

18-16659

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

WADE TRAVIS WEBB  
*Plaintiff –Appellant,*

v.

COUNTY OF PIMA, ET AL.  
*Defendants.*

---

Appeal from the Order Dismissing Plaintiff's Case Ordered  
August 6, 2018 and Judgment Entered on August 6, 2018  
In The United States District Court  
For The District Of Arizona  
Case No. 18-CV-00268-TUC-FRZ (Hon. Frank R. Zapata)

---

OPENING BRIEF

---

Wade Travis Webb, Pro Se  
117 Logan Avenue  
Elizabethtown, KY 42701  
(270) 304-8591

## TABLE OF CONTENTS

Table of Authorities.....	iii
Statement of Jurisdiction.....	1
Issues Presented for Review.....	1
Statement of the Case.....	2
1. Procedural Background.....	3
2. Factual Background.....	4
A. Accuser Suicide Attempt & Hospitalization.....	4
B. Plaintiff’s Situation.....	6
C. Ms. Shaw Contacts Plaintiff.....	6
D. Plaintiff Accused of Stalking Ms. Shaw & Arrested.....	11
E. The Incident Report.....	15
F. The “Investigation” & Detective Castillo’s Testimony.....	17
G. DCA Chamblee Presiding Over Grand Jury Hearing.....	21
H. Criminal Case Against Plaintiff.....	23
I. Relevant Events During Criminal Case.....	24
J. Synopsis of Damage Inflicted Upon Plaintiff.....	27
Standard of Review.....	28
Summary of the Argument.....	30
Legal Argument.....	31

Conclusion.....	52
Statement of Related Cases.....	53
Certificate of Compliance.....	54
Certificate of Service.....	55
Form 8.....	56

## TABLE OF AUTHORITIES

<u>Cases</u>	Page(s)
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	36-37
<i>Baker v. McNeil Island Corrections Center</i> , 859 F.2d 124 (9th Cir.1988).....	29
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	36-37, 52
<i>Collins v. Harker Heights</i> , 503 U.S. 115 (1992).....	35
<i>Conley v. Gibson</i> , 355 U.S. 41 (1957).....	34-35
<i>Daniels v. Williams</i> , 474 U.S. 327 (1986).....	35
<i>Dura Pharmaceuticals, Inc. v. Broudo</i> , 544 U.S. 336 (2005).....	36-37
<i>Erickson v. Pardus</i> , 551 U.S. 89 (2007).....	36
<i>Gibson v. County of Washoe, Nevada</i> , 290 F.3d 1175 (2002).....	52
<i>Jackson v. Nanos</i> , 15-CV-52 (D. Ariz. 2015).....	41
<i>Larson v. Napier</i> , No. 16-16259 (9th Cir. 2017).....	41
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986).....	29
<i>Maty v. Grasselli Chemical Co.</i> , 303 U.S. 197 (1938).....	35
<i>Moore v. City of E. Cleveland, Ohio</i> , 431 U.S. 494 (1977).....	50
<i>Moyo v. Gomez</i> , 32 F.3d 1382 (1994).....	29
<i>Palko v. State of Connecticut</i> , 302 U.S. 319 (1937).....	50
<i>Planned Parenthood Of Southeastern Pennsylvania v. Casey</i> , 505 U. S. 833 (1992).....	36

<i>Rehburg v. Paulk</i> , 132 S.Ct. 1497 (2012).....	32, 45-46, 51
<i>Reno v. Flores</i> , 507 U.S. 292 (1993).....	35
<i>Starr v. Bacca</i> , 652 F.3d 1202 (2011).....	36-37, 53
<i>Swierkiewicz v. Sorema N.A.</i> , 534 U.S. 506 (2002).....	36
<i>United States v. Sells Engineering, Inc.</i> , 463 U.S. 418 (1983).....	32, 45
<i>Washington v. Glucksberg</i> , 521 U.S. 702 (1997).....	36, 50
<i>West v. Atkins</i> , 487 US 42 (1988).....	33
<i>Wood v. Georgia</i> , 370 U.S. 375 (1962).....	32
<b><u>Other Authorities</u></b>	
28 U.S.C. § 1291.....	1
28 U.S.C. § 1331.....	1
28 U.S.C. § 1332.....	1
28 U.S.C. § 1915.....	29
42 U.S.C. § 1983.....	1-3, 29, 31, 33
42 U.S.C. § 2000e.....	31
14 <sup>th</sup> Amendment United States Constitution.....	2-3, 23, 33, 35
Arizona Revised Statutes (A.R.S.) § 13-206.....	24
A.R.S. § 13-2801.....	24
A.R.S. § 13-2923.....	22, 24
A.R.S. § 13-3601.....	22, 24

Article II § 4 Arizona Constitution.....24

Rule 12.9 Arizona Rules of Criminal Procedure.....23-24

## **STATEMENT OF JURISDICTION**

The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332. The district court entered an order dismissing Appellant's Amended Complaint on August 6, 2018 (Doc. 12) and judgment was entered in accordance with that order by the district court clerk the same day (Doc. 13). Plaintiff subsequently filed a Rule 60 Motion for Relief From Judgment on August 31, 2018 (Doc. 15) which was denied by the district court on September 12, 2018 (Doc. 19). Appellant timely filed a Notice of Appeal on August 31, 2018. The Court has jurisdiction pursuant to 28 U.S.C. § 1291.

## **ISSUES PRESENTED FOR REVIEW**

1. Whether the district court erred in ruling that Appellants Complaint (Doc. 1) for failure to state a claim in which relief could be granted under 42 U.S.C. § 1983 in regards to multiple Defendants (Doc. 6) was deficient.
2. Whether the district court erred in entering judgment (Doc. 12 & 13) against Appellant by dismissing the Amended Complaint (Doc. 10/Doc. 8) for not complying with the order to correct said deficient Complaint for failing to allege facts that would render any of the multiple Defendants liable under 42 U.S.C. § 1983.
3. Whether the district erred by denying Appellants Rule 60 Motion For Relief From Judgment. (Doc. 15, Doc. 19)

## **STATEMENT OF THE CASE**

Plaintiff Wade Webb brought this suit according to 42 U.S.C. § 1983 alleging violations, and continuing violations, of his due process rights, as well as equal protection, secured to him by the 14<sup>th</sup> Amendment of the United States Constitution. This stems from a criminal felony charge in which Plaintiff was wrongfully accused of stalking an ex-girlfriend, subsequently unconstitutionally indicted on the charge, and then had to spend 84 days from the day he was arrested and 74 days since the indictment by a grand jury in another state while the case was being resolved. Plaintiff's home state was Kentucky and this issue occurred in Pima County, Arizona.

Plaintiff formally accused the Pima County Sheriff's Department (PCSD) and Pima County Attorney's Office (PCAO) of denying his due process rights to a fair and impartial grand jury hearing, among others, by submitting a Motion to Remand to Grand Jury for Redetermination of Probable Cause 16 days before the PCAO moved to dismiss the case in open court at a case management conference already scheduled. The PCAO and PCSD did not deny the allegations.

Multiple employees of the PCSD and PCAO showed deliberate indifference and a complete lack of regard of Mr. Webb's constitutional rights. His allegations could not be any clearer during the criminal case. The PCSD and PCAO knew he was staying in a hotel, driving a rental car, was using a public defender, and the



expenses he was incurring would derail his entire life. He was not offered restitution for these failures and the district court erred in dismissing his case and allowing his assailants to walk away with zero consequences denying him his fundamental right to hold the Defendants accountable for their actions and lack thereof.

### **1. Procedural Background**

On May 29, 2018 Plaintiff filed a pro se Complaint alleging 42 U.S.C § 1983 claims where multiple Defendants in Pima County, Arizona violated, and continue to violate, the 14<sup>th</sup> Amendment due process clause and equal protection. The Defendants are Pima County; Former Pima County Sheriff Clarence Dupnik; Former Pima County Sheriff Chris Nanos; Sheriff Mark Napier; Pima County Detective Jeffrey Castillo; Pima County Attorney Barbara LaWall; Unknown Parties with the PCSD and PCAO that were and/or are acting within the scope of their employment as state actors. (Doc. 1)

On June 6, 2018 it was ordered that Plaintiff amend the Complaint for failure to state a claim in which relief could be granted. (Doc. 6) On June 27, 2018 Plaintiff submitted an Amended Complaint in which only the claims portion of the original Complaint was revised. (Doc. 8) On June 29, 2018 it was ordered that Plaintiff comply with local rules by striking through what portions of the Complaint were removed as well as underlying any additions to the original

Complaint. (Doc. 9) On July 12, 2018 Plaintiff submitted the Amended Complaint complying with local rules in which the entire claims portion of the original Complaint was struck through and the additions were underlined. (Doc. 10) On August 7, 2018 Plaintiff's case was dismissed by the district court claiming the Amended Complaint was still deficient for failing to allege facts that would render any Defendant liable under 42 U.S.C. § 1983 and judgment entered in favor of Defendants. (Doc. 12, 13)

On August 31, 2008 Plaintiff submitted a Motion For Relief From Judgment pursuant to Rule 60(b) defending his claims as the district court erred in dismissing his case. (Doc. 15) On September 14, 2018 the district court denied the Rule 60(b) Motion. (Doc. 19) A timely appeal was filed on August 31, 2008. (Doc. 14)

A pro se Plaintiff is not required to submit a record of excerpts pursuant to Rule 30-1.2. However, the Court will not be burdened as there are minimal applicable documents in this case to be referenced.

## **2. Factual Background**

### **A. Accuser Suicide Attempt & Hospitalization**

In June 2013 a 911 call was made by a friend of Jill Kappus Shaw from Ms. Shaw's residence in Tucson, Arizona stating that Ms. Shaw asked her to call the police, Ms. Shaw wanted to kill herself, and Ms. Shaw may attempt suicide the following day while her husband, Bradley Shaw, was at work. A deputy with the

PCSD responded to the call and found Ms. Shaw and her husband heavily intoxicated. Ms. Shaw's friend informed the deputy that Ms. Shaw had been drinking for a few days, was depressed, and had cut her right wrist in three places a few days ago.

Ms. Shaw was distraught because a lawsuit, in the state of Washington, in which she alleged a coworker had been stalking her was dismissed. Ms. Shaw explained to the deputy about the lawsuit being dismissed, began crying, and stated "I can't deal with this shit anymore, I don't want to deal with it" and her husband stated "see I can't deal with this shit, I'm about to send my wife away."

Ms. Shaw initially resisted going to a hospital but did agree to check herself into a hospital and the deputy and Ms. Shaw's friend went to the hospital with her. While at the hospital after checking in Ms. Shaw became hostile and cursed at the staff multiple times even trying to leave the hospital at one point but was unable.

A room was ready for Ms. Shaw but Ms. Shaw did not want to enter the room, became belligerent, and then the deputy and a nurse had to forcibly move Ms. Shaw into the room and restrain her to the bed. Ms. Shaw was screaming as she was being moved, told the staff to go "fuck" themselves, and then continued screaming afterwards that she was a lawyer, which she is, going to have everyone's job, and they needed to let her go "right the fuck now." (Doc. 1, 8, 10 pgs. 3-5)

## **B. Plaintiff's Situation**

Plaintiff is a well-qualified financial planner and was at the beginning stages of a transition period in January 2014 as he had been working toward opening a financial planning business and buying a house since April 2009. In 2009 Mr. Webb closed a financial planning business he owned, humiliatingly declared bankruptcy, moved in with a family member, and began the process of recovering from his business mistakes with the sole goal of going back into business for himself and buying a house.

Mr. Webb worked with AmeriCorps for two years from 2009-2011 primarily assisting the poor with their finances then took a job working 3<sup>rd</sup> shift at a factory while being several levels underemployed starting in December of 2011. Mr. Webb routinely worked 6-7 days/week and 50+ hours/week while also coaching an Under 12 youth soccer team. Mr. Webb did what he had to do as it was a means to end to accomplish his goals. (Doc. 1, 8, 10 pgs. 5-6)

## **C. Ms. Shaw Contacts Plaintiff**

On 1/9/2014, seven months after attempting suicide and being hospitalized, Ms. Shaw, who still resided in Tucson and had been married for almost two years, initiated contact with Plaintiff, who resided in Kentucky, by searching the internet to obtain his cell phone number and subsequently calling him.

Ms. Shaw and Mr. Webb knew each other for 20 years at the time as they had an off and on romantic relationship for many years during the 1990s. Ms. Shaw cried out for help, was struggling with life issues to the point of threatening suicide, and insisted that Mr. Webb assist her with her problems.

Mr. Webb agreed to assist Ms. Shaw with her mental issues as she was clearly unstable and seemingly was seeking out his assistance as a last resort even though he had a full schedule already. Ms. Shaw was aware within a week of contacting him what was going on in Mr. Webb's life.

Mr. Webb and Ms. Shaw conversed over the next couple of months via phone and text messages but Ms. Shaw remained unstable during the period. During this period Ms. Shaw led Mr. Webb to believe she was divorcing her husband, suggested she was living in a camper in her back yard, and subsequently was actually separated from her husband.

Ms. Shaw and Mr. Webb spoke for more than eight hours on the phone over this time period. Ms. Shaw called Mr. Webb's phone a total of approximately 45 times over this time period including calling him 9 times in the middle of the night on one occasion and 16 times in the middle of the night on another occasion. Mr. Webb called Ms. Shaw's phone a total of approximately 16 times.

Over this time period Ms. Shaw sent many text messages with photos to Mr. Webb including, among many others, a picture of her cut right wrist bleeding from

her June 2013 suicide attempt, a picture of the camper in her back yard, a picture of Ms. Shaw and her dog on the same day as the camper in which she included a note stating “I’m sending this awful pic of me in return for having to go love you t”. (Plaintiff goes by his middle name Travis and Ms. Shaw sometimes referred to him as “T”.)

Later in the time period Ms. Shaw texted Mr. Webb four pictures of a card he gave her in the 1990s that she kept all those years with a handwritten love note in it that ended with Mr. Webb promising “If you ever need me let me know and I will be there for you.”

On the same night Ms. Shaw texted Mr. Webb a different card he gave her in the 1990s that she kept all those years and then sent the same card with his promise a second time. The next day Ms. Shaw texted Mr. Webb a photo of her left wrist cut and bleeding with an explicit plea for help stating:

“M this is not healthy am I just reaching out? I can’t sleep haven’t for days and I like to watch blood drip down my wrists in the unlikely situation that someone might actually help me because I’m clearly not brave enough to accomplish the outcome I crave.”

Ms. Shaw was clearly unstable at this point so Mr. Webb called her almost immediately after the text message. Later in the time period Ms. Shaw texted Mr. Webb multiple photos of documents from her lawsuit that was dismissed in which she alleged her coworker was stalking her because she was still upset about it.

Ms. Shaw and Mr. Webb had communication issues with their phones for two weeks – a typo in the Complaint and Amended Complaint states 3 weeks but that is incorrect – at the end of February 2014. Mr. Webb was concerned for Ms. Shaw’s safety and contacted Ms. Shaw’s sister, Courtney, whom he had not had any communication with for well over a decade. Mr. Webb explained to Courtney what transpired over the time period dealing with Ms. Shaw’s mental health and Courtney informed him that she had been dealing with Ms. Shaw’s mental health issues for years.

Mr. Webb made it clear during his communications with Courtney that his intentions at all times were to make sure Ms. Shaw was safe.

When the phone problems were resolved Ms. Shaw was still erratic and informed Mr. Webb that she was now taking the prescription pain killer Percocet which she was purchasing from a neighbor.

Ms. Shaw then began to test Mr. Webb as to whether he would be in a committed relationship with her and if he really did care about her wellbeing. Ms. Shaw’s behavior was odd and then she wanted to intentionally upset Mr. Webb fully knowing that he was exhausted from working the night shift for almost 2.5 years, dealing with her mental issues going on two months, and would fly to Tucson if she enticed him enough to check on her wellbeing as he already

communicated he thought about doing it during the time period with the phone issues.

Mr. Webb expressed his ongoing frustration with his job to Ms. Shaw and that he wanted quit and move on in which Ms. Shaw encouraged him to do so he could get his business up and running. Mr. Webb's financial situation was not ideal but good enough and he did leave his job the following day. Once again there were phone issues and Mr. Webb conversed with Courtney who was also having phone issues.

Mr. Webb contacted his brothers to talk about the situation and Ms. Shaw's mental health issues, suicidal ideations, etc. and then made the decision to fly to Tucson several days later on 3/14/2014. The record shows that before Mr. Webb made the trip he got fingerprinted at the local Sheriff's Office for an FBI background check, which is needed to register as an investment advisor, and mailed it to the FBI, he contacted his soccer team to let them know the practice schedule for the upcoming season, and flew to Tucson because he needed a vacation and to check on the welfare of Ms. Shaw. Mr. Webb also needed to make a decision on how to proceed with his own goals that he had been working towards for five years. (Doc. 1, 8, 10 pgs. 5-9)



#### **D. Plaintiff Accused of Stalking Ms. Shaw & Arrested**

Mr. Webb arrived in Tucson on 3/14/2014 and tried to contact Ms. Shaw to let her know he was in town and concerned about her welfare but was unable to reach her. In the early evening hours of Saturday, 3/15/2014, he drove to Ms. Shaw's residence to check on her well-being while never hiding anything he was doing.

Bradley Shaw answered the door, told him she was not home, and that he had called the police. Mr. Webb returned to his car and left the residence but did not know who this person was as he had never spoken to Mr. Shaw before and was under the impression that Ms. Shaw was separated from her husband.

Mr. Webb never threatened Mr. Shaw, did not attempt to force his way into the residence, or anything remotely similar to that and left without incident.

Mr. Webb then called 911 for a welfare check explaining that he had flown in from Kentucky because Ms. Shaw had been suicidal, sent him pictures of her wrists cut, messaged that she liked to hurt herself, was taking prescription pain pills, requested an update from the responder, and then was told that someone would check on it and call him.

Mr. Webb was later contacted by Deputy Sherriff Daniel Sharp, Jr. with the PCSD. Deputy Sharp asked Mr. Webb if he would meet with him at a substation and Mr. Webb agreed. Deputy Sharp was already aware that there was an incident

referencing suicide at the same address in June 2013 in which the PCSD did respond.

Deputy Sharp responded to the call from Mr. Shaw in which he questioned Ms. Shaw about the suicidal threats from Mr. Webb's call and she told Deputy Sharp that she had not been suicidal or had suicidal thoughts since June 2013 and any pictures Mr. Webb would have would be from June 2013. Deputy Sharp did not ask Ms. Shaw if she was taking prescription pain killers purchased from a neighbor.

When Mr. Webb arrived at the substation it was immediately obvious by Deputy Sharp's demeanor that something was awry and he may have a very serious issue on his hands in which he would be powerless.

Deputy Sharp asked Mr. Webb if he had any proof to show that Ms. Shaw had been suicidal in which Mr. Webb showed Deputy Sharp the picture of the cut wrist with the blood and the plea for help sent to Mr. Webb in February 2014 but Deputy Sharp completely disregarded the contradictory evidence.

Deputy Sharp with the PCSD was shown clear evidence, which he specifically asked if Mr. Webb possessed, that directly contradicted what Ms. Shaw had told him who was already known to the PCSD to have attempted suicide nine months previously and was hospitalized.

Deputy Sharp did not contact Ms. Shaw at any point to question her about the plea for help text included with the cut wrist picture to determine the date of the cut wrist picture or whether the plea for help text was written in June 2013 as Ms. Shaw claimed she had not had any suicidal thoughts since June 2013.

Mr. Webb also informed Deputy Sharp that there was a card that Ms. Shaw kept from the 1990s but it is unclear if Mr. Webb showed Deputy Sharp the card at that time because he may have had trouble pulling it up on his phone as Mr. Webb felt uncomfortable and nervous. Regardless, Mr. Webb did mention it multiple times to Deputy Sharp as further evidence that Deputy Sharp was being misled by Ms. Shaw.

For unknown reasons Ms. Shaw had just blatantly lied to Deputy Sharp as the text from that picture clearly shows that she was not well and Deputy Sharp was going to believe anything Ms. Shaw said while disregarding anything Mr. Webb said or showed.

Deputy Sharp called Detective S. W. Martin with the Night Detectives who told Deputy Sharp to call Sergeant T. B. Parish II with the Domestic Violence Unit and Plaintiff was later arrested for a felony of stalking Ms. Shaw.

While Mr. Webb was being interrogated Mr. Webb repeatedly told Deputy Sharp that his only intention was to help Ms. Shaw. Mr. Webb repeatedly told Deputy Steven Copp, who was present the entire time, that his only intention was

to help Ms. Shaw. Mr. Webb's private cell phone was also confiscated by Deputy Sharp. Deputy Copp transported Mr. Webb to the Pima County Adult Detention Center.

Mr. Webb was booked for the felony stalking charge. He would go before a Judge the following morning for his initial appearance. Mr. Webb also called his father to let him know what had happened and that he was in jail.

After the initial appearance Mr. Webb experienced the most humiliating and degrading event in his entire life. He was actually told to get completely naked in front of a guard, instructed to lift his penis and testicles, then turn around, bend over, spread his butt cheeks apart, and cough to ensure he was not hiding anything in his anus. After that he was given an orange jumpsuit along with other items and taken to a "pod" where he would be with seven other inmates. Fortunately for Mr. Webb he was not attacked during this time.

Mr. Webb's mother and an uncle booked flights from Kentucky and Florida, respectively, and arrived in Tucson on Monday 3/17/2014 to get Mr. Webb out of jail. Mr. Webb was released from jail the afternoon of Monday 3/17/2014.

The Pretrial Booking Sheet notes in the Criminal History section that "A search of national, state and local criminal history repositories did not reveal any previous arrests involving felony or misdemeanor charges."

Mr. Webb was 38 years old at the time and he is not a criminal.

Mr. Webb did not sleep from the morning of 3/15/2014 when he awoke until the evening of 3/17/2014. He did not sleep for over 55 hours.

Mr. Webb's mother and his uncle left a few days later as they had to get back to their own lives. One of Mr. Webb's brothers flew out after his mother and uncle had left to stay with him for a few days but he needed to get back to his own life as well. Mr. Webb settled into a hotel in Pima County which he would stay at for the duration of the criminal case. (Doc. 1, 8, 10 pgs. 9-13)

### **E. The Incident Report**

Mr. Webb ordered the incident report and received it on 3/25/2014. Deputy Sharp painted Mr. Webb in the worst light possible while minimizing anything negative that had to do with Ms. Shaw.

Ms. Shaw, for unknown reasons, went to elaborate lengths to portray herself as a victim completely at the expense of Mr. Webb even to the point of making false accusations and intentionally misleading law enforcement.

The incident report contained many inaccuracies. One significant inaccuracy involved when Mr. Webb and Ms. Shaw actually dated and had a sexual relationship. The incident report states "They were boyfriend and girlfriend in high school and did have a sexual relationship in high school in Kentucky."

It is unknown as to whether Ms. Shaw told Deputy Sharp deliberate inaccurate information or if Deputy Sharp wrote, either purposefully or in error,

this information incorrectly but regardless it is unacceptable in a felony stalking case. Ms. Shaw and Mr. Webb did not date in high school as Mr. Webb was not even in high school when they met as he was a freshman in college and Ms. Shaw was a senior in high school which makes that impossible.

The incident report states “They only talk to each other about every three to five years.” The record shows that Ms. Shaw and Mr. Webb communicated in April of 2012 when Ms. Shaw, once again, contacted Mr. Webb approximately three weeks before she was to get married to Mr. Shaw which is 1 year and 9 months as well as contacting Mr. Webb 2.5 years prior to January 2014. Getting these contact dates incorrect is unacceptable in a felony stalking case.

Mr. Webb also learned in the incident report that his life may have been in danger as Ms. Shaw asked her husband to grab a gun and, per a recorded interview by Deputy Sharp with Mr. Shaw, Mr. Shaw had been carrying a gun around to possibly even shoot Mr. Webb.

Mr. Webb could have been killed, perhaps in a premeditated murder plot, and knowing Ms. Shaw’s mental health history, that she was on prescription pain killers, and what Mr. Webb just showed Deputy Sharp, he, along with everyone else involved in this case, should have taken that threat to Mr. Webb’s life very seriously but Mr. Webb received no protection while in Pima County. (Doc. 1, 8, 10 pgs. 11, 15-16)

## F. The “Investigation” & Detective Castillo’s Testimony

The same day Mr. Webb got of jail, Monday 3/17/2014, Detective Jeffrey Castillo with the PCSD was assigned to the case. Mr. Webb was also appointed a Public Defender on or about 3/18/2014. Detective Castillo had until 3/25/2014 to investigate this case against Mr. Webb and, supposedly, present it to a prosecutor(s) to determine whether or not an indictment would be sought at a Grand Jury Hearing on 3/25/2014. A download of the contents of Mr. Webb’s private phone was also executed by search warrant on 3/19/2014 and a CD/DVD was placed into evidence by Detective Castillo.

Detective Castillo was the sole witness for the State at the Grand Jury Hearing and mentioned nothing to the jurors about any of the facts contained thus far in this Brief or in the Complaint and Amended Complaint.

It is unclear exactly what Detective Castillo’s investigation entailed as he did not even interview Ms. Shaw until *after* he testified at the Grand Jury Hearing on a Felony Stalking Charge that if convicted could result in 3.5 years in prison and even then it was only a 14 minute recorded phone interview in which the last six minutes had nothing to do with an actual investigation.

Detective Castillo told Ms. Shaw in the recording that *he already testified earlier the same day, 3/25/2014, at the Grand Jury Hearing.*

Detective Castillo wrote, without disclosing that the recorded phone interview occurred *after* the Hearing, in his recorded summary interview, that:

“Over the course of a couple of weeks I have attempted to meet with the victim Jill Shaw to obtain a recorded statement in person but have been unable to do so as our schedules did not coincide. On 3/25/14 I spoke with Jill over the phone once again to obtain a statement.”

Detective Castillo wrote in his Credentials affidavit that he is a peace officer in the state of Arizona, is employed by the PCSD, has been a peace officer since 2008, and has the following training and experience:

“I graduated from the PCSDs Law Enforcement Training Academy. My training included criminal investigation to include crime scene investigation, evidence collection procedures, and interviewing and questioning. I have been assigned to the Patrol Division and the Criminal Investigation Division where I have conducted numerous criminal investigations.”

Detective Castillo and all PCSD personnel, as well as all PCAO personnel, should know the importance of interviewing someone *before* testifying at a Grand Jury Hearing. That is unacceptable.

Detective Castillo and all PCSD personnel should know there is no substitute for an in-person interview. It is a scientific fact that an in-person interview yields much more data from nonverbal cues such as deceptive communication that cannot be attained over the phone.

Ms. Shaw and Detective Castillo live in the same county so their schedules not coinciding is an unacceptable excuse. One hour or less would suffice and Mr. Webb deserves that interview as a citizen of the United States as being arrested and



thrown in jail for almost two days did not coincide with his schedule. Detective Castillo had eight days from the time he was assigned to Mr. Webb's case to get that interview done.

Detective Castillo wrote in his recorded summary interview with Ms. Shaw *after* he had already testified that Ms. Shaw and Mr. Webb dated in high school and college directly contradicting the incident report as Ms. Shaw told Detective Castillo the correct information regarding their past relationship.

Detective Castillo incorrectly, while under oath at the Grand Jury Hearing, told the jurors that Mr. Webb "dated the victim, Ms. Shaw, several years prior while they were in high school" as the very first sentence when beginning his testimony misleading the jurors from the start about the duration of their relationship.

Detective Castillo told the jurors that this relationship was in Kentucky, which was correct, and since then Ms. Shaw had moved to Tucson and gotten married without disclosing how long she had been married, 1 year and 8 months, or that she lived in Tucson for four years at the most.

Detective Castillo read the jurors two out of context text messages from Mr. Webb to Ms. Shaw without informing the jurors of any of the previous evidence.

Detective Castillo, when asked by Deputy County Attorney (DCA) Michelle Chamblee who was presiding over the Hearing if he could describe what Ms. Shaw

and Mr. Webb's relationship was, he told the jurors "When they were in high school, they had a romantic and a sexual relationship. They dated in high school."

Detective Castillo told the jurors three times that they incorrectly dated only in high school which immeasurably misleads the jurors about Ms. Shaw and Mr. Webb's past relationship.

The Clerk then asked Detective Castillo how many years ago was Ms. Shaw and Mr. Webb's relationship as the very next question following Detective Castillo's incorrectly telling the jury they dated in high school twice in which he responded "I want to say about 20 years. Quite a while." This is incorrect as they dated for many years while not in high school.

The jurors asked how long Ms. Shaw had been in Arizona in which he replied "Several years. I don't know exactly how many." Four years at the most.

Detective Castillo then told the jurors that "She's been married for quite some time." 1 year and 8 months.

Detective Castillo also implied to the jurors that Mr. Webb quit his job on 3/15/2014, bought a one-way ticket that same day, and then randomly showed up at her residence that evening which the record clearly shows that is not true and presenting that to the jury in such a manner is unacceptable.

Detective Castillo did not inform the jurors about anything from the previous two months or that Ms. Shaw was hospitalized in June of the previous year for

attempting suicide or that Plaintiff flew to Tucson for a welfare check. The word suicide or any variants and mental health or any variants was not mentioned once during the testimony.

On the recorded phone interview with Ms. Shaw she does state that she and Mr. Webb talk or text “every few years” which is not correct, Ms. Shaw has trouble recollecting whether or not she did send any pictures of her cut wrist as well as stating anything Mr. Webb might have would have been from June 2013, and claims she has not had any problems with suicidal thoughts etc. since June 2013.

Detective Castillo also states during the recorded interview with Ms. Shaw that once Mr. Webb is arrested and the PCSD completes the investigation *he does not have any further involvement unless he is subpoenaed to testify in court.* (Doc. 1, 8, 10 pgs 14, 16-18)

### **G. DCA Chamblee Presiding Over Grand Jury Hearing**

A prosecutor, either lead prosecutor DCA Kendrick Wilson and/or DCA Chamblee, is supposed to review the evidence and investigation of the PCSD and specifically Detective Castillo to decide whether probable cause exists to pursue an indictment. The determination was made to seek a Stalking, Domestic Violence, A Class 3 Felony charge against Mr. Webb.

DCA Chamblee did not correct or question any of the “facts” during Detective Castillo’s testimony.

Mr. Webb was specifically charged with violating Arizona Revised Statutes (A.R.S.) §§ 13-2923 (A) (2) and (B), 13-3601.

DCA Chamblee did not mention to the jurors the elements required to prove stalking, the law Mr. Webb was accused of violating, contained in A.R.S. § 13-2923 (A) (2) or (B).

A prerequisite for a “Domestic Violence” charge under A.R.S. § 13-3601 is to determine if an offense occurred according to a multitude of statutes, in this instance stalking under A.R.S. § 13-2923, before domestic violence can even be considered.

Additionally, a juror asked the only legal question to DCA Chamblee, after Detective Castillo was excused and left the Grand Jury room, and it regarded A.R.S. § 13-3601 (6) (d). A.R.S. § 13-3601 (6) has to do with determining whether the relationship between Ms. Shaw and Mr. Webb is currently or was previously a romantic or sexual relationship and (d) states “If the relationship has terminated, the length of time since termination” can be considered.

The jurors did not have the correct information to consider any of A.R.S. § 13-3601 (6) in their deliberations and the information they did have mischaracterized Ms. Shaw and Mr. Webb’s past relationship.

The jurors returned a true bill by a vote of 14-2 and Mr. Webb was indicted on a Stalking, Domestic Violence, A Class 3 Felony on 3/25/2014. (Doc. 1 pg 19; Doc. 8 pgs 19, 28-29; Doc. 10 pgs 19, 37-38)

### **H. Criminal Case Against Plaintiff**

The dates and the activity of the criminal case are as follows:

1. Arraignment – 4/2/2014 – Mr. Webb plead not guilty; Case Management Conference scheduled for 5/2/2014
2. Case Management Conference – 5/2/2014 – Mr. Webb asks for 2 week extension to give PCAO time to review additional evidence presented by defense; 2<sup>nd</sup> Case Management Conference scheduled for 5/14/2014
3. Stipulation filed – 5/9/2014 – Mr. Webb asks for 2 week extension to preserve the ability to file a motion to remand from 5/12/2014 to 5/27/2014 pursuant to Rule 12.9 of Arizona Rules of Criminal Procedure (time limit to challenge a grand jury proceeding for a new finding of probable cause alleging that the defendant was denied a substantial procedural right)
4. 2<sup>nd</sup> Case Management Conference – 5/14/2014 – Mr. Webb asks for 3 week extension as a Motion to Remand to Grand Jury was forthcoming; 3<sup>rd</sup> Case Management Conference scheduled 6/6/2014
5. Motion To Extend Page Limit filed – 5/21/2014 – Mr. Webb asks for page extension from 10 to 16 to address all applicable facts and law permitting the filing of Motion to Remand to Grand Jury for Redetermination of Probable Cause
6. Petition For Shortening Time filed – 5/21/2014 – Mr. Webb asks for Order of Shortening Time for hearing Motion to Remand to Grand Jury for Redetermination of Probable Cause because ***Defendant is living in a hotel in Tucson, AZ pending this case. His home is the State of Kentucky.***
7. Motion To Remand To Grand Jury For Redetermination Of Probable Cause filed – 5/21/2014 – Mr. Webb's motion, formally accusing the PCSD and PCAO, was made pursuant to the Due Process clause of the 14<sup>th</sup>

Amendment to the U.S. Constitution, Art. II § 4 of the Arizona Constitution (due process), A.R.S. § 13-206 (entrapment), Ariz. R. Crim. P. 12.9, A.R.S. § 13-2801 *et seq.* (interference with judicial and other proceedings; mistakenly referred to as A.R.S. § 36-2801 in motion), and relevant case law.

8. ORDER for Hearing on Motion To Remand To Grand Jury For Redetermination of Probable Cause – 5/22/2014 – Hearing scheduled for 6/16/2014

9. 3<sup>rd</sup> Case Management Conference – 6/6/2014 – DCA Wilson makes Motion to Dismiss in open court, judge grants Motion to Dismiss, judge vacates Hearing scheduled for 6/16/2014

Additionally, the last page of the Motion to Remand states:

Mr. Webb was deprived of his due process right to a fair and impartial presentation of the evidence when the prosecutor failed to instruct the jury on relevant statute and when the detective failed to provide an “accurate picture” of the substantive facts. Had the State corrected the testimony, the Grand Jury could well have determined that there was convincing evidence of lawful conduct, and returned a no bill. By failing to instruct the Grand Jury on the law pursuant to A.R.S. § 13-2923 and the salient exculpatory facts, the State violated Mr. Webb’s due process rights to an unbiased Grand Jury, and a fair and impartial presentation of the evidence.

The PCAO and PCSD *chose* not to defend themselves against Mr. Webb’s accusations by not filing any opposing documents and by dismissing the case before the hearing on the motion to remand. (Doc. 1, 8, 10 pgs 20, 22-25)

### **I. Relevant Events During Criminal Case**

On the day of Plaintiff’s Arraignment on 4/2/2014, he was aggressively approached by an unknown male subject in plain clothes. The unknown male subject shoved papers in his face telling Mr. Webb he needed to read those.

After pleading not guilty Mr. Webb started to leave the courtroom when the same unknown male subject along with another unknown male subject got up out of their seats as they waited over an hour just to confront Mr. Webb a second time.

They held the double doors open for Mr. Webb and proceeded to follow him down the hallway to the elevators. Once at the elevators the unknown male subjects aggressively confronted Mr. Webb and then proceeded to try to intimidate Mr. Webb by rattling off information that only his family and attorney knew.

It is unknown how this information was attained but Mr. Webb was obviously tracked down by these people. Mr. Webb could have been in serious danger as Mr. Webb, who was void of any protection in Pima County unlike Ms. Shaw, did not know who they were and they could have been influenced by Ms. Shaw's rhetoric just as everyone else in Pima County was. It is inexcusable that Mr. Webb had that experience.

Two days later, on 4/4/2014, Mr. Webb was staked out at his hotel for an untold number of hours by an unknown subject. Mr. Webb noticed a person in a black mini SUV that morning that appeared to be taking pictures of him.

Mr. Webb exited his hotel a couple of hours later and the vehicle and person were still there. As Mr. Webb drove his rental car to run an errand the vehicle proceeded to follow him to his destination and then followed him back to his hotel

parking in the same spot as before. While stopped at a red light Mr. Webb looked into his rearview mirror and the unknown subject blatantly photographed him.

It is unclear what sort of danger Mr. Webb may have been in during this obvious intimidation attempt. If the PCSD and PCAO spent the hours wasted on staking him out actually doing an investigation then Mr. Webb would not have gone through that experience. It is inexcusable that Mr. Webb had that experience.

On 5/13/2014, four days after the Stipulation was filed in which Mr. Webb asked for a two week extension to preserve the ability to file a motion to remand to grand jury for a redetermination of probable cause alleging that the Defendant was denied a substantial procedural right, Detective Castillo does a phone interview with Ms. Shaw's sister in order to gain further information about Mr. Webb and Ms. Shaw's past relationship.

Detective Castillo did nothing since 3/25/2014, a total of 49 days, prior to this interview. This is after Detective Castillo specifically told Ms. Shaw on the 3/25/2014 recorded phone interview that once Mr. Webb was arrested and the PCSD completes the investigation *he does not have further involvement unless he is subpoenaed to testify in court.* Detective Castillo was not subpoenaed to testify in court but did further his investigation. The DCAs with the PCAO was supposed to have already approved of the investigation prior to the Grand Jury hearing on



3/25/2014. There should be no need to gather further information about Ms. Shaw and Mr. Webb's past relationship at that point. (Doc. 1, 8, 10 pgs 21-23)

### **J. Synopsis of Damage Inflicted Upon Plaintiff**

No one in Pima County ever contacted Mr. Webb to even attempt to offer restitution for the 12 weeks he was in Pima County. Plaintiff incurred expenses of more than \$7,000 in hotel bills, approximately \$2,000 or more in rental car expenses, and at least \$2,500 in basic living expenses. The PCAO and PCSD knew Mr. Webb was using a public defender and these sort of expenses would be devastating to his financial situation in addition to the fact he lives in Kentucky the PCAO and PCSD knew there would be an almost zero percent chance that they would ever be held accountable for their actions. The financial and emotional damage Mr. Webb suffered derailed what he had been working towards for five years and he was in the same situation as five years previously but this was not his fault. (Doc. 1, 8, 10 pgs 25-26)

The five years lost, and now more years since these violations are still occurring and having a significant impact on him, of his life amounted to more than 1,800 days, including working approximately 5,500 hours underemployed for nothing, that he spent pursuing happiness which amounts to approximately 21 days he lost for every 1 of the 84 days spent in Pima County. (Doc. 1 pg 30)

Mr. Webb's problems just began when the felony charge was dismissed and he was not appointed an attorney to assist him in justly retaliating. Plaintiff has suffered tremendously as a result of the financial and emotional toll of the criminal case brought against him. Mr. Webb has been in counseling since July of 2014 to the present day solely due to the criminal charge brought against him and its repercussions on his life. He was not in counseling before meeting with Deputy Sharp. A well-qualified counselor has stated that Plaintiff was showing signs of post-traumatic stress trauma when he returned to Kentucky. Other counselors have also assisted him in managing post-traumatic stress disorder and depression. Mr. Webb has been homeless and slept in his car numerous times. Plaintiff has never felt the need to sleep in his car before 3/15/14. His family called the police on him on two separate occasions because they were worried about how he was handling his situation. His family attempted to have Plaintiff hospitalized but the hospital would not accept him as there was nothing they could do to help him with the situation he was in. Plaintiff has struggled with employment and finances among many others which Mr. Webb has proof of. (Doc. 15 pgs 12-13)

### **STANDARD OF REVIEW**

The district court ordered Plaintiff to amend his Complaint to "state a claim upon which relief may be granted." (Doc. 6 pg 4) The district court subsequently dismissed the case without prejudice stating "the Amended Complaint still fails to

allege facts that would render Pima County, the County's Attorney, or current or former Sheriff's liable under 42 U.S.C. § 1983" and entered judgment against Plaintiff. (Doc. 12 pg 2)

The language is the same as a Rule 12(b)(6) motion for "failure to state a claim upon which relief could be granted" as well as the same language in 28 U.S.C. § 1915(e)(2)(ii), when referring to *in forma pauperis*, a case can be dismissed by the court if a Complaint "fails to state a claim on which relief may be granted."

In this case the moving party is the district court and summary judgment was entered against Plaintiff.

A Complaint may not be dismissed unless it appears certain that the Plaintiff can prove no set of facts in support of the claim which would entitle Plaintiff to relief. *Baker v. McNeil Island Corrections Center*, 859 F.2d 124, 127 (9th Cir.1988). Allegations of material fact must be taken as true and construed in the light most favorable to the claim. *Id. Moyo v. Gomez*, 32 F.3d 1382, 1384 (1994)

Any inference drawn from the facts must be reasonable, and drawn in favor of the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)

This Court reviews a grant of summary judgment de novo.

## **SUMMARY OF THE ARGUMENT**

Plaintiff contends that there are many errors in the orders by the district court in dismissing his case for failure to state a claim in which relief can be granted. Although a pro se Plaintiff like Mr. Webb will not possess the legal skills of a seasoned attorney, the claims in the Amended Complaint, and possibly the Complaint, are sufficient to support a valid claim against the Defendants.

The nature of this case involving several levels of law enforcement and multiple prosecutors that work hand-in-hand to seek an indictment in which Mr. Webb is powerless to defend himself is overlooked by the district court as is the seriousness of due process violations for lack of probable cause during not only a grand jury hearing but the subsequent consequences to a citizen of United States of America when a case in which grand jurors are given false information presented as fact is prosecuted.

It takes failures at all levels of government, the County, the Attorneys Office, the Sheriff Department, as well as employees of those entities including a County Attorney and Sheriffs, for a perfect storm to develop like it did with Plaintiff's criminal case. The Defendants are responsible and liable. Plaintiff's claims are valid and are properly pled. It is up to a jury to determine whether Mr. Webb's constitutional rights secured to him by the United States Constitution were violated by the Defendants.

## **LEGAL ARGUMENT**

The relevant portion of 42 U.S.C. § 1983 states that “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

A “person” in 42 U.S.C. § 1983 is defined in 42 U.S.C. § 2000e and “includes one or more individuals, governments, governmental agencies,” which is exactly who Mr. Webb has named as Defendants.

Mr. Webb’s claims against Defendants are because of violations, among others, of section one of the 14<sup>th</sup> Amendment which states “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

42 U.S.C. § 1983 is intended to allow United States citizens that especially have violable evidence that their constitutional rights were violated, which Mr.

Webb has the complete case file with audio interviews, by government entities and employees an avenue to hold them liable.

The Supreme Court of the United States has addressed the importance of the grand jury many times over the years as it serves a critical role to prohibit the government from prosecuting its own innocent citizens.

In *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 423 (1983) the U.S. Supreme Court stated that “The grand jury has always occupied a high place as an instrument of justice in our system of criminal law – so much so that it is enshrined in the Constitution.”

A Grand Jury is “a primary security to the innocent against hasty, malicious, and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused...to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice or ill will.” *Wood v. Georgia*, 370 U.S. 375, 390 (1962)

“The importance of the grand jury cannot be underestimated: In the federal system and many States, a felony cannot be charged without the consent of community representatives, a vital protection from unwarranted prosecutions.” *Rehburg v. Paulk*, 132 S.Ct. 1497, 1508 (2012) (footnote 3)

Mr. Webb has already proven with irrefutable facts that Detective Castillo gave false testimony at the Grand Jury Hearing in which Mr. Webb was indicted

on a felony and DCA Chamblee did not correct his testimony. It is in the record of the criminal case.

Mr. Webb made clear allegations in his motion to remand to grand jury to redetermine probable cause that the due process clause of the 14<sup>th</sup> Amendment, among others, was violated by the PCAO, PCSD, and a multitude of employees at the grand jury hearing and in the subsequent prosecution of a charge that Mr. Webb was indicted on with false information.

This offense is ongoing; it just does not stop at a grand jury hearing or because a felony charge is dismissed. The Defendants must defend themselves against Mr. Webb's accusations as there is clear and incontrovertible evidence of his claims and that the PCAO and PCSD chose not to defend themselves. The only recourse Mr. Webb is left with is a civil suit which is exactly what 42 U.S.C. § 1983 is designed to allow.

To bring a successful § 1983 claim, a plaintiff must allege (1) a violation of a constitutional right and (2) must show that the alleged violation was committed by "a person acting under color of state law." *West v. Atkins*, 487 US 42, 49 (1988). This is exactly what Plaintiff has done and is doing.

The United States Supreme Court has clearly put a tremendous value on the grand jury system to protect United States citizens from the government unnecessarily intervening in United States citizens lives and causing them

undeserving, as well as unknown, suffering at the hands of the criminal justice system.

However, rulings such as in this case completely contradict what the United States Supreme Court declares about the grand jury system. It is so important that it is enshrined in the Constitution, is used to determine whether or not a charge is founded upon reason, and it is a vital protection against unwarranted prosecutions.

It cannot be both ways. Either the grand jury is an important instrument of justice or it is not.

The district court goes through a host of cases on the order to amend the original Complaint. (Doc. 6 pg 3) Mr. Webb is untrained in law and the claims on the Complaint may or may not be sufficiently pled but he does contend the claims are, at a minimum, sufficiently pled in the Amended Complaint and the case does not warrant dismissal. (Doc. 8 pgs 26-34, Doc. 10 pgs 35-43)

“In appraising the sufficiency of a complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)

Plaintiff has laid out a plethora of facts that are included in the claims against every Defendant as every claim is preceded by realleging and incorporating



all allegations contained in the entirety of the Complaint and Amended Complaint. It means what it states. There is no need to go over every applicable fact that may be relevant concerning any Defendant as it is already included in the claim itself.

Additionally, “The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” *Conley* at 48. (citing *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938))

The Courts over the years have put a tremendous amount of importance on due process and the 14<sup>th</sup> Amendment as it is fundamental in the United States to protect innocent citizens from the government interfering in United States citizen’s lives and protecting liberty, just as the grand jury is. This is exactly what Mr. Webb claims.

“The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992) (Due Process Clause "protects individual liberty against `certain government actions regardless of the fairness of the procedures used to implement them' ") (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. *Reno*

*v. Flores*, 507 U.S. 292, 301-302 (1993); *Planned Parenthood Of Southeastern Pennsylvania v. Casey*, 505 U. S. 833, 851 (1992).” *Washington v. Glucksberg*, 521 U.S. 702, 719-720 (1997)

Plaintiff does not agree with the cases the district court is using in the order to amend Complaint (Doc. 6 pg 3) or the two duplicate cases cited in dismissing the case (Doc 12 pg 1) as they are irrelevant regarding the Amended Complaint. There are no specific examples in either order of how Mr. Webb failed the various theories.

The district court is using a heightened pleading standard that is not necessary according to Rule 8(a) and discounting the value of discovery. A complaint is not the case, it is just a notice.

A case from the Ninth Circuit Court of Appeals, *Starr v. Bacca*, 652 F.3d 1202 (2011), is particularly instructive.

The district court relies on *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) in both orders.

However, the Ninth Circuit notes that “The juxtaposition of *Swierkiewicz* (*Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002)) and *Erickson* (*Erickson v. Pardus*, 551 U.S. 89 (2007) (*per curiam*)), on the one hand, and *Dura* (*Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005)), *Twombly* (*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)), and *Iqbal*, on the other, is perplexing.

Even though the Court stated in all five cases that it was applying Rule 8(a), it is hard to avoid the conclusion that, in fact, the Court applied a higher pleading standard in *Dura*, *Twombly* and *Iqbal*. *Starr* at 1215.

“The theory of Rule 8(a), and of the federal rules in general, is notice pleading.” *Starr* @ 1212.

“Under the federal rules a complaint is required only to give the notice of the claim such that the opposing party may defend himself or herself effectively. The theory of the federal rules is that once notice-giving pleadings have been served, the parties are to conduct discovery in order to learn more about the underlying facts.” *Starr* @ 1212.

In the case at hand, discovery is particularly critical to determine unknown facts, procedures, policies, customs, etc. that were not established during the criminal case but Mr. Webb has raised. For example, when was the “plea for help” text message written, in June 2013 or February 2014 as Ms. Shaw claimed she had not had any suicidal thoughts since June 2013? The question was not asked during the criminal case to determine the date but it will be answered through discovery. Is it commonplace for the PCAO and PCSD to conduct a recorded interview by phone after giving sworn testimony that later was determined to be false at a grand jury hearing in a felony case instead of before? As can be concluded in the facts of

this case and the allegations there are too many unknowns to discount any possibilities. That is what discovery is for – to get to the truth.

Pima County Attorney LaWall details the steps of the criminal justice process as well as what role the PCAO plays during the criminal justice process on the PCAO [website](#) which claims a Grand Jury “provides an important check on the government to prosecute its citizens.” (Doc. 1 pgs 31-33, Doc. 8 pg 28, Doc. 10 pgs 36-37) Do LaWall’s prosecutors have the proper training to prosecute criminal cases or conduct Grand Jury Hearings etc.? Does LaWall have the proper supervisory steps in place to monitor cases and her prosecutors etc.? Was LaWall directly involved in any of the decision making in Mr. Webb’s case? Mr. Webb’s criminal case involves at least two prosecutors and an unknown number of investigators. Questions such as these will be answered through discovery.

Pima County Sheriff Dupnik was the sheriff during the criminal case with Nanos and Napier following. On the PCSD [website](#), which has not changed during all three administrations, there is an ethics, oath, and mission statement in which the PCSD claims to support the United States Constitution as well as the Constitutional rights of all people to liberty, equality, and justice, among many other claims. (Doc. 1 pgs 26-28, Doc. 8 pgs 30-31, Doc. 10 pgs 39-40) Did Dupnik have any policies or procedures etc. to ensure all PCSD personnel adhered to the ethics and oaths? Did Dupnik ensure that all PCSD personnel had the proper

training to execute their jobs properly? Did Dupnik have the proper supervisory steps in place to monitor personnel and their work so the Constitutional rights of all people to liberty, equality, and justice is not compromised? There were at least five known employees with the PCSD on three different levels – 2 deputies, 2 detectives, 1 sergeant – that had a part in the criminal case. Questions such as these will be answered through discovery.

Pima County takes a heavy handed approach when it comes to risk management of all entities under its direction, including the PCSD and PCAO, that is outlined on the Pima County [website](#). The only thing Pima County is concerned about is liability and if it may cost money and that is exactly how the PCSD and the PCAO operate. (Doc. 15 pgs 10-12) More information would be obtained through discovery.

Mr. Webb brings up two somewhat similar cases to his involving the PCSD in the Rule 60(b) motion to illustrate as an example as he does not have access to case files but it does further develop how multiple PCSD employees handled a known person that was mentally unstable and what the consequences were to the victims. (Doc. 15 pgs 5-6)

Two different incidents occurred in which a person, William Warfe, in the PCSD database that was already known to be mentally unstable and had made a multitude of false 911 calls in which the PCSD responded that started in December

2012. The PCSD even transported Mr. Warfe to a Crisis Response Center at one point because he “heard voices in his head.”

In May of 2013, Mr. Warfe called 911 to report that he heard a gunshot, people yelling and screaming, and a woman crying about “having to shoot him” from a nearby property. Multiple PCSD deputies responded to the call along with a supervising deputy. The 911 operator did not question Mr. Warfe's claims and neither did the responding deputies.

Mr. Warfe informed the responding PCSD personnel on what property this event occurred. This ended up with a couple, the Larsons, having an assault rifle, held by one of the deputies, pointed directly at Mr. Larson when he answered the door. The occupants were subsequently detained and their home searched.

When Mr. Warfe, who was on the scene, was notified that there did not appear to be an issue at the Larson residence, Mr. Warfe informed the deputies that it may be another residence. This residence was the home of multiple people, the Jacksons.

The PCSD personnel did the exact same thing at the Jackson residence ordering the occupants out of their residence at gunpoint, they were detained, and the residence searched.

Both households were detained, in handcuffs, for an extended period of time but eventually released from custody as the event Mr. Warfe described never happened.

The Larsons, *Larson v. Napier*, No. 16-16259 (9th Cir. June 27, 2017), and the Jacksons, *Jackson v. Nanos*, 15-CV-52 (D. Ariz.), later filed suit against Sheriff Dupnik, the supervising deputy, and others involved alleging constitutional rights violations.

Plaintiff brings these cases up, even though he has access to very limited information, for several reasons.

Similar to the Larson case, Ms. Shaw was already known to have been hospitalized for attempted suicide etc. in which the PCSD responded. Mr. Webb showed Deputy Sharp within a very short period of time contradictory evidence to Ms. Shaw's claim that she had not been suicidal etc. since June 2013 even though the evidence Mr. Webb presented was from February 2014. Deputy Sharp never questioned Ms. Shaw about the contradictory evidence and Mr. Webb was arrested for stalking Ms. Shaw and taken to jail.

Similar to the Jackson case, Detective Castillo with the PCSD had access to the contradictory evidence as did the prosecutors with the PCAO that Mr. Webb presented, which Castillo did not specifically ask Ms. Shaw about during the phone interview after Castillo already testified, once again just accepting Ms. Shaw's

story. Mr. Webb was indicted by a grand jury on a felony and subsequently prosecuted.

Mr. Webb's criminal case rose to a much higher level than either the Larson or Jackson case, involved at least three different levels at the PCSD, prosecutors at the PCAO, others that are not known, and lasted for 84 days not a couple of hours.

On 3/26/2014, one day after Mr. Webb was indicted on the felony, Pima County became aware of the Larson case as the defendants in that case were served for violating the constitutional rights of the Larsons. An attorney with the PCAO was assigned to the case and the same attorney was assigned to the Jackson case when they later filed a constitutional rights violation lawsuit.

The PCSD, while claiming oaths, ethics and constitutionality on their website, and Pima County did nothing to proactively engage either household for the errors. Instead, both households had to file a civil suit in which Pima County chose to defend instead of accepting responsibility.

At the exact same time as Mr. Webb's criminal case the PCAO and Pima County became aware of how the PCSD handled Mr. Warfe's claims while simultaneously a similar situation was developing in how Ms. Shaw's claims were being handled but instead of just the PCSD, the PCAO, who also claims ethics and checks on the power of government, did not question Ms. Shaw's claims.



Pima County writes nothing about the merits of claims but instead only writes about avoiding liability. Pima County, not the PCSD or the PCAO, wrote the check to the Larsons for \$1,250,000. The Jackson case was later settled after the Larson appeal.

The district court comments on this but is missing the point as this is a small example but a significant one as the cases are similar and Mr. Webb does not have access to any files in Pima County. (Doc. 19 pg 3)

CA Barbara LaWall on the PCAO [website](#) details the role of both the PCSD and the PCAO in the Formal Charging Decision section and the Grand Jury section:

A detective or other officer will present to a deputy county attorney all the evidence that has been gathered about the crime in question. The deputy county attorney will review the evidence and decide whether to issue formal charges against the defendant and, if so, what the charges should be.

The charging or "issuing" decision is a critical step in the criminal justice process. It is guided by legal and ethical rules that require a reasonable belief that the evidence is sufficient to convince a jury-unanimously, beyond a reasonable doubt, and despite any reasonable defenses-that the defendant is guilty of the charge.

If the issuing attorney concludes the evidence is sufficient to file formal felony charges, that decision must then be reviewed by a neutral third party (Grand Jury in this case). This step provides an important check on the government's power to prosecute its citizens: a case may proceed only if the third party independently agrees there is "probable cause" to believe the named defendant committed the crime or crimes charged.

To summarize, the district court contends that Plaintiff is claiming the investigation by the County and Detective Castillo is subpar by challenging the testimony of Castillo, for multiple reasons, by claiming that Castillo provided the jurors with false information, and that the prosecutor allowed his testimony which led to an indictment. (Doc. 6 pgs 2-4, Doc. 12 pg 1, Doc. 19 pgs 2-3)

Plaintiff does contend that the investigation by Detective Castillo is unacceptable and the decision by a prosecutor to file formal charges is unacceptable. This means a prosecutor approved the investigation, actually thought there was sufficient evidence to seek a felony indictment against Mr. Webb, and that a jury could be convinced – unanimously – that Mr. Webb was stalking Ms. Shaw.

Subsequently, Mr. Webb was indicted by the jurors who were given false information, only told one side of the story, provided the jurors with no exculpatory evidence, did not instruct the jurors on relevant law, and then determined that enough “probable cause” did exist to charge Mr. Webb with a felony.

Essentially, Mr. Webb claimed constitutional violations and that he was unjustly indicted at the grand jury hearing by PCSD and PCAO personnel. The PCAO decided to dismiss for unknown reasons but it was after the formal accusation and 74 days after the indictment.

“Without thorough and effective investigation, the grand jury would be unable either to ferret out crimes deserving of prosecution, or to screen out charges not warranting prosecution.” *US v. Sells* at 424.

Detective Castillo unequivocally told the jurors false information and DCA Chamblee did not correct him. It is an indisputable fact backed up by evidence. No exculpatory evidence was provided to the jurors. It is an indisputable fact backed up evidence.

A jury cannot make a determination if probable cause exists to seek an indictment based on false information presented as fact. This was not a thorough and effective investigation that could screen out a charge not warranting prosecution by any of the PCSD personnel or any of the PCAO personnel.

This brings into question absolute immunity for prosecutors and Grand Jury witnesses. Since public prosecutors, DCA Wilson and DCA Chamblee, cannot be sued, unlike their private predecessors, they enjoy absolute immunity which gives them a free pass in today’s system even absent probable cause. *Rehburg* at 1503-1504.

Similar are Grand Jury witnesses that may be detectives. A detective may want an indictment to the point of sacrificing a proper investigation. However, since a prosecutor is responsible for actually signing off on the indictment, hence a Grand Jury Hearing, with absolute immunity, then that will allow a free pass for

the detective that may be the witness. Then, as in Mr. Webb's case, the innocent citizen is aggressively prosecuted with no consequences for any individuals responsible. *Rehburg* at 1508.

The United States Supreme Court has acknowledged in *Rehburg* the advantages and inherent dangers of grand jury hearings as there is not a Judge present and any and all witnesses as well as the prosecutor enjoy immunity even absent probable cause.

It is baffling as the Courts have emphasized that the Grand Jury system is extremely important and a check on the power of government to prevent citizens from being unjustly prosecuted – unless it is not important. Either United States citizens lives and fundamental rights matter in the United States or they do not. There is no in-between position.

The Declaration of Independence states “that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing

its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

Mr. Webb’s criminal case and now this civil case being dismissed is not in line with the foundation document. Over a 240 year period the principles and rights of citizens that the United States was founded upon is compromised.

This can happen over and over to Mr. Webb at the whim of any prosecutor or anyone in law enforcement. There is not a logical reason for Mr. Webb to attempt to do anything in the pursuit of happiness when whatever he was working towards can be shut down by indicting him on a bogus felony charge at will without probable cause anytime he leaves the state of Kentucky.

The district court has also made several errors in presenting facts concerning the order to amend the Complaint and the order denying the Rule 60(b) motion.

The order to amend Complaint starts with the district court presenting a fact that Plaintiff disputes. The presented fact claims that “police responded to a 9-1-1 call after Plaintiff showed up uninvited at Jill Shaw’s residence (where Ms. Shaw lived with her husband) on the evening of March 15, 2014.” (Doc. 6 pg 1)

Plaintiff disputes that he was not invited and that it is presented as conclusory. Plaintiff alleges in both complaints, and reiterated in this brief, that he was invited to be arrested or to possibly be murdered. With the evidence Mr. Webb already has, with even more obtained through discovery, he reasonably

believes that he can convince a jury that he was invited. Mr. Shaw had been carrying a gun around and Ms. Shaw told her husband to “grab a gun”. Mr. Webb was just a few feet away from being killed. A complaint does not cover all the evidence that Mr. Webb has and there is no need for it to either.

Additionally, Plaintiff called 911 as well to request a welfare check and was told an officer would check on it and contact him with an update. Deputy Sharp was aware of both 911 calls and simply requested that Mr. Webb meet with him. Mr. Webb also contends in both complaints, and reiterated in this brief, that Deputy Sharp contacted Mr. Webb with the intent of arresting him as Mr. Webb supplied the contradictory evidence requested by Deputy Sharp and it was ignored.

Ms. Shaw encouraged Mr. Webb to leave his job as Mr. Webb wanted to move on with his life and told Ms. Shaw this. Mr. Webb did leave his job the next day but did not purchase a plane ticket that same day. The record shows that it was more than a week before Mr. Webb flew to Tucson, AZ. The district courts facts are not correct. (Doc. 19 pg 2)

Mr. Webb also disputes the district court when it states “Plaintiff has not established — nor does there exist — a constitutional right to have state investigators interview key witnesses *in-person* before a Grand Jury proceeding occurs.” (Doc. 19 pgs 3-4)

Mr. Webb does have the constitutional right to a fair and unbiased presentation of evidence to a grand jury. The grand jury system cannot operate as intended if false information is used to seek an indictment. If this is the case and everyone has immunity at grand jury hearings, then the grand jury system should be abolished, or at least in Pima County as this may be common practice, as it too dangerous to United States citizens. Mr. Webb's due process rights were violated and continue to be violated.

A grand jury essentially operates on the "honor system" and there is no place in the legal system that can be substituted with the "honor system" when seeking felony indictments.

More information can be attained with an in-person interview than a phone interview. It is scientific fact. However, this does not change the fact the official interview with Ms. Shaw was done *after* Detective Castillo testified and the criminal case records clearly show that he contradicted critical testimony obtained from the phone interview.

"Plaintiff was arrested and indicted, despite claims of innocence; but Plaintiff was also exonerated according to the due process of law." (Doc. 19 pg 4)

Mr. Webb disagrees with this. His due process rights were officially violated on 3/25/2014 and he was not exonerated according to the due process of law. Mr. Webb received two votes not to indict him and it is not beyond reason

that there would be no need to be exonerated after the fact if the jurors were given correct information as testimony and exculpatory evidence was presented.

The district court states that “Plaintiff has not shown that any of the Defendants’ actions rose to the level of a constitutional violation.<sup>1</sup>” (Doc. 19 pg 4) Footnote 1 – “*See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (guiding that the Fourteenth Amendment protects “fundamental rights” so “deeply rooted in this Nation's history and tradition, and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed’ ”) (quoting *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494 (1977), and *Palko v. State of Connecticut*, 302 U.S. 319 (1937)).”

Plaintiff disagrees with the district courts statement as the arguments he has presented are valid. Plaintiff wholeheartedly agrees with footnote 1 as it reiterates the stance taken by Mr. Webb about how serious the Courts are when it comes to the 14<sup>th</sup> Amendment and the rights it is designed to protect which is exactly what Mr. Webb’s arguments have been.

The district court states that “The Federal Courts’ co-equal role in our constitutional system of governance does not include mandating the witness interviewing procedure that local state officials must follow when conducting their criminal investigations.<sup>2</sup>” (Doc. 19 pg 4)



It is not the Federal Courts job to mandate interviewing procedures of local state officials and that is not the point. The point is to determine how and why was false information presented to the jurors. In this case the interview with Ms. Shaw after already testifying was a major contributor that resulted in false testimony. If it is commonplace in Pima County that the interviewing procedures contribute to false information being presented to jurors then it takes civil suits to rectify the customs, practices, and procedures that lead to unfair and biased testimony.

The supposed deterrent for false testimony by a law enforcement witness at a trial or at a grand jury hearing is sanctions such as prosecution for perjury since it is a serious criminal offence. It is considered to be sufficient enough so civil liability would not be necessary for sworn testimony. Additionally, a supposedly sufficient deterrent for law enforcement witnesses is the possibility of losing their jobs. *Rehburg* at 1505-1507.

Those deterrents mean nothing if they are not enforced. If these deterrents are enforced it still leaves no recourse for the accused for the testimony alone. If a law enforcement officer is prosecuted for perjury or sanctioned for the testimony or even fired, ultimately the County would have to voluntarily and promptly offer restitution for the constitutional rights violations of a United States citizen.

Discovery is the only way to determine if there were disciplinary actions involving

anyone involved in this case and if anyone is no longer employed when was the departure and what were the circumstances behind that departure.

The district court also noted that “Plaintiff’s appeal may lack a realistic probability of success.” (Doc. 19 pg 4)

However, it is not up to the district court to determine the probability of success of any case or any appeal.

“The factual allegations of the complaint need only "plausibly suggest an entitlement to relief." As the Court wrote in *Twombly*, Rule 8(a) "*does not impose a probability requirement at the pleading stage*; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence" to support the allegations.” *Starr* @1217.

"Whether a local government has displayed a policy of deliberate indifference to the constitutional rights of its citizens is generally a jury question." *Gibson v. County of Washoe, Nevada*, 290 F.3d 1175, 1194-1195 (2002)

## **CONCLUSION**

Based on all of the foregoing, Appellant respectfully requests this Court to reverse the district court’s dismissal of Plaintiff’s case for a deficient Complaint and/or Amended Complaint and/or reverse the district court’s denial of the Rule 60(b) Motion For Relief From Judgment and remand this matter to the district

court for further proceedings, so that this case may be tried on the true merit of the claims.

### **STATEMENT OF RELATED CASES**

To Appellant's knowledge, there are no known related cases currently pending in this Court.

DATED this 5<sup>th</sup> day of January, 2019.

/s/ Wade Travis Webb, Pro Se  
Wade Travis Webb  
117 Logan Avenue  
Elizabethtown, KY 42701  
(270) 304-8591

## **CERTIFICATE OF COMPLIANCE**

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font. Excluding the parts of brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and 9 Cir. R. 32-1(c), this brief is 12,595 words. Circuit form 8 is attached.

## **CERTIFICATE OF SERVICE**

Certificate of Service is not applicable in this case as there is no Appellee.

**Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number 18-16659**

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

- This brief complies with the length limits permitted by Ninth Circuit Rule 28.1-1. The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- This brief complies with the length limits permitted by Ninth Circuit Rule 32-1. The brief is 12,595 words or 53 pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b). The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable, and is filed by (1)  separately represented parties; (2)  a party or parties filing a single brief in response to multiple briefs; or (3)  a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- This brief complies with the longer length limit authorized by court order dated [ ] The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.
- This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2 (a) and is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32 (f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 29-2 (c)(2) or (3) and is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- This brief complies with the length limits set forth at Ninth Circuit Rule 32-4. The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or Unrepresented Litigant

/s/ Wade Travis Webb

Date

10/27/2018

(\*s/\* plus typed name is acceptable for electronically-filed documents)

(Rev.12/1/16)