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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RICHARD A. SCHUKNECHT,

Plaintiff,

v.

S. FINCH, Yakima Police Lt. #3622;  
L. GEORGE, Yakima Police Sgt. #3034;  
and CITY OF YAKIMA,

Defendant.

NO. 1:14-CV-3017-SAB

**ORDER GRANTING SUMMARY  
JUDGMENT**

Plaintiff Richard Schuknecht was an Officer with the Yakima Police Department (YPD) for twenty-six years. In August 2010, Schuknecht’s wife of twenty years, Theresa (now Theresa Hahn-Campbell), informed Schuknecht that she wanted to separate. Shortly thereafter, Schuknecht learned that his estranged wife was in a romantic relationship with Ed Campbell. Campbell was the Director of the Yakima County Department of Corrections and was Theresa’s supervisor. After his wife left, Schuknecht was hospitalized for depression and diagnosed with bipolar disorder.

In October 2011, Schuknecht received word that a judge had ruled against him concerning a property settlement agreement pertaining to the divorce. Several of Schuknecht’s co-workers reported to Lieutenant Steve Finch, Schuknecht’s supervisor, that Schuknecht had repeatedly made threatening statements

1 describing his desire to injure or kill Theresa and Ed Campbell. Lt. Finch placed  
2 Schuknecht on administrative leave and notified Theresa of the threats. Theresa  
3 obtained a temporary protection order against Schuknecht a few days later. The  
4 order prevented, among other things, Schuknecht from coming within 1,000 feet  
5 of Theresa or her residence at 310 N. 66<sup>th</sup> Avenue in Yakima—the house  
6 Schuknecht and Theresa had shared until the prior year.

7         On November 27, Schuknecht drove his and Theresa’s daughter to Pullman,  
8 Washington. She left her Suzuki Sidekick in Schuknecht’s possession. The Suzuki  
9 may have contained some of Schuknecht’s belongings because Theresa was  
10 moving out of the house on 66<sup>th</sup> Avenue and had to empty it of items Schuknecht  
11 had left when he moved out. Schuknecht states that he returned from Pullman in  
12 the early hours of the 28<sup>th</sup>, around 3 or 4 a.m. At about 9:30 a.m., while Theresa  
13 was at work, Ed Campbell claims he saw Schuknecht sitting in the Suzuki parked  
14 in front of Theresa’s home. Campbell called Theresa who, in turn, called YPD  
15 Captain Schneider to report the possible protective order violation. Captain  
16 Schneider instructed Lt. Finch to follow up with Theresa and Campbell. Finch  
17 called Theresa who informed him that Schuknecht likely had a house key from  
18 their daughter’s key ring and that he would have expected no one to be at the  
19 house at that time. Theresa also told Finch that her daughter had mentioned  
20 Schuknecht was planning on retrieving some items from the home. Lt. Finch  
21 headed to the home to speak with Campbell and asked Sergeant Lloyd George to  
22 meet him there. Campbell told the officers that he recognized the car because he  
23 had seen it almost every day for the past year, it had a unique dent, and it was  
24 filled with items he had helped load into the car the night before. Campbell may  
25 have reported he could not see the face of the person in the Suzuki because the  
26 individual was pretending to be on his phone in order to shield his face. He did  
27 indicate the individual in the car had the same build as Schuknecht and was  
28 wearing a green military style jacket and a baseball cap. The parties dispute what

1 level of certainty in the identification Campbell conveyed to the officers.  
2 Defendants assert Campbell reported he was “positive” the person in the Suzuki  
3 was Schuknecht and that he armed himself based on that belief. Plaintiff, however,  
4 claims the officers could not have been told by Campbell that he was “positive”  
5 the man in the car was Schuknecht because in an Answer in a separate lawsuit,  
6 Campbell declared he told the officer he “couldn’t be 100% certain” because he  
7 could not see the driver’s face.

8 After interviewing Campbell, the officers reviewed the protective order, and  
9 confirmed that it prohibited Schuknecht from being within 1000 feet of the  
10 residence. Lt. Finch called Schuknecht and arranged for him to come into the  
11 police department. After the officers informed Schuknecht of the allegation that he  
12 violated the protection order, he grew upset and denied the accusation, claiming  
13 that Campbell had falsified the information because of Campbell’s relationship  
14 with Theresa. Schuknecht also told the officers that he had slept in that morning,  
15 was on his computer at the time alleged and that a neighbor would verify that the  
16 Suzuki had not moved that morning. The Officers read Schuknecht Miranda  
17 warnings and arrested him.

18 Schuknecht filed suit against Lt. Finch, Sgt. George, and the City of Yakima  
19 alleging malicious prosecution and false arrest under 42 U.S.C. § 1983 and  
20 Washington state common law, unlawful civil conspiracy, outrage, conspiracy to  
21 deprive due process under § 1983, municipal liability under § 1983, and  
22 negligence under Washington state common law.

### 23 **Motion Standard**

24 Summary judgment is appropriate if the “pleadings, depositions, answers to  
25 interrogatories, and admissions on file, together with the affidavits, if any, show  
26 that there is no genuine issue as to any material fact and that the moving party is  
27 entitled to judgment as a matter of law.” Celotex Corp. v. Catrett, 477 U.S. 317,  
28 323 (1986) (citing Fed. R. Civ. P. 56(c)). There is no genuine issue for trial unless

1 there is sufficient evidence favoring the nonmoving party for a jury to return a  
2 verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
3 (1986). The moving party has the burden of showing the absence of a genuine  
4 issue of fact for trial. *Celotex*, 477 U.S. at 325.

5 In addition to showing that there are no questions of material fact, the  
6 moving party must show that it is entitled to judgment as a matter of law. *Smith v.*  
7 *Univ. of Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party  
8 is entitled to judgment as a matter of law if the non-moving party has failed to  
9 make a sufficient showing on an essential element of a claim on which the non-  
10 moving party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving  
11 party cannot rely on conclusory allegations alone to create an issue of material  
12 fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

13 When considering a motion for summary judgment, a court may neither  
14 weigh the evidence nor assess credibility; instead, “[t]he evidence of the non-  
15 movant is to be believed, and all justifiable inferences are to be drawn in his  
16 favor.” *Anderson*, 477 U.S. at 255.

### 17 Analysis

18 Schuknecht has stipulated he is no longer pursuing claims for malicious  
19 prosecution under 42 U.S.C. § 1983 and Washington common law, unlawful civil  
20 conspiracy, and outrage. Plaintiff is still pursuing claims of false arrest under §  
21 1983 and Washington common law, conspiracy to deprive due process under §  
22 1983, municipal liability under § 1983, and negligence under Washington state  
23 common law. Defendants seek summary judgment on all claims.

### 24 False Arrest

25 To prove a claim of false arrest, Schuknecht must show he was arrested  
26 without lawful authority, or without probable cause. See *Michigan v. Summers*,  
27 452 U.S. 692, 700 (1981); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380  
28 (9th Cir. 1998); *Hanson v. City of Snohomish*, 121 Wn.2d 552, 556 (1993).

1 Probable cause exists when in the totality of the circumstances within an officer's  
2 knowledge would cause a reasonably prudent person to believe that a crime has  
3 been, or is currently, being committed. *Lassiter v. City of Bremerton*, 556 F.3d  
4 1049, 1053. Probable cause is measured at the moment of the arrest and is not  
5 subject to post facto evidence or investigation. See *United States v. Jensen*, 425  
6 F.3d 698, 704 (9th Cir. 2005). Under Washington state law, a police officer must  
7 arrest a person when the officer has probable cause to believe the individual has  
8 violated the terms of a protective order. RCW 10.31.100(2)(a). Additionally, an  
9 officer is not generally required to continue investigating once he has probable  
10 cause to arrest. *Ewing v. City of Stockton*, 588 F.3d 1218, 1227 (9th Cir. 2009).

11 Accordingly, the controlling question for Schuknecht's false arrest claim is  
12 whether, construing the facts in the light most favorable to Schuknecht, Lt. Finch  
13 and Sgt. George had knowledge of facts and circumstances sufficient to cause a  
14 reasonably prudent person to believe Schuknecht had violated the protective order.  
15 For the reasons set forth below, the Court finds that the officers had probable  
16 cause to arrest Schuknecht.

17 It is not disputed that Theresa told Lt. Finch that Schuknecht had their  
18 daughter's keys and explained reasons why Schuknecht may have been going to  
19 the house. It is also undisputed that Campbell told Lt. Finch and Sgt. George that  
20 he was certain the car in front of the house on 66<sup>th</sup> Avenue was Schuknecht's and  
21 Theresa's daughter's car, he saw items in the back of the car he had helped load  
22 the previous day, he recognized a distinctive dent on the vehicle, the driver had a  
23 similar build to Schuknecht, and that he was convinced enough it was Schuknecht  
24 that he armed himself. Campbell may have told the officers that he was not "100%  
25 positive" it was Schuknecht because the driver obscured his face with his arm,  
26 however, he also deduced it "must be" Schuknecht and told the officers such.

27 Plaintiff insists the officers lacked the requisite probable cause to arrest him  
28 because Campbell was not 100% positive the driver was Schuknecht because he

1 could not see his face, the officers suggestively interrogated Campbell to  
2 encourage him to say he was positive it was Schuknecht, and because Campbell's  
3 and Theresa's statements to the officers were unreliable.

4         Whether Campbell told Lt. Finch and Sgt. George he was 100% positive the  
5 driver was Schuknecht or that it "must be" Schuknecht based on the car and build  
6 of the driver—while relevant—simply does not defeat probable cause. Probable  
7 cause is a fluid concept that deals with probabilities, not certainties. *Illinois v.*  
8 *Gates*, 462 U.S. 213, 232 (1983). Probable cause may also rely on hearsay and  
9 other information, even when hastily obtained. *Hart v. Parks*, 450 F.3d 1059, 1066  
10 (9th Cir. 2006).

11         In this case, Theresa provided Lt. Finch reasons why Schuknecht may have  
12 gone to the house and told Lt. Finch that Schuknecht was in possession of the  
13 Suzuki. Campbell told Lt. Finch that he saw the Suzuki, was positive it was the  
14 one in Schuknecht's possession, and that the driver's build resembled that of  
15 Schuknecht. Assuming the Officers found Theresa and Campbell credible, the  
16 information they provided created substantial reason for the officers to believe  
17 Schuknecht had violated the protection order by coming within 1000 feet of  
18 Theresa's residence. Essentially, the officers had the statements of Theresa and  
19 Campbell, which indicated Schuknecht violated the order, and Schuknecht's  
20 denials. Officers are allowed latitude in determining when to credit witness'  
21 statements or denials. See *McSherry v. City of Long Beach*, 584 F.3d 1129, 1135  
22 (9th Cir. 2009). Other than Schuknecht's accusation that Campbell was lying  
23 because of Campbell's relationship with Theresa, there is no evidence presented  
24 that indicates any reason for the officers to find Campbell's statement not credible.  
25 The officers were familiar with the events that led to the Protective Order being  
26 entered, and were familiar with Schuknecht. There is nothing in the record that  
27 would allow this Court to doubt Lt. Finch's and Sgt. George's determination to  
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1 credit Campbell’s and Theresa’s statements over Schuknecht’s denials—even  
2 when viewing the evidence in the light most favorable to Schuknecht.

3 Schuknecht cites case law that holds mere resemblance to a general  
4 description of a suspect is not adequate for probable cause. See *Torres v. City of*  
5 *Los Angeles*, 548 F.3d 1197, 1208 (9th Cir. 2008). That holding, however, is  
6 inapposite here. Campbell’s identification of Schuknecht was not based merely on  
7 the resemblance of the driver to Schuknecht but instead was based on several  
8 factors including the car which Campbell knew to be in Schuknecht’s possession.  
9 Furthermore, recognizing a person with which one is personally familiar with is  
10 incomparable to a law enforcement officer arresting someone for matching the  
11 vague description of “young, Mexican male.” *Id.*

12 Additionally, Schuknecht’s allegation that Sgt. George’s interaction with  
13 Campbell was “suggestive” to the point it defeats probable cause is  
14 unsubstantiated. The claim that the questioning was suggestive stems from one  
15 line in Sgt. George’s report which states “I again asked Mr. Campbell if he was  
16 positive that the occupant of the vehicle was Rick Schucknecht [sic].” Although  
17 the report does not indicate if there was a first time that question was posed, such  
18 inference must be drawn at this stage because Schuknecht is the non-movant. Yet,  
19 even twice asking a witness if he was positive the driver of the Suzuki was the  
20 person the witness had already identified as someone he personally knew, would  
21 not be suggestive. The Court of Appeals case Schuknecht cites in support of the  
22 suggestiveness argument involved law enforcement devising a photo lineup that  
23 included five Hispanic males and one Caucasian male—the defendant. *Grant v.*  
24 *City of Long Beach*, 315 F.3d 1081, 1087 (9th Cir. 2002). The situation in this  
25 case is wholly distinct from a pre-identification suggestive lineup, and the  
26 record—even viewed in a light most favorable to Schuknecht—does not support  
27 any claim that Campbell’s identification of the plaintiff was based on suggestive  
28 interrogation.

1 Even under Plaintiff’s theory of the events, Lt. Finch and Sgt. George had  
2 sufficient probable cause to effectuate the arrest of Schuknecht. Accordingly,  
3 Defendants’ motion for summary judgment on the false arrest claim is granted.

#### 4 Conspiracy to Deprive Due Process

5 Schuknecht also alleges Defendants conspired to deprive him of due process  
6 under 42 U.S.C. § 1983. Such a claim requires a showing of (1) an agreement or  
7 meeting of minds to (2) violate plaintiff’s constitutional rights. *Woodrum v.*  
8 *Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989). Here, Schuknecht has  
9 only pleaded vague conclusory allegations and has not alleged any facts that  
10 support finding the existence of a conspiracy. This is insufficient to survive  
11 summary judgment. See *Zichko v. Idaho Dept. of Health, Educ. & Welfare*, 24  
12 *F.3d 252* (9th Cir. 1994); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978).  
13 Additionally, Schuknecht failed to respond to arguments for summary judgment  
14 on this claim. Therefore, summary dismissal of the conspiracy to deprive due  
15 process claim is warranted.

#### 16 Municipal Liability

17 Schuknecht also alleges municipal liability against the City of Yakima  
18 under a Monell theory of liability. See *Monell v. Dept. of Soc. Servs. of City of*  
19 *New York*, 436 U.S. 658 (1978). Because the Court finds no underlying  
20 constitutional violation occurred, and because Plaintiff alleges no policy or  
21 practice maintained by the City of Yakima or decision by qualified decision-maker  
22 that deprived Schuknecht of his constitutional rights, the Court grants Defendants’  
23 motion for summary judgment on the municipal liability claim.

24 Plaintiff’s expert—whose report was not filed in support of Plaintiff’s  
25 opposition to summary judgment—alleges that Lt. Finch and Sgt. George violated  
26 YPD policies, which, if true, counters Schuknecht’s claim for municipal liability.  
27 See *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121 (1988). Plaintiff’s expert  
28 also claims the City of Yakima “ratified Defendants [sic] arrest and incarceration



1 of Mr. Schuknecht by failing to take remedial steps to investigate the Defendants  
2 [sic] actions once it was discovered that the arrest and incarceration were not  
3 based on due diligence and probable cause did not exist.” As previously noted,  
4 probable cause did exist for the arrest. Additionally, the Plaintiff does not identify  
5 what such remedial steps would be and how failing to take such steps constitutes a  
6 deliberate policy, custom or practice that led to a constitutional violation.  
7 Accordingly, Defendants’ motion for summary judgment is granted as to the  
8 municipal liability claim.

### 9 Negligence

10 Schuknecht’s complaint includes allegations of negligence against all  
11 defendants. The complaint states the City of Yakima failed to fulfill its duty to  
12 exercise appropriate supervision of its police officers and that Lt. Finch and Sgt.  
13 George failed to exercise reasonable care during their contact with Schuknecht.  
14 The complaint merely recites the elements of a general negligence claim and does  
15 not describe what duties were breached by the defendants with any specificity.  
16 Additionally, Schuknecht failed to respond to Defendants’ motion for summary  
17 judgment with regards to the negligence claim. Accordingly, Defendants’ motion  
18 for summary dismissal of the negligence claims against the City of Yakima, Lt.  
19 Finch and Sgt. George is granted.

### 20 Qualified Immunity

21 Defendants raise a qualified immunity defense. Qualified immunity protects  
22 a law enforcement officer from liability under § 1983 when a reasonable officer  
23 would have believed his actions that resulted in a constitutional violation were  
24 lawful in light of clearly established law. *Harlow v. Fitzgerald*, 457 U.S. 800, 818  
25 (1982); *Anderson v. Creighton*, 483 U.S. 635, 639 (1987). Because the Court finds  
26 there was probable cause for Schuknecht’s arrest, and therefore no constitutional  
27 violation, qualified immunity analysis is unnecessary.

28 //

1 **Conclusion**

2 Even when viewing the facts in the light most favorable to Schuknecht, Lt.  
3 Finch and Sgt. George had probable cause to arrest Schuknecht and Defendants  
4 are entitled to summary judgment of the false arrest claim. Schuknecht has also  
5 failed to present any genuine issue of material fact with regard to the conspiracy to  
6 deprive due process, municipal liability, or negligence claims. Defendants' motion  
7 for summary judgment is granted in full.

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

9 1. Defendants' Motion for Summary Judgment, ECF No. 24, is

10 **GRANTED.**

11 2. All other pending motions are **DENIED AS MOOT.**

12 3. All previously set court dates, including the trial date, are **STRICKEN**

13 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to  
14 enter this Order, provide copies to counsel and **close the file.**

15 **DATED** this 8<sup>th</sup> day of May 2015.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned above a horizontal line.

21 Stanley A. Bastian

22 United States District Judge