

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WESLEY H. KAISER,

Plaintiff,

vs.

SPOKANE COUNTY and DEPUTY
J. RUSSELL,

Defendants.

No. 14-CV-0078-JLQ

MEMORANDUM OPINION
AND ORDER RE: MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Motion for Summary Judgment (ECF No. 22) and Motion to Exclude Plaintiff's Expert Winthrop Taylor (ECF No. 20). Richard Wall represents the Plaintiff and Heather Yakely the Defendants. Response and Reply briefs have been filed. (ECF No. 28, 29, & 33). The Motions were submitted for decision, without oral argument, on July 10, 2015.

I. Introduction

This action was filed in state court on July 1, 2013, and removed by the Defendants to this court on March 21, 2014. Plaintiff's claims arise out of an encounter with the Defendant Deputy Russell on May 2, 2010. On that date, Plaintiff was at Sacred Heart Medical Center in Spokane, Washington, visiting his son who was receiving treatment for a gunshot wound. Plaintiff contends he was wrongfully asked to leave the room by Spokane County Deputy Sheriff Russell and that excessive force was used in removing him. Plaintiff brings claims of excessive force and unlawful arrest against Deputy Russell under 42 U.S.C. § 1983, and also a state law negligence claim against Russell. The only allegation in the Complaint against Spokane County is that the County is responsible on a theory of respondeat superior for the state law negligence claim.

1 Defendants generally deny the allegations, and have moved for summary judgment
2 on all claims. Plaintiff in Response (ECF No. 29) concedes that "there is insufficient
3 evidence to sustain a § 1983 claim against Spokane County under *Monell* and that the
4 County is entitled to summary judgment on that claim." (ECF No. 29, p. 2). Plaintiff also
5 states: "Defendants do not seek summary judgment as to Plaintiff's excessive force claims
6 against Deputy Russell." (*Id.* at p. 1-2). While it is true that Defendant's Motion does not
7 focus on the excessive force claim, both the Motion and the Proposed Order (ECF No. 22-
8 1) seek that "all causes of action" be dismissed.

9 As to the claim of unlawful arrest, Defendants contend that Deputy Russell had
10 probable cause to arrest Mr. Kaiser for obstruction and resisting arrest in violation of
11 RCW § 9A.76.020 and § 9A.76.040. On the negligence claim, Defendants argue Plaintiff
12 cannot establish breach of duty or damages. Defendants argue that expert medical
13 testimony is required to link Plaintiff's alleged wrist injuries to the handcuffing by Deputy
14 Russell.

15 Plaintiff claims that summary judgment should be denied because there are genuine
16 issues of fact as to whether Plaintiff engaged in any conduct that could reasonably be
17 construed as obstruction or resisting arrest. Plaintiff further states that no expert
18 testimony is required to establish his injuries, and that if such expert testimony were
19 required it could be provided by his treating physician, Dr. Trumble, who has been
20 disclosed as a potential witness.

21 **II. Factual Background**

22 In summary judgment proceedings, the facts are viewed in a light most favorable to
23 the non-movant, in this case the Plaintiff. Additionally, Plaintiff has presented a
24 videotaped recording of a portion of the interaction between he and Deputy Russell in the
25 hallway of the hospital. When there is a video recording, the Supreme Court has directed
26 that the court view the facts "in the light depicted by the videotape" and if the non-
27 movant's version of events is utterly contradicted by the video, it cannot be accepted as
28 true for the purpose of summary judgment. *Scott v. Harris*, 550 U.S. 372, 380-81 (2007).

1 The following facts are taken from Plaintiff's Statement of Facts and the video:

2 Plaintiff Wesley Kaiser, along with other family members was in a hospital room at
3 Sacred Heart Hospital on May 2, 2010, where his son was being treated for a gunshot
4 wound (Pltf's St. of Facts ¶ 1 at ECF No. 31). Plaintiff states he was asked to leave the
5 room by Deputy Russell and "at first refused, but later complied". (*Id.* at ¶ 2). Plaintiff
6 claims that as he exited the room, Russell pushed him in the back, then handcuffed him,
7 and escorted him down the hallway. (*Id.* at ¶ 4-5). Plaintiff asserts that as he was escorted
8 down the hallway Russell threw him "against a wall, twisted his hands and wrists, and
9 took him to the ground." (*Id.* at ¶ 6). Plaintiff states he was arrested for obstruction and
10 resisting, although he denies he resisted. He alleges he was placed in a patrol car and taken
11 to the County jail.

12 The video depicts an individual, who is apparently Plaintiff Wesley Kaiser, come out
13 of the hospital room and stand very close to the officer, apparently Deputy Russell. The
14 video appears to show Russell placing his hand on Kaiser's lower back, but there is no
15 visible shove¹. Russell handcuffs Kaiser and they go down the hall and out of camera
16 range. There appears to be several seconds of time in the hospital hallway that were not
17 captured on the video. When Kaiser and Russell appear on the video footage again, they
18 are near the hospital exit doors, just inside the hospital. It is here Russell appears to pull
19 down and back on the handcuffs, while Kaiser is facing away from him, and Kaiser is
20 taken to the ground. The parties dispute exactly what occurred at that moment. Russell
21 has filed an affidavit stating that Kaiser was trying to pull away, he pulled back, Kaiser
22 lost his balance, and both fell to the ground. (ECF No. 25, ¶ 18-19). The image quality is
23 not perfectly clear, and the fall occurs fairly far from where the camera is positioned.
24 What exactly happened at that time presents a question of fact for the jury.

25
26
27 ¹Although the amount of force used is unclear from the
28 video, Deputy Russell's own report states he "pushed the
[plaintiff] away and told him this would be his one warning".
(ECF No. 25-1).

1 Defendant has also filed a Statement of Facts, which includes additional facts. The
2 following are largely undisputed by Plaintiff. When there is a dispute it is noted:

3 Deputy Russell and Deputy Smith were dispatched to Sacred Heart Medical Center
4 at 10:20 p.m. in response to a shooting. (ECF No. 27, ¶ 1). When the Deputies entered the
5 hospital room, Nathan Kaiser, Plaintiff's son, was being treated for the gunshot wound.
6 Plaintiff was present along with other family members and a friend. Defendant's
7 Statement of Fact ("SOF") appears to erroneously refer, numerous times, to "Deputy
8 Jones". (See ECF No. 27, ¶¶ 2-17). After stating that Deputies Russell and Smith were
9 dispatched, Defendants' SOF states that Deputy "Jones" arrived. Deputy Jones is not a
10 named party. No affidavit was filed by a Deputy Jones. The Incident Reports submitted
11 by Deputies Russell and Smith do not mention a "Deputy Jones". This apparent and
12 repeated error muddles the summary judgment record. Is there another Deputy who was
13 involved but that is not mentioned in the Incident Reports, and who has submitted no
14 evidence? It appears more likely that references to "Deputy Jones" are actually to Deputy
15 Smith, as the Defendants' Statements of Fact concerning Jones often cite to the Smith
16 affidavit as support. A review of Defendant's Trial Witness List (ECF No. 34) contains no
17 reference to Deputy Jones. The court will proceed with this Motion assuming the
18 references to "Deputy Jones" are erroneous and meant to refer to "Deputy Smith".

19 Deputy Smith entered Nathan's hospital room first and spoke with Nathan. He also
20 spoke with Nathan's friend, Nolan. Deputy Smith states that when he attempted to speak
21 with Nathan, Plaintiff was "interrupting and interjecting himself" (*Id.* at ¶ 8). Plaintiff
22 denies that allegation. Deputy Russell took several photos of Nathan Kaiser. Plaintiff
23 was standing near the bed, and Russell asked Plaintiff to step back so he could take
24 photos. (ECF No. 27, ¶ 12). Deputy Russell states that Plaintiff smelled of alcohol, but
25 Plaintiff denies it, stating he had less than one full glass of wine. Deputy Smith requested
26 that Deputy Russell clear the room so that he could speak with Nathan alone. (*Id.* at ¶ 16).
27 Russell motioned for Plaintiff to leave the room, and then asked Plaintiff three times to
28 "come here". (*Id.* at ¶ 18). Russell then threatened to arrest Plaintiff for obstruction if he

1 did not leave the room. (*Id.* at ¶ 20). Russell contends Plaintiff was aggressive in his body
2 language, "pushed his chest out" and attempted to brush against Russell. (*Id.* at ¶ 21).
3 Russell admits handcuffing Plaintiff and directing him down the hallway. As to the fall,
4 which is captured on video, Russell contends Kaiser was trying to pull away, he (Russell)
5 pulled back, Kaiser lost his balance, and they both fell to the ground. (ECF No. 25, ¶ 18-
6 19).

7 Plaintiff contends he was the only one asked to leave the hospital room, and that he
8 had said nothing in the minutes before he was asked to leave. (Plaintiff's Depo. at ECF
9 No. 30-1, p. 62). He claims that as he exited the room, Russell shoved him in the back.
10 Plaintiff claims he was not saying anything when he was shoved in the back, and describes
11 his own demeanor as "curious". (*Id.* at 64). Plaintiff claims he asked what he did wrong,
12 and why he needed to leave the emergency room. (*Id.* at 65). He claims he was not
13 agitated or interfering with the investigation. Plaintiff claims that after he was handcuffed
14 by Russell and they were walking down the hall, he told Russell of a prior surgery on his
15 right hand and that the handcuffs were hurting him. Plaintiff states he was thrown against
16 the wall and that his hands and wrists were twisted. (*Id.* at 67). He claims that near the
17 exit door he was shoved forward head first, then pulled back and thrown against the wall.
18 (*Id.* at 69).

19 **III. Discussion**

20 **A. Summary Judgment Standard**

21 The purpose of summary judgment is to avoid unnecessary trials when there is no
22 dispute as to the material facts before the court. *Northwest Motorcycle Ass'n v. U.S. Dept.*
23 *of Agriculture*, 18 F.3d 1468, 1471 (9th Cir. 1994). The moving party is entitled to
24 summary judgment when, viewing the evidence and the inferences arising therefrom in the
25 light most favorable to the nonmoving party, there are no genuine issues of material fact in
26 dispute. Fed. R. Civ. P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).
27 While the moving party does not have to disprove matters on which the opponent will
28 bear the burden of proof at trial, they nonetheless bear the burden of producing evidence

1 that negates an essential element of the opposing party's claim and the ultimate burden of
2 persuading the court that no genuine issue of material fact exists. *Nissan Fire & Marine*
3 *Ins. Co. v. Fritz Companies*, 210 F.3d 1099, 1102 (9th Cir. 2000). When the nonmoving
4 party has the burden of proof at trial, the moving party need only point out that there is an
5 absence of evidence to support the nonmoving party's case. *Devereaux v. Abbey*, 263 F.3d
6 1070, 1076 (9th Cir. 2001).

7 Once the moving party has carried its burden, the opponent must do more than
8 simply show there is some metaphysical doubt as to the material facts. *Matsushita Elec.*
9 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, the opposing party
10 must come forward with specific facts showing that there is a genuine issue for trial. *Id.*

11 Although a summary judgment motion is to be granted with caution, it is not a
12 disfavored remedy: "Summary judgment procedure is properly regarded not as a
13 disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a
14 whole, which are designed to secure the just, speedy and inexpensive determination of
15 every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)(citations and quotations
16 omitted).

17 **B. Motion to Strike Winthrop Taylor's Testimony**

18 Before determining the Motion for Summary Judgment, the court must decide
19 another motion relating to the evidence of record. Defendants have filed a Motion to
20 Strike (ECF No. 20) and exclude the testimony of Plaintiff's designated expert, Winthrop
21 Taylor. The Motion states that Taylor proposes to offer opinion testimony that: "Deputy
22 Jeremy Russell lacked the lawful authority to compel Mr. Wesley Kaiser to leave the
23 bedside of his injured son." (*Id.* at p. 2). Defendant states Mr. Taylor testified at
24 deposition that the only opinion he was asked to render was on the following question:
25 "whether a police officer of reasonable training and experience would believe --would
26 have believed he had lawful authority to remove Mr. Wesley Kaiser from the hospital
27 room at the time he did." (ECF No. 20, p. 8).

1 Plaintiff's Response (ECF No. 28) states that Mr. Taylor is prepared to testify "that
2 a reasonable officer in Deputy Russell's position would not have believed he had legal
3 authority to order Plaintiff to leave the room." (ECF No. 28, p. 2). Plaintiff also states that
4 although Mr. Taylor's report may contain implied comments on the credibility of other
5 witnesses, he would not testify as to credibility at trial.

6 Under Fourth Amendment excessive force analysis, the inquiry is objective
7 reasonableness, not what the officer individually and subjectively believed. Similarly,
8 whether there was probable cause for arrest is an objective determination. Plaintiff's
9 briefing recognizes that an "officer's subjective state of mind is irrelevant to a
10 determination of probable cause." (ECF No. 29, p. 7). Therefore, Mr. Taylor cannot
11 testify that Deputy Russell could not have believed that he had legal authority to order
12 Plaintiff to leave the room. However, whether Mr. Taylor can testify that a reasonable
13 officer would not have believed, is a slightly different inquiry.

14 Consideration of Mr. Taylor's proffered opinion has no impact on the court's
15 determination of the instant Motion. The court **DENIES** the Motion to Strike for
16 purposes of evidence in the summary judgment record. Defendants may renew the Motion
17 in regard to Winthrop's testimony at trial at the Pretrial Conference.

18 **C. Unlawful Arrest**

19 Plaintiff contends that he was arrested without probable cause in violation of his
20 Fourth Amendment rights and asserts a claim under 42 U.S.C. § 1983. (Complaint ¶ 16).
21 "A warrantless arrest by a law officer is reasonable under the Fourth Amendment where
22 there is probable cause to believe that a criminal offense has been or is being committed."
23 *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). Whether probable cause exists "depends
24 upon the reasonable conclusion to be drawn from the facts known to the arresting officer
25 at the time of the arrest." *Id.*

26 Viewing the facts in a light most favorable to Plaintiff, there are issues of fact
27 concerning the existence of probable cause to arrest Plaintiff for obstructing a law
28 enforcement officer. Plaintiff claims he did not say anything to Deputy Russell before

1 being asked to leave the hospital room. Plaintiff claims he was not interfering or
2 interjecting himself into the conversation between Deputy Smith and Nathan Kaiser. He
3 claims Deputy Russell shoved him in the back without provocation. Plaintiff claims he
4 then asked what he did wrong, and why he needed to leave the emergency room. He
5 states he was thereafter handcuffed by Russell and led down the hallway. Deputy Russell
6 claims at this point Plaintiff was "detained" and that he was not "under arrest" until the
7 disputed incident near the exit door where Plaintiff was either thrown to the ground, or
8 lost his balance while trying to pull away and fell to the ground.

9 The Washington Supreme Court has recently reiterated that: "Washington courts
10 have long limited the application of obstruction statutes, lest those statutes infringe on
11 constitutionally protected activity." *State v. E.J.J.*, 2015 WL 3915760 (June 25, 2015).
12 Washington cases have "consistently required *conduct* in order to establish obstruction of
13 an officer." *Id.* at *2. "A conviction for obstruction cannot be based solely on an
14 individual's speech because the speech itself is constitutionally protected." *Id.* According
15 to Plaintiff's deposition testimony, he was not agitated and was not interrupting or
16 interfering with questioning by Deputy Smith. He states he asked why he needed to leave,
17 and what he had done wrong. Such conduct would not constitute obstruction, and the jury
18 could believe his testimony. To the contrary, the jury, as the finder of fact, could believe
19 the testimony of Laura Roehl, Plaintiff's ex-wife, who was present in the room that
20 evening. According to Roehl, Plaintiff "appeared intoxicated" and was "talking a
21 lot/interrupting the officer". (ECF No. 26). She states that when asked to leave the room,
22 Plaintiff became "aggressive" and "physically and verbally combative" towards the
23 officers. (*Id.*).

24 At this juncture, the court must view the facts in a light most favorable to the
25 Plaintiff. According to Plaintiff, all he did was stand close to Deputy Russell and ask him
26 why he needed to leave and what he did wrong. The United States Supreme Court has
27 stated that "the freedom of individuals verbally to oppose or challenge police action
28 without thereby risking arrest is one of the principal characteristics by which we

1 distinguish a free nation from a police state." *City of Houston v. Hill*, 482 U.S. 451, 454
2 (1987). Plaintiff was visiting his adult son, who had recently suffered a gun shot wound,
3 in the hospital. Plaintiff being unhappy about being asked to leave, and questioning why
4 he needed to leave, does not, in and of itself, constitute obstruction.

5 Defendant's Motion for Summary Judgment as to the claim of unlawful arrest is
6 **DENIED.**

7 **D. Excessive Force**

8 As set forth by the Supreme Court in *Graham v. Connor*, 490 U.S. 385 (1989), the
9 analysis under the Fourth Amendment is whether the use of force was reasonable. Making
10 the reasonableness determination "requires a careful balancing of the nature and quality of
11 the intrusion on the individual's Fourth Amendment interests against the countervailing
12 governmental interests at stake." *Graham v. Connor*, 490 U.S. 386, 396 (1989). The
13 reasonableness inquiry is an objective test: "whether the officers' actions are objectively
14 reasonable in light of the facts and circumstances confronting them, without regard to their
15 underlying intent or motivation." *Id.* at 397. In determining whether the force used was
16 excessive, the court looks at the severity of the force used and the need for force. *Tekle v.*
17 *United States*, 511 F.3d 839, 844 (9th Cir. 2007). In evaluating the need for force, the
18 court may look to the severity of any crime at issue, whether a suspect poses an immediate
19 threat, and whether a suspect is actively resisting or attempting to evade arrest. *Id.* The
20 most important *Graham* factor is whether the suspect posed an immediate threat to the
21 safety of the officers or others. *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011)(en
22 banc).

23 As to the severity of the crime at issue, the alleged conduct was relatively minor,
24 and viewing the facts in a light most favorable to Plaintiff, the conduct did not amount to
25 obstruction. Concerning the second factor, it also weighs in favor of Plaintiff. Plaintiff
26 was not armed. The only evidence of his being a threat, is evidence concerning his
27 potential intoxication and aggressive behavior. There is no evidence that he threatened
28 Deputy Russell or physically assaulted Russell prior to being handcuffed. Russell's

1 testimony concerning alleged aggressive behavior is that Plaintiff walked near him and
2 "pushed his chest out". (ECF No. 25, ¶ 12). There is a question of fact, as set forth above,
3 concerning whether Plaintiff actively resisted Russell after he was handcuffed.

4 Plaintiff has testified that Russell ran his head into the wall when his hands were
5 handcuffed behind his back. He has testified that Russell threw him against the wall,
6 twisted his hands and wrists, and he was then either thrown or fell to the ground. A jury
7 could find such use of force to be unreasonable and excessive under the Fourth
8 Amendment. Defendants' Motion for Summary Judgment on the claim of excessive force
9 is **DENIED**.

10 **E. Municipal Policy or Custom**

11 Spokane County, a municipality, is not liable under § 1983 for the acts of its
12 employees on the basis of respondeat superior liability. *Monell v. Dept. of Social Serv.*,
13 436 U.S. 658, 691 (1978). A municipality is only liable if the constitutional violation is
14 the result of an official policy or custom. *Id.* at 694 ("It is when execution of a
15 government's policy or custom, whether made by its lawmakers or by those whose edicts
16 may fairly be said to represent official policy, inflicts the injury that the government as an
17 entity is responsible under § 1983.").

18 Defendants did not challenge the sufficiency of the Complaint, but it does not
19 appear the Complaint states a claim for *Monell* liability. (ECF No. 1-4). Regardless,
20 Plaintiff in Response (ECF No. 29) to the Motion concedes that "there is insufficient
21 evidence to sustain a § 1983 claim against Spokane County under *Monell* and that the
22 County is entitled to summary judgment on that claim." (ECF No. 29, p. 2). Defendant
23 Spokane County's Motion for Summary Judgment on the issue of municipal liability is
24 **GRANTED**.

25 **F. Negligence**

26 Plaintiff claims that Deputy Russell's actions breached a duty of care to him and
27 support a claim of negligence under Washington state law. Plaintiff also claims that
28 Spokane County is liable for his negligence under a theory of respondeat superior. (See

1 Complaint at ECF No. 1-4, ¶ 14-15). Defendant argues that the claim is precluded by the
2 "public duty doctrine". (ECF No. 22, p. 13). Defendant also argues that Plaintiff cannot
3 establish the damages element of a negligence claim. Plaintiff responds that his injuries
4 do not require expert testimony, and that to the extent expert testimony is required, his
5 treating physician, Dr. Trumble, has been disclosed and could testify. As to the duty of
6 care, Plaintiff contends it is well-established that a law enforcement officer owes a duty of
7 care to an arrestee who has been taken into custody.

8 The "public duty doctrine" provides that "no liability may be imposed for a public
9 official's negligent conduct unless it is shown that the duty breached was owed to the
10 injured person as an individual and was not merely the breach of an obligation owed to the
11 public in general." *Taylor v. Stevens County*, 111 Wn.2d 159, 163 (1988). In the context
12 of a Section 1983 excessive force claim, the Ninth Circuit has recognized the validity of
13 the public duty doctrine defense. See *DeBoer v. City of Olympia*, 183 Fed.Appx. 671 (9th
14 Cir. 2006)("The public duty doctrine precludes DeBoer's claims that the individual
15 officers were negligent."). District courts in the state of Washington have similarly found
16 that "while it is true that the officers owe a general duty to all citizens to avoid the use of
17 excessive force when effectuating an arrest, it cannot be said that they owe the plaintiff a
18 specific duty." *James v. City of Seattle*, 2011 WL 6150567 (W.D. Wash. 2011) citing
19 *Pearson v. Davis*, 2007 WL 305125 (W.D.Wash. 2007); *Jimenez v. City of Olympia*, 2010
20 WL 3061799 (W.D.Wash. 2010); *Donaldson v. City of Seattle*, 65 Wash.App. 661 (1992).

21 In *Pearson*, the plaintiff argued that the officers owed a duty of care to her as a
22 handcuffed woman "to refrain from using more force than necessary to effect her arrest
23 and custody", and that the officers had engaged in "negligent handling". The court
24 rejected that claim based on the public duty doctrine. It would appear to the court that the
25 public duty doctrine applies in this instance as well. Plaintiff's assertion of negligence in
26 the Complaint is conclusory: "Russell's conduct as alleged herein constitutes a breach of
27 his duty of care toward Plaintiff, which breach was the direct and proximate cause of
28

1 injury to Plaintiff." (ECF No. 1-4, ¶ 14). Defendant's Motion states they cannot discern
2 what duty Plaintiff alleges was breached and "if Plaintiff offers a specific duty that was
3 breached, Defendants will address it in their Reply." (ECF No. 22, p. 15). Plaintiff in
4 response asserts that the duty is a "duty of care toward an arrestee to protect them from
5 foreseeable harms." (ECF No. 29, p. 10). Plaintiff cites four federal cases in support of its
6 argument, none from the Ninth Circuit and none discussing Washington law. Plaintiff
7 cites to one Supreme Court case, wherein the court sets forth the broad principle that:
8 "when the State takes a person into its custody and holds him there against his will, the
9 Constitution imposes upon it a corresponding duty to assume some responsibility for his
10 safety and general well-being." *DeShaney v. Winnebago County*, 489 U.S. 189, 200
11 (1989).

12 None of the cases cited by Plaintiff are factually on point, as the alleged injuries to
13 Plaintiff Kaiser occurred during the 2-to-3 minute time period in which he was being
14 handcuffed and led from the hospital to the patrol car. They did not result from him being
15 in custody for a period of time, or involve the State's obligation to provide "food, clothing,
16 shelter, medical care, and reasonable safety" as discussed in *DeShaney*. Plaintiff's reliance
17 on a broad general principle of a duty to individuals in custodial care does not trump the
18 analysis set forth in the public duty doctrine cases which Plaintiff has failed to address.
19 Defendants' Motion for Summary Judgment on the negligence claim is **GRANTED**. As
20 the negligence claim against Russell is dismissed, the respondeat superior claim against
21 the County for Russell's alleged negligence must also be dismissed.

22 **IV. Conclusion**

23 Viewing the facts in a light most favorable to Plaintiff, Deputy Russell did not have
24 probable cause to arrest Plaintiff for obstruction. Considering the factual record,
25 including the video evidence, a jury could find Deputy Russell's use of force to have been
26 unreasonable, and thus excessive. Therefore, the Motion as to the claims of unlawful
27 arrest and excessive force against Russell is Denied. The negligence claim against Russell
28 is precluded by the public duty doctrine, and thus the claim against the County under a

1 theory of respondeat superior also fails. All claims against Spokane County will be
2 dismissed for the reasons set forth herein.

3 **IT IS HEREBY ORDERED:**

4 1. Defendants' Motion to Exclude Mr. Taylor (ECF No. 20) is **DENIED** with leave
5 to renew at the Pretrial Conference.

6 2. Defendants' Motion for Summary Judgment (ECF No. 22) is **GRANTED IN**
7 **PART** and **DENIED IN PART**. The Motion is granted as to all claims against Spokane
8 County and those claims will be dismissed. The Motion is also granted as to the
9 negligence claim against Deputy Russell. The Motion is denied as to the excessive force
10 and unlawful arrest claims against Russell.

11 3. Pretrial Conference remains set in this matter for **September 4, 2015** at 10:00
12 a.m., in Spokane, Washington.

13 4. Jury trial remains set for **September 21, 2015, at 9:00 a.m.** in Spokane,
14 Washington.

15 **IT IS SO ORDERED.** The Clerk is hereby directed to file this Order and furnish
16 copies to counsel.

17 Dated July 30, 2015.

18 s/ Justin L. Quackenbush
19 JUSTIN L. QUACKENBUSH
20 SENIOR UNITED STATES DISTRICT JUDGE
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