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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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TVAR L. JACKSON; BARRY J.  
GARDNER; and ISRAEL L. JONES,

NO: 2:14-CV-142-RMP

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Plaintiffs,

ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

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v.

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SPOKANE COUNTY; STEVEN  
KYLE TREECE; and STEVE  
TUCKER,

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Defendants.

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BEFORE THE COURT is Defendants' Motion for Summary Judgment,

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ECF No. 18. Oral arguments were heard on this matter on November 10, 2015.

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This Court has reviewed the record and the pleadings contained therein and is fully  
informed.

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BACKGROUND

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On May 13, 2014, Plaintiffs filed a Complaint in this action seeking

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damages for unlawful arrest in violation of their civil rights from Defendants

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT~ 1

1 Stephen Treece and Steve Tucker, for violation of due process from Defendants  
2 Treece and Tucker, from Tucker for false arrest and/or false imprisonment, assault,  
3 and outrage; and from Spokane County for the actions of its agents, Treece and  
4 Tucker. *See* ECF No. 1 at 8-10.

5 According to Plaintiffs' Complaint, on April 17, 2013, they simply had been  
6 present at the Spokane County Courthouse to attend the trial of John Castro for the  
7 crime of murder and were sitting together at the back of the courtroom. *See* ECF  
8 No. 1 at 4-5. Following the testimony of one witness, Dennis Bryant, Plaintiffs  
9 allege that Defendant Stephen Treece, a Spokane County deputy prosecutor, texted  
10 a Spokane police officer, Sergeant Whol, falsely claiming that Plaintiffs were  
11 affecting Bryant's testimony, which set into motion an investigation that led to  
12 Plaintiffs being arrested for the crimes of witness tampering and/or witness  
13 intimidation. *See* ECF No. 1 at 4-5.

14 Defendants filed the present Motion for Summary Judgment on all of  
15 Plaintiffs' claims following a stipulated extension of time to file, ECF No. 18. In  
16 response to Defendants' Motion for Summary Judgment, ECF No. 18, Plaintiffs  
17 conceded that they lack evidence for their claims against Defendants Tucker and  
18 Spokane County brought pursuant to 42 U.S.C. § 1983, their claims for intentional  
19 infliction of emotional distress (to which they initially referred to as "outrage"),  
20 and the unlawful arrest claim against Treece. *See* ECF No. 31. Plaintiffs

1 simultaneously submit that they lack evidence for an unlawful arrest claim against  
2 Treece, but continue to pursue their claim against him under 42 U.S.C. § 1983,  
3 seemingly due to what they see as his role in an allegedly unlawful arrest. *Id.*

4 Accordingly, this Court must consider Defendants' Motion for Summary  
5 Judgment only regarding the remaining claims: against Treece for violation of  
6 Plaintiffs' civil rights under 42 U.S.C. § 1983, against Treece and Spokane County  
7 for false imprisonment under state law, and against Treece and Spokane County for  
8 malicious prosecution. This Court has original jurisdiction over Plaintiffs' 42  
9 U.S.C. § 1983 claim, *see* 28 U.S.C. § 1331, and exercises supplemental jurisdiction  
10 over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 in the interest of  
11 judicial economy.

## 12 ANALYSIS

13 The moving party is entitled to summary judgment when there are no  
14 disputed issues of material fact when all inferences are resolved in favor of the  
15 non-moving party. *Northwest Motorcycle Ass'n v. United States Dep't of Agric.*,  
16 18 F. 3d 1467, 1471 (9th Cir. 1994); FED. R. CIV. P. 56(c). If the non-moving party  
17 lacks support for an essential element of their claim, the moving party is entitled to  
18 judgment as a matter of law regarding that claim. *See Celotex Corp. v. Catrett*,  
19 477 U.S. 317, 323. Importantly, at the summary judgment stage, the Court does

1 not weigh the evidence presented, but instead assumes its validity and determines  
2 whether it supports a necessary element of the claim. *Id.*

3 In order to survive a motion for summary judgment once the moving party  
4 has met their burden, the nonmoving party must demonstrate that there is probative  
5 evidence that would allow a reasonable jury to find in their favor. *See Anderson v.*  
6 *Liberty Lobby*, 477 U.S. 242, 251 (1986). A nonmoving party “cannot rely on  
7 conclusory allegations unsupported by factual data to create an issue of material  
8 fact.” *See Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

9 Prior to assessing the viability of each of Plaintiffs’ remaining claims, this  
10 Court recognizes that Plaintiffs have agreed to Defendants’ summary of facts with  
11 the following exceptions:

12 The statements by Treece to law enforcement were complete  
13 falsehoods. Plaintiffs did not make any gestures or loud noised [sic]  
14 during Mr. Bryant's testimony or otherwise do anything to try to  
15 influence his testimony at trial. (Declaration of T. Jackson, ECF# 28,  
16 p. 2, lns. 9 - 15; Declaration of B. Gardner, ECF# 29, p. 2, lns. 22 - 28;  
17 Declaration of I. Jones, ECF# 27, p. 2, lns. 15 - 24). Dennis Bryant did  
not change his demeanor during his testimony. He was uncooperative  
and hostile toward the prosecution throughout his testimony and had  
given every indication in a pre-trial interview that he would not be  
cooperative as a witness at trial. (Declaration of T. Note, ECF# 30, p.  
2, lns. 6 - 11).

18 ECF No. 31 at 2. Applying the summary judgment standard, this Court must find  
19 whether or not these facts are truly in dispute, and if so, whether the facts, taken in  
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1 the light most favorable to Plaintiffs, provide probative evidence that would allow  
2 a reasonable jury to find in their favor. *See Anderson*, 477 U.S. at 251.

3 First, Plaintiffs allege that Treece’s statements to law enforcement were  
4 complete falsehoods but fail to provide sufficient evidence by which a reasonable  
5 jury could find that to be the case. Plaintiffs provide bare conclusory assertions  
6 that Treece did not observe them disrupting court because they were not doing  
7 anything beyond observing court, *see e.g.*, ECF Nos. 27-29, but fail to provide  
8 evidence raising a genuine issue of material fact showing the invalidity of Treece’s  
9 beliefs of what he perceived.

10 Summary judgment is appropriate when a plaintiff does not make a  
11 “substantial showing” of deliberate falsehoods or reckless disregard, and only  
12 offers unsubstantiated assertions of dishonesty. *See Cassette v. King Cty.*, 625 F.  
13 Supp. 2d 1084, 1090 (W.D. Wash. 2008) *aff’d*, 338 F. App’x 585 (9th Cir. 2009)  
14 (citing *Mosley v. Sacramento County*, 61 Fed. Appx. 382 (9th Cir.2003)).

15 Plaintiffs’ failure to provide evidence of Treece’s alleged dishonesty requires this  
16 Court to hold that Plaintiffs have failed to meet their evidentiary burden, especially  
17 when coupled with a follow-up investigation that involved numerous witnesses  
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1 that led to a finding of probable cause by a district court judge who issued arrest  
2 warrants, *see* ECF No. 19 at 4.

3 Plaintiffs also argue that Dennis Bryant, the witness whom Treece thought  
4 Plaintiffs were trying to intimidate, did not change his demeanor during his  
5 testimony and was instead uncooperative and hostile from the start of his  
6 testimony. ECF No. 31 at 2. However, Treece believed Bryant had changed his  
7 demeanor since testifying in a previous trial in which Bryant had been cooperative  
8 and willing to share details with the Court, not that he had changed his demeanor  
9 from earlier on the same day. *See* ECF No. 19 at 3. Plaintiffs do not argue or  
10 provide any evidence that Bryant's demeanor had not changed since the prior  
11 proceeding. Therefore, the validity of Treece's belief that Bryant's demeanor had  
12 changed since the prior proceeding is not a genuine issue of material fact.

13 In light of these findings alone, this Court finds that granting summary  
14 judgment regarding the remaining claims against Treece and Spokane County is  
15 appropriate due to a lack of evidence. Therefore, the Court finds that Plaintiffs'  
16 bare assertions that Treece was lying, which is the factual basis for all of Plaintiffs'  
17 claims against Treece, lack requisite factual support, and therefore, all of the  
18 claims against Treece should be dismissed. *Arguendo*, the Court will accept all of  
19 Plaintiffs' conclusory statements as true and assess each of Plaintiffs' claims to  
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1 determine if those assumed facts would be sufficient to prove the necessary  
2 elements of Plaintiffs' claims.

3 **42 U.S.C. § 1983 claim against Treece**

4 42 U.S.C. § 1983 provides a cause of action for Plaintiffs in a very broad  
5 sense as it states in relevant part:

6 Every person who, under color of any statute, ordinance, regulation,  
7 custom, or usage, of any State or Territory or the District of Columbia,  
8 subjects, or causes to be subjected, any citizen of the United States or  
9 other person within the jurisdiction thereof 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, suit in equity, or  
other proper proceeding for redress . . .

10 "The purpose of § 1983 is to deter state actors from using the badge of their  
11 authority to deprive individuals of their federally guaranteed rights and to provide  
12 relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161, 112 S.  
13 Ct. 1827, 1830, 118 L. Ed. 2d 504 (1992) (citing *Carey v. Phipps*, 435 U.S. 247,  
14 254–257, 98 S.Ct. 1042, 1047–1049, 55 L.Ed.2d 252 (1978)).

15 Plaintiffs' basis for a claim against Treece for a violation of their rights  
16 under 42 U.S.C. § 1983 is not clear. This Court relies on Plaintiffs' assertion in  
17 their Response to Defendants' Motion for Summary Judgment that "Treece can be  
18 held liable in his individual capacity under 1983 if the jury finds that he knowingly  
19 lied to the police." ECF No. 31 at 9. Despite dropping their state law claim for  
20 unlawful arrest, the same allegation seems to serve as the basis for their claim

1 against Treece under § 1983 for his texting a police officer that he thought a crime  
2 was being committed. The first issue that the Court will address is whether Treece,  
3 as a county prosecutor, has immunity from liability for damages.

4 Prosecutors are protected by absolute immunity from liability for damages  
5 arising under § 1983 claims “when performing the traditional functions of an  
6 advocate.” *Kalina v. Fletcher*, 522 U.S. 118, 131, 118 S.Ct. 502, 139 L.Ed.2d 471  
7 (1997); *see also Imbler v. Pachtman*, 424 U.S. 409, 431, 96 S. Ct. 984, 995, 47 L.  
8 Ed. 2d 128 (1976) (holding that “. . . [I]n initiating a prosecution and in presenting  
9 the State’s case, the prosecutor is immune from a civil suit for damages under §  
10 1983”). However, courts make this determination based on the nature of the  
11 alleged conduct, in light of the fact that “actions of a prosecutor are not absolutely  
12 immune merely because they are performed by a prosecutor.” *Genzler v.*  
13 *Longanbach*, 410 F.3d 630, 636 (9th Cir. 2005) (citing *Buckley v. Fitzsimmons*,  
14 509 U.S. 259, 273, 113 S.Ct. 2606, 125 L.Ed.2d 209 (1993)). Further, “§ 1983  
15 may provide a remedy . . . insofar as petitioner performed the function of a  
16 complaining witness.” *Kalina v. Fletcher*, 522 U.S. 118, 131, 118 S. Ct. 502, 510,  
17 139 L. Ed. 2d 471 (1997). The Fourth Circuit Court of Appeals held that a  
18 prosecutor is not protected by absolute immunity for his activities prior to a  
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1 probable cause determination because he is not yet acting as an advocate. *See*  
2 *Goldstein v. Moatz*, 364 F.3d 205 (4th Cir. 2004).

3 The parties disagree over whether or not Treece was acting within the scope  
4 of his prosecutorial duties when he texted Sergeant Whol about Plaintiffs'  
5 behaviors. A finding that Treece was acting within the scope of his duties would  
6 be advantageous for Treece because he may then be afforded absolute immunity.  
7 However, the Court in *Kalina v. Fletcher*, 522 U.S. 118, 130-31, 118 S. Ct. 502,  
8 510, 139 L. Ed. 2d 471 (1997) held:

9 Testifying about facts is the function of the witness, not of the lawyer.  
10 No matter how brief or succinct it may be, the evidentiary component  
11 of an application for an arrest warrant is a distinct and essential  
12 predicate for a finding of probable cause. Even when the person who  
13 makes the constitutionally required "Oath or affirmation" is a lawyer,  
14 the only function that she performs in giving sworn testimony is that of  
15 a witness.

13 Plaintiffs argue both sides of the same issue to convince the Court that  
14 Treece was simultaneously acting as a prosecutor under color of law to make him  
15 liable under § 1983, but acting outside of his traditional role as a prosecutor, so that  
16 he would not be afforded the absolute immunity reserved for prosecutors carrying  
17 out their duties. Plaintiffs state:

18 Although Treece was acting within the scope of his official duties as a  
19 Deputy Prosecuting Attorney, he chose to engage in conduct that was  
20 not within the traditional role of an advocate. Acting within the scope  
of one's duties as a deputy prosecutor and acting within the traditional

1 role of a prosecuting attorney as an advocate are two very different  
2 things.

3 ECF No. 31 at 9.

4 Unlike in the *Kalina* case cited by Plaintiffs, where the prosecutor was able  
5 to be sued as a “complaining witness,” Treece did not file a certification of  
6 probable cause to any court and was much less involved in the charges against  
7 Plaintiffs than was the prosecutor in *Kalina* who instead actively pursued the  
8 charges. Treece’s text message and interview only set in motion an investigation  
9 conducted by law enforcement and pursued by a different deputy prosecutor, G.  
10 Mark Cipolla, which resulted in a finding of probable cause to arrest Plaintiffs  
11 based on evidence gathered from numerous witnesses. *See* ECF No. 22 at 3.

12 Treece’s text message to police was only a statement of his observation:  
13 “There’s a row of gangsters in the back row, east side of the courtroom who seem  
14 to be causing witness some problems,” ECF No. 21-1 at 2. Treece did not apply  
15 for arrest warrants, certify anything to the court, or in any way participate in the  
16 investigation, arrest, or prosecution of Plaintiffs outside of his conveying his  
17 observations to the police. He was simply the first of a number of other witnesses  
18 who shared observations with police regarding the Plaintiffs, none of whom was a  
19 defendant in any of his then assigned cases. Therefore, Treece’s sending a text  
20 message or talking to police regarding the same individuals were not actions taken

1 within his prosecutorial duties or as part of his traditional role an  
2 advocate/prosecutor.

3 Accordingly, although Treece will not be afforded immunity, this Court  
4 finds that his actions were not taken “under color of law,” a prerequisite for § 1983  
5 liability. Plaintiffs have failed to provide any legal support for a viable § 1983  
6 claim under such circumstances and summary judgment is appropriately granted  
7 regarding Plaintiffs’ remaining § 1983 claim.

8 **False imprisonment claim against Treece**

9 The essential elements to pleading a false imprisonment cause of action  
10 under Washington law are: (1) [t]hat there was an intentional restraint,  
11 confinement or detention of a person; (2) [t]hat such restraint,  
12 confinement or detention was unlawful; and (3) [t]hat such restraint,  
confinement or detention compels the person to stay or go somewhere  
against his or her will.

13 29 Wash. Prac., Wash. Elements of an Action § 11:1 (2015-2016 ed.).

14 As stated by the Washington State Supreme Court:

15 The gist of an action for false arrest or false imprisonment is the  
16 unlawful violation of a person’s right of personal liberty or the restraint  
of that person without legal authority:

17 A person is restrained or imprisoned when he is deprived of either  
18 liberty of movement or freedom to remain in the place of his lawful  
19 choice; and such restraint or imprisonment may be accomplished by  
20 physical force alone, or by threat of force, or by conduct reasonably  
implying that force will be used. One acting under the apparent  
authority—or color of authority as it is sometimes described—or  
ostensibly having and claiming to have the authority and powers of a  
police officer, acts under promise of force in making an arrest and  
effecting an imprisonment.

1 *Bender v. City of Seattle*, 99 Wash. 2d 582, 591, 664 P.2d 492, 499 (1983) (internal  
2 quotation marks omitted).

3 Plaintiffs do not establish how Treece can be held liable under this claim  
4 when he only sent a text and made a statement to police. Between the sending of  
5 Treece's text and Plaintiffs' imprisonment, numerous officers conducted an  
6 investigation, witnesses were interviewed, and police applied for and received  
7 arrest warrants pursuant to a district court's determination of probable cause to  
8 arrest Plaintiffs. *See generally* ECF No. 22, 22-1. Even if this Court were to  
9 accept that Treece's text was completely dishonest, his sharing an untrue  
10 observation regarding individuals who would be arrested by police and prosecuted  
11 by other prosecutors, does not support a claim against him for false imprisonment.  
12 There were numerous intervening causes that resulted in Plaintiffs' arrest, *see* ECF  
13 Nos. 22 at 3, 22-1, and Plaintiffs fail to provide any evidence that Treece  
14 unlawfully restricted Plaintiffs' "liberty of movement or freedom to remain in the  
15 place of [their] lawful choice." *See Bender* 99 Wash. 2d at 591, 664 P.2d at 499.

### 16 **Malicious prosecution claim against Treece<sup>1</sup>**

17 To maintain an action for malicious prosecution, the plaintiff must  
18 allege and prove five elements: (1) that the prosecution claimed to have  
19 been malicious was instituted or continued by the defendant; (2) that  
there was want of probable cause for the institution or continuation of

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20 <sup>1</sup> Plaintiffs combine their arguments for unlawful imprisonment and malicious  
prosecution in their response to the present motion, but they are separate claims.

1 the prosecution; (3) that the proceedings were instituted or continued  
2 through malice; (4) that the proceedings terminated on the merits in  
3 favor of the plaintiff, or were abandoned; and (5) that the plaintiff  
4 suffered injury or damages as a result of the prosecution.

5 16A Wash. Prac., Tort Law And Practice § 22:2 (4th ed.). “The gist of an action  
6 for malicious prosecution . . . rests on malice and want of probable cause.”

7 *Bender v. City of Seattle*, 99 Wash. 2d at 591, 664 P.2d at 499 (citing *Peasley v.*  
8 *Puget Sound Tug & Barge Co.*, 13 Wash.2d 485, 498–99, 125 P.2d 681 (1942) and  
9 *Pallett v. Thompkins*, 10 Wash.2d 697, 699, 118 P.2d 190 (1941)). In this case, the  
10 charges were dismissed against Plaintiffs after they served time in jail, so this  
11 Court need only assess whether the first three elements of this claim are supported  
12 with sufficient evidence to allow a reasonable jury to find in their favor. *See*  
13 *Anderson*, 477 U.S. at 251.

14 The Court finds that Treece’s alleged conduct does not support a claim for  
15 instituting or continuing the prosecutions of Plaintiffs. Plaintiffs allege that Treece  
16 provided evidence to the investigating officers, but the prosecutions of the  
17 Plaintiffs were initiated after arrest warrants were issued upon a judicial finding of  
18 probable cause in light of all the evidence presented by police. *See* ECF Nos. 22,  
19 22-1. Plaintiffs’ cases were assigned to a different prosecutor and Treece had  
20 nothing to do with “continuing” the actions against Plaintiffs. *See* ECF No. 21.  
Additionally, Plaintiffs have not provided any evidence of malice on the part of  
Treece. “In the absence of any affirmative evidence whatsoever of improper

1 motive or reckless disregard, an inference of malice is unwarranted as a matter of  
2 law.” *Youker v. Douglas Cty.*, 162 Wash. App. 448, 465, 258 P.3d 60, 68 (2011).  
3 Plaintiffs, therefore, have not demonstrated how their version of the facts would be  
4 sufficient to allow a reasonable jury to find in their favor. *See Anderson*, 477 U.S.  
5 at 251. Accordingly, the claim of malicious prosecution against Treece is  
6 dismissed.

### 7 **False imprisonment and malicious prosecution claims against Spokane** 8 **County**

9 Plaintiffs only respond to Defendants’ Motion for Summary Judgment  
10 regarding these claims by arguing, “[b]ecause the facts support causes of action  
11 under state law against Treece, his employer, Spokane County, may also be held  
12 liable under the doctrine of respondeat superior.” ECF No. 31 at 11. Plaintiffs  
13 concede that their evidence fails to establish any legitimate § 1983 claim against  
14 Spokane County pursuant to *Monell v. Dept. of Social Serv.*, 436 U.S. 658, 98 S.  
15 Ct. 2018, 56 L. Ed. 2d 611 (1978), but nonetheless proceed against Spokane  
16 County for state law claims based on the same facts underlying their previously  
17 filed § 1983 claims. *See* ECF No. 31 at 9.

18 The doctrine of respondeat superior was articulated in Washington in *Kuehn*  
19 *v. White*, 24 Wash. App. 274, 277, 600 P.2d 679, 681 (1979) when the court held:  
20 “[a] master is responsible for the servant’s acts under the doctrine of respondeat

1 superior when the servant acts within the scope of his or her employment and in  
2 furtherance of the master's business.”

3 As previously discussed, this Court finds that Plaintiffs have failed to  
4 establish how Treece's texting and speaking to the police regarding charges that he  
5 was not involved in prosecuting support any of Plaintiffs' claims against him. The  
6 Court has found that all of the claims against Treece should be dismissed.  
7 Therefore, there is no basis for holding Spokane County liable for any of the  
8 alleged claims, even if Treece was acting within the scope of his employment.

#### 9 CONCLUSION

10 This Court finds that Plaintiffs have failed to raise a genuine issue of  
11 material fact and have failed to provide evidence sufficient to allow a reasonable  
12 jury to find in their favor on any of the claims.

13 Accordingly, **IT IS HEREBY ORDERED** that Defendants' Motion for  
14 Summary Judgment, **ECF No. 18**, is **GRANTED**.

15 The District Court Clerk is directed to enter this Order, enter Judgment  
16 accordingly, provide copies to counsel, and **close this case**.

17 **DATED** this 9th day of December 2015.

18  
19 *s/ Rosanna Malouf Peterson*  
20 ROSANNA MALOUF PETERSON  
Chief United States District Court Judge