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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

PRESTON R. TENSLEY and BEATA L. )  
TENSLEY, husband and wife, )  
 )  
Plaintiffs, )  
 )  
-vs- )  
 )  
CITY OF SPOKANE, WASHINGTON, )  
ROGER BRAGDON, BRADLEY ARLETH, )  
WILLIAM MARSHALL, LONNIE )  
TOFSRUD, COREY TURMAN, JOHN DOE )  
#1, JOHN DOE #2, and JANE DOE, )  
 )  
Defendants. )  
 )

NO. CV-05-0233-LRS  
**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

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BEFORE THE COURT is Defendants' Motion for Summary Judgment. (Ct. Rec. 9), which was orally argued on May 15, 2006. Richard Wall participated on behalf of the Plaintiff and Ellen O'Hara participated on behalf of the Defendants. After careful review of the pleadings submitted by all parties and with the benefit of oral argument, this order will memorialize and supplement the oral rulings of the Court on that date, which are incorporated herein by reference.

The Court finds that there are no genuine issues of material fact. Accordingly, Defendants are entitled to summary judgment as a matter of law for the reasons stated on the record, and set forth below.

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1 **I. BACKGROUND**

2 This case involves a lawsuit brought by Plaintiff Preston Tensley,  
3 and his wife, Beata Tensley. Plaintiff claims that Spokane City police  
4 officers unlawfully deprived him of his civil rights and due process of  
5 law when he was arrested and charged with several felonies. Complaint  
6 (Ct. Rec. 1). In addition, Mr. Tensley claims that the police officers  
7 violated the laws of the State of Washington. *Id.*

8 In the early morning hours of March 24, 2005, Spokane Police  
9 officers responded to a report of vehicle prowling. In her call to 9-1-1,  
10 Connie Moran reported that she heard what sounded like someone trying to  
11 enter the basement of the home that she shared with her sister, Joyce  
12 Wicke. She reported that the prowler might be a person named "Preston."  
13 Affidavit of Doris Stragier, Ct. Rec. 12, p. 4-12. Ms. Moran reported  
14 that "Preston" had said that he was from the Spokane Police Department,  
15 and that he had a badge, so she let him in." Ct. Rec. 12 at p. 6. In  
16 the 9-1-1 tape, Ms. Moran also stated that "he was fighting with us and  
17 like trying to get us to sleep with him." Ct. Rec. 12 at p. 8. Police  
18 officers were dispatched to the home, checked the area, and questioned  
19 the sisters about the person named "Preston." Detectives interviewed  
20 both Ms. Wicke and Ms. Moran. Ms. Moran identified "Preston" as being  
21 Preston Tensley. Ms. Moran reported to the police officers that she had  
22 been raped by Mr. Tensley. Ct. Rec. 12 at ¶ 17-18. The sisters did not  
23 know precisely when the assault had occurred, but with the help of a  
24 calendar, they stated that the date had been March 21. Ms. Moran also  
25 reported that Mr. Tensley drank from a Sprite can during the alleged  
26 sexual assault. Affidavit of William Marshall, Ct. Rec. 14 at ¶¶7-12.

1 The sisters identified Mr. Tensley and his vehicle a black Grand Prix,  
2 which they described as a Pontiac. Ct. Rec. 14 at ¶¶14-16. Ms. Moran  
3 reported to detectives that Mr. Tensley had two weapons with him when she  
4 let him into the home. Ms. Moran also stated to detectives that Mr.  
5 Tensley had pointed a gun at her sister and led her into a bedroom where  
6 she was assaulted. Ms. Wicke initially denied having any sexual contact  
7 with Mr. Tensley, however, after being questioned about Ms. Moran's  
8 report, she told a detective that Mr. Tensley had fondled her against her  
9 will. Ct. Rec. 14 at ¶¶16-17. According to the record, Mr. Tensley also  
10 took Ms. Wicke with him in his car to go look for a friend. Ct. Rec. 14  
11 at ¶23.

12 With the statements of two witnesses, and corroborating evidence,  
13 the detectives had probable cause to arrest Mr. Tensley. At  
14 approximately 2:50 p.m. on March 25, 2005, detectives went to Mr.  
15 Tensley's home and arrested him. Search warrants were then signed by a  
16 judge for Mr. Tensley's home, and his automobile. Affidavit of Corey  
17 Turman, Ct. Rec. 15 at ¶¶8-11. After the search warrants were signed,  
18 detectives seized a weapon from Mr. Tensley's car, and another one from  
19 his home. Ct. Rec. 15 at ¶21; Ct. Rec. 14 at ¶24. Mr. Tensley was  
20 charged with first degree burglary, first degree rape, kidnaping, and  
21 criminal impersonation. Ct. Rec. 14 at ¶24. Also on March 25, 2005, Mr.  
22 Tensley was arraigned in Spokane County Court where television cameras  
23 were present. During his bail setting argument, a Spokane County  
24 Prosecutor stated, "We also have information that the Defendant is  
25 affiliated with a gang, which also gives rise to community safety  
26 concerns." Ct. Rec. 12 at p. 29. On approximately March 29, 2005, Ms.

1 Moran and Ms. Wicke contacted local reporters, and recanted their  
2 stories. Ct. Rec. 12 at pp. 41-44; 53-58. On April 1, 2005, Mr. Tensley  
3 was released from custody, and the charges against him were dismissed.

## 4 **II. STANDARDS OF LAW**

### 5 A. Summary Judgment Standard

6 Under Rule 56(c), summary judgment is proper "if the pleadings,  
7 depositions, answers to interrogatories, and admissions on file, together  
8 with the affidavits, if any, show that there is no genuine issue as to  
9 any material fact and that the moving party is entitled to a judgment as  
10 a matter of law." Fed. R. Civ. P. 56(c). In ruling on a motion for  
11 summary judgment the evidence of the non-movant must be believed, and all  
12 justifiable inferences must be drawn in the non-movant's favor. *Anderson*  
13 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513 (1986).  
14 However, when confronted with a motion for summary judgment, a party who  
15 bears the burden of proof on a particular issue may not rest on its  
16 pleading, but must affirmatively demonstrate, by specific factual  
17 allegations, that there is a genuine issue of material fact which  
18 requires trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).  
19 The party must do more than simply "show there is some metaphysical doubt  
20 as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio*  
21 *Corp.*, 475 U.S. 574, 586(1986) (footnote omitted). "Where the record  
22 taken as a whole could not lead a rational trier of fact to find for the  
23 nonmoving party, there is no 'genuine issue for trial.'" *Id.* at 587  
24 This court's function is not to weigh the evidence and determine the  
25 truth of the matter but to determine whether there is a genuine issue for  
26 trial. There is no issue for trial "unless there is sufficient evidence

1 favoring the non-moving party for a jury to return a verdict for that  
2 party." *Anderson*, 477 U.S. at 249. Summary judgment must be granted  
3 "against a party who fails to make a showing sufficient to establish the  
4 existence of an element essential to that party's case, and on which that  
5 party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.  
6 "A plaintiff's belief that a defendant acted from an unlawful motive,  
7 without evidence supporting that belief, is no more than speculation or  
8 unfounded accusation about whether the defendant really did act from an  
9 unlawful motive." *Carmen v. San Francisco Unified School Dist.*, 237 F.3d  
10 1026, 1028 (9th Cir. 2001). "To be cognizable on summary judgment,  
11 evidence must be competent." *Id.* (quoting Fed. R. Civ. P. 56(e)).

12 B. 42 U.S.C. § 1983 Standard.

13 To state a claim under 42 U.S.C. § 1983, at least two elements must  
14 be met: (1) the defendant must be a person acting under color of state  
15 law, (2) and his conduct must have deprived the plaintiff of rights,  
16 privileges or immunities secured by the Constitution or laws of the  
17 United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), overruled  
18 in part on other grounds, *Daniels v. Williams*, 474 U.S. 327, 330-31  
19 (1986). Implicit in the second element is a third element of causation.  
20 *See Mt. Healthy City School Dist. v. Doyle*, 429 U.S. 274, 286-87, (1977).  
21 When a plaintiff fails to allege or establish one of the three elements,  
22 his complaint must be dismissed. The Civil Rights Act, 42 U.S.C. § 1983,  
23 is not merely a "font of tort law." *Parratt*, 451 U.S. at 532. That  
24 plaintiff may have suffered harm, even if due to another's negligent  
25 conduct does not in itself necessarily demonstrate an abridgment of  
26 constitutional protections. *Davidson v. Cannon*, 474 U.S. 344 (1986).

1           **II. Plaintiff Fails to Demonstrate a Constitutional Violation**

2           Claims that law enforcement officers have violated a person's rights  
3 in the course of a seizure or detention are analyzed under the Fourth  
4 Amendment and its reasonableness standard. *Graham v. Connor*, 490 U.S.  
5 386, 395 (1989). In making a search or arrest, the reasonableness  
6 requirement is satisfied by probable cause. *Brinegar v. United States*,  
7 338 U.S. 160, 175 (1949). In Washington, probable cause for arrest  
8 exists when there is a reasonable ground for suspicion supported by  
9 circumstances sufficient to lead a cautious man to believe the suspect  
10 is guilty. *State v. Scott*, 93 Wn.2d 7, 10-11 (1980) cert denied, 446  
11 U.S. 920. To arrest without a warrant, the officer must reasonably  
12 believe the suspect has committed, is committing, or is about to commit  
13 a felony. RCW 10.31.100. In Mr. Tensley's case, the officials had the  
14 the statements and positive identification of two witnesses, as well as  
15 corroborating evidence. Ct. Rec. 14. This Court finds that the officers  
16 had probable cause to arrest Mr. Tensley.

17           As stated on the record, Mr. Tensley's due process rights were not  
18 violated because all of the officers named in this lawsuit behaved  
19 reasonably in arresting Mr. Tensley. Furthermore, the officers did not  
20 violate Mr. Tensley's due process rights because they acted reasonably  
21 in executing a search warrant of Mr. Tensley's car and of his home.

22           In essence, Plaintiff is arguing that the officers acted negligently  
23 in believing the alleged victims. However, even assuming, arguendo, that  
24 Defendants acted negligently, Plaintiff has failed to state a  
25 constitutional claim. That Plaintiff may have suffered harm, even if  
26 due to another's negligent conduct does not in itself necessarily

1 demonstrate an abridgment of constitutional protections. *Davidson v.*  
2 *Cannon, supra*. In Washington, a claim for negligent investigation is  
3 generally not recognized for a variety of policy reasons, unless the  
4 person is within the class of individuals the statute is designed to  
5 protect. *Donaldson v. City of Seattle*, 65 Wn. App. 661 (1992).

6 Plaintiff's claim against Police Chief Bragdon for failing to train  
7 must be dismissed. Plaintiff must establish that a failure to train  
8 amounts to deliberate indifference to the rights of the person with whom  
9 the officers come into contact. *Canton v. Harris*, 489 U.S. 378 (1989).  
10 As the Court noted on the record, there is no evidence of deliberate  
11 indifference in this case. Moreover, liability in a § 1983 claim cannot  
12 be premised on supervisory responsibility or position. *Monnell v. New*  
13 *York City Dept of Social Services*, 436 U.S. 658, 694 n. 58 (1978); *Padway*  
14 *v. Palches*, 665 F.2d 965 (9<sup>th</sup> Cir. 1982).

### 15 **III. Defendants Are Entitled to Qualified Immunity**

16 Even if there were a constitutional violation, this Court finds the  
17 Defendants are entitled to qualified immunity. Under the doctrine of  
18 qualified immunity officials are "shielded from liability for civil  
19 damages insofar as their conduct does not violate clearly established  
20 statutory or constitutional rights of which a reasonable person would  
21 have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The  
22 qualified immunity standard is a generous one. It "gives ample room for  
23 mistaken judgments" by protecting "all but the plainly incompetent or  
24 those who knowingly violate the law." *Hunter v Bryant*, 502 U.S. 224, 229  
25 (1991) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Because day  
26 to day decisions of officials are accorded deference by the courts these

1 officials are entitled to a corresponding accommodation if a reasonable  
2 error in judgment is made. "This accommodation exists because 'officials  
3 should not err always on the side of caution' because they fear being  
4 sued." *Hunter*, 502 U.S. at 228.

5 The issue of qualified immunity is a question of law for the court.  
6 See *Act Up!/Portland v. Bagley*, 988 F.2d 868, 873 (9th Cir. 1993).  
7 Applying the standard is a two-part process. The first question is  
8 whether the law governing the official's conduct was clearly established.  
9 If the relevant law was not clearly established, the official is entitled  
10 to immunity from suit. *Saucier v. Katz*, 533 U.S.194, 201 (2001). See  
11 also *Somers v. Thurman*, 109 F.3d 614, 617 (9th Cir. 1997), cert. denied,  
12 522 U.S. 852 (1997). If the law was clearly established, the next  
13 question is whether, a reasonable official could have believed the  
14 challenged conduct was lawful. *Id.* In this case, the officials had the  
15 statements of two alleged victims and other corroborating evidence before  
16 arresting Mr. Tensley. The fact that the witnesses later recanted,  
17 resulting in dismissal of the charges does not change the analysis.  
18 Moreover, based on the information they had at the time, the officers  
19 reasonably believed their conduct was lawful. Under the circumstances,  
20 the officers are entitled to qualified immunity.

#### 21 **IV. Plaintiff's State Causes of Action are Also Dismissed**

22 Plaintiff also fails to state a cause of action under the laws of  
23 Washington State.

##### 24 A. False Imprisonment.

25 In Washington, probable cause for arrest exists when there is a  
26 reasonable ground for suspicion supported by circumstances sufficient to

1 lead a cautious man to believe the suspect is guilty. *State v. Scott*,  
2 93 Wn.2d at 10-11. To arrest without a warrant, the officer must  
3 reasonably believe the suspect has committed, is committing, or is about  
4 to commit a felony. RCW 10.31.100. This Court finds that the officers  
5 in this case acted reasonably in accordance with the law. Defendants did  
6 not commit the tort of unlawful imprisonment because the arrest was based  
7 on probable cause pursuant to RCW 9A.46.090.

8 B. Conversion.

9 Similarly, Plaintiff's claim of conversion cannot stand. Conversion  
10 is the willful interference with any chattel without lawful justification  
11 whereby any person entitled thereto is deprived possession of it.  
12 *Washington State Bank v. Medalia Health Care*, 96 Wn.App.557, 554 (1999).  
13 Defendants' interference with Mr. Tensley's land was lawful and pursuant  
14 to a search warrant. Therefore, the claim is dismissed.

15 C. Trespass.

16 In addition, Plaintiff's claim for trespass must be dismissed. The  
17 City acknowledged that it entered Mr. Tensley's property without  
18 permission. Ct. Rec. 10 at 14. However, as the Defendants correctly  
19 assert, the officials entered Mr. Tensley's property pursuant to a  
20 warrant. For these reasons, Plaintiff's claim for trespass must be  
21 dismissed.

22 D. Defamation.

23 Mr. Tensley claims that he was defamed when a county prosecutor made  
24 a statement concerning his alleged gang ties during his arraignment. To  
25 prove defamation, a plaintiff must show that the alleged tort feaser  
26 made a false and defamatory communication, that the communication was not

1 privileged, and that the statement was the actual cause of harm to the  
2 Plaintiff. *Moe v. Wise*, 97 Wn. App. 950, 957 (1999). Truth is an  
3 absolute defense to defamation. *Lee v. Columbian, Inc*, 64 Wn. App. 534,  
4 538 (1991). In the instant case, as noted during the hearing, the  
5 alleged statement was made in Court. Moreover, the statement was not  
6 made by any of the named Defendants or even a Spokane City employee, but  
7 instead a Spokane County prosecutor. Therefore, Plaintiff's defamation  
8 claim must be dismissed.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Defendants' Motion for Summary Judgment (Ct. Rec 9) is **GRANTED**.  
11 All of Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

12 2. There is insufficient evidence in the record for the Court to  
13 rule on the Defendants' Counterclaim for Malicious Prosecution;  
14 therefore, it is **DISMISSED WITHOUT PREJUDICE**.

15 **IT IS SO ORDERED.** The Clerk is hereby directed to file this Order,  
16 enter Judgment in favor of Defendants, furnish copies to counsel and  
17 close the file.

18 **DATED** this 21st day of July, 2006.

19 *s/Lonny R. Suko*

20 \_\_\_\_\_  
21 LONNY R. SUKO  
22 UNITED STATES DISTRICT JUDGE  
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