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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REY MARTINEZ,

Plaintiff,

v.

CITY OF TUKWILA POLICE  
DEPARTMENT, et al.,

Defendants.

Case No. C14-1207RSM

ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT

**I. INTRODUCTION**

This matter comes before the Court on Defendants' Motion for Summary Judgment, Dkt. #15. Defendants, City of Tukwila and Officer Jamie Sturgill, move for summary judgment dismissal of all of Plaintiff's claims on procedural and substantive grounds. *Id.* at 1. Plaintiff Rey Martinez did not file a Response or otherwise address Defendants' Motion until January 4, 2016.<sup>1</sup> *See* Dkt. #22. For the reasons set forth below, the Court GRANTS Defendants' Motion for Summary Judgment.

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<sup>1</sup> The Court notes that it has previously issued an Order to Show Cause why this case should not be dismissed for failure to prosecute after the Plaintiff initially failed to file a Joint Status Report as directed by the Court. Dkt. #9.

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## II. BACKGROUND

The Court will summarize the facts in this case from the Complaint, Defendants’ Motion, and attached exhibits where appropriate.<sup>2</sup>

Plaintiff Rey Martinez attended a house party the evening of April 16, 2011, at 13305 Macadam Road South in Tukwila, Washington. Dkt. #5 at 5. Mr. Martinez, his wife, and other partygoers were drinking alcohol that evening. Dkt. #17-1 at 24-26. Mr. Martinez testified that there were people at the party who were intoxicated. *Id.* at 28.

At 9:15 p.m., Alicia Waterton called 911 and reported hearing “multiple gunshots” near the address of 13219 E. Marginal Way South in Tukwila, Washington on Macadam Road. Dkt. #16-1 at 2. A minute later, a second 911 caller named Joan Meagher reported hearing at least 20 to 30 shots, and stated she believed it was in the area of 133 Macadam Road. *Id.* Several other members of the public called to report gunshots in the area. *Id.* at 3. Daniel Grise, who lived at 13325 Macadam Road, called 911 and stated he heard possibly 10 to 12 shots coming from his next door neighbor’s house, and reported he heard people talking prior to the shots. *Id.*

Tukwila police officers Tim Bonagofski, Nick Hogan, Erik Kunsmann, Zack Anderson, Adam Balcom and Jamie Sturgill were dispatched to the call. *Id.* at 2-3. Dispatch advised the officers there were several people calling to report up to 20 shots fired in the location of the 13300 block of Macadam Road South. *Id.* at 19. The 911 call receiver also heard shots over the phone while talking to one of the many 911 callers. *Id.* When the officers arrived in the area, several of the 911 callers came out of their houses and pointed the officers in the direction of a house at 13305 Macadam Road. *Id.* After Officer Sturgill arrived in the area, a male ran up to

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<sup>2</sup> The Court notes that Plaintiff’s Response, Dkt. #22, was filed more than a month after the noting date for this Motion without leave of the Court. Plaintiff’s brief contains no explanation for the delayed filing and will not be considered. Even if the Court were to consider Plaintiff’s Response, nothing therein would alter the Court’s ruling on this Motion. The Court further notes that Plaintiff’s brief cites generally and without specific paragraphs to an affidavit of the Plaintiff that is not sworn before a notary or declared true under penalty of perjury. *See* Dkt. #22-1.

1 his car and said he was positive that the shots came from a house party approximately 200 yards  
2 from his home. *Id.* Officer Sturgill looked in the direction he was pointing and saw several  
3 people standing outside in the backyard of a house just south of the overpass bridge. *Id.* The  
4 officers approached the house at approximately 9:24 p.m., nine minutes after the first 911 call  
5 came in. *Id.*

6  
7 The officers walked into the backyard where they were met by approximately 15 to 20  
8 adults. *Id.* According to a “Follow Up Report” signed by Officer Sturgill on April 17, 2011,  
9 the group of adults appeared to be highly intoxicated and aggressive upon initial contact with  
10 police. *Id.* at 21. One adult male began swearing at Officer Bonagofski and was escorted away  
11 from the other subjects. *Id.* at 19. Officer Sturgill and the other officers began telling the party  
12 crowd why they were there, specifically that gunshots were reported and that people were  
13 pointing out their location. *Id.* The partygoers admitted they had also heard shots, but claimed  
14 they did not come from their party. *Id.* The group became mostly cooperative once they were  
15 informed of the reason for the police contact. *Id.* at 21.

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18 Officer Sturgill quickly looked for bullet casings on the ground but did not see any. *Id.*  
19 at 19. He asked for permission to look around inside the house to check on the welfare of those  
20 inside. *Id.* This was allowed and everyone inside seemed fine. *Id.* He walked back outside,  
21 and walked over to where Officer Bonagofski was talking to the male who had been swearing  
22 when they arrived. *Id.*

23  
24 At some point Officer Sturgill saw Officer Hogan engaged in a fist fight with a male  
25 from the party. *Id.* at 19. According to Mr. Martinez, there was “a lot of commotion” when the  
26 fight began. Dkt. #17-1 at 59. According to Mr. Martinez, the partygoers were “loud” and  
27 “upset to see what was happening.” *Id.* at 59-60. He estimates the fight lasted between two to  
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1 four minutes. *Id.* at 60. Officer Sturgill ran up to the fight and deployed his pepper spray in the  
2 eyes and face of the partygoer and the partygoer was tasered by another officer. Dkt. #16-1 at  
3 19. Officers were then able to get the partygoer in handcuffs. *Id.*

4         According to a report signed by Officer Anderson, he saw the crowd become  
5 increasingly aggressive and advance toward the police in response to the arrest of this  
6 partygoer. *Id.* at 21. The Plaintiff's wife testified that the entire group of partygoers moved  
7 toward the altercation between Turner and the police officer at the same time. Dkt. #17-1 at 32.  
8 Officer Balcom could see additional subjects in the crowd step forward and try to engage with  
9 Officer Hogan and the subject he was fighting with. Dkt. #16-1 at 25. Officer Balcom began to  
10 push multiple unknown subjects away for the safety of the police officers. *Id.* According to  
11 Officer Balcom, the scene immediately intensified and almost all of the subjects in the crowd  
12 began to swear profanities and attempt to get involved. *Id.* at 25-26. Balcom was yelling at  
13 people to "Back up!" and "Stay back!" but his orders were being ignored and he had to continue  
14 to push people back. *Id.* at 26. Officer Balcom noticed one male in the crowd appeared to be  
15 "fueling the fire" and was getting others riled up. *Id.* This subject was wearing a black Carhart  
16 jacket with a logo on the back and patches down the sleeve. *Id.* This male was Plaintiff. *See*  
17 Dkt. #17-1 at 56-57. According to Officer Balcom, he was swearing profusely and flailing his  
18 arms in an aggressive manner, which escalated the others. Dkt. #16-1 at 26. He was saying  
19 things such as "Fuck you!" and "Get off him I'll fuck you up!" *Id.* Officer Balcom had to push  
20 the male backwards at least twice. *Id.*

21         There was some kind of struggle at some point in the arrest of the initial partygoer. Mr.  
22 Martinez admits he did not see or hear anything that happened between Mr. Turner and the  
23 police officer before they popped out from behind a car and tumbled to the ground. Dkt. #17-1  
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1 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*  
2 Inc., 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny &*  
3 *Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

4 The Court must draw all reasonable inferences in favor of the non-moving party. *See*  
5 *O’Melveny & Meyers*, 969 F.2d at 747, *rev’d on other grounds*, 512 U.S. 79 (1994). However,  
6 the nonmoving party must make a “sufficient showing on an essential element of her case with  
7 respect to which she has the burden of proof” to survive summary judgment. *Celotex Corp. v.*  
8 *Catrett*, 477 U.S. 317, 323 (1986). Further, “[t]he mere existence of a scintilla of evidence in  
9 support of the plaintiff’s position will be insufficient; there must be evidence on which the jury  
10 could reasonably find for the plaintiff.” *Anderson*, 477 U.S. at 251.

## 13 **B. Analysis**

14 Plaintiff’s Complaint seeks relief under §1983 and alleges as causes of action violations  
15 of the Washington State Constitution for due process and cruel and unusual punishment,  
16 violations of the U.S. Constitution under the Fourth Amendment for unreasonable search and  
17 seizure and unreasonable force, under the Eighth Amendment for cruel and unusual punishment,  
18 and otherwise for due process. Dkt. #5 at 6-7.

### 20 **1. Fourth Amendment Claim**

21 Ninth Circuit courts analyze all claims of excessive force that arise during or before  
22 arrest under the Fourth Amendment’s reasonableness standard. *Coles v. Eagle*, 704 F.3d 624,  
23 627 (9th Cir. 2012). The Court must ask “whether the officers’ actions are ‘objectively  
24 reasonable’ in light of the facts and circumstances confronting them.” *Graham v. Connor*, 490  
25 U.S. 386, 397 (1989). This inquiry “requires a careful balancing of ‘the nature and quality of  
26 the intrusion on the individual’s Fourth Amendment interests’ against the countervailing  
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1 governmental interests at stake.” *Id.* at 396 (quoting *Tennessee v. Garner*, 471 U.S. 1, 8, 105 S.  
2 Ct. 1694, 85 L. Ed. 2d 1 (1985)). “The calculus of reasonableness must embody allowance for  
3 the fact that police officers are often forced to make split-second judgments — in circumstances  
4 that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in  
5 a particular situation.” *Glenn v. Washington County*, 673 F.3d 864, 871, (9th Cir. 2011) (citing  
6 *Graham*, 490 U.S. at 396-97). “Reasonableness therefore must be judged from the perspective  
7 of a reasonable officer on the scene, ‘rather than with the 20/20 vision of hindsight.’” *Id.* (citing  
8 *Graham*, 490 U.S. at 396).

9  
10 The analysis involves three steps. “First, we must assess the severity of the intrusion on  
11 the individual's Fourth Amendment rights by evaluating the type and amount of force inflicted.”  
12 *Glenn*, 673 F.3d at 871 (citing *Espinosa v. City and County of San Francisco*, 598 F.3d 528,  
13 537 (9th Cir. 2010)) (internal quotation marks omitted). “[E]ven where some force is justified,  
14 the amount actually used may be excessive.” *Id.* (citing *Santos v. Gates*, 287 F.3d 846, 853 (9th  
15 Cir. 2002)). “Second, we evaluate the government's interest in the use of force.” *Id.* (citing  
16 *Graham v. Connor*, 490 U.S. 386, 396 109 S.Ct. 1865 (1989)). In evaluating the government's  
17 interest in the use of force, The Court looks to: “(1) the severity of the crime at issue, (2)  
18 whether the suspect posed an immediate threat to the safety of the officers or others, and (3)  
19 whether the suspect was actively resisting arrest or attempting to evade arrest by flight,”  
20 however, the inquiry is not limited to these factors. *Young v. Cnty. of Los Angeles*, 655 F.3d  
21 1156, 1163 (9th Cir. 2011) (citing *Miller v. Clark Cnty.*, 340 F.3d 959, 964 (9th Cir. 2003)).  
22 “Finally, ‘we balance the gravity of the intrusion on the individual against the government's  
23 need for that intrusion.’” *Glenn*, 673 F.3d at 871 (citing *Miller*, 340 F.3d at 964).  
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1 Defendants point to *Jackson v. City of Bremerton*, 268 F.3d 646 (9th Cir. 2001) as a case  
2 with a similar fact pattern where the Ninth Circuit determined that the use of pepper spray did  
3 not violate the Fourth Amendment’s prohibition of unreasonable force. In that case, plaintiff  
4 Jackson and her family were attending a party in a park where alcohol was being served.  
5 *Jackson*, 268 F.3d at 649. Police arrived and recognized one of the family members as someone  
6 with an outstanding warrant. *Id.* This person, Jackson’s son, attempted to flee into the group of  
7 people and escape arrest. *Id.* At least two more officers arrived and the group yelled and swore  
8 at the police and “advanced upon them” as they tried to arrest Jackson’s son. *Id.* Fights broke  
9 out between police and members of the group and the plaintiff ran over to try and interfere with  
10 an officer fighting with a female friend. *Id.* at 650. At some point the officers warned the group  
11 a chemical irritant would be used if they did not disperse. *Id.* An officer applied pepper spray  
12 to Jackson to prevent her interference. *Id.* Jackson’s hair was sprayed with pepper spray which  
13 dripped down her head, she was handcuffed in a rough manner, and an officer rolled up the  
14 windows of the patrol car she was sitting in with the chemical still on her head when she  
15 continued to argue with him. *Id.* The Ninth Circuit ruled the nature and quality of these  
16 intrusions against the plaintiff were “minimal.” *Id.*, at 652.

20 The court further ruled that the officers were “substantially outnumbered” and faced  
21 with a group that refused to obey the officers’ commands to disperse, shouted at the officers,  
22 and that engaged the officers in verbal and physical altercations. *Id.*, 652-53. Jackson’s active  
23 interference posed an immediate threat to the officers’ personal safety and ability to control the  
24 group. *Id.* Under circumstances that the plaintiff herself described as a “melee,” the force  
25 applied was reasonable and necessary to control a “rapidly evolving” and escalating situation.  
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1 *Id.*, at 653. On balance, applying the *Graham* analysis, the Ninth Circuit ruled the use of force  
2 was not excessive.

3 The Court finds *Jackson* to be a case with an analogous fact pattern where the use of  
4 force was equal to or even greater than that alleged in the instant matter, but for which the  
5 *Graham* analysis applied by the Ninth Circuit resulted in a finding that the force was  
6 reasonable. Here, the force applied by Officer Sturgill was likewise reasonable and necessary to  
7 control a rapidly evolving situation where officers were actively engaged in physical  
8 altercations with party-goers under the influence of alcohol. Faced with no issues of material  
9 fact or legal arguments raised by the Plaintiff, the Court concludes that Plaintiff's Fourth  
10 Amendment claim fails as a matter of law.  
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## 12 **2. Eighth Amendment Claim**

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14 "To sustain an Eighth Amendment claim, the plaintiff must prove a denial of the  
15 minimal civilized measure of life's necessities, occurring through deliberate indifference by  
16 prison personnel or officers." *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir.1996). Supreme  
17 Court precedent and the underlying purposes of the Eighth Amendment indicate that there must  
18 be an intent to punish in order to establish a cause of action. *Robins v. Meecham*, 60 F.3d 1436,  
19 1440 (9th Cir.1995). The Eighth Amendment protects the interests and safety of inmates, and  
20 restrains governmental overreaching. *Id.*  
21

22 Mr. Martinez alleges he was subjected to cruel and unusual punishment under the Eighth  
23 Amendment. Dkt. #5 at 7 (Complaint, ¶¶ 4.5 and 4.7). Defendants argue that Plaintiff's claim  
24 is based on being pepper sprayed during the party incident, not any alleged treatment after being  
25 incarcerated by government officials, and that his claim must therefore be analyzed under the  
26 Fourth Amendment, not the Eighth Amendment. Dkt. #15 at 15. Again, Mr. Martinez does not  
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1 respond. The Court agrees with Defendants and, having already dismissed Plaintiff's Fourth  
2 Amendment claim as a matter of law, dismisses this claim as well.

### 3 **3. Due Process Claim**

4 Defendants argue that Plaintiff's due process claim, to the extent that he intends it to be  
5 separate from his other claims, should be dismissed as it is subsumed by his Fourth Amendment  
6 claim. The Court agrees and dismisses this claim as well.  
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### 8 **4. State Claims**

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10 Defendants argue that Plaintiff's state constitutional claims must also be dismissed  
11 because Plaintiff failed to comply with the requirement of filing a claim for damages outlined in  
12 RCW 4.96.010(1) and because there is no cause of action for violation of the Washington State  
13 Constitution generally. *See* Dkt. #15 at 18-19. Again, Plaintiff does not respond. The Court  
14 agrees with Defendants. Additionally, even if Plaintiff had complied with RCW 4.96.010(1),  
15 his state constitutional claims mirror his federal claims, and would be dismissed for the same  
16 reasons stated above.  
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### 18 **5. Remaining Claims**

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20 To the extent that Plaintiff pleads claims for failure of the police to read him his  
21 constitutional rights, or for failure of Defendant City of Tukwila to properly train police  
22 officers, the Court agrees with Defendants' analysis and will dismisses these claims as well.  
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24 *See* Dkt. #15 at 16-18.

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