: Your Honor?

17 THE COURT: Yes.

18 MS. WEST: May I respond to the Jeffrey point?
19 That wasn't the holding of Jeffrey. Jeffrey they said
20 there wasn't irreparable injury.

21 And so, that wasn't based on whether or not it
22 was a challenge to the constitutionality of a law.
23 Rather, the Court there said, here we don't have to think
24 about this because there is no irreparable injury. I
25 think it was about a law that prohibited someone from

1 having exotic animals and the person had an exotic animal
2 and they said it wasn't irreparable injury that there was
3 this law that th constitutionally was going to be
4 challenged.

5 So it was in the context of the law that the
6 constitutionality was being challenged, but the holding of
7 the case there simply was that there was no irreparable
8 injury.

9 THE COURT: Okay, let's move along to the
10 damages claim under the Michigan Constitution.

11 MS. HENDERSON: Yes, Your Honor, and I believe
12 this one is equally as straightforward. Plaintiff is
13 asking this Court to disregard the Supreme Court's direct
14 language in the Bauserman case, in which the Court,
15 specifically, said it was not extending liability under
16 the Michigan Constitution to municipal municipalities and
17 individual actors. That was only as to the state and its
18 reasoning dates back to this Smith and Jones cases, in
19 which the courts recognized that the state is not --
20 cannot otherwise be held liable because of the 11th
21 Amendment immunity that it has such that municipalities
22 and individual actors can be held liable under those
23 statutes such that Bauserman, specifically, did not extend
24 liability under the Michigan Constitution to those
25 individuals and it stated that directly and Plaintiff is

1 asking this Court to disregard the holdings of the
2 Michigan Supreme Court.

3 MS. WEST: Your Honor, what Bauserman says about
4 municipalities and individuals is that it's not going to
5 consider that question because it would be dictum. That's
6 directly what the Bauserman Court says. But Defendants
7 rely on Jones and the Jones case, expressly, is tied to
8 Smith, relies expressly on Smith. Bauserman overruled_
9 Smith.

10 So, Jones has been clearly abrogated by
11 Bauserman. Bauserman is not based on the unavailability
12 of other remedies or listed exceptions to when a
13 constitutional claim may or may not exist.

14 Rather, Bauserman is based on the judicial
15 authority and responsibility to ensure that violations of
16 the Michigan Constitution, particularly, under the
17 Declaration of Rights have a remedy. And I think that
18 this is particularly apropos here where, you know,
19 Defendants are on the one hand arguing, well, you have
20 other opportunities, other remedies, so there's no claim
21 against individuals or municipality.

22 But then on the other hand, they argue a
23 hodgepodge of immunities that shield them from liability,
24 so --

25 THE COURT: Right. But what about the language

1 of Bauserman and that refers to the state?

2 MS. WEST: So, again, the language and Bauserman
3 where it directly talks about individuals and a
4 municipality, they simply say we're not considering that
5 today because it would be dictum. But all the rationale
6 that Bauserman relies on to find a claim against the state
7 applies with equal force to individuals or municipalities,
8 because the reasoning of Bauserman is that if there's a
9 violation or a Court constitutional right under the
10 Michigan Constitution. The judiciary has the authority to
11 ensure that there's a remedy there, that for every
12 violation of the constitutional right there needs to be a
13 remedy and it's a judicial responsibility to ensure that
14 that exists.

15 And I think that's shown in that the Bauserman
16 Court goes through Justice Boyle's decision in Smith,
17 where Justice Boyle kinda set up a system where there
18 might be a claim here, there might not be a claim here.
19 Here are the exceptions and they rejected all of the
20 exceptions where -- that Justice Boyle said out of, oh,
21 there wouldn't be a claim in X, Y, Z circumstances.

22 And I think that that, again, it goes to --
23 contrary to what Defendants are arguing here that, oh,
24 this remedy only exist if there's no other remedy
25 available. That's not what the Bauserman Court said.

1 The Bauserman Court said, there is a judicial
2 obligation to ensure that violations and constitutional
3 rights have a remedy.

4 And, again, that's particularly heightened here
5 where Defendants are, simultaneously, trying to argue that
6 all the other remedies that we're trying to seek are also
7 unavailable. It heightens the fact that there needs to be
8 a Right of Action under the Michigan Constitution to
9 vindicate the violation of Constitution rights.

10 THE COURT: Any reply to that?

11 MS. HENDERSON: Just real quick, Your Honor.

12 I would say, obviously, we disagree with that
13 interpretation and believe that this Court is bound by the
14 holdings of the Michigan Supreme Court and prior Court of
15 Appeals opinions that don't recognize such a cause of
16 action.

17 But, additionally, Plaintiff has also pled an
18 official capacity claim and individual capacity claim
19 against each individual, such that an official capacity
20 claim against the Defendant, Doherty, on the state law
21 issues would not be proper to be before this Court because
22 the Court of Claims would have exclusive jurisdiction of
23 such claims.

24 THE COURT: That is true. But, she's not
25 arguing it is the state, right? She's not arguing it's

1 the state, correct? Your arguing it's the Wayne County
2 prosecutor --

3 MS. HENDERSON: Right. Right, Your Honor. Even
4 if Your Honor --

5 THE COURT: And the municipalities are creatures
6 of this state, right --

7 MS. HENDERSON: Correct, Your Honor,
8 municipalities are but Defendant, Doherty, as a prosecutor
9 because prosecutors are -- they have constitutional
10 duties, when they act they're actually acting on behalf of
11 the State of Michigan, which is what the Court recognizes
12 when they act in their official capacity they are arms of
13 the state --

14 THE COURT: Right.

15 MS. HENDERSON: -- and the case law is very
16 clear on that such that in his official capacity that suit
17 is considered to be against the state such that it falls
18 within the Court of Claims. In his individual capacity
19 that's different, but his official capacity he is an arm
20 of the state.

21 THE COURT: And he's being sued in his official
22 capacity --

23 MS. WEST: And individual, Your Honor. So even
24 if Your Honor --

25 THE COURT: Pardon me.

1 MS. WEST: And individual capacity, both.

2 So even if Your Honor were to find that the
3 official capacity claim shouldn't be here, which we would
4 argue it should be because it's part of the claims against
5 all the other Defendants, who I think Defendants concede
6 are properly in this court. But, even if Your Honor were
7 to decide that the official capacity claim can't be heard
8 by this Court, we also have an individual capacity claim
9 against Defendant, Doherty, which is certainly within this
10 Court's jurisdiction.

11 THE COURT: Any response to that?

12 MS. HENDERSON: The only response is that any
13 official capacity claims would have to be dismissed
14 because the Court of Claims jurisdiction is exclusive.
15 There's no way around it, so the official capacity claims
16 cannot proceed here against him.

17 I believe our motion takes care all of the
18 claims against him --

19 THE COURT: Right. But, if he's being sued in
20 his individual capacity, then whether he acted with in his
21 official authority is an issue popping up in the abuse
22 process, right. It's a factual issue.

23 MS. HENDERSON: I believe there's always a
24 distinction between the official capacity portion and the
25 individual capacity portion. But there would be a

1 blurring of that line, Your Honor, but I believe at least
2 the official capacity portion of that --

3 THE COURT: Would be with the state.

4 MS. HENDERSON: Yes.

5 THE COURT: Okay.

6 Then we can go on to the issue of immunity.

7 MS. HENDERSON: Yes, Your Honor. So, in regards
8 to the state law claims there is certain immunities and
9 the terms overlap with the federal but immunities are
10 different.

11 So, in regards to Defendant, Doherty, Michigan
12 has adopted absolute prosecutorial immunity along the same
13 lines of the Imbler Doctrine that the federal law adopted
14 such that he's entitled to absolute immunity for his
15 prosecutorial decisions for his decision to initiate
16 charges. That is at the heart of prosecutorial immunity
17 and that is exactly what Plaintiff complains of here. The
18 decision to initiate charges such that absolute immunity
19 whether that be state law immunity or federal immunity,
20 they both after the same, would bar any claims against him
21 related to the decision to initiate charges, which is all
22 Plaintiff complains of here as to Defendant, Doherty.

23 Such that that would take care of any claims as
24 to him.

25 THE COURT: Okay.

1 MS. HENDERSON: But -- oh, I'm sorry, Your
2 Honor.

3 THE COURT: No, no, I'm -- as long as you're
4 still on that issue. Go ahead.

5 MS. HENDERSON: I can and on the absolutely
6 immunity issue because I believe the other immunities also
7 he's encompassed within those as well, but --

8 THE COURT: Yeah, go ahead.

9 MS. HENDERSON: He's the only one that would be
10 entitled to absolute immunity.

11 Would, Your Honor, like me to address --

12 THE COURT: Yes.

13 MS. HENDERSON: -- the qualified immunities?

14 THE COURT: Yeah, go ahead.

15 MS. HENDERSON: Okay. So under a state law
16 there's a qualified immunity for intentional torts, which
17 I'm not sure if Plaintiff misunderstands how Michigan law
18 operates on that. But there is still qualified immunity
19 for intentional torts such that if it's taken in the
20 course of employment and in good faith and discretionary,
21 the individuals are entitled to immunity for those
22 actions.

23 Now, here the only allegations that these
24 individuals did not act in good faith is that they acted
25 without probable cause. We do address that in our motion,

1 Your Honor. Number one, there is a warrant being issued
2 by an independent member of the judiciary. This is a
3 facially valid warrant. Plaintiff has not taken issue
4 with the warrant in any sense such that the warrant acts
5 as an absolute bar there, such if there was probable cause
6 and they can't show that these individuals acted with
7 malice.

8 There's no allegations in that regard, they
9 basis it solely on the fact that they acted without
10 probable cause. They have shown that's not true, so these
11 individuals are entitled to state law qualified immunity
12 as well and that's the immunities for the individuals on
13 the state side.

14 Wayne County is also entitled to immunity under
15 the GTLA, the GTLA has very specific exceptions for which
16 a municipality, the entity itself can be sued. This does
17 not fall within any of those exceptions such that it's
18 barred.

19 I think I've covered all the state law
20 immunities, Your Honor. If you'd like me to do the
21 federal I can.

22 THE COURT: It's okay. Go ahead.

23 MS. WEST: So at the outset, Your Honor, I would
24 remind Your Honor that none of these immunities come into
25 play to the extent that Your Honor thinks there is a claim

1 for injunctive relief, because these immunities simply
2 don't apply to injunctive relief and the injunctive
3 relief, something I didn't mention that I'd like to. It's
4 not solely about the prosecution.

5 Defendant -- or Plaintiff, rather, has asked for
6 an injunction for all future retaliatory acts and
7 Plaintiff pleaded other retaliatory act besides simply the
8 prosecution's against him. Including that Defendants
9 illegally held his property and that's in the Complaint 28
10 and 29 and 31 to 32.

11 And with regard to getting into now the various
12 immunity doctrines. I first say I'm not sure where from
13 the Complaint Defendants are getting their position that
14 the allegations of retaliation are based solely on the
15 absence of probable cause. It's not in the Complaint.

16 In fact, the Complaint, specifically, alleges
17 that these are part of a policy of retaliation and I'm
18 thinking here of the Complaint at paragraph 64, 74, 75,
19 96, 97. And this leads nicely into the absolute immunity
20 conversation.

21 And so, absolute immunity only applies to
22 prosecutorial functions and Plaintiff has certainly
23 alleged -- and, again, at the Motion for Summary
24 Disposition stage we need to take all the allegations as
25 true and view them in the light most favorable to Robert.

1 And he has absolutely alleged acts that are outside of
2 that prosecutorial discretion (sic).

3 At paragraph 40, of the Complaint. Plaintiff
4 alleges that Mr. Doherty instructed the officer-in-charge
5 to file a new warrant request and this was the day after
6 the Federal Civil Rights lawsuit was filed. That
7 Defendant, Doherty, the prosecutor, contacted the
8 officer-in-charge of the investigation.

9 And, again, Robert has alleged that during that
10 conversation he, specifically, requested that he file a
11 new warrant request. This falls under the kind of
12 investigative acts that are not covered by prosecutorial
13 immunity.

14 Robert has also alleged that Defendant, Doherty,
15 conspired with Defendant, Stella, and this is the
16 Complaint, paragraph, 61 to 63. To design a policy of
17 retaliation against Robert and work together to file these
18 criminal charges because of the federal lawsuit.

19 And there, Defendants don't even really deny
20 that Defendant, Stella, Wayne County Corporate Counsel,
21 and Defendant, Doherty, the prosecutor, spoke to each
22 other about this prosecution and that Defendant, Stella,
23 had some hand in causing this prosecution to come about.

24 In fact, on page 18 of their Motion for Summary
25 Disposition they describe this as a legal advice, but

1 Defendant, Doherty, had nothing to do with the Federal
2 Civil Rights lawsuit. It makes no sense that in defending
3 Wayne County from these federal constitutional claims in a
4 civil rights lawsuit. That Defendant, Stella, would have
5 some reason to talk to Defendant, Doherty, about the
6 prosecution against Robert or to instruct him as to what
7 Robert has alleged in the Complaint. To instruct him to
8 go about and bringing these prosecutions.

9 And Defendant, Stella, then -- further reason to
10 think that this is what was going on, is Defendant,
11 Stella, then, relied on the existence of these
12 prosecutions to the federal judge in saying you shouldn't
13 hear Robert's claims, because there's an ongoing state
14 prosecution so you need to abstain. So he was using this
15 as a tactic in the federal litigation.

16 In addition, he's using it for retaliation for
17 Robert for speaking out against Wayne County and their
18 abusive forfeiture practices.

19 But, again, with regard to absolute immunity at
20 this stage Robert has certainly alleged specific acts that
21 are investigative and not prosecutorial. And thus, the
22 shield of absolute immunity does not exist for those acts.

23 Turning to qualified immunity. Qualified
24 immunity only applies where there is -- or it does not
25 apply, rather, if there are violations of, clearly,

1 established constitutional rights and that's certainly the
2 case here. And I'm thinking of the Holzemer case,
3 Holzemer vs City of Memphis from the Sixth Circuit in
4 2010. Where the Court there said the Constitution
5 prohibits retaliation for its citizens exercise of its
6 First Amendment right to free speech, whether that speech
7 takes written, oral or in another form.

8 And its beyond doubt that filing a Federal Civil
9 Rights lawsuit and speaking publicly as Robert did about
10 government injustice and misconduct, he is protected by
11 both the United States Constitution and the Michigan
12 Constitution. And so this was certainly a, clearly,
13 established right that was violated by the Defendants in
14 this case.

15 MS. HENDERSON: May I respond, Your Honor?

16 First, I want to clear up, I hadn't -- I think,
17 counsel might be a little confused 'cause I hadn't moved
18 on to federal immunities in that regard to address the,
19 clearly, established prong in all of that yet.

20 So, staying focused on the state law immunities
21 in that regard. I'm a bit surprised by some of the
22 arguments today such that counsel is now arguing that
23 these Defendants took Plaintiff's property. Because they,
24 specifically, allege that MSP confiscated the property,
25 when Plaintiff was arrested. In that it was the Wayne

1 County Prosecutor's office that sent a letter saying to
2 release the property back to Plaintiff, such that the
3 Wayne County Prosecutor's office, there's no allegations
4 and no foundation to argue that they ever took Plaintiff's
5 property. They actually are the ones that released that
6 property. It was MSP that arrested, investigated, took
7 the property, held the property and had to be told by the
8 Wayne County Prosecutor's office to release such property
9 and that's taken directly from the Complaint. I believe,
10 the letter's even attached.

11 And such that we also discussed the issuance and
12 request for a new warrant request after MSP submitted a
13 warrant request, I believe, the allegations are Defendant,
14 Doherty, then reviewed it and asked for changes to it and
15 a new one was issued by MSP.

16 This is all part and parcel of what these cases
17 discuss in regards to prosecutorial immunity. That is the
18 reviewing of a warrant request, requesting changes to it.
19 He didn't perform any independent investigation, he
20 reviewed a warrant request. Said, this is what I'm going
21 to need in order to present the warrant request, which he,
22 clearly, it is entitled to immunity for presentation of a
23 warrant request. These all fall within his prosecutorial
24 discretion.

25 And to the extent that there's any argument that

1 we don't deny some of these allegations, Your Honor, we
2 are working within the Complaint as its been pled to date,
3 should this get into discovery, we do deny several of
4 these allegations. But as to the points here I believe
5 that the law is clear on all of these issues and
6 Plaintiffs pleadings just fail to overcome these immunity
7 failures.

8 THE COURT: Okay. Thank you.

9 So, your seeking equitable relief as well as
10 monetary relief?

11 MS. WEST: That's right, Your Honor and
12 injunction and (inaudible).

13 THE COURT: Right. And part of the analysis for
14 injunctive relief is that there, you know, money damages
15 can't be a part of that request.

16 MS. WEST: I'm sorry, Your Honor. I don't
17 understand, Your Honor. You can bring a claim for both
18 injunctive relief and damages.

19 THE COURT: Right. What are you damages that
20 your claiming?

21 MS. WEST: So, Your Honor, because of the
22 retaliatory prosecutions against Robert. He spent a
23 weekend in jail for (sic) the height of the COVID
24 pandemic. He lost two different job opportunities,
25 specifically, because there were pending criminal charges

1 against him that in both cases he was hired and then the
2 employer discovered that there were pending charges and
3 let him go.

4 He spent two years of his life living under the
5 threat of felony prosecution. So, I think that there's --

6 THE COURT: So, you're seeking intentional
7 infliction? I mean what your claims, is what I'm asking?

8 MS. WEST: Well, I think the lost wages, Your
9 Honor, and also he had the stress of spending the weekend
10 in jail.

11 THE COURT: Well what -- should I call out the
12 Complaint and just see what the claims are. That's what
13 I'm asking.

14 MS. WEST: There's not a specific number --

15 THE COURT: Oh.

16 MS. WEST: -- if that's what Your Honor is
17 looking for. I think we would want to have a damages
18 expert, but if Your Honor is looking for an estimate I --

19 THE COURT: No, no, I'm not looking -- no, no, I
20 think you're misunderstanding me. I'm just wondering what
21 the claims are in the Complaint.

22 MS. WEST: Sure.

23 THE COURT: You've got an equitable claim for
24 injunctive relief and I assume you're seeking a permanent
25 injunction?

1 MS. WEST: Yes. We're seeking compensatory and
2 punitive damages against all Defendants, an award of \$1 a
3 nominal damages for the violation of his constitutional
4 rights. A Judgment declaring that the criminal -- the
5 pursuit of this retaliatory policy and the criminal
6 prosecutions violated constitutional right under the
7 Michigan Constitution and (inaudible) Constitution and for
8 an order permanently enjoining Defendants from prosecuting
9 Robert with the specific crimes that were alleged in the
10 first two prosecutions.

11 THE COURT: And just out of curiosity what is
12 the statute of limitations on that?

13 MS. HENDERSON: On which claim, Your Honor?

14 THE COURT: On the prosecution.

15 MS. HENDERSON: I believe, generally, that falls
16 within the three years.

17 THE COURT: How long has it been?

18 MS. WEST: It's been two and a half years, I
19 think or just been two years, a little over two years
20 since the first.

21 THE COURT: So once the three years is reached
22 presumably there'd be no need for injunctive relief.

23 MS. WEST: It if it is three years that would be
24 right but I'm not sure that's the correct number for some
25 reason I think it might be longer.

1 THE COURT: I think you can quickly look it up.
2 There is a statute of limitations, right?

3 MS. HENDERSON: Right, Your Honor. And I
4 believe at the earliest it would be two years, if we're
5 talking -- and, I'm sorry, I think state law may be two
6 years for that but the --

7 THE COURT: I'll look it up what is the --

8 MS. HENDERSON: -- general personal injury is
9 three years.

10 MS. WEST: Receipt and concealment of stolen
11 property is the charge.

12 THE COURT: Okay.

13 MS. HENDERSON: The actual counts, Your Honor,
14 that have been raised are for a violation of the Michigan
15 Constitution. A Fourteenth and First Amendment claim for
16 the Federal Constitution and then malicious prosecution
17 and abuse of process under state law.

18 THE COURT: Abuse of process is three years, I
19 know that. But I'm just looking with regard to the
20 injunctive relief she's requesting that it may not even be
21 necessary if the statute of limitations has already past.

22 MS. WEST: So, Your Honor, if I may, the request
23 is, again, it's for an order permanently enjoining them
24 from prosecuting him for those crimes.

25 THE COURT: Right.

1 MS. WEST: And from taking any further
2 retaliatory action against him. And so, I think, you know
3 --

4 THE COURT: That's a little vague, but
5 retaliatory action against him. I mean, what other
6 retaliatory action could they take against him besides
7 charging him a third time, right?

8 MS. WEST: I think that they could --

9 THE COURT: Does it work for them?

10 MS. WEST: No.

11 THE COURT: Go ahead. What retaliatory action?

12 MS. WEST: Well, I think that they could look
13 for other charges and they could try to find or I think
14 there's, you know, I don't, you know --

15 THE COURT: Okay, I'm sorry, I need to go back,
16 again, 'cause I need to take a break, the one was receipt
17 of stolen property.

18 MS. HENDERSON: Your Honor, that's the criminal
19 charge --

20 THE COURT: Yeah, that's what I'm asking.

21 MS. WEST: Yeah, receipt and concealment of
22 stolen property.

23 THE COURT: Okay and what was the other?

24 MS. WEST: There was -- both the same.

25 THE COURT: Oh, so that's what?

1 MS. WEST: Two counts of the same.

2 THE COURT: Yeah, okay, and that's it. Those
3 are the only criminal offences he was charged with?

4 MS. HENDERSON: As far as I'm aware, Your Honor.

5 THE COURT: As far as your aware?

6 MS. WEST: Yes.

7 THE COURT: Okay, anything else, ladies? I'm
8 going to take a break.

9 MS. HENDERSON: No, Your Honor, I believe our
10 brief fully addresses these issues unless the Court has
11 questions.

12 MS. WEST: Your Honor, the only thing I would
13 add is I would request that whatever -- which ever way
14 Your Honor comes out. Your Honor would issue a decision
15 whether or not the Bauserman case does recognize a cause
16 of action against a municipal and (inaudible) individuals.

17 THE COURT: Sure. Okay, and I'm sorry but one
18 more time but when was he -- when was the incident of the
19 receipt --

20 MS. WEST: Sorry, I do not -- it was in the
21 summer of 2019.

22 THE COURT: July?

23 MS. HENDERSON: July 2019, Your Honor.

24 THE COURT: Okay. Thank you. We're in a short
25 recess.

1 (At 10:20 a.m., court in recess)

2 (At 11:01 a.m., court resumes)

3 THE COURT: The Court is recalling Reeves versus
4 County of Wayne. Case 23-003148-CZ.

5 The Court took a quick recess, reviewed the new
6 case presented by Plaintiff's counsel, which is People vs
7 Alan Michael Sador is it or Setter? It's a published case
8 but it did involve a different situation involving a
9 creditor.

10 The State prosecuting the individual who had
11 declared bankruptcy and the State was prosecuting him for
12 a debt. This case I don't find is the same and that case
13 would not apply to the facts of this case.

14 So, I'm going to take each count individually
15 with regard to the injunctive relief. I tried to
16 determine the statute of limitations on concealing in and
17 receiving -- receiving and concealing stolen property. It
18 appears to be six years. I'm not sure. That -- it was in
19 the statute I pulled up.

20 But, nonetheless, Plaintiff's Complaint asked
21 the Court to enjoin Defendants from prosecuting Plaintiff
22 with the crimes alleged in the first two prosecutions and
23 from taking further retaliatory action against him.

24 In Jefferson vs Clinton Township -- you may be
25 seated young man. It's fine.

1 Cited by the Defendant, the Court noted that it
2 is an overstatement to claim that criminal prosecutions
3 are precluded from being enjoined. Rather, it is
4 permissible to seek an injunction where public officials
5 are proceeding a illegally and improperly under a claim of
6 right, where it is alleged that the complainant, thereby,
7 suffers an irreparable injury. That injury must result
8 from the acts of the public officials in enforcing the
9 allegedly invalid law.

10 In the present case, what we have is not an
11 allegedly invalid law, but the claiming that the law was
12 invalidly retaliatory applied to Plaintiff. The two cases
13 cited by Plaintiff involved challenges to ordinances that
14 were claimed to be invalid or unconstitutional, like
15 Jefferson.

16 Injunctive relief is not available to Plaintiff
17 in this case as to further criminal prosecutions because
18 he is not challenging the validity of the statute, but the
19 validity of the prosecutions under a valid statute.

20 He also seeks an injunction to bar further
21 retaliatory action against him. But, I don't see anything
22 where there is any case law that states that a person
23 needs to obtain an injunction to prevent unlawful
24 behavior. The request is speculative.

25 Plaintiff here is not seeking monetary in this

1 claim damages but equitable relief and the Court can
2 consider whether the equitable remedy is valid and the
3 Court finds it is not.

4 Damages under the Michigan Constitution, in his
5 Complaint Plaintiff asserts that he was retaliated against
6 by the Defendants for joining in the Federal Class Action
7 lawsuit. He cites the Michigan Constitution Article 1,
8 Section 5, which guarantees a person's right to freely
9 speak, write, express and publish his view on all
10 subjects.

11 Plaintiff alleges that Defendant, Stella, who
12 defended the federal case, instructed or requested
13 Defendant, Doherty, pursue criminal charges against
14 Plaintiff both times. He also alleges that both of the
15 individual Defendants did this in retaliation for
16 Plaintiff joining in the federal lawsuit.

17 In Bauserman vs Unemployment Insurance Agency
18 519 Mich 673. The Court found that the money damages are
19 available as a remedy for state constitutional torts.
20 However, that case dealt with a state actor, the case
21 states a claim for damages against the state arising from
22 violation by the State of Michigan Constitution may be
23 recognized in appropriate cases, citing Smith vs
24 Department of Public Health.

25 The keyword is the state Plaintiff has not cited

1 any cases where a governmental entity below the state
2 level is monetarily responsible for violations of the
3 state constitution. The Constitution imposes restrictions
4 on the state for the protection of Michigan citizens and
5 if the state harms its citizens in violation of those
6 protections. That is what creates liability.

7 And that's at Bauserman 700.

8 So, at footnote 13 of the opinion the Court,
9 specifically, states that only the state is liable for
10 constitutional violation damages. As for liability on the
11 part of cities and villages that issue is not before the
12 Court and it would be dictum to consider it.

13 Plaintiff asserts that the Court should ignore
14 the footnote as dictum and asserts that there is no
15 justification for limiting the right to seek damages for a
16 constitutional violation to only the State.

17 The footnote is part of the case and serves to
18 clarify the ruling and refute a dissent that the majority
19 in Bauserman holds that the State can be liable for
20 constitutional (inaudible) to the extent Plaintiff wants
21 this Court to make new law by broadening the application
22 of Bauserman to lower level governmental entities that is
23 within the province of the appellate courts.

24 Plaintiff asked the Court to ignore Bauserman
25 and apply a different case Mays vs Governor.

1 The Court, however, won't ignore the precedent
2 set forth in Bauserman, which holds only a state level
3 entity liable for constitutional violations.

4 Therefore, Summary Disposition under MCR 2.116
5 (C) (8) is granted on Plaintiff's Michigan Constitutional
6 claim against all Defendants.

7 With regard to immunity according to the
8 complaint two individual Defendants are sued in their
9 official capacity as well as their individual capacity.

10 This concerns the claim by Plaintiff in Count 2
11 for violation of his Civil Rights by retaliating against
12 him for participating in a Federal Class Action lawsuit.

13 In Count 3, the intentional tort claims a
14 malicious prosecution and abuse of process. As to
15 Defendant, Doherty, he is the assistant prosecuting
16 attorney involved in authorizing charges against
17 Plaintiff. Defendant asserts that as a prosecutor he's
18 entitled to absolute immunity for prosecutorial action,
19 citing Payton vs Wayne County 137 Mich App 361. That case
20 involves statements made by the persecutor and chief
21 assistant prosecutor (inaudible) he then sued them for
22 defamation.

23 The Court found the prosecutors to be absolutely
24 immune from liability under 42 US C 1983, because the
25 action was related to and dependent upon the legal

1 opinions and discretionary judgments of the prosecutor's
2 office.

3 In Windrow vs Michigan Department of Human
4 Services, the assistant prosecutors were found to be,
5 absolutely, immune while interviewing potential victims.

6 That case involved in intentional torts,
7 defamation, malicious prosecution and that was at 530F at
8 appendix 516.

9 Plaintiff argues that the absolute immunity does
10 not extend to lower level prosecutors. But that
11 distinction is not noted in the cases in particular
12 Windrow involved such lower level assistant prosecuting
13 attorneys.

14 Plaintiff also argues that this immunity is not
15 present in the Governmental Tort Liability Act 691.1401.

16 And this is true it is an immunity established
17 by case law and never overruled but that does not make it
18 invalid.

19 Therefore, Doherty is absolutely immune from
20 liability for Counts 2 and 3 in his official capacity as
21 well as his individual capacity. An official capacity
22 suit is not against an individual but against the entity,
23 this type of claim is virtually against the County and is
24 subject to the same analysis.

25 Under Caddy vs Iranian County 574 F3d 334.

1 Defendant, Doherty, also argues that a claim against him
2 in his official capacity would be against the state and
3 thus within the sole jurisdiction of the Court of Claims.

4 Caddy found that a prosecutor pursuing his or
5 her duties and in enforcing state law or policy is a state
6 official.

7 Caddy also found that the assistant prosecutor
8 is not entitled to absolute immunity under federal law.
9 That case, however, does not mention the Court of Claims
10 and I am not convinced that this claim against Defendant
11 must be heard in that court.

12 No other case cited by Defendant involves an
13 assistant prosecutor.

14 Doherty is entitled to absolute immunity in this
15 case and the claims against him should be dismissed.

16 Defendant, Stella, claims qualified immunity as
17 to the claims against him. This Defendant was Defendant
18 counsel on the federal case according to Plaintiff's
19 Complaint asked Defendant, Doherty, to initiate criminal
20 charges against Plaintiff.

21 A governmental employee is immune from tort
22 liability when (A), that employee is acting or reasonably
23 believes he is acting within the scope of his authority.

24 (B), the employee is engaged in the exercise or
25 discharge of governmental function and stating employees

1 conduct does not amount to gross negligence.

2 That's MCL 691.1407(2).

3 The issue then is whether the employee is immune
4 from liability for intentional torts, which by their
5 definition usually are not within the scope of an
6 employee's authority. To qualify for governmental
7 immunity the governmental employee must show that he was
8 acting in the course of his employment and at least
9 reasonably believed that he was acting within the scope of
10 his authority. That his actions were discretionary and
11 that he acted in good faith. That's Old ham vs Wayne
12 County 482 Mich 459.

13 Here, Defendants argue that Stella acted within
14 the scope of his employment to give legal advice.
15 Defendants also assert that Plaintiff's assertion that the
16 warrants are issued without probable cause is conclusory
17 and without basis. Defendant's argument on this point
18 also conclusory. This argument is not ripe for summary
19 disposition because there must be a factual development
20 for the Court or the trier-of-fact to determine whether
21 Defendant, Stella, was acting in good faith as required by
22 Oldham.

23 Defendant, Wayne County, is immune from tort
24 liability if it is acting in the exercise or discharge of
25 a governmental function. MCL 6901.14071 and the same

1 argument applies to the County with regard to intentional
2 torts. The County's liability is vicarious.

3 Defendants also argue that Plaintiff's Complaint
4 does not allege the intentional torts with sufficient
5 particularity Refitt vs Mantis, which quotes Dailey vs
6 Dykama Gossett 287 Mich 397 2010. Refitt states that a
7 complaint alleging abuse of process, must allege more than
8 the issuance of the process but misuse of the process
9 after issued. For malicious prosecution a Plaintiff must
10 allege sufficient facts supporting the elements of that
11 tort. MCR 2.1165 requires a Court to prevent Plaintiff an
12 opportunity to amend his Complaint.

13 So, the Court is granting Defendant's Motion to
14 Dismiss the Claim for Injunctive Relief under (C) ((8),
15 failure to state a claim. Granting Defendant's Motion to
16 Dismiss the claim for damages for Michigan Constitution
17 violation under (C) (8) granting the dismissal to
18 Defendant, Doherty, under (C) (8) for prosecutorial
19 immunity and denying the Motions for Dismissal to
20 Defendant, Stella, and Wayne County under (C) (8) or (C) (7)
21 on the intentional torts and the federal claims because
22 there needs to be a factual development to establish
23 whether Stella was acting in good faith.

24 So, the Plaintiff is also permitted to amend his
25 Complaint to alleging intentional torts with more

1 particularity and that's the Court's ruling.

2 MS. HENDERSON: Your Honor, may I ask for
3 clarification is the Court making a ruling as to the
4 argument regarding the warrant establishing the absolute
5 bar, the issuance of the warrant which would bar the
6 malicious prosecution claims?

7 THE COURT: I think I already ruled on that, did
8 I not? Did you catch it?

9 MS. WEST: No, I did not.

10 THE COURT: Okay. Hold on. Let me pull it
11 again. Okay, which -- are you referring to -- okay, so I
12 covered the injunctive relief.

13 MS. HENDERSON: Yes.

14 THE COURT: Damages under the Michigan
15 Constitution and are you referring to the immunity?

16 MS. HENDERSON: That the facially valid warrant
17 in regards to a failure to plead claim. That a facially
18 valid warrant bars a malicious prosecution claim. It was
19 page 13 of our brief.

20 THE COURT: I think what I ruled is that the
21 malicious prosecution is an intentional tort and there
22 needs to be a development, a factual development of that
23 before I can make a determination --

24 MS. HENDERSON: Right, Your Honor --

25 THE COURT: -- that's what I ruled.

1 MS. HENDERSON: Okay.

2 THE COURT: I'm not sure what you're asking.

3 MS. HENDERSON: No, I think our argument is that
4 as pled the facts as pled are that there was a facially
5 valid --

6 THE COURT: Yeah, but the Court rule allows her
7 to amend -- amend her Complaint, if she wishes to add more
8 specificity.

9 MS. HENDERSON: Such that is the Court ruling
10 that she -- that claim will be granted if she can't (sic)
11 more specificity?

12 THE COURT: No. No, I'm permitting her the
13 opportunity to add more specificity and then we can just
14 take it from there, I suppose. If you think there's still
15 a need to file a motion on that issue. But, the Court is
16 ruling that there is -- needs to be a factual development
17 on that issue.

18 MS. HENDERSON: Before it can address the
19 immunity issues raised by its Defendant, Stella, and Wayne
20 County.

21 THE COURT: Right. That's our ruling.

22 Thank you have a nice day.

23 MS. WEST: Yes, Your Honor.

24 MS. HENDERSON: Thank you.

25 (At 11:17 a.m., proceeding concluded)

CERTIFICATE OF COURT REPORTER

COUNTY OF WAYNE)

STATE OF MICHIGAN)

I certify that this transcript, consisting of (44) pages, inclusive, is a complete, true, and correct transcript of the proceedings and testimony taken in the matter of Robert Reeves v County of Wayne, et al., 23-003148-CZ, Motion Hearing on Tuesday, July 6, 2023.

8/22/2023
Date

Athalia A. Cargile
Athalia A. Cargile, CSMR 6836
Official Court Reporter

DISCLAIMER

I, Athalia Cargile, transcribed the above matter. I did not report the above matter, and therefore, I am not responsible for inaudible words or unidentifiable speakers.

8/22/2023
Date

Athalia A. Cargile
Athalia A. Cargile, CSMR 6836
Official Court Reporter

APPENDIX C

Court of Appeals' Opinion

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT REEVES,

Plaintiff-Appellee,

v

COUNTY OF WAYNE and DAVIDDE STELLA,

Defendants-Appellants,

and

DENNIS DOHERTY,

Defendant.

FOR PUBLICATION

June 09, 2025

10:08 AM

No. 367444

Wayne Circuit Court

LC No. 23-003148-CZ

ROBERT REEVES,

Plaintiff-Appellee/Cross-Appellant,

v

COUNTY OF WAYNE and DAVIDDE STELLA,

Defendants-Appellants/Cross-Appellees,

and

DENNIS DOHERTY,

Defendant/Cross-Appellee.

No. 367447

Wayne Circuit Court

LC No. 23-003148-CZ

Before: K. F. KELLY, P.J., and O'BRIEN and ACKERMAN, JJ.

ACKERMAN, J.

After Robert Reeves challenged Wayne County’s controversial civil forfeiture program in federal court,¹ he says the County retaliated—reviving a dormant criminal case and selectively prosecuting him for bringing that suit. The charges against Reeves were ultimately dismissed (twice) for lack of evidence. This appeal asks whether Reeves’s claims of retaliatory prosecution can survive governmental immunity and pleading challenges. In Docket No. 367447, defendants Wayne County and Davidde Stella appeal by right the trial court’s partial denial of summary disposition under MCR 2.116(C)(7) (governmental immunity). In Docket No. 367444, they appeal by leave granted the same order’s partial denial of summary disposition under MCR 2.116(C)(8) (failure to state a claim). Reeves cross-appeals the partial grant of summary disposition. After rejecting a portion of the appeal as moot, we affirm in part, reverse in part, and remand for further proceedings.

I. BACKGROUND

According to the complaint,² in July 2019, Javone Williams—an associate with whom plaintiff had previously worked—asked him to meet at a job site, where plaintiff demonstrated that he knew how to operate a skid-steer loader. Plaintiff then drove to a nearby gas station, where he was stopped by officers assigned to a Michigan State Police task force investigating thefts of rental equipment from Home Depot. Officers questioned plaintiff about the skid-steer loader, detained him briefly in a local jail, and then released him without filing charges. They also seized plaintiff’s 1991 Chevrolet Camaro and \$2,280 in cash, which were retained as part of “omnibus forfeiture proceedings” submitted to the Wayne County Prosecutor.

In September 2019, the Michigan State Police sought arrest warrants for several individuals, including plaintiff and Williams, but did not follow through with them. Several months later, on February 14, 2020, plaintiff helped lead a federal class action challenging the constitutionality of Wayne County’s forfeiture program. Wayne County was represented in that case by Stella, an assistant corporate counsel. The very next day, the Wayne County Prosecutor’s Office directed the Michigan State Police to release the assets seized from plaintiff and Williams. That same day, defendant Dennis Doherty, an assistant prosecutor, contacted the officer in charge of the earlier warrant request and received a revised version that named only plaintiff and Williams, omitting the others previously included. Plaintiff alleges that Doherty instigated that filing.

Plaintiff was arrested on May 8, 2020. The 36th District Court dismissed the charges at a preliminary examination in February 2021 for lack of evidence. The Prosecutor’s Office refiled

¹ See *Ingram v Wayne Co*, 81 F4th 603 (CA 6, 2023), abrogated by *Culley v Marshall*, 601 US 377; 144 S Ct 1142; 218 L Ed 2d 372 (2024). The program has been characterized as “a money-making venture . . . most often used to extort money from those who can least afford it.” *Ingram*, 81 F4th at 623 (Thapar, J., concurring).

² Because this appeal stems from a ruling on the pleadings, no discovery has taken place. As noted in our discussion of the standards of review, we treat plaintiff’s factual allegations as true for purposes of this analysis.

the charges, but they were dismissed again after a second preliminary examination in January 2022.

In this case, plaintiff alleges that Doherty, acting at Stella's direction, pursued "baseless" charges in retaliation for his exercise of First and Fourteenth Amendment rights through the federal class action. The complaint asserts claims under the Michigan Constitution, 42 USC 1983, and the state-law torts of malicious prosecution and abuse of process.

Defendants moved for summary disposition on the grounds of governmental immunity and failure to state a claim. In July 2023, the trial court granted the motion in part, dismissing plaintiff's claims under the Michigan Constitution for failure to state a viable cause of action and dismissing all claims against Doherty based on absolute prosecutorial immunity. The court denied summary disposition as to the remaining claims and noted that plaintiff would be "permitted to amend his Complaint to alleg[e] intentional torts with more particularity." Plaintiff later filed an amended complaint in the trial court while this appeal was pending.

Wayne County and Stella now appeal the trial court's refusal to dismiss all claims against them. Plaintiff cross-appeals the dismissal of his claims against Doherty and his claims for injunctive and monetary relief under the Michigan Constitution.

II. PLAINTIFF'S PLEADINGS

Defendants' primary argument on appeal is that plaintiff's original complaint failed to adequately plead his claims under 42 USC 1983 and Michigan tort law. They contend that a lack of probable cause is a required element of each claim and that the complaint offered only conclusory allegations on that point. According to defendants, the trial court should have granted their motion for summary disposition under MCR 2.116(C)(8) and then permitted plaintiff to seek leave to amend his complaint—an approach they believe would have led to the dismissal of most or all claims. But that argument misreads the rule: The court rules do not mandate the rigid sequence defendants envision.

The standards governing motions under MCR 2.116(C)(8) are familiar. Such a motion "tests the *legal sufficiency* of a claim based on the factual allegations in the complaint," and "a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019). "A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id.* at 160. Less familiar are the procedures that apply when such a motion is granted. Under MCR 2.116(I)(5), "[i]f the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." The question, then, is how trial courts must implement that requirement.

There is little dispute that the opportunity to amend a pleading under MCR 2.116(I)(5) generally applies only when a motion under MCR 2.116(C)(8) has merit. See, e.g., *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997) ("If a court grants summary disposition pursuant to MCR 2.116(C)(8), (9), or (10), the court must give the parties an opportunity to amend their

pleadings . . .”). But “[t]he rule is not specific on the order of [the] rulings.” 1 Longhofer & Quick, Michigan Court Rules Practice, Text, § 2116.18 (8th ed), p 550. Courts have implemented the rule in a variety of legitimate ways. “The usual practice is to enter a conditional order stating that summary disposition is granted unless an amended pleading is filed by a certain time. However, nothing forbids a court from allowing an amendment even after granting summary disposition if the amendment is sufficient.” *Id.* Defendants’ assertion that the rule mandates a particular sequence is not supported by the text or case law.

Reported decisions reflect that flexibility. In *Codd v Wayne Co*, 210 Mich App 133, 137; 537 NW2d 453 (1995), we found it sufficient that “the trial court, in lieu of requiring plaintiffs to file formally an amended complaint, allowed the parties to present supplemental briefs.” In *ABB Paint Finishing, Inc v Nat’l Union Fire Ins Co*, 223 Mich App 559, 564; 567 NW2d 456 (1997), we observed that a plaintiff could “request[] leave to amend its complaint before the trial court rules on a motion under C(8),” which “the trial court should normally allow” under MCR 2.116(I)(5). Those examples confirm that the rule offers far more procedural flexibility than defendants suggest.

Although defendants misread the rule, we must still consider whether the trial court complied with it. We review a trial court’s interpretation and application of court rules de novo. *In re Ott*, 344 Mich App 723, 735; 2 NW3d 120 (2022).

The motion practice in the trial court was not a model of clarity. Defendants moved for summary disposition under both MCR 2.116(C)(7) and (8), without specifying which arguments were asserted under which subrule. Perhaps as a result, the trial court’s decision was similarly muddled. The court stated that factual development was necessary “to establish whether Stella was acting in good faith”—language inconsistent with a (C)(8) ruling, which requires a decision based solely on the pleadings. Yet the court also stated that plaintiff would be “permitted to amend his Complaint to alleg[e] intentional torts with more particularity,” echoing the language and purpose of MCR 2.116(I)(5). That statement could reasonably be construed as the trial court implicitly granting the motion—because leave to amend under (I)(5) usually presumes that the underlying motion had merit. When defense counsel sought clarification, the court continued to blend concepts in those rules:

The Court. I think what I ruled is that the malicious prosecution is an intentional tort and there needs to be a development, a factual development of that before I can make a determination—

Ms. Henderson. Right, Your Honor—

* * *

The Court. I’m not sure what you’re asking.

Ms. Henderson. No, I think our argument is that as pled the facts as pled are that there was a facially valid—

The Court. Yeah, but the Court rule allows her to amend—amend her Complaint, if she wishes to add more specificity.

Ms. Henderson. Such that is the Court ruling that she—that claim will be granted if she can’t [sic] more specificity?

The Court. No. No, I’m permitting her the opportunity to add more specificity and then we can just take it from there, I suppose. If you think there’s still a need to file a motion on that issue. But, the Court is ruling that there is—needs to be a factual development on that issue.

Ms. Henderson. Before it can address the immunity issues raised by its Defendant, Stella, and Wayne County.

The Court. Right. That’s our ruling.

We agree with defendants that the trial court never clearly ruled on their (C)(8) arguments. A motion under (C)(8) challenges the “legal sufficiency” of the complaint and must be decided solely on the pleadings. *El-Khalil*, 504 Mich at 159. A need for further factual development is inconsistent with such a motion. Even so, if the motion had merit, plaintiff would have been entitled to amend his complaint under MCR 2.116(I)(5)—which is precisely what the trial court allowed.

Importantly, plaintiff filed an amended complaint after these appeals were initiated. The trial court has not yet ruled on the sufficiency of that amended complaint, and any issues concerning it are not before us. Because the amended complaint now governs this case, defendants’ objections to the initial complaint are moot.³ The trial court acknowledged as much when it stated that, once the amended complaint was filed, “we can just take it from there” and that defendants were free to file a renewed motion.

In sum, defendants received the procedural remedy they claim was denied. If they believe the amended complaint still fails to state a claim, the proper course is to raise those arguments in the trial court on remand.

III. GOVERNMENTAL IMMUNITY

In addition to their challenges to the sufficiency of plaintiff’s pleadings, defendants contend that the governmental immunity act, MCL 691.1401 *et seq.*, shields Wayne County from vicarious liability for plaintiff’s state-law intentional tort claims. They maintain that the trial court should have granted summary disposition under MCR 2.116(C)(7). Because that argument turns on the legal characterization of the County’s functions—not the specific factual allegations in plaintiff’s complaint—review is appropriate, and we agree with defendants.

“Summary disposition under MCR 2.116(C)(7) is appropriate if a claim is barred because of immunity granted by law.” *Pike v Northern Mich Univ*, 327 Mich App 683, 690; 935 NW2d 86 (2019). We review *de novo* both the trial court’s decision on such a motion and its interpretation

³ In their appellate brief, defendants’ pleading-based arguments concern plaintiff’s claims under 42 USC 1983 and the state-law intentional tort claims asserted against Stella.

of the governmental immunity act. *Id.* In doing so, we accept as true the complaint’s allegations unless contradicted by documentary evidence. *Id.* at 690-691.

The governmental immunity act provides that “[e]xcept as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.” MCL 691.1407(1). “Generally, governmental agencies in Michigan are statutorily immune from tort liability.” *McCahan v Brennan*, 492 Mich 730, 736; 822 NW2d 747 (2012). “In determining whether a particular activity constitutes a governmental function, the focus is on the precise activity giving rise to plaintiff’s claim rather than on the entity’s overall or principal operation.” *Margaris v Genesee Co*, 324 Mich App 111, 125; 919 NW2d 659 (2018), quoting *Everett v Saginaw Co*, 123 Mich App 411, 414; 333 NW2d 301 (1983).

Margaris illustrates the proper analysis. There, the Genesee County sheriff and undersheriff conducted a sting operation based on allegations that the plaintiff’s employee had been stealing meat from a restaurant called the Starlite Diner and selling it to the plaintiff, who owned a different restaurant. *Maragaris*, 324 Mich App at 114-115. The undersheriff facilitated an agreement in which the plaintiff paid \$1,800 in restitution to the Starlite Diner’s owner in exchange for avoiding criminal charges. *Id.* at 115. The plaintiff later sued the county, the sheriff, the undersheriff, and the owner of the Starlite Diner, “alleging that defendants committed fraud by misrepresenting facts in order to extort money from plaintiff and for intentional infliction of emotional distress, conversion, discrimination, harassment, and civil conspiracy.” *Id.* The plaintiff contended that the county “was not engaged in a governmental function” because the sting amounted to private debt collection. *Id.* at 125. We rejected that framing:

In determining whether a particular activity constitutes a governmental function, the focus is on the precise activity giving rise to plaintiff’s claim rather than on the entity’s overall or principal operation. Nonetheless, to use anything other than the general activity standard would all but subvert the broad governmental immunity intended by the Legislature because it would be difficult to characterize any tortious act that is a governmental function. Governmental immunity is differentiated from the immunity given to individuals in that the immunity granted by the GTLA to a governmental entity is based upon the general nature of the activity of its employees, rather than the specific conduct of its employees. Thus, to determine whether a governmental agency is engaged in a governmental function, the focus must be on the general activity, not the specific conduct involved at the time of the tort. [*Margaris*, 324 Mich App at 125-126 (cleaned up).]

We concluded that the county “was engaged in the governmental function of law enforcement, and, as discussed, the activity of law enforcement includes investigating suspected crimes and resolving those investigations.” *Id.* at 126. It was therefore entitled to immunity. *Id.*

The conduct at issue here likewise falls within the core functions of local government. Representing the County in civil litigation, prosecuting criminal charges, and employing attorneys to perform those functions all fall within the general scope of government activity. Because the analysis focuses on the general nature—and not the specific actions Doherty or Stella are alleged

to have taken in the course of their duties—Wayne County is immune from vicarious liability under the government immunity act.

Plaintiff claims that defendants’ descriptions of the activities “as ‘prosecuting crimes’ and ‘representing the County in civil matters’ are overly broad statements of Defendant Doherty’s and Defendant Stella’s ‘governmental mission.’ ” He asserts that Doherty and Stella acted outside the scope of their authority by abusing their offices to retaliate against him. But that framing misapprehends the relevant standard. As *Margaris* makes clear, the question is not whether the conduct was lawful or authorized, but whether the *type of activity* was one the government ordinarily performs. Recasting official conduct as personal misconduct does not disqualify it from being a governmental function for purposes of immunity.

Plaintiff also relies on language from the fractured decision in *Smith v Dep’t of Pub Health*, 428 Mich 540; 410 NW2d 749 (1987), but cites an opinion joined by only two justices. “Plurality decisions in which no majority of the justices participating agree as to the reasoning are not an authoritative interpretation binding on this Court under the doctrine of *Stare decisis*.” *Negri v Slotkin*, 397 Mich 105, 109; 244 NW2d 98 (1976). By contrast, *Margaris* is binding precedent, and plaintiff offers no persuasive reason to distinguish it here.

IV. PLAINTIFF’S CROSS-APPEAL

The trial court did expressly dismiss several aspects of plaintiff’s case: his request for injunctive relief, claims for money damages under the Michigan Constitution, and claims against Doherty. Plaintiff cross-appeals those rulings.

A. INJUNCTIVE RELIEF

Plaintiff first challenges the trial court’s conclusion that it lacked authority to enjoin future criminal prosecutions. “Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.” *Jeffrey v Clinton Twp*, 195 Mich App 260, 263-264; 489 NW2d 211 (1992). “When reviewing a grant of equitable relief, an appellate court will set aside a trial court’s factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews *de novo*.” *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

In *Jeffrey*, we addressed whether courts may enjoin criminal prosecutions. There, the defendant township enacted an ordinance prohibiting the possession of certain exotic animals. *Jeffrey*, 195 Mich App at 262. The plaintiffs had acquired a South American cougar before the ordinance was enacted. *Id.* at 261. After the township ordered its removal and the district court issued a warrant for violating the ordinance, the plaintiffs sought injunctive relief. *Id.* at 263. The circuit court “permanently enjoin[ed] defendant from enforcing the ordinance against plaintiffs” and later clarified “that the injunction applie[d] only to plaintiffs herein and with respect to the cougar they purchased in November 1987.” *Id.*

On appeal, the township argued that “criminal prosecutions are precluded from being enjoined.” *Id.* We rejected that categorical position as “an overstatement” but nevertheless agreed “that injunctive relief was improper in this case.” *Id.* While recognizing that criminal prosecutions

are generally not subject to injunctive relief, the Court cited two Supreme Court cases—*Mich Salt Works v Baird*, 173 Mich 655; 139 NW 1030 (1913), and *Ritchie v Hamtramck*, 340 Mich 284; 65 NW2d 732 (1954)—for a narrow exception. *Jeffrey*, 195 Mich App at 264. Under that exception, injunctive relief may be granted “where public officials are proceeding illegally and improperly under a claim of right, where it is alleged, as in the instant case, that the complainant thereby suffers irreparable injury.” *Id.*, quoting *Ritchie*, 340 Mich at 288. That irreparable injury “must result from the acts of the public officials in enforcing the allegedly invalid law.” *Jeffrey*, 195 Mich App at 264. In cases in which “an irreparable injury will result from the acts of public officials in attempting to proceed under an invalid law, the jurisdiction of equity may be invoked for the purpose of obtaining injunctive relief and a determination as to the constitutionality of the statute that is involved.” *Id.*, quoting *Diggs v State Bd of Embalmers & Funeral Directors*, 321 Mich 508, 514; 32 NW2d 728 (1948).

The rule from *Jeffrey* is therefore that courts may not enjoin criminal prosecutions unless public officials are proceeding under an invalid law, and the plaintiff will suffer irreparable harm as a result. *Jeffrey*, 195 Mich App at 264, citing *Ritchie*, 340 Mich at 288, and *Diggs*, 321 Mich at 514. Plaintiff in this case does not allege that the statute under which he was prosecuted is invalid. The trial court therefore correctly determined that injunctive relief was unavailable.

Plaintiff cites *Younger v Harris*, 401 US 37; 91 S Ct 746; 27 L Ed 2d 669 (1971), and *Dombrowski v Pfister*, 380 US 479; 85 S Ct 1116; 14 L Ed 2d 22 (1965), for the proposition that courts may enjoin criminal proceedings when the target of those proceedings demonstrates irreparable harm. But those cases address when *federal* courts may intervene in *state* prosecutions—raising issues of federalism and comity not relevant to this appeal. Moreover, *Dombrowski* involved prosecutions found to suppress free expression in an unconstitutional manner. 380 US at 492-498. And in *Younger*, 401 US at 53, the Supreme Court cautioned that *Dombrowski* “should not be regarded as having upset the settled doctrines that have always confined very narrowly the availability of injunctive relief against state criminal prosecutions.”

Because plaintiff has not shown that his prosecution was brought under an invalid law or that he otherwise falls within the narrow exception recognized in *Jeffrey*, the trial court properly denied his request to enjoin future prosecutions.

B. MONETARY DAMAGES

Plaintiff next challenges the trial court’s conclusion that he cannot pursue monetary damages against a local government for allegedly violating the Michigan Constitution. We agree with the trial court that plaintiff has no legal basis for such a claim.

There is no dispute that plaintiff has constitutionally protected rights—under both the United States and Michigan Constitutions—to criticize the government and to seek redress. The First Amendment guarantees freedom of expression and the right to petition the government for grievances. US Const, Am I; *Moody v NetChoice, LLC*, 603 US 707, 723; 144 S Ct 2383; 219 L Ed 2d 1075 (2024); *Bill Johnson’s Restaurants, Inc v NLRB*, 461 US 731, 741; 103 S Ct 2161; 76 L Ed 2d 277 (1983). The Michigan Constitution guarantees “the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.” Const 1963, art 1, § 3; *League of Women Voters of Mich v Secretary of*

State, 333 Mich App 1, 26; 959 NW2d 1 (2020). It also provides that “[e]very person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.” Const 1963, art 1, § 5; *League of Women Voters*, 333 Mich App at 26-27.

The Supreme Court has held that “[a] claim for damages against the state arising from violation by the state of the Michigan Constitution may be recognized in appropriate cases.” *Smith*, 428 Mich at 544. The question here is whether that remedy extends to counties.

Our caselaw says it does not. In *Jones v Powell*, 462 Mich 329; 612 NW2d 423 (2000), the plaintiff sued the City of Detroit and individual police officers for common-law torts and violations of the Michigan Constitution. The claims arose from the officers’ forced entry into the plaintiff’s home to search for a suspect they mistakenly believed was inside.⁴ *Id.* at 331-332. Although the jury awarded damages for the state constitutional claims, this Court reversed, explaining that *Smith* created only “a narrow remedy against the state where none otherwise would have existed.” *Jones v Powell*, 227 Mich App 662, 671; 577 NW2d 130 (1998). That rationale, we held, does not extend to municipalities or their employees. *Id.* The Supreme Court affirmed, holding that “*Smith* provides no support for inferring a damage remedy for a violation of the Michigan Constitution in an action against a municipality or an individual government employee.” *Jones*, 462 Mich at 335. The Court emphasized that *Smith* was based on “the unavailability of any other remedy,” a concern that is “inapplicable in actions against a municipality or an individual defendant.” *Id.* at 337. The Court concluded that § 1983 and common-law tort claims already provide sufficient recourse against local governments and their officials. *Id.*

Undeterred by *Jones*’s clear holding, plaintiff turns to *Bauserman v Unemployment Ins Agency*, 509 Mich 673; 983 NW2d 855 (2022), to contend that damages claims are available against local governments. In *Bauserman*, the plaintiffs alleged that a state agency violated their due process rights under the Michigan Constitution, Const 1963, art 1, § 17, when it “adjudicated allegations of fraud, seized plaintiffs’ tax returns, and imposed penalties on plaintiffs without providing meaningful notice or an opportunity to be heard . . .” *Id.* at 681. The Court reiterated *Smith*’s holding that “[a] claim for damages against the state arising from violation by the state of the Michigan Constitution may be recognized in appropriate cases.” *Id.* at 693, quoting *Smith*, 428 Mich at 544. After analyzing the plaintiff’s claims, the Court recognized a right to seek monetary relief. It explained:

When the language of the Constitution itself does not delegate that responsibility to another branch of government and when the Legislature has not enacted an adequate alternate remedy for the constitutional violation, we will recognize and enforce a monetary-damages remedy. [*Id.* at 711.]

In a footnote addressing concerns raised by Justice VIVIANO in his dissenting opinion, the Court expressly declined to extend its holding to local governments or their officials:

⁴ The plaintiff also asserted claims under § 1983, which were removed to federal court. *Jones*, 462 Mich at 332.

Justice VIVIANO mentions liability for cities and villages as well as individuals who operate public utilities. But our holding is that the *state* is liable for harms it commits in violation of the Constitution; whether other entities, such as municipal governments or individual government actors, can be liable for constitutional torts is not before us, and we decline to address that question in what would be dictum. [*Bauserman*, 509 Mich at 708 n 13.]

Thus, *Bauserman* reaffirmed the limited scope of *Smith* and did not disturb the clear bar set by *Jones*. Even if a future decision were to extend *Bauserman* to local governments, its reasoning would still require the absence of alternative remedies. Here, plaintiff alleges that defendants violated his state constitutional rights to free expression and to petition the government for redress—rights also guaranteed by the United States Constitution. *Mills v Alabama*, 384 US 214, 218; 86 S Ct 1434; 16 L Ed 2d 484 (1966); US Const, Am I. Plaintiff therefore has a potential avenue for relief under 42 USC 1983, assuming he can properly plead and prove his claims. Because alternative remedies are available, and because *Jones* remains binding, the trial court correctly dismissed plaintiff’s claim for damages under the Michigan Constitution.

C. DOHERTY’S IMMUNITY

Finally, plaintiff contends that the trial court erred in concluding that Doherty is entitled to absolute prosecutorial immunity. While the law on this subject is unsettled, we agree that Doherty is not entitled to absolute immunity.

1. PROSECUTORIAL IMMUNITY

Governmental immunity for public officials is set out in MCL 691.1407. Under § 1407(5), “[a] judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.” Because Doherty is an assistant prosecutor—not the “elective or highest appointive executive official”—he does not qualify for immunity under § 1407(5). Instead, his immunity is governed by § 1407(2), which applies to government employees.

Under § 1407(2), an employee is immune from tort liability if: (1) the employee “is acting or reasonably believes he or she is acting within the scope of his or her authority”; (2) “[t]he governmental agency is engaged in the exercise or discharge of a governmental function”; and (3) the conduct at issue “does not amount to gross negligence that is the proximate cause of the injury or damage.” Section 1407(3) further clarifies that § 1407(2) “does not alter the law of intentional torts as it existed before July 7, 1986,” the effective date of the 1986 amendments to the statute. Because plaintiff alleges intentional torts, the relevant inquiry is what the law provided regarding prosecutorial immunity before that date.

The leading case on prosecutorial immunity in that context is *Bischoff v Calhoun Co Prosecutor*, 173 Mich App 802; 434 NW2d 249 (1988). In *Bischoff*, the plaintiff, a former police officer, brought claims for defamation and intentional interference with contractual rights against a county prosecutor who had allegedly reported the plaintiff’s suspected involvement in criminal

activity to his employer. *Id.* at 803-804. No charges were filed, but the plaintiff sued. *Id.* at 804. This Court held that the prosecutor was entitled to absolute immunity under § 1407(5). *Id.* at 806.

In reaching that conclusion, the Court addressed the plaintiff’s argument that the prosecutor “was not performing a judicial or quasi-judicial function” and therefore should not be protected by absolute immunity. *Id.* at 807. The Court acknowledged that courts had previously “distinguished activity which is quasi-judicial in nature, and therefore absolutely immune, from prosecutorial activity which is essentially investigative or administrative and therefore entitled to only the protection of the qualified immunity.” *Id.* at 809, citing *Imbler v Pachtman*, 424 US 409, 430; 96 S Ct 984; 47 L Ed 2d 128 (1976), and *Payton v Wayne Co*, 137 Mich App 361, 367; 357 NW2d 700 (1984).

Although *Bischoff* ultimately rested on the statutory language, its endorsement of the functional distinction between quasi-judicial and administrative or investigative functions remains instructive. That said, *Bischoff* is not controlling here. Unlike the prosecutor in *Bischoff*, Doherty does not qualify for § 1407(5) immunity, and the opinion predates November 1, 1990, meaning it is not binding under MCR 7.215(J)(1).

Nevertheless, this Court has repeatedly cited *Bischoff* in unpublished opinions to reaffirm the distinction between absolute immunity for quasi-judicial acts and only qualified immunity for investigative or administrative conduct.⁵ We find that approach persuasive. Accordingly, we conclude that Doherty is entitled to absolute immunity only if the challenged conduct was quasi-judicial in nature. If instead his actions were investigative or administrative, he is entitled only to qualified immunity.

2. APPLICATION TO DOHERTY

Having established that Doherty’s entitlement to absolute immunity depends on the nature of his conduct, we must determine whether his alleged actions were quasi-judicial or instead administrative or investigative in character. We conclude that only qualified immunity applies.

The relevant principles are set out in *Buckley v Fitzsimmons*, 509 US 259; 113 S Ct 2606; 125 L Ed 2d 209 (1993). There, the Supreme Court explained that “[a] prosecutor’s administrative duties and those investigatory functions that do not relate to an advocate’s preparation for the initiation of a prosecution or for judicial proceedings are not entitled to absolute immunity.” *Id.* at 273. Those investigatory functions include activities “normally performed by a detective or police officer,” such as “searching for the clues and corroboration that might give him probable cause to recommend that a suspect be arrested” *Id.* By contrast, actions such as evaluating evidence or interviewing witnesses in preparation for trial fall within a prosecutor’s quasi-judicial

⁵ See, e.g., *Genuine Solutions Counseling Ctr PLLC v Governor*, unpublished per curiam opinion of the Court of Appeals, issued June 20, 2024 (Docket No. 364180); *Trendell v Hackel*, unpublished opinion per curiam of the Court of Appeals, issued September 12, 2019 (Docket No. 345520); *McCarthy v Scofield*, unpublished per curiam opinion of the Court of Appeals, issued October 8, 2009 (Docket No. 284129); *Kasben v Aylsworth*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2001 (Docket No. 223084).

role and are protected by absolute immunity. *Id.* The Sixth Circuit applied that distinction in *Harris v Bornhorst*, 513 F3d 503, 510-511 (CA 6, 2008), where it held that a prosecutor who ordered an arrest without first assessing probable cause acted “in an administrative or investigative capacity” and was therefore “not entitled to absolute immunity.”

Although plaintiff filed an amended complaint while this appeal was pending, Doherty’s immunity turns on the legal character of the conduct alleged—an issue that can be resolved on the face of the original pleadings. Plaintiff alleged that Doherty contacted the new officer in charge of the task force to seek clarification, recommended submission of the warrant request, and directed the officer in charge to file that request. Those allegations suggest that Doherty’s conduct was aimed at reviving a dormant prosecution and falls within the category of investigative or administrative acts, not quasi-judicial ones. Because the alleged conduct is not protected by absolute immunity, the trial court erred in dismissing the claims against Doherty on that basis. We express no opinion as to whether plaintiff has otherwise stated a valid claim against Doherty, but we remand for the trial court to evaluate Doherty’s entitlement to qualified immunity.

V. CONCLUSION

Given the complex issues and procedural posture of this appeal, we summarize our holdings as follows: First, we affirm the trial court’s dismissal of plaintiff’s claims for injunctive and monetary relief under the Michigan Constitution. Second, we hold that prosecutors are entitled to absolute immunity only for judicial or quasi-judicial functions, and qualified immunity for administrative or investigative acts. Because plaintiff alleges that Doherty’s conduct fell into the latter category, we reverse the trial court’s grant of absolute immunity and remand for proceedings consistent with a qualified immunity analysis. Third, we hold that Wayne County is entitled to governmental immunity from vicarious liability for the alleged intentional torts of its employees and reverse the trial court’s ruling to the contrary. Finally, we conclude that defendants’ challenges to the sufficiency of plaintiff’s original complaint are moot in light of the amended complaint filed under MCR 2.116(I)(5). This ruling does not preclude defendants from filing a renewed motion for summary disposition under MCR 2.116(C)(8) on remand.

/s/ Matthew S. Ackerman

/s/ Kirsten Frank Kelly

/s/ Colleen A. O’Brien

APPENDIX D

Register of Actions

REGISTER OF ACTIONS

CASE NO. 23-003148-CZ

RECEIVED by MSC 3/13/2026 6:14:31 PM

PARTY INFORMATION

Defendant	Assistant Corporation Counsel Davidde Stella	Attorneys
		T. Joseph Seward <i>Retained</i> (248) 733-3580(W)
		Kali M. L. Henderson <i>Retained</i> (248) 733-3580(W)
Defendant	Assistant Prosecuting Attorney Dennis Doherty	T. Joseph Seward <i>Retained</i> (248) 733-3580(W)
		Kali M. L. Henderson <i>Retained</i> (248) 733-3580(W)
Defendant	County of Wayne	T. Joseph Seward <i>Retained</i> (248) 733-3580(W)
		Kali M. L. Henderson <i>Retained</i> (248) 733-3580(W)
Defendant	Doherty, Dennis	T. Joseph Seward <i>Retained</i> (248) 733-3580(W)
		Kali M. L. Henderson <i>Retained</i> (248) 733-3580(W)
Defendant	Stella, Davidde	T. Joseph Seward <i>Retained</i> (248) 733-3580(W)
		Kali M. L. Henderson <i>Retained</i> (248) 733-3580(W)
Plaintiff	Reeves, Robert	Barton W. Morris <i>Retained</i> (248) 541-2600(W)
		Benjamin Field <i>Retained</i> 703-682-9320(W)
		Christian Lansinger <i>Retained</i> 703-682-9320(W)
		Kirby West <i>Retained</i> 703-682-9320(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS	
03/09/2023	Complaint, Filed (Clerk: Flanagan, J)
03/09/2023	Service Review Scheduled (Clerk: Flanagan, J) (Due Date: 06/08/2023)
03/09/2023	Status Conference Scheduled (Clerk: Flanagan, J)
03/09/2023	Case Filing Fee - Paid \$175.00 Fee Paid (Clerk: Flanagan,J)
03/16/2023	Miscellaneous Motion, Filed Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Keefe,C)
03/16/2023	Miscellaneous Motion, Filed Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Keefe,C)
03/16/2023	Miscellaneous Motion, Filed Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Keefe,C)
03/29/2023	Proof of Service, Filed (Clerk: Fletcher,L)
03/29/2023	Proof of Service, Filed (Clerk: Fletcher,L)
03/29/2023	Proof of Service, Filed (Clerk: Fletcher,L)
04/06/2023	Appearance of Attorney, Filed (Clerk: Ruff,J)
04/06/2023	Proof of Service, Filed (Clerk: Ruff,J)
04/06/2023	Appearance of Attorney, Filed (Clerk: Ruff,J)
04/06/2023	Proof of Service, Filed (Clerk: Ruff,J)
04/06/2023	Miscellaneous Pleadings, Filed (Clerk: Ruff,J)
04/06/2023	Proof of Service, Filed (Clerk: Ruff,J)
04/11/2023	Proof of Service, Filed (Clerk: Howard,B)
04/11/2023	Miscellaneous Pleadings, Filed (Clerk: Howard,B)
04/17/2023	Service of Complaint, filed (Clerk: Chapman,L)
04/17/2023	Proof of Service, Filed (Clerk: Chapman,L)
04/21/2023	Proof of Service, Filed (Clerk: Ruff,J)
04/21/2023	Motion to Dismiss, Filed Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Ruff,J)
05/01/2023	Praecipe, Filed (Judicial Officer: Hubbard, Susan L.) (Clerk: Rector,C)
05/01/2023	Order, Signed and Filed (Clerk: Rector,C)
05/02/2023	Proof of Service, Filed (Clerk: Rector,C)
05/09/2023	Order Pro Hac Vice, Signed and Filed (Clerk: Rector,C)
05/16/2023	Proof of Service, Filed (Clerk: Lawrence,M)
05/16/2023	Miscellaneous Pleadings, Filed (Clerk: Lawrence,M)
06/07/2023	Status Conference (8:00 AM) (Judicial Officer Hubbard, Susan L.) 06/06/2023 Reset by Court to 06/07/2023 06/09/2023 Reset by Court to 06/06/2023 Result: Reviewed by Court
06/07/2023	Status Conference Scheduling Order, Signed and Filed (Clerk: Rector,C)
06/09/2023	Proof of Service, Filed (Clerk: Powell,K)
06/09/2023	Answer to Motion, Filed (Clerk: Powell,K)
06/14/2023	Proof of Service, Filed (Clerk: Ruff,J)
06/14/2023	Reply to Brief, Filed (Clerk: Ruff,J)
07/06/2023	Motion Hearing (9:30 AM) (Judicial Officer Hubbard, Susan L.) Defendants - Defendants' Motion for Summary Disposition Result: Held
07/06/2023	Motion Granted in Part/Denied in Part, Order to Follow (Judicial Officer: Hubbard, Susan L.) (Clerk: Rector,C)
07/20/2023	Proof of Service, Filed (Clerk: Hamed,I)
07/28/2023	Proof of Service, Filed

(Clerk: Rector,C)
08/02/2023 [Order Granting in Part/Denying in Part, Signed and Filed](#)
(Clerk: Rector,C)
08/22/2023 [Proof of Service, Filed](#)
(Clerk: DeLoach,K)
08/22/2023 [Claim of Appeal, Filed](#)
(Clerk: DeLoach,K)
08/22/2023 [Proof of Service, Filed](#)
(Clerk: Ruff,J)
08/22/2023 [Miscellaneous Pleadings, Filed](#)
(Clerk: Ruff,J)
08/25/2023 [Proof of Service, Filed](#)
(Clerk: Harrison,S)
08/25/2023 [Amended Complaint, Filed](#)
(Clerk: Harrison,S)
08/28/2023 CANCELED **Review Hearing** (8:15 AM) (Judicial Officer Hubbard, Susan L.)
Dismiss Hearing or Injunction
Scheduling Order Dates?
Dismiss Hearing or Injunction
08/31/2023 [Proof of Service, Filed](#)
(Clerk: Harrison,S)
08/31/2023 [Motion for Stay of Proceedings, Filed](#)
Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Harrison,S)
09/01/2023 [Proof of Service, Filed](#)
(Clerk: Ruff,J)
09/01/2023 [Exhibit, Filed](#)
(Clerk: Ruff,J)
09/08/2023 [Notice of Hearing, Filed](#)
(Clerk: Chapman,L)
09/08/2023 [Proof of Service, Filed](#)
(Clerk: Chapman,L)
09/12/2023 [Proof of Service, Filed](#)
(Clerk: Keefe,C)
09/12/2023 [Claim of Appeal, Filed](#)
(Clerk: Keefe,C)
09/13/2023 [Praecipe, Filed](#) (Judicial Officer: Hubbard, Susan L.)
(Clerk: Rector,C)
09/21/2023 [Proof of Service, Filed](#)
(Clerk: Ruff,J)
09/21/2023 [Miscellaneous Pleadings, Filed](#)
(Clerk: Ruff,J)
09/21/2023 [Notice of Hearing, Filed](#)
(Clerk: Ruff,J)
09/21/2023 [Proof of Service, Filed](#)
(Clerk: Ruff,J)
09/22/2023 **Motion Hearing** (9:00 AM) (Judicial Officer Hubbard, Susan L.)
Defendants - Defendants' Motion to Stay Proceedings Pending Appeal
Result: Held
09/22/2023 **Motion Granted, Order to Follow** (Judicial Officer: Hubbard, Susan L.)
df mo to stay proceedings (Clerk: Fletcher,L)
09/27/2023 [Proof of Service, Filed](#)
(Clerk: Ruff,J)
09/27/2023 [Miscellaneous Pleadings, Filed](#)
(Clerk: Ruff,J)
09/29/2023 **Case Evaluation - General Civil**
per order s/f on 09/29; case is in a Stay. gt) (Clerk: Laws,E) (Complete Date: 09/29/2023)
09/29/2023 [Closed/Final - Ord for Stay of Proceedings, Signed and Filed](#)
(Clerk: Fletcher,L)
09/29/2023 [Proof of Service, Filed](#)
(Clerk: Fletcher,L)
10/10/2023 [Higher Court Order/Decision Received by Circuit Court](#)
PERMIT OUT OF STATE ATTORNEY IS GRANTED COA # 367444 (Clerk: Causey,R)
10/10/2023 [Higher Court Order/Decision Received by Circuit Court](#)
PERMIT OUT OF STATE ATTORNEY IS GRANTED COA # 367444 (Clerk: Causey,R)
10/16/2023 [Higher Court Order/Decision Received by Circuit Court](#)
LEAVE TO APPEAL IS GRANTED COA # 367444 (Clerk: Causey,R)
10/17/2023 [Higher Court Order/Decision Received by Circuit Court](#)
GRANTED COA#367447 (Clerk: Hampton,A)
01/16/2024 CANCELED **Settlement Conference** (9:30 AM) (Judicial Officer Hubbard, Susan L.)
Dismiss Hearing or Injunction
Dismiss Hearing or Injunction
01/23/2024 [Transcript, Filed](#)
(Clerk: Causey,R)
01/24/2024 CANCELED **Settlement Conference** (9:30 AM) (Judicial Officer Hubbard, Susan L.)
Dismiss Hearing or Injunction
Dismiss Hearing or Injunction
01/24/2024 **File Sent**
File Sent To COA 367444 01/24/24 (Clerk: Hampton,A)
05/23/2025 [Higher Court Order/Decision Received by Circuit Court](#)
APPEAL DENIED COA#367444; 367447 (Clerk: Walker,A)
06/09/2025 [Higher Court Order/Decision Received by Circuit Court](#)
Published-Affirm in Part, Reverse in Part, Remanded COA#367444 AND 367447 (Clerk: Walker,A)
06/23/2025 **Review Hearing** (8:30 AM) (Judicial Officer Hubbard, Susan L.)
Stay COA?

- 03/04/2024 *Reset by Court to 04/15/2024*
- 04/15/2024 *Reset by Court to 05/20/2024*
- 05/20/2024 *Reset by Court to 06/10/2024*
- 06/10/2024 *Reset by Court to 07/01/2024*
- 07/01/2024 *Reset by Court to 07/15/2024*
- 07/15/2024 *Reset by Court to 08/05/2024*
- 08/05/2024 *Reset by Court to 08/26/2024*
- 08/26/2024 *Reset by Court to 09/16/2024*
- 09/16/2024 *Reset by Court to 09/30/2024*
- 09/30/2024 *Reset by Court to 10/21/2024*
- 10/21/2024 *Reset by Court to 10/23/2024*
- 10/23/2024 *Reset by Court to 11/25/2024*
- 11/25/2024 *Reset by Court to 12/16/2024*
- 12/16/2024 *Reset by Court to 01/27/2025*
- 01/27/2025 *Reset by Court to 03/03/2025*
- 03/03/2025 *Reset by Court to 03/24/2025*
- 03/24/2025 *Reset by Court to 04/07/2025*
- 04/07/2025 *Reset by Court to 04/28/2025*
- 04/28/2025 *Reset by Court to 06/02/2025*
- 06/02/2025 *Reset by Court to 06/05/2025*
- 06/05/2025 *Reset by Court to 06/23/2025*
- 07/16/2025 Result: Reviewed by Court
Higher Court Order/Decision Received by Circuit Court
APPEAL DENIED COA#367447 (Clerk: Walker,A)
- 08/01/2025 **Higher Court Order/Decision Received by Circuit Court**
RETURN OF RECORD TO THE TRIAL COURT OR TRIBUNAL, COA# 367447. (Clerk: Long,F)
- 08/05/2025 **Special Conference** (9:30 AM) (Judicial Officer Hubbard, Susan L.)
Returned from COA. Minutes Comment: Clerk Not Present (Clerk: Rector, C Date: 08-06-25)
- 08/20/2025 Result: Held
Settlement Conference (9:30 AM) (Judicial Officer Hubbard, Susan L.)
FSC. Minutes Comment: Clerk Not Present (Clerk: Rector, C Date: 08-21-25)
- 08/27/2025 Result: Held
Proof of Service, Filed
(Clerk: Ruff,J)
- 08/27/2025 **Motion to Withdraw as Attorney, Filed**
Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Ruff,J)
- 08/27/2025 **Miscellaneous Pleadings, Filed**
(Clerk: Parkinson,J)
- 08/27/2025 **Proof of Service, Filed**
(Clerk: Parkinson,J)
- 09/15/2025 **Miscellaneous Motion, Filed**
Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Ruff,J)
- 09/15/2025 **Proof of Service, Filed**
(Clerk: Ruff,J)
- 09/15/2025 **Affidavit, Filed**
(Clerk: Ruff,J)
- 11/12/2025 **Proof of Service, Filed**
(Clerk: Parkinson,J)
- 11/17/2025 **Order Pro Hac Vice, Signed and Filed**
(Clerk: Rector,C)
- 11/21/2025 **Proof of Service, Filed**
(Clerk: Payne,Y)
- 11/24/2025 **Order to Withdraw as Attorney, Signed and Filed**
(Clerk: Rector,C)
- 03/04/2026 **Settlement Conference** (9:30 AM) (Judicial Officer Hubbard, Susan L.)
FSC

FINANCIAL INFORMATION

To pay on Adult Criminal cases [CLICK HERE](#)

Plaintiff Reeves, Robert			
	Total Financial Assessment		365.00
	Total Payments and Credits		365.00
	Balance Due as of 02/23/2026		0.00
03/10/2023	Transaction Assessment		175.00
03/10/2023	eFiling	Receipt # 2023-16639	The Law Offices of Barton Morris (175.00)
03/20/2023	Transaction Assessment		20.00
03/20/2023	eFiling	Receipt # 2023-18736	The Law Offices of Barton Morris (20.00)
03/20/2023	Transaction Assessment		20.00
03/20/2023	eFiling	Receipt # 2023-18737	The Law Offices of Barton Morris (20.00)
03/20/2023	Transaction Assessment		20.00
03/20/2023	eFiling	Receipt # 2023-18739	The Law Offices of Barton Morris (20.00)

04/25/2023	Transaction Assessment			20.00
04/25/2023	eFiling	Receipt # 2023-28100	Seward Henderson PLLC	(20.00)
08/23/2023	Transaction Assessment			25.00
08/23/2023	eFiling	Receipt # 2023-57716	Seward Henderson PLLC	(25.00)
09/05/2023	Transaction Assessment			20.00
09/05/2023	eFiling	Receipt # 2023-61411	Seward Henderson PLLC	(20.00)
09/13/2023	Transaction Assessment			25.00
09/13/2023	eFiling	Receipt # 2023-63872	Institute for Justice	(25.00)
08/28/2025	Transaction Assessment			20.00
08/28/2025	eFiling	Receipt # 2025-66894	Institute for Justice	(20.00)
09/15/2025	Transaction Assessment			20.00
09/15/2025	eFiling	Receipt # 2025-72067	Law Offices of Barton Morris	(20.00)

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APPENDIX E

Defendants-Appellants' Consolidated Brief on Appeal

STATE OF MICHIGAN
IN THE COURT OF APPEALS

ROBERT REEVES

Plaintiff-Appellee/Cross-Appellant

Docket Nos. 367444, 367447
Lower Court Case No. 23-003148-CZ
Hon. Susan L. Hubbard

v.

**COUNTY OF WAYNE; ASSISTANT
CORPORATION COUNSEL**

DAVIDDE STELLA, sued in his
individual and official capacity;

Defendant-Appellants/Cross-Appellees

and

ASSISTANT PROSECUTING

ATTORNEY DENNIS DOHERTY, sued in his
Individual and official capacity.

Defendant-Cross-Appellee.

DEFENDANT-APPELLANTS' CONSOLIDATED BRIEF ON APPEAL

*****ORAL ARGUMENT REQUESTED*****

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STATEMENT OF JURISDICTION

This Court's jurisdiction is two-fold. First, the primary appeal was filed under MCR 7.203(A)(1) and 7.202(6)(a)(v). On August 1, 2023, the trial court signed an order granting in part, and denying in part, Defendants' Motion for Summary Disposition. Defendants filed this primary appeal on August 22, 2023.

Second, the secondary portion of this appeal was filed as an application for leave to appeal under MCR 7.203(B)(1). The application was filed on August 22, 2023. This Court granted the application on October 16, 2023. In the same order, this Court consolidated the appeals.

Plaintiff has also filed a cross-appeal consistent with 7.207(A)(1), appealing the partial grant of Defendant's Motion for Summary Disposition.

STATEMENT OF QUESTIONS INVOLVED

I. WHETHER THE LOWER COURT ERRED BY NOT DECIDING THE PROBABLE CAUSE ARGUMENT PRESENTED BY DEFENDANTS THAT DEMONSTRATES PLAINTIFF HAS NOT PLEAD ANY OF THE ACTIONS TAKEN AGAINST HIM WERE ILLEGAL?

Defendants answer, "Yes."

Plaintiff answers, "No."

II. WHETHER THE LOWER COURT ERRED BY NOT GRANTING DEFENDANT STELLA QUALIFIED IMMUNITY WHERE PLAINTIFF FAILED TO PRESENT A SINGLE CASE ON POINT?

Defendants answer, "Yes."

Plaintiff answers, "No."

III. WHETHER THE LOWER COURT ERRED BY NOT GRANTING DEFENDANT STELLA QUALIFIED IMMUNITY BECAUSE PLAINTIFF DID NOT PLEAD A VIOLATION OF HIS CONSTITUTIONAL RIGHTS?

Defendants answer, "Yes."

Plaintiff answers, "No."

IV. WHETHER THE LOWER COURT ERRED BY NOT RULING THAT PLAINTIFF FAILED TO PLEAD A FIRST AMENDMENT CLAIM BECAUSE HE PLED THAT THE DISPUTED ACTIONS WERE SUPPORTED BY PROBABLE CAUSE?

Defendants answer, "Yes."

Plaintiff answers, "No."

V. WHETHER THE LOWER COURT ERRED BY NOT DISMISSING THE FEDERAL CLAIM AGAINST WAYNE COUNTY BECAUSE NO CONSTITUTIONAL VIOLATION OCCURRED?

Defendants answer, "Yes."

Plaintiff answers, "No."

VI. WHETHER THE LOWER COURT ERRED BY NOT GRANTING DEFENDANT STELLA IMMUNITY UNDER MICHIGAN LAW FOR THE INTENTIONAL TORT CLAIMS BASED ON THE ALLEGATIONS IN THE COMPLAINT?

Defendants answer, "Yes."

Plaintiff answers, “No.”

VII. WHETHER THE LOWER COURT ERRED BY NOT FINDING THAT PLAINTIFF HAD FAILED TO PLEAD AN ABUSE OF PROCESS CLAIM WHERE HE CHALLENGES NOTHING MORE THAN THE INITIATION OF PROCESS?

Defendants answer, “Yes.”

Plaintiff answers, “No.”

VIII. WHETHER THE LOWER COURT ERRED BY NOT FINDING THAT PLAINTIFF HAD FAILED TO PLEAD A MALICIOUS PROSECUTION CLAIM?

Defendants answer, “Yes.”

Plaintiff answers, “No.”

IX. WHETHER THE LOWER COURT ERRED BY RULING THAT WAYNE COUNTY IS NOT IMMUNE FROM THE INTENTIONAL TORTS OF ABUSE OF PROCESS AND MALICIOUS PROSECUTION?

Defendants answer, “Yes.”

Plaintiff answers, “No.”

X. WHETHER THE LOWER COURT ERRED BY RULING THAT WAYNE COUNTY CAN BE VICARIOUSLY LIABLE FOR AN EMPLOYEE’S INTENTIONAL TORTS?

Defendants answer, “Yes.”

Plaintiff answers, “No.”

STATEMENT OF FACTS

I. INTRODUCTION

In 2019, Plaintiff was arrested by the Michigan State Police, who also seized his vehicle. This case arises out of that arrest and seizure, which has subsequently spawned multiple court actions. This suit complains about the actions that occurred in two of those court actions: Plaintiff's criminal prosecutions and his lawsuit challenging the seizure of his vehicle. Plaintiff alleges that his rights were violated by the prosecutor that charged him (Prosecutor Doherty), the attorney that defended against his lawsuit (Assistant Corporation Counsel Stella), and the County that employs both of those individuals. Defendants challenged this lawsuit from the outset by filing a dispositive motion, raising various defenses, and the trial erred in addressing some of those arguments and dismissing only Defendant Doherty. Defendants now appeal the rulings that left Defendant Stella and Wayne County in the suit. The parties have agreed to condense the issues in the main appeal and application for leave to appeal; thus, Defendants Stella and Wayne County raise all the reasons the Lower Court erred in not dismissing them in this brief.

II. ALLEGATIONS UNDERLYING MOTION

The below summary of events is pulled from Plaintiff's Complaint and its attachments. Defendants' underlying dispositive motion was based purely on these allegations. Plaintiff's Complaint, and its exhibits, is included in the Appendix as item five.

A. *The Criminal Cases*

In "early 2019," Plaintiff owned a car, a Chevrolet Camaro, that he had been working on and hoped to sell. [Appendix 5, p. 59, ¶ 19] He drove this car to meet with his friend and sometimes colleague, Javone Williams, at a job site. [Appendix 5, p. 59, ¶ 20, 23] At the job site, Plaintiff "demonstrated to Javone that he knew how to operate a skid-steer loader." [Ex. 1, Complaint, p. 055, ¶ 21] But when he left, he was met by unidentified officers at a gas station who "demanded to know what he knew about the skid steer, which they alleged had been stolen from Home Depot." [Appendix 5, p. 59, ¶ 21] The unidentified officers detained him "for several hours at a local jail" before releasing him without his car, cell phones or \$2,280.00 in cash. [Appendix 5, p. 59, ¶ 22-23]

As it turns out, a **Michigan State Police** ("MSP") task force had been investigating "a string of rental equipment thefts from Home Depot stores." [Appendix 5, p. 61, ¶ 35] The seizure of the car and cash after the detainment was part of the investigation. [Appendix 5, p. 61, ¶ 35] A

warrant request for Plaintiff was submitted on September 5, 2019, by the MSP task force. [Appendix 5, p. 61, ¶ 36]

The “police did not release” his property for “nearly six months.” [Appendix 5, p. 59, ¶ 24 (emphasis added)]. They held onto it without filing a forfeiture complaint or providing Plaintiff with an opportunity to contest it. [Appendix 5, p. 59, ¶ 24] After futile attempts to regain his property from the police, he filed a class action lawsuit on February 4, 2020, with two other individuals, against Wayne County to challenge their vehicle forfeitures on various grounds. [Appendix 5, p. 60, ¶ 26-27] See Section II for more on this lawsuit.

The Wayne County Prosecutor’s Office then directed the Michigan State Police to release Plaintiff’s property. [Appendix 5, p. 60, ¶ 28-29] Plaintiff received his money and vehicle back shortly thereafter. [Appendix 5, p. 60-7, ¶ 30-33]

On February 5, 2020, Defendant Dennis Doherty, an Assistant Prosecutor with the Wayne County Prosecutor’s Office, sought clarification from the “new officer-in-charge of the investigation.” [Appendix 5, p. 61-2, ¶ 38] On February 15, 2020, a new warrant request was submitted by the officer-in-charge and Doherty “recommended submission of the request.” [Appendix 5, p. 62 ¶ 39] On March 12, 2020, a warrant was issued by the Wayne County Circuit Court for Plaintiff, and his friend Javone, on two felony counts of receipt or concealment of stolen property. [Appendix 5, p. 61, ¶ 34] Plaintiff was picked up on the warrant weeks later, spent a weekend in jail, and was released on bond. [Appendix 5, p. 62, ¶ 43-44]

After Covid-19 related delays, a preliminary examination was held on February 8, 2021. [Appendix 5, p. 62, ¶ 46-48] The case was dismissed for “insufficient evidence.” [Appendix 5, p. 62, ¶ 47-48]

On February 12, 2021, two felony charges were filed against Plaintiff again. [Appendix 5, p. 63, ¶ 49] Charges were not filed against Javone. [Appendix 5, p. 63, ¶ 51] The warrant was again issued by a court, signed by then-Magistrate Judge Millicent Sherman. [Appendix 5, p. 63, ¶ 50, p. 080]

A preliminary examination was held on January 26, 2022. [Appendix 5, p. 63, ¶ 53] The case was dismissed when the “COMPLAINING WITNESS FAILED TO APPEAR.” [Appendix 5, p. 64, ¶ 54-55 and Exhibit 4 to Complaint, p. 086]

B. The Federal Lawsuit

Attorney and Defendant Davidde Stella defended Wayne County in Plaintiff's federal class action suit. [Appendix 5, p. 64, ¶ 57] Attorney Stella is employed by the Department of Corporation Counsel for Wayne County. [Appendix 5, p. 58, ¶ 15] In defending the County, Defendant Stella filed a motion presenting the legal argument that the federal court should abstain until the criminal proceedings concluded. [Appendix 5, p. 64, ¶ 57] Both Plaintiff and Defendant Stella kept the federal court apprised of the criminal case's status. [Appendix 5, p. 64, ¶ 58-60]

Plaintiff alleges that Defendant Stella "directed or requested" Defendant Doherty to pursue the criminal charges against Plaintiff. [Appendix 5, p. 65, ¶ 61]

C. This Civil Suit

Plaintiff filed this suit to address constitutional issues and other violations, both federal and state, that he believes occurred based on the above-described conduct. He filed three counts: a Michigan Constitutional challenge, a federal First Amendment Retaliation claim, and a state tort Malicious Prosecution/Abuse of Process claim. [Appendix 5, p. 68-73] He seeks compensatory and punitive damages, in addition to declaratory and injunctive relief, including "an order permanently enjoining Defendants from prosecuting [Plaintiff] with the crimes alleged in the first two meritless prosecutions..." [Appendix 5, p. 74, ¶ A-D]

Plaintiff alleges several facts concerning a non-party (Stephanie Wilson) and actions taken against her by others in the Wayne County Prosecutor's Office, such as statements made by Prosecutor Hamdan (not a defendant). These allegations, presumably, are an attempt to paint a broader picture of an alleged forfeiture conspiracy, however, they are not relevant to the issues in the underlying motion or this appeal.

III. PROCEDURAL HISTORY

Defendants filed a dispositive motion in lieu of answering. Defendants sought dismissal of the whole complaint. The Court held oral arguments on the motion and issued an oral ruling. In its oral ruling, the trial court granted the motion in part, and denied it in part. Specifically, Defendant Doherty was dismissed in full, as the Court found that he is entitled to absolute immunity for his alleged actions that were prosecutorial. [Appendix 3, p. 43-45] The Michigan constitutional claim and claim for injunctive relief were dismissed as to all defendants as well. [Appendix 3, p. 39-43] But the trial court denied the requests to dismiss the claims federal and intentional tort claims against Attorney Stella and Wayne County.

Attorney Stella had raised two grounds for dismissal for both the federal and state law claims. He argued that he was entitled to qualified immunity (federal and state) and that Plaintiff had failed to plead a claim upon which relief could be granted. The arguments were, in part, based upon the fact that Plaintiff did not challenge the underlying findings of probable cause supporting the warrants he pled were signed by neutral judiciaries. Instead, Plaintiff only alleged the legal conclusion that Defendants actions were not supported by probable cause, but did not support this conclusion with factual allegations. The trial court did not directly address this issue, instead issuing a confusing statement that plaintiff could amend his complaint and that factual development was needed. [Appendix 3, p. 49]

The trial court ruled that Attorney Stella was not entitled to immunity under state law because factual development was required to prove that Stella was acting in good faith where Plaintiff has plead that Stella was not acting in good faith because he was acting without probable cause.¹ [Appendix 3, p. 46] In so ruling, the trial court also acknowledged that Stella argued Plaintiff's allegations were conclusory, and stated that Stella's were "also conclusory." [Appendix 3, p. 46] Yet, the trial court did not address how Plaintiff could proceed with only conclusory allegations unsupported by facts. This was an error and if corrected, Stella is entitled to dismissal.

The trial court then ruled that it could not dismiss the County due to the same factual question because "[t]he County's liability is vicarious." [Appendix 3, p. 47] This is a plain misstatement and application of the law and when corrected, Wayne County will be entitled to immunity and dismissal.

As to the abuse of process/malicious prosecution claim that Defendants argued Plaintiff could not factually support due to the warrant, the Court ruled that Plaintiff was entitled to amend his complaint. [Appendix 3, p. 47] When asked to clarify its ruling, the Court refused to decide the issue and confusingly stated it needs factual development before it can be decided. Specifically, the trial court ruled:

I'm permitting her the opportunity to add more specificity and then we can just take it from there, I suppose. If you think there's still a need to file a motion on that issue. But, the Court is ruling that there is -- needs to be a factual development on that issue.

¹ As explained in argument I below, acting without probable cause is not sufficient to show that he was not acting in good faith.

[Appendix 3, p. 047] This ruling was in error as the legal issue remains and will not change. Correction of the error will result in dismissal for Stella.

STANDARD OF REVIEW

Defendants filed their dispositive motion under MCR 2.116(C)(7) and (C)(8). This appeal now raises those issues as well. This Court reviews those decisions *de novo*. *Nuculovic v Hill*, 287 Mich App 58, 61; 783 NW2d 124 (2010).

I. MCR 2.116(C)(7) – IMMUNITY GRANTED BY LAW

Pursuant to MCR 2.116(C)(7), “[e]ntry of judgment [or] dismissal of the action... is appropriate because of... immunity granted by law.” “[A] party moving for summary disposition under MCR 2.116(C)(7) is not limited to challenging the facial validity of the pleadings... the movant may establish that, given the undisputed facts of the case, he or she is entitled to immunity as a matter of law, notwithstanding the plaintiff’s allegations.” *Yono v Dept of Transp (On Remand)*, 306 Mich App 671, 693; 858 NW2d 128 (2014) *app gtd sub nom Yono v Dept of Transp*, 497 Mich 1040; 864 NW2d 142 (2015). A party may, but is not required to, support a motion under MCR 2.116(C)(7) with affidavits, depositions, admissions, or other admissible documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 187 (1999). If such material is submitted, the court must consider it. *Id.*, citing MCR 2.116(G)(5). If immunity is granted by law, summary disposition is proper. *Fane v Detroit Library Com’n*, 465 Mich 68, 74; 631 NW2d 678 (2001).

II. MCR 2.116(C)(8) – FAILURE TO STATE A CLAIM

Summary disposition is also available under MCR 2.116(C)(8), which permits dismissal if Plaintiff has failed to state a claim upon which relief can be granted. Such a motion “tests the *legal sufficiency* of a claim based on the factual allegations in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion under (C)(8) is permitted where the claims are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

ARGUMENT

I. **THE DISTRICT COURT ERROR THAT UNDERLIES THE MAJORITY OF DEFENDANTS ISSUES: THAT PLAINTIFF'S COMPLAINT SUPPORTS THAT HIS CHARGES/ARRESTS WERE ALWAYS SUPPORTED BY PROBABLE CAUSE AS FOUND BY A NEUTRAL JUDICIARY**

Plaintiff's Complaint only includes facts alleging that charges were initiated against him for the wrong reasons, i.e., retaliation for his civil suit. Plaintiff summarily states that the Defendants acted without probable cause, but this is a conclusory allegation unsupported by facts as to why. *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994) (all conclusions must be supported by allegations of fact). Plaintiff does not include any facts that there was not probable cause to charge him, that there was a problem with the warrant obtained for his arrest, or that misrepresentations were made by any Defendant when obtaining the warrant. Therefore, there are no facts that support the conclusory allegation that the actions were taken without probable cause.²

But Plaintiff does allege that Defendants brought (or caused) charges to be brought twice, and each time a warrant was issued for his arrest *by the Court*. [Appendix 5, p. 61, ¶ 34, p. 63, ¶ 50, and p. 83] He alleges that the first warrant was issued by "the Wayne County Circuit Court." [Appendix 5, p. 61, ¶ 34] And he goes beyond just the allegations of court issuance for the second prosecution by attaching the Register of Action that shows the Judge that signed the warrant was Milicent Sherman. [Appendix 5, p. 63, ¶ 50, and p. 83] It is indisputable that a neutral judiciary made a finding of probable cause to issue the warrants and Plaintiff did not allege facts showing a problem with this finding.

The Lower Court, therefore, erred by not ruling that Plaintiff's allegations do not overcome the fact that a neutral judiciary found probable cause supported the Defendants actions. This issue underlies the majority of issues raised in Defendants appeal, yet the trial court refused to address it. The Lower Court first issued a confusing ruling by stating that the Plaintiff's allegations concerning the lack of probable cause were conclusory, as was Defendants' argument because

² The Lower Court issued a confusing ruling as to the summary nature of these allegations. The Court held that "Defendants also assert that Plaintiff's assertion that the warrants are issued without probable cause is conclusory and without basis. Defendant's argument on this point also conclusory." Thus, it appears the Lower Court agreed that allegations were conclusory but failed to connect the dots as to the implications of that conclusion, i.e., rule that the count was dismissed and then allow Plaintiff an opportunity to seek an amendment.

factual development was needed...to decide a separate immunity defense.³ When asked to clarify its ruling on this issue because it had not made one, the Lower Court stated that it had ruled that “the malicious prosecution is an intentional tort and there needs to be a development, a factual development of that before I can make a determination –” [Appendix 3, p. 48] The following exchange then occurred:

THE COURT: Yeah, but the Court rule allows her to amend -- amend her Complaint, if she wishes to add more specificity.

MS. HENDERSON: Such that is the Court ruling that she -- that claim will be granted if she can't (sic) more specificity?

THE COURT: No. No, I'm permitting her the opportunity to add more specificity and then we can just take it from there, I suppose. If you think there's still a need to file a motion on that issue. **But, the Court is ruling that there is -- needs to be a factual development on that issue.**

MS. HENDERSON: Before it can address the immunity issues raised by its Defendant, Stella, and Wayne County.

THE COURT: Right. That's our ruling. Thank you have a nice day.

[Appendix 3, p. 49] This shows that Court did not address any of Defendants probable cause arguments, improperly ruling that factual development was needed on unknown points.

This ruling is an error because it does not address the question presented to the Court. Defendants assert that the pleadings do not entitle Plaintiff to develop facts through discovery. Factual development cannot answer the question of whether a pleading supports legally viable claims. The Lower Court was required to address the issue and it was an error not to do so. The Lower Court's duty to first answer the legal questions raised regarding probable cause do is not excused by its ruling that it must permit Plaintiff to amend the complaint, where this ruling amounts to a (C)(8) issue; it still had to rule on those issues raised by Defendants. *Doyle v Hutzel Hosp*, 241 Mich App 206, 212; 615 NW2d 759 (2000) (holding that a party must be given an opportunity to amend their pleadings “[i]f a trial court grants summary disposition pursuant to

³ It appears the Lower Court may have conflated two of the defenses raised by Defendant Stella: state law qualified immunity and the warrant bar.

MCR 2.116(C)(8)...” (emphasis added)); see also *Liggett Rest Group, Inc v City of Pontiac*, 260 Mich App 127, 139; 676 NW2d 633 (2003) (holding that proper course of action would have been for trial court to grant the plaintiff’s request to file a motion to amend after granting summary judgment under (C)(8)); *Wolfenbarger v Wright*, 336 Mich App 1, 21; 969 NW2d 518 (2021) (holding that *after granting* (C)(8) motion, trial court should have allowed opportunity for amendment). The Court is then required, per MCR 2.116(I)(5) to allow Plaintiff to seek leave to amend consistent with MCR 2.118, at which point an assessment of whether leave will be granted can be made.⁴

This Court should correct the error and rule that Plaintiff pled only that an independent finding of probable cause was made, and that Plaintiff’s allegations do not challenge said finding. Below Defendants will address how this finding will impact each of Plaintiff’s remaining claims based on Defendants’ arguments for dismissal.

II. IT WAS AN ERROR NOT TO DISMISS THE FEDERAL CLAIMS.

A. *The Claims as to Defendant Stella*

1. **The Lower Court erred by not addressing and granting Defendant Stella qualified immunity because the law is not clearly established that his conduct violated the First Amendment nor can Plaintiff prove a violation occurred.**

In the Lower Court, Defendant Stella argued that he is entitled to dismissal of Plaintiff’s federal First Amendment Retaliation claim. Defendant argued that not only could plaintiff not prove a constitutional violation because he could not prove causation, but that the law was not clearly established. The Lower Court did not address these specific arguments as to the federal claim. Correction of this error should result in a grant of immunity to Defendant Stella and dismissal of the federal claim.

⁴ This step is necessary under the Court Rules. The filing of the motion for leave allows the court to assess whether leave should be granted, i.e., whether the amendment is futile. In this instance, the Lower Court would not rule that an amendment was required but at the same timer permitted one without assessing the futility of the amendment. Defendants would have opposed the proposed amendment as futile. This is inefficient, and against not only MRC 2.118, but MCR 1.105 that requires the Rules be construed for “the just, speedy, and economical determination of every action.”

Qualified immunity protects government officials from civil liability to the extent that their conduct does not violate clearly established law. *Taylor v Barkes*, 575 US 822, 825 (2015) (quoting *Reichle v Howards*, 566 US 658, 664 (2012)). It is an “exacting standard” that provides officials with leeway in the face of unaddressed scenarios. *Rudlaff v Gillispie*, 791 F3d 638, 643 (CA 6 2015) (internal quotations omitted). Once raised by a defendant, the plaintiff bears the burden of demonstrating the defendant is not entitled to it. *Livermore v Lubelan*, 476 F3d 397, 403 (CA 6 2007). To carry this burden, a plaintiff “cannot simply assert a constitutional violation and rely on broadly stated general rights...” *Cooper v Parrish*, 203 F3d 937, 951 (CA 6 2000).

As originally announced in *Saucier v Katz*, there are two parts to a qualified immunity analysis: (1) whether a constitutional right was violated, and (2) whether the right was clearly established. 533 US 194 (2001); *Pearson v Callahan*, 555 US 223, 232 (2009). The first prong of the analysis requires the court to identify “the specific constitutional right allegedly infringed” because a plaintiff’s claim must be judged by “the specific constitutional standard which governs that right, rather than [some] generalized . . . standard.” *Graham v Connor*, 490 US 386, 394 (1989). Under the first prong, the Court must determine whether the facts show that each officer’s conduct violated a constitutional right. *Saucier*, 533 U.S. at 201.

The plaintiff must then demonstrate that the constitutional right was clearly established. A right is clearly established if it was “so clear that *every* reasonable [official]...would have recognized that [his conduct was unconstitutional]—and not just in the abstract but in the *precise* situation [the official] was facing.” *Ashford v Raby*, 951 F3d 798, 801 (CA 6 2020). The Sixth Circuit recently provided a clear summary of the Supreme Court’s recent clarifications of this prong’s requirements:

Except in an obvious circumstance, it’s not enough for a plaintiff to offer cases that merely stand for the general proposition . . . the [Supreme] Court has repeatedly told us that specific cases are especially important. **The unlawfulness of the officer’s acts must be so well defined that no reasonable officer would doubt it.**

In addition, a plaintiff cannot point to unpublished decisions to meet this burden. Basic logic tells us at least this much. After all, the qualified-immunity inquiry looks at whether a right has been clearly established. For a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate. Yet how can an unpublished case place a question beyond debate when it doesn’t even bind a future panel of this court? It can’t. So at a minimum, [the plaintiff] must

provide on-point caselaw that would bind a panel of this court.

Bell v Southfield, 37 F4th 362, 367-68 (CA 6 2022) (cleaned up with quotes from *Rivas-Villegas v Cortesluna*, 142 S Ct 4, 8 (2021) (per curiam); *City of Tahlequah v Bond*, 142 S Ct 9, 11-12 (2021) (per curiam), and other citations omitted).

Defendants address the prongs in reverse order, as the first also encompasses his second argument on this point, i.e., that Plaintiff failed to plead a viable theory. As to the clearly established element, Defendants are aware of no case that would have provided notice to Defendant Stella that it was unlawful for him, an attorney, to provide his client, a Wayne County prosecutor, with a legal opinion as to Doherty's employment duties (prosecuting). Plaintiff alleges only that Defendant Stella requested or directed for criminal charges to be instituted, and then that, upon submission, a warrant was granted. Defendant is aware of no case that would have notified Defendant Stella that it was unlawful to advise his client to request a facially valid warrant. Plaintiff did not present the Lower Court with any such caselaw. As such, he is entitled to qualified immunity and this Court should correct that error and grant him immunity from the federal claim.

2. The Lower Court's Probable Cause Error also Caused it to Err when Denying Defendant Stella's Argument that Plaintiff Failed to Plead a First Amendment Violation.

To plead a valid First Amendment Retaliation claim, Plaintiff must "(1) protected speech; (2) injury as a result of defendant's actions; and (3) causation." *Everson v Calhoun Co.*, 407 Fed Appx 885, 887 (CA 6, 2011) (citing *Hartman v Moore*, 547 US 250, 261-62 (2006) (*Bivens* claim for retaliatory prosecution); *Barnes v. Wright*, 449 F3d 709, 720 (CA 6.2006) (retaliatory arrest)). In *Everson*, the Sixth Circuit held that a retaliation claim must fail as a matter of law if the defendant had probable cause for a criminal prosecution. Here, as established above, Plaintiff pleads that a facially valid warrant was issued. The warrant renders Plaintiff unable to plead the element of causation. Correction of the Lower Court's error on this issue would result in dismissal for Defendant Stella, and, as addressed below, Wayne County.

B. The Claims as to Wayne County

A municipality may be subject to municipal liability under § 1983, but it cannot be held vicariously liable for the acts or omissions of its officers; a municipality can only be held directly liable for its own acts or omissions. *Monell v Dep't of Social Servs*, 436 US 658, 690-91 (1978). Therefore, a policy or custom attributable to the municipality must serve as the factual predicate for a municipal liability claim. *Id.* at 690; *Pembaur v. City of Cincinnati*, 475 US 469, 479-80 (1986); *Bd. of County Comm'rs v. Brown*, 520 US 397, 403 (1997).

The Supreme Court has held that where no constitutional injury has been inflicted by a state actor, any questions of the actor's municipal employer's liability become moot. *City of Los Angeles v. Heller*, 475 US 796, 799 (1986) (holding that "If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point.") As explained in the preceding paragraphs, Plaintiff failed to plead that any constitutional violation occurred. Thus, no constitutional injury was inflicted based on any policy.

III. IT WAS AN ERROR NOT TO DISMISS THE STATE CLAIMS.

A. The Errors as to Defendant Stella

1. The Lower Court erred by not granting Stella immunity for the intentional torts based on the allegations in the Complaint.

Michigan law provides governmental employees with qualified immunity from intentional torts. MCL § 691.1407(2)(c)(3); *Odom v Wayne Co*, 482 Mich 459; 760 NW2d 217 (Mich 2008); *Ross v Consumers Power Co*, 420 Mich 567; 363 NW2d 641 (1984). A governmental employee is entitled to qualified immunity if:

1. the employee's challenged acts were undertaken during the course of employment and that the employee was acting, or reasonably believed he was acting, within the scope of his authority,
2. the acts were undertaken in good faith, and
3. the acts were discretionary rather than ministerial, in nature.

Odom, 482 Mich at 480.

The "good faith" element is subjective in nature. *Id.* at 482. "It protects a defendant's honest belief and good-faith conduct with the cloak of immunity while exposing to liability a defendant

who acts with malicious intent.” *Id.* A lack of good faith has been defined as “malicious intent, capricious action or corrupt conduct or willful and corrupt misconduct. *Id.* at 474. For the challenged act to satisfy the “discretionary” element, it must be the product of personal deliberation, judgment, and decision. *Id.* at 476.

To show malice, “[i]t is not sufficient for plaintiff to merely show that the individual defendants acted without probable cause.” *McCarthy v Scofield*, unpublished per curiam opinion of the Court of Appeals, issued October 8, 2009 (Docket No. 284129), p *4 (Appendix 6, p. 103) (citing *Odom v Wayne Co*, 482 Mich 459, 474; 760 NW2d 225 (2008)) (this unpublished opinion is cited because it exemplifies the argument in a similar circumstance and cites to a published opinion on the same point); see also *Stoll v Luce Mackinac Alger Schoolcraft Dist Health Dept Bd of Health*, unpublished per curiam opinion of the Court of Appeals, issued October 21, 2014 (Docket No. 316287), p *3 (Appendix 7, p. 111) (this unpublished opinion is cited because it applies these principles in the context of a (C)(8) motion).

Here, Plaintiff has only alleged that the Defendants acted without probable cause, but this is a conclusory allegation (see Section II(B)(1)(c) below). *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994) (all conclusions must be supported by allegations of fact). Plaintiff does not plead any facts to demonstrate the charges were without probable cause. Nor does he allege any malicious or capricious conduct, merely that Stella acted without probable cause. Defendant acted within the scope of his authority as an attorney providing advice to his client. Therefore, under the facts as established in the Complaint, Defendant Stella is entitled to qualified immunity under state law. The Lower Court erred by failing to rule based on the facts in the Complaint. No factual development is required to assess the allegations. Correction of this error should result in dismissal of the intentional tort state law claims raised against Defendant Stella.

2. The Lower Court erred by not dismissing the intentional tort claims because Plaintiff failed to adequately plead his claims.

i. Abuse of Process

To plead a claim for Abuse of Process, as Plaintiff attempts in Count III, he must plead (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding.” *Friedman v Dozorc*, 412 Mich 1, 30; 312 NW2d 585 (1981). “A complaint asserting an abuse of process must allege more than the mere issuance of the process, because an

action for abuse of process lies for the improper use of process after it has been issued, not for maliciously causing it to issue.” *Reffitt v Mantese*, unpublished per curiam opinion of the Court of Appeals, issued October 15, 2019 (Docket No. 346471), p *5 (Appendix 8, p. 117) (cleaned up) (quoting *Dalley v Dykema Gossett*, 287 Mich App 296, 322; 788 NW2d 679 (2010) (quoting *Friedman*, 412 Mich at 31)) (this unpublished opinion is cited because it best exemplifies this principle while relying on published opinions).

Plaintiff pleads only that Defendant Stella (along with Doherty) initiated prosecution for an improper purpose. He does not allege that some portion of the process was abused after the initiation. Plaintiff cannot support such a claim without this element. And the facts that have been pled, demonstrate that the Defendant Stella took no action after the initiation because the case was dismissed at the first hearing each time. Therefore, this claim must fail as a matter of law. It was error for the Lower Court not to issue a ruling on this issue and not grant dismissal of this claim.

ii. Malicious Prosecution

A claim for Malicious Prosecution requires Plaintiff to plead sufficient facts supporting “that: (1) defendant has initiated a criminal prosecution against him, (2) the criminal proceedings terminated in his favor, (3) the private person who instituted or maintained the prosecution lacked probable cause for his actions, and (4) the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice.” *Walsh v Taylor*, 263 Mich App 618, 632–33; 689 NW2d 506 (2004). A prosecutor’s “exercise of his independent discretion in initiating and maintaining a prosecution is a complete defense to an action for malicious prosecution.” *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 384; 572 NW2d 603 (1998). And a facially valid warrant is an absolute defense to a malicious prosecution claim. *Gooch v Wachowiak*, 352 Mich 347, 353; 89 NW2d 496 (1958); *see also Meeks v City of Detroit*, 220 F Supp 3d 832, 839 (ED Mich, 2016), sub nom. *Meeks v City of Detroit*, 727 Fed Appx 171 (CA 6, 2018) (holding that facially valid warrant bars malicious prosecution claim under Fourth Amendment).

Here, Plaintiff’s pleadings do not satisfy elements (1) or (3) as to Defendant Stella. Defendant Stella did not initiate criminal prosecution; Plaintiff alleges that the MSP initiated the criminal prosecution by requesting a warrant and Defendant Doherty initiated the charges. Nor were any actions against Plaintiff initiated or maintained without probable cause; as demonstrated above, Plaintiff has pled only that a warrant was issued. He does not allege that the Defendants

lied to obtain the warrant, or fabricated evidence. The facially valid warrant is, therefore, an absolute bar for either Defendant Stella. Thus, Plaintiff has failed to plead a malicious prosecution claim. The Lower Court Erred by not dismissing this claim, regardless of whether Plaintiff would be entitled to seek an amendment afterwards. This Court should correct the error by dismissing the claim and directing the Lower Court to allow Plaintiff the opportunity to file a motion for leave to amend so that the Lower Court can assess, consistent with MCR 2.116(I)(5) and 2.118, whether justice requires leave be granted.

B. The Lower Court should have dismissed the state law claims against Wayne County because the County is entitled to governmental immunity and cannot be liable for the intentional torts of its employees.

With the enactment of the Government Tort Liability Act (“GTLA”), MCL 691.1401 et seq., the Michigan Legislature shielded governmental agencies from tort liability when the agencies are engaged in the exercise or discharge of a governmental function. *Payton v Detroit*, 211 Mich App 375, 391-392; 536 NW2d 233 (1995); MCL 691.1407(1). A governmental function is an activity expressly or impliedly mandated or authorized by the constitution, statute, or other provision of law. *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567; 363 NW2d 641 (1984). The exceptions to this immunity are outlined in the GTLA. MCL 691.1401 et seq.

Should there be any doubt, representing the County in civil matters and prosecuting crimes, are governmental functions. The “employ” of an attorney to represent the County in civil matters is expressly authorized by statute. MCL 45.515; 45.563; 49.71; see also Wayne County Ordinance Sec. 4.311. The prosecution of crimes and operation of a prosecutor’s office is also a constitutionally designated governmental function. Const 1963, art 4, § 4. Therefore, the general actions being complained of here are governmental functions for which the County is entitled to immunity. *Payton*, 211 Mich App at 392–93 (explaining that the general nature of the activity defines the function for entities).

Moreover, Governmental agencies cannot be liable for the intentional torts of their employees. *Margaris v Genesee Cnty*, 324 Mich App 111, 126; 919 NW2d 659 (2018) (citing *Payton*, 211 Mich App at 393. Malicious prosecution and abuse of process are intentional torts. *Odom v Wayne Co*, 482 Mich 459, 480; 760 NW2d 217 (2008); *Dalley v Dykema Gossett*, 287 Mich App 296, 322; 788 NW2d 679 (2010) (holding that abuse of process is an intentional tort).

Plaintiff alleges a state law claim for malicious prosecution and abuse of process inartfully against the generic “Defendants.” To the extent that they are alleged against Wayne County, the

County is immune pursuant to MCL 691.1407(1). There is no exception within the GTLA, or any other statute, for malicious prosecution, nor can it be vicariously liable for its employees' intentional torts. Therefore, summary disposition is appropriate. The trial court erred in ruling that Wayne County could be vicariously liable for Stella's actions. [Appendix 3, p. 047] This Court should correct that error by dismissing Wayne County.

CONCLUSION

The Lower Court erred by failing to properly address and rule upon the probable cause argument. Correction of this error will ripple through Defendants' other arguments. Correction of this error, as well as the others identified, above should result in complete dismissal of Plaintiff's Complaint.

Respectfully submitted,

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Dated: December 15, 2023

APPENDIX F

Defendants-Appellants' Reply Brief on Appeal and
Cross-Appellee Response (Consolidated) Brief

STATE OF MICHIGAN
IN THE COURT OF APPEALS

ROBERT REEVES

Plaintiff-Appellee/Cross-Appellant

Docket Nos. 367444, 367447
Lower Court Case No. 23-003148-CZ
Hon. Susan L. Hubbard

v.

**COUNTY OF WAYNE; ASSISTANT
CORPORATION COUNSEL**

DAVIDDE STELLA, sued in his
individual and official capacity;

Defendant-Appellants/Cross-Appellees

and

ASSISTANT PROSECUTING

ATTORNEY DENNIS DOHERTY, sued in his
Individual and official capacity.

Defendant-Cross-Appellee.

DEFENDANT-APPELLANTS REPLY AND
CROSS-APPELLEE RESPONSE (CONSOLIDATED) BRIEF

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INTRODUCTION

This case is not the retaliatory soap opera Plaintiff wrote about over and over and over again. This case is about the ability of a lawyer to function as a lawyer without the threat of civil lawsuits chasing them away; whether it be as corporation counsel or prosecutor or any other role that assigns a duty to a lawyer. The dramatic façade quickly topples when one looks for the factual support behind Plaintiff’s conclusory declaration that “there was no probable cause,” because there is no factual support for such a statement. Plaintiff acknowledges there is no factual support by writing that he needs discovery to find out if the warrant was valid or not. But that is putting the cart before the horse. He must be able to point to an actual problem with the warrant. Because he cannot, then he cannot pursue any of his claims against the two lawyers who were doing their jobs nor their employer.

In this brief, Defendants will explain why Plaintiff is wrong about the law he advances in support of his claims and why his Complaint is not legally viable such that it should have been dismissed in full, and not just in part.

COUNTER-ARGUMENT

For ease of reference, Defendants will address the issues based on which appeal they were raised in. First, Defendants will reply to the issues raised in their original appeal (and application) for the claims they ask this Court to dismiss. Then, Defendants will respond to those issues raised in Plaintiff’s cross-appeal of the issues the Circuit Court dismissed.

I. REPLY

A. The Warrant was Valid and Plaintiff Admits there are no Facts to the Contrary

Defendants’ appeal argues that the Circuit Court erred by failing to rule that Plaintiff’s pleading only supports one conclusion: that a facially valid warrant was issued for his arrest. A facially valid warrant would bar Plaintiff’s claims against all Defendants. Plaintiff argues that the Circuit Court was correct to conclude factual development was necessary on this point because his allegation that “there was no probable cause” is entitled the presumption of truth. But he does not allege any deficiencies in the warrant that was requested by Doherty and signed by an independent judicial authority; he only alleges that a warrant was issued, and he was arrested pursuant to it.

In response to Defendants’ argument, Plaintiff argues that he needs discovery to uncover one, since he believes it was issued in retaliation. See Plaintiff’s Brief, p. 19 (writing that “Further

factual development is needed to determine whether the information Defendant Doherty presented to the circuit court in his warrant requests was “reasonably trustworthy.”) That is not sufficient. “Mere conjecture does not entitle a party to discovery, because such discovery would be no more than a fishing expedition.” *Davis v City of Detroit*, 269 Mich App 376, 380; 711 NW2d 462 (2005). He must allege that the warrant was deficient based on some “independent evidentiary support” in order to plead a valid claim and be entitled to discovery. *Id.* Otherwise, the warrant stands as facially valid and an absolute defense to Plaintiff’s claims.

Moreover, considering the facts in the Complaint, it is not difficult to envision that a warrant could be issued based on Plaintiff’s presence at the scene of stolen goods and his use thereof.

B. Defendants Stella and Wayne County are Entitled to Immunity

1. Stella’s Immunities

Defendant Stella argued that he is entitled qualified immunity under federal law for Plaintiff’s First Amendment Retaliation claim because there was no constitutional violation (based on the facially valid warrant) and because the law was not clearly established as to whether his conduct would violate the First Amendment. Plaintiff argues that his claim should survive for three reasons: that such claims are allowed when there is a problem with the information presented to obtain a warrant (pages 18-19), that the Supreme Court permits retaliation claims based on official policies (pages 19-20), and that the law did clearly establish that Stella’s conduct was unconstitutional (pages 20-22). Each of Plaintiff’s arguments is based on misrepresentations to this Court and not legally sound, as explained below.

First, Defendant has never contested that, if there was a problem with the warrant that would call probable cause into question, Plaintiff may be able to assert a claim for retaliation. But Plaintiff never identified any problems with the warrant, and Plaintiff tries to avoid stating directly as much, and in the process, misrepresents that cases like *Everson* are relevant. Plaintiff writes that discovery is necessary to test the grounds for the warrant. As discussed above, he is not entitled to a fishing expedition for such materials; he must have some evidence now calling into question the underlying facts of the warrant, not the reason for the warrant. Discovery in a civil suit is not the avenue to figure out whether a warrant is valid; criminal law already provides such a procedure, and even there, more than mere conclusory allegations are required to challenge a warrant at a *Franks* hearing. See *People v Brown*, unpublished opinion of the Court of Appeals, issued July 20,

2023 (Docket No. 360613), 2023 WL 4676070, p *3. Moreover, *Everson* included the very allegations that Plaintiff lacks here: that there was a problem with the information presented to obtain the warrant. *Everson v Calhoun Cnty.*, 407 Fed Appx 885, 888 (CA 6, 2011) (discussing how plaintiff alleged that the evidence presented to find probable cause did not include certain specific information about the circumstances).

Second, Plaintiff has only told this Court a half-truth in representing that the Supreme Court permits retaliatory arrest claims when they are based on official policies regardless of probable cause. He leaves out that the Supreme Court specifically considered, and rejected, his argument that such an exception applies to malicious prosecution claims. *Lozman v City of Riviera Beach*, 138 S Ct 1945, 1953; 201 L Ed 2d 342 (2018); *Nieves v Bartlett*, 139 S Ct 1715, 1723; 204 L Ed 2d 1 (2019) (confirming limitation applies only to arrests, not prosecutions). Thus, where Plaintiff writes that “[a]lthough it was a retaliatory arrest at issue in *Lozman*, rather than a retaliatory prosecution, its logic also applies to the prosecution here,” he failed to inform this Court that his argument had been rejected by the Supreme Court. (Plaintiff’s Brief, p. 19) Moreover, *Lozman* involved an official policy by city council members, not, as Plaintiff calls them, a low-level prosecutor and

Third, Plaintiff has misrepresented the clearly established standard and misapplied it to conclude that Stella is not entitled to it. Plaintiff writes that law from the district court or other circuits can clearly establish law. (Plaintiff’s Brief, p. 20-21) That is not true; the Supreme Court has been clear that only it, and possibly the governing Circuit, can clearly establish law. *Rivas-Villegas v Cortesluna*, 595 US 1, 6 (2021); *Camreta v Greene*, 563 US 692, 709 n 7 (2011) (noting that district court opinions are not controlling authority for any other court, or even another case, and carry limited weight). Plaintiff then did not point to any case of a similar nature that would have notified Stella that his conduct would have violated Plaintiff’s First Amendment rights. Instead, he pointed to a very different case, involving a retaliatory arrest by a police officer, to demonstrate that the Court’s discussion of the officer’s intent is sufficient to notify Stella that his accurate legal communications could subject him to a constitutional claim. He did not point to a single similar case; thus, his claim fails.

Lastly, as to the state law immunity, Plaintiff has only pled that Stella acted maliciously because he acted without probable cause. Plaintiff argument fails for the same reason his probable cause argument fails: his legal conclusion that Defendant acted maliciously is premised solely on

the conclusion that there was no probable cause. Without that, he has not pled any malicious action. Therefore, Stella should be granted immunity.

2. *Wayne County's Immunity*

Plaintiff asserts that under state law, Wayne County can be vicariously liable for the intentional torts of its employees because their actions were “part of an unauthorized course of retaliatory conduct.” Plaintiff posits that their actions exceeded the scope of what is authorized by the law, and therefore, the County can be liable since immunity only extends to governmental functions. Plaintiff then also argues that the Court must look to the Defendants’ general activities, and not their specific tortious conduct, but asks that the Court do the opposite by considering the conspiring instead of the generic acts of prosecuting Plaintiff. Plaintiff is wrong in his understanding of the law and his application of it.

Defendants argue that the County is entitled to immunity because Plaintiff’s claim does not fall into any of the statutory exceptions to immunity, and it cannot be vicariously liable, citing to *Payton v Detroit* and *Margaris v Genesee Cnty*. Both *Payton* and *Margaris* correctly state the law: governmental agencies cannot be liable for the intentional torts of their employees.

Plaintiff is then wrong in asserting that the alleged actions do constitute governmental functions. When determining whether an activity constitutes a governmental function, courts focus on the general activity involved at the time of the alleged tort. *Herman v City of Detroit*, 261 Mich App 141, 144; 680 NW2d 71 (2004). As a practical matter, the broad definition of “governmental function” encompasses the vast majority of activities in which a governmental agency engages. *Ross v Consumers Power*, 420 Mich 567, 620-21; 363 NW2d 641 (1982). *Payton* demonstrates why Plaintiff is wrong in his application of the governmental function analysis. There, this Court applied the governmental function analysis to allegations of malicious prosecution against multiple Detroit police officers. *Payton v City of Detroit*, 211 Mich. App. 375, 380; 536 N.W.2d 233 (1995). The City of Detroit, also a defendant, argued that it was entitled to governmental immunity under MCL § 691.1407(1) *Id.* at 391. The Court agreed with Detroit, holding that the challenged conduct occurred while the officers were engaging in activities related to a governmental function – i.e., the operation of the city’s police force. *Id.* at 393. Specifically, the operation of a police department included the authority to pursue, arrest, and detain people that have broken the law; the Court stated that “there are few functions more clearly governmental in nature” than those three actions. *Id.* Thus, Detroit was entitled to immunity as to the tort claim. *Id.*

The same is applicable here. The general nature of the activity is not the specific tortious conduct of conspiring as Plaintiff alleges. It is the prosecution of crimes and representation of the County in legal matters. Those are governmental functions for which the County is entitled to immunity. Thus, they cannot be vicariously liable.

C. Plaintiff's Claims are Insufficiently Pled

Defendants argued that Plaintiff did not sufficiently plead his malicious prosecution and abuse of process claims. The argument as to the malicious prosecution is based, in part, on the probable cause argument discussed above. It is also based on the law that holds that a prosecutor's "exercise of his independent discretion in initiating and maintaining a prosecution is a complete defense to an action for malicious prosecution." *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 384; 572 NW2d 603 (1998). Thus, Stella cannot be liable for Doherty exercising his prosecutorial authority, least of not when there was probable cause for him to do so.

Additionally, Plaintiff did not respond to Defendants' argument regarding the abuse of process claim. Defendant argued that an abuse of process claim requires more than the initiation of process. Plaintiff responds by arguing only that the Defendants should be liable *for initiating* charges, without offering any case law for this proposition that is directly contrary to the law. Thus, Plaintiff has failed to carry his burden and this claim should be dismissed under MCR 2.116(C)(8).

II. RESPONSE

A. Injunctive Relief is not Permitted

The Circuit Court ruled that Plaintiff's request for injunctive relief could not be sustained for two reasons: because Plaintiff does not challenge the law itself as invalid, only that it was retaliatorily applied; and because there is no case law that permits an injunction to prevent unlawful behavior, such that the request is speculative. The Circuit Court was correct that Michigan law does not permit a Michigan court to enjoin the judicial functions of another court. Michigan law is clear: "criminal prosecutions cannot be restrained by injunction." *Jeffrey v Clinton Twp*, 195 Mich App 260, 264; 489 NW2d 211 (1992) (citing and discussing *Michigan Salt Works v Baird*, 173 Mich 655; 139 NW 1030 (1913); *Kleinke v Oates*, 187 Mich 548; 153 NW 675 (1915); *Osborn v Charlevoix Circuit Judge*, 114 Mich 655; 72 NW 982 (1897); *Society of Good Neighbors v Groat*, 77 F Supp 695 (ED Mich, 1948)). There is a limited exception to said rule for when the plaintiff challenges the legality of the law underlying the prosecution. *Id.* If there is no such challenge, then

“A court of equity will not transfer to its own jurisdiction the trial of a criminal case.” *Michigan Salt Works v Baird*, 173 Mich 655, 660; 139 NW 1030 (1913) (quoting *Pratt Food Co v Bird*, 148 Mich 631, 634; 112 NW 701 (1907))

The Circuit Court was correct that Plaintiff is not challenging the validity of the law being enforced against him. Plaintiff is merely challenging that in this one particular instance the law should not be applied to him, not because of a problem with the law or facts supporting its application, but because the reason it is being applied is wrong. That is not lawful grounds for a Michigan court to issue an injunction under controlling precedent.

Plaintiff’s argument in support of his position is wrong for two reasons. First, Plaintiff wrongly points this Court to federal cases that are not controlling nor on point. He first points to cases discussing when a *federal* court can enjoin a state court under *federal* law. Those cases are built upon the boundaries of state sovereignty and comity as laid out in federal injunction statutes and cases like *Younger* and *Ex parte Young*, such that they are inapplicable to the concerns raised by one state court enjoining another. *Perez v Ledesma*, 401 US 82, 84-5 (1971). Second, Plaintiff is also wrong in his analysis of the Michigan court decisions, like *Jeffrey*, that the Circuit Court relied upon. The rule from *Jeffrey* was blunt: a prosecution may only be enjoined when the validity of the underlying law is challenged. Plaintiff is wrong that exceptions exist beyond invalid law, dependent upon the “irreparability” of the injury; an invalid law is a requirement. *Jeffrey v Clinton Tp*, 195 Mich App 260, 264; 489 NW2d 211 (1992) (emphasis added) (holding that “[t]he irreparable injury referred to must result from the acts of the public officials in enforcing the allegedly invalid law.”) citing *Diggs v State Bd of Embalmers & Funeral Directors*, 321 Mich 508, 514; 32 NW2d 728 (1948).

B. A Michigan Constitutional Claim is not, nor should it be, Valid

The Circuit Court properly applied the Michigan Supreme Court’s holdings in *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 706; 983 NW2d 855 (2022), and *Smith v Department of Public Health*, 428 Mich 540; 410 NW2d 749 (1987). As explained below, *Bauserman* represents only a slight change of the doctrine discussed in *Smith* regarding violations of Michigan’s Constitution and it does not, nor should it, permit suits against municipalities and their employees.

In *Smith* the Michigan Supreme Court held that the state may be subject to liability for damages based on a violation of the Michigan Constitution. *Smith*, 428 Mich at 544. The *Smith*

decision bred confusion, and courts grappled with how far it reached. Thus, the Supreme Court subsequently clarified that its holding in *Smith* was limited:

Smith provides no support for inferring a damage remedy for a violation of the Michigan Constitution in an action against a municipality or an individual government employee. . . . *Smith* only recognized a narrow remedy against the state on the basis of the unavailability of any other remedy. Those concerns are inapplicable in actions against a municipality or an individual defendant. Unlike states and state officials sued in an official capacity, municipalities are not protected by the Eleventh Amendment. . . . A plaintiff may sue a municipality in federal or state court under 42 U.S.C. § 1983 to redress a violation of a federal constitutional right . . . [or] bring an action against an individual defendant under § 1983 and common-law tort theories.

Jones v Powell, 462 Mich 329, 335, 337; 612 NW2d 423 (2000); see also *Bennett v Detroit Police Chief*, 274 Mich App 307, 316 n 3; 732 NW2d 164 (2006) (a violation of the Michigan Constitution does not give rise to a viable cause of action against “entities other than the state”); *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001) (a violation of the Michigan Constitution does not give rise to a viable cause of action against “individual government employees”).

In *Bauserman*, the majority wrote that it was only recognizing a cause of action against “the state” and specifically declined to extend a monetary remedy for state constitutional violations to “municipal governments or individual actors.” *Bauserman*, 509 Mich at 708 n 13. Thus, certain parameters of *Smith*, as outlined in *Jones*, remain and there is no cause of action against entities other than the state. Plaintiff can avail himself of remedies under § 1983 and common law tort theories, like his other counts asserted in his Complaint. Thus, his claim that the Defendants violated the Michigan Constitution is not cognizable as to the defendants because they are individuals and a municipal government.

Plaintiff disagrees, arguing (for the first time) that *Bauserman* allowed the extension of constitutional claims to all government actors, citing to two irrelevant court opinions. In the Circuit Court, Plaintiff agreed that *Bauserman* was limited in its reach to only the State of Michigan itself, and sought to avoid the holding by arguing that it should extend to because municipalities are no different than the State, and that the only reason it had not been extend was because the issue was not before it. Neither argument is true, and this Court should affirm the Circuit Court’s rejection of these arguments.

In making such an argument, Plaintiff ignores the Michigan Supreme Court's prior discussion of this very issue in *Jones v Powell*, 462 Mich 329, 335, 337; 612 NW2d 423 (2000). It was that discussion that led to its eventual holding in *Bauserman*. In *Jones*, the Court explained that the State of Michigan is very different from an individual or municipal entity because it is protected by the Eleventh Amendment. The State cannot be sued in federal court unless it consents. Individuals and municipal entities can be sued in federal court for constitutional violations, though. The need for the extension recognized in *Bauserman* is not applicable to individuals and municipalities, nor is there any grounds for this Court to overrule the Michigan Supreme Court.

Plaintiff points to two cases, *Long Lake* and *Ryan*, for his position, but neither can aid this Court as Plaintiff suggests. First, *Long Lake* held that the plaintiff had a *federal* constitutional remedy under the "Fourth Amendment" due to the unauthorized drone surveillance when it cited *Bauserman*. *Long Lake Twp v Maxon*, 343 Mich App 319, 336; 997 NW2d 250 (2022). *Long Lakes* citation to *Bauserman* was plainly a reference to *Bauserman's* discussion of other remedies available, just as Defendants have discussed above. This is also clearly a reference to the federal Fourth Amendment given the context and fact that Michigan's Constitution does not have a "Fourth Amendment," and *Long Lakes* directly states as much. *Id.* at 325. Thus, *Long Lakes* supports Defendants' argument, not Plaintiff's.

Second, *Ryan* is not controlling. It is a federal district court opinion and it lacks any analysis other than to hold that *Bauserman* now allows some constitutional claims. *Ryan v Nagy*, No. 20-11528, 2022 WL 17091985, at *6-7 (ED Mich, November 21, 2022). Moreover, *Ryan* dealt with individuals that are employed by the State itself, not municipalities. *Id.* at *1. This case does not provide the Court with any relevant analysis as to why *Bauserman* should be extended further.

Plaintiff has failed to demonstrate that *Bauserman* permits the claims that *Smith* barred and this Court should affirm the Circuit Court accordingly.

C. Absolute Prosecutorial Immunity

The Circuit Court properly determined that Defendant Doherty is entitled to absolute immunity under both Michigan and federal law. The test for both is the same, as Michigan adopted the federal *Imbler* absolute immunity doctrine per *Payton v Wayne Co*, 137 Mich App 361, 371; 357 NW2d 700 (1984). Under this doctrine, a prosecuting attorney's actions "in initiating a prosecution and in presenting the State's case" are immune from a civil suit for damages. *Imbler v Pachtman*, 424 US 409, 431; 96 S Ct 984; 47 L Ed 2d 128 (1976). The Court looks to "the nature

of the function” Plaintiff complains of to determine if it is prosecutorial and thus subject to immunity. *Adams v Hanson*, 656 F3d 397, 402 (CA 6, 2011) (citations omitted). Prosecutorial conduct includes “the preparation and filing of...charging documents.” *Kalina v Fletcher*, 522 US 118, 129; 118 S Ct 502; 139 L Ed 2d 471 (1997); *Burns v Reed*, 500 US 478, 491; 111 S Ct 1934; 114 L Ed 2d 547 (1991). A prosecutor’s motivations for their actions are irrelevant to the analysis. *Eldridge v Gibson*, 332 F3d 1019, 1021 (CA 6, 2003). This immunity applies even where the prosecutor “charges maliciously, unreasonably, without probable cause, or even on the basis of false testimony or evidence.” *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238 (7th Cir. 1986); *Lesinski v City of Steubenville*, No. 2:03-CV-932, 2005 WL 1651737, at *9 (SD Ohio, July 13, 2005) citing *Imbler*, 424 US at 427-28 and summarizing cases discussing how immunity applies regardless of reasons motivating the prosecution.

Ireland v Tunis, 113 F3d 1435 (CA 6, 1997) provides context for the application of this doctrine. In *Ireland*, the Court granted absolute immunity to prosecutors for “deciding to file a criminal complaint against Ireland, authorizing and preparing the complaint, seeking a warrant for her arrest, and...presenting the charging documents to the judge.” *Id.* at 1447. The Sixth Circuit Court of Appeals reasoned that “[t]hese were advocacy functions intimately associated with the judicial phase of the criminal process,” and thus entitled to immunity. *Id.* As recognized in *Imbler*, “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.” *Imbler v Pachtman*, 424 US 409, 431 n 33 (1976). This includes “the obtaining, reviewing, and evaluating of evidence.” *Id.*

Plaintiff complains that Defendant Doherty reviewed the warrant request, suggested changes, and “recommended submission of the request.” [Exhibit A, Complaint, p. 7-8 ¶ 38-40] These actions are prosecutorial in nature. They are intimately associated with the judicial phase of the criminal process. They are actions already addressed by the Supreme Court in *Kalina* and the Sixth Circuit in *Ireland*. Thus, the Circuit Court was correct to grant Defendant Doherty absolute immunity.

Plaintiff argues that Doherty was not acting as a prosecutor, but instead as an investigator, because he requested a change to the warrant and because his acts were retaliatory and therefore could never be prosecutorial. Plaintiff is wrong on both counts. First, Plaintiff does not allege that Doherty asked the police officer to go out and get more information, or that any additional investigation occurred because of Doherty’s request. Plaintiff merely alleges that Doherty asked

for a change in the language of the warrant request. The actions complained of are the core functions of a prosecutor: preparing (requesting the change) and presenting a warrant request to initiate charges. These are not investigative actions; they were actions that needed to be done in order to fulfill the role of presenting the warrant request. These actions are protected by absolute immunity.

Plaintiff directs the Court to *Prince v Hicks* for the proposition that a prosecutor can be denied immunity for advising an officer that there is probable cause before probable cause actually exists. (Plaintiff's Brief, p. 17-18) But Plaintiff, much like the plaintiff in *Prince*, fails to apply the true test of whether immunity applies. In *Prince*, the Court held that a prosecutor would be afforded absolute immunity under Supreme Court precedent for charging someone even when there was no probable cause. *Prince v Hicks*, 198 F3d 607, 614 (CA 6, 1999). The Court explained the error best:

As we noted above, the Supreme Court wrote in *Buckley* that “[a] prosecutor neither is, nor should consider himself to be, an advocate before he has probable cause to have anyone arrested.” *Buckley*, 509 U.S. at 274, 113 S.Ct. 2606. It is important to read this sentence in the context of the *Buckley* decision in its entirety. A footnote in *Buckley* following the above-quoted sentence clarifies a point that *Prince* fails to recognize. A prosecutor performing an investigative function before she has probable cause to arrest a suspect cannot expect to receive the protection of absolute immunity, but a prosecutor who initiates criminal proceedings against a suspect whom she had no probable cause to prosecute is protected by absolute immunity. *See Buckley*, 509 U.S. at 274 n. 5, 113 S.Ct. 2606 (explaining that “there is no [anomaly] in denying absolute immunity for a state actor's investigative acts made before there is probable cause to have a suspect arrested just because a prosecutor would be entitled to absolute immunity for the malicious prosecution of someone whom he lacked probable cause to indict”) (citation omitted). The dividing line is not, as *Prince* argues, the point of determination of probable cause. **Instead, the dividing line is the point at which the prosecutor performs functions that are intimately associated with the judicial phase of the criminal process.**

Prince, 198 F3d at 614. The *Prince* prosecutor was not entitled to immunity because the advice she gave was during the investigative phase since she gave the advice and *the officer then* executed a warrant in reliance on her advice. *Id.* at 614-15. This is different from Doherty's actions because Plaintiff alleges that Doherty asked for changes and then Doherty approved the warrant to initiate charges, allowing only one conclusion: that the requested change was closely associated with

Doherty's presentation of the case and not the officer's investigative actions. Thus, *Prince* is not an applicable precedent.

CONCLUSION

These Defendants deserve the opportunity to function as lawyers, zealously advocating for their clients. This lawsuit is an improper attempt to curb their actions. If Plaintiff believes they acted unlawfully by charging him without probable cause, Plaintiff is required to actually put forth at least some allegation of why there was no probable cause despite a judicial ruling that there was enough to issue a warrant. His bald accusations are insufficient. This Court should affirm the dismissals granted by the Circuit Court, and reverse the denials, such that this lawsuit be dismissed in full.

Respectfully submitted,

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Dated: February 9, 2024

PROOF OF SERVICE

I hereby certify that on **Friday, February 9, 2024**, I electronically filed the foregoing document with the Clerk of the Court via the MiFile system, which will send notification to all counsel of record.

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APPENDIX G

Order Granting Plaintiff-Appellant's Application for Leave to Appeal

Order

Michigan Supreme Court
Lansing, Michigan

January 16, 2026

168969

ROBERT REEVES,
Plaintiff-Appellant,

v

COUNTY OF WAYNE, DAVIDDE STELLA,
and DENNIS DOHERTY,
Defendants-Appellees.

SC: 168969
COA: 367444, 367447
Wayne CC: 23-003148-CZ

Megan K. Cavanaugh
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood
Justices

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On order of the Court, the application for leave to appeal the June 9, 2025 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall include among the issues to be briefed whether a plaintiff alleging state constitutional-tort claims against a municipal government and/or an individual government employee may recover a judicially inferred monetary damages remedy. See *Jones v Powell*, 462 Mich 329 (2000); *Bauserman v Unemployment Ins Agency*, 509 Mich 673 (2022). The time allowed for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1).

Amici who appeared at the application stage are invited to file supplemental briefs amicus curiae. The Michigan Municipal League, Michigan Townships Association, Michigan Association of Counties, and the Government Law Section of the State Bar of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case who are not exempt from the motion requirement under MCR 7.312(H) may move the Court for permission to file briefs amicus curiae.

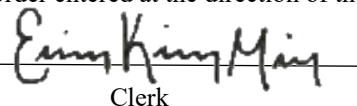


b0113

I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 16, 2026

Appx. 156


Clerk