IN THE SUPREME COURT OF IOWA

No. 21-0909
Polk County No. LACL148061

---

JASON CARTER,

Plaintiff–Appellant,

vs.

STATE OF IOWA, MARK D. LUDWICK, Special Agent of Iowa Department of Public Safety, and MARK D. LUDWICK, in his individual capacity,

Defendants–Appellees.

---

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
THE HONORABLE WILLIAM P. KELLY, JUDGE

---

# APPELLEES' FINAL BRIEF

---

THOMAS J. MILLER
ATTORNEY GENERAL OF IOWA

JEFFREY C. PETERZALEK
TESSA M. REGISTER
Assistant Attorneys General
Iowa Department of Justice
1305 East Walnut Street, 2nd Fl.
Des Moines, Iowa 50319
Phone: 515-281-4213
Email: Jeffrey.Peterzalek@ag.iowa.gov
Email: Tessa.Register@ag.iowa.gov
ATTORNEYS FOR DEFENDANTS–APPELLEES

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Statutes**



**Other Authorities**



**Rules**

## STATEMENT OF THE ISSUES

**I. The district court properly dismissed count I because the State is sovereignly immune, the arrest warrant was supported by probable cause, and the State exercised all due care to comply with the law.**

### Authorities

Iowa Code § 669.14(4)

Iowa Code § 669.26

*Baldwin v. City of Estherville (Baldwin I)*, 915 N.W.2d 259 (Iowa 2018)

*Baldwin v. City of Estherville (Baldwin II)*, 929 N.W.2d 691 (Iowa 2019)

*Boyer v. Iowa High Sch. Athletic Ass'n*, 127 N.W.2d 606 (Iowa 1964)

*Carter v. Carter*, 957 N.W.2d 623 (Iowa 2021)

*Franks v. Delaware*, 438 U.S. 154 (1978)

*Greene v. Friend of Court of Polk Cnty.*, 406 N.W.2d 433 (Iowa 1987)

**II. Count III was properly dismissed because it is an improper collateral attack on Jason's civil judgment, the claim is barred by judicial-process immunity, the claim is barred by sovereign immunity, the State is entitled to all-due-care immunity, and the State did not violate Jason's due-process rights during the civil proceeding.**

### Authorities

*Briscoe v. LaHue*, 460 U.S. 325 (1983)

*Carter v. Carter*, 957 N.W.2d 623 (Iowa 2021)

*Green v. Racing Ass'n of Cent. Iowa*, 713 N.W.2d 234 (Iowa 2006)

*Livers v. Schenck*, 700 F.3d 340 (8th Cir. 2012)

*Schott v. Schott*, 744 N.W.2d 85 (Iowa 2008)

*Venckus v. City of Iowa City*, 930 N.W.2d 792 (Iowa 2019)

## III. Count IV was properly dismissed because the claim is barred by sovereign immunity, the criminal investigation does not shock the contemporary conscience, and the State exercised all due care to comply with the law.

### Authorities

*Akins v. Epperly*, 588 F.3d 1178 (8th Cir. 2009)

*Carter v. Carter*, 957 N.W.2d 623 (Iowa 2021)

*Minor v. State*, 819 N.W.2d 383 (Iowa 2012)

*Wilson v. Lawrence Cty.*, 260 F.3d 946 (8th Cir. 2001)

## ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court pursuant to Iowa Rule of Appellate Procedure 6.1101(2)(*c*) because this case presents substantial issues of first impression regarding state constitutional torts, including the permissibility of sovereign immunity defenses to state constitutional tort claims; the appropriate stages of raising qualified- and absolute-immunity defenses to state constitutional tort claims; and a plaintiff's ability to collaterally attack rulings in other proceedings, including rulings by this Court, through state constitutional tort claims.

## FACTUAL BACKGROUND AND PROCEEDINGS

### I. Introduction.

This state constitutional tort action is one in a series of lawsuits brought by Jason Carter arising out of his civil liability and criminal acquittal for killing his mother. In June of 2015, Shirley Carter was shot and killed in her home. Six months later, Shirley's husband, Bill Carter, filed a civil wrongful-death suit against his son, Jason. The civil jury found by a preponderance of the evidence that Jason was liable for his mother's death and ordered him to pay $10 million in damages. Predictably, Jason was soon thereafter arrested pursuant to a valid warrant and a prosecutor charged him with First-Degree Murder. Following trial, the criminal jury did not find beyond a reasonable doubt that Jason committed First-Degree Murder.

Jason has twice unsuccessfully attempted to leverage the outcome of the criminal proceedings to vacate his civil judgment. Unable to convince the state court that his civil judgment was erroneous, Jason moved forums and filed a § 1983 claim against Iowa Division of Criminal Investigation ("DCI") Agent Mark D. Ludwick in federal court, alleging false-arrest and substantive-due-process constitutional violations. He then filed another suit in state court against Agent Ludwick and the State of Iowa (collectively "the State") bringing *Godfrey*-type claims for false arrest, substantive due process, and

equal protection, as well as claims for common law tortious infliction of emotional distress, negligent investigation, false arrest, abuse of process, and malicious prosecution. Jason also sought attorney fees from the State for not only this case, but also fees for defending the civil wrongful-death case and his criminal charge. In both the federal and state constitutional tort suits, Jason attacks his civil liability, accusing the State of causing his $10 million wrongful-death judgment and seeking the $10 million sum in damages from the State.

The State moved to dismiss all claims. After thorough review, the district court dismissed Jason's suit in its entirety, finding the State was sovereignly and qualifiedly immune from all claims and that Jason failed to state a claim for any violation of the Iowa Constitution. For all the reasons set forth below, the district court should be affirmed.

## II. Factual Background.

The Court has seen Jason before. *See Carter v. Carter*, 957 N.W.2d 623 (Iowa 2021). On June 19, 2015, Shirley was shot and killed in her home in Marion County, Iowa. (Pet. ¶ 11, App. at 6). Shirley was found by her son, Jason, who had called 911 "and told the operator his mother was dead and that she seemed to have been on the floor for two hours." *Carter*, 957 N.W.2d at 629. The DCI arrived to investigate the homicide and Agent Ludwick was the

lead investigator. (Pet. ¶¶ 12–13, App. at 6). Jason, who found Shirley's body and expressed specific knowledge of how long she had been lying on the floor, was immediately a suspect. (Pet. ¶ 14, App. at 6).

Six months after Shirley's death, Bill, Billy Dean Carter, and the Estate of Shirley Carter ("civil plaintiffs") filed a wrongful-death action against Jason. (Pet. ¶¶ 29, 32 App. at 7–8). At this point, the criminal investigation was ongoing and no criminal charges had been filed. (Pet. ¶ 58, App. at 10). During the civil proceeding, a significant point of contention between the parties was whether the civil plaintiffs could subpoena the DCI for criminal investigative information regarding Shirley's death. (Pet. ¶¶ 32–44, App. at 8–9). Jason moved to quash the civil plaintiffs' subpoena to obtain criminal investigative information, but the district court denied his motion and authorized the civil plaintiffs' "counsel to share information with the DCI on such terms as the DCI and [civil plaintiffs] agreed, provided [civil plaintiffs] promptly gave defense counsel the same information." (App. at 75). In light of the sensitive nature of an ongoing criminal investigation, the state court judge's "order both directly and indirectly, presumed the DCI would not provide all the information in its files to the [civil plaintiffs.] Thus, both parties knew or should have known, only the information DCI agreed to give [civil plaintiffs] would be available during the civil trial." (App. at 75–76).

DCI indeed complied with the subpoena and produced some, but not all, criminal investigative information to the civil plaintiffs. (Pet. ¶ 43, App. at 9). "However, after Jason was provided with a portion of DCI's investigatory file, he made no attempt to subpoena DCI for the balance of its investigative file or specifically for interviews on other suspects." *Carter*, 957 N.W.2d at 639.

Jason also alleges that Agent Ludwick cooperated with the civil plaintiffs and their counsel during the civil proceeding, including "participat[ing] in at least one meeting with the Civil Plaintiffs' lead counsel's office before the civil trial" where he would testify as a fact witness, as well as "several meetings with the Civil Plaintiff's local counsel." (Pet. ¶ 422, App. at 49). During the civil trial, Agent Ludwick, among many other witnesses, took the stand and answered counsels' questions about the evidence provided by the DCI. (Pet. ¶ 90, App. at 14).

On December 15, 2017, the civil jury returned a verdict against Jason, finding him civilly liable for the death of his mother and ordering him to pay $10 million in damages. (Pet. ¶¶ 54, 454, App. at 10, 53). Two days after the wrongful-death judgment, Jason was arrested pursuant to a valid warrant. (Pet. ¶¶ 57–59, App. at 10). Marion County Attorney Ed Bull charged Jason with First-Degree Murder. (Pet. ¶ 58, App. at 10). After a contested preliminary

hearing, the court found probable cause to proceed with the criminal charge against Jason. On March 22, 2019, the criminal jury did not find beyond a reasonable doubt that Jason committed First-Degree Murder. (Pet. ¶ 552, App. at 68).

While his criminal case was pending, Jason petitioned to vacate the civil judgment against him in light of new criminal investigative information obtained during the criminal proceeding. (Pet. ¶ 76, App. at 12). Relying on many of the same pieces of evidence Jason raises in this suit, the court denied the motion. (App. at 79–80). The court concluded, in relevant part, (1) "[v]irtually all the evidence Jason presented in support of his position involves some level of hearsay, often double and triple hearsay"; (2) "most of the individuals claiming to have information about Shirley Carter's death were themselves incarcerated in Marion County Jail or facing criminal charges and 'looking to make a deal'"; and (3) "[w]hile the names of the same people seem to pop up in the interviews . . . it is difficult to identify the source of the allegations . . . [and] in the absence of corroboration, like physical evidence or facts that would only be known to the killer, the information is unreliable." (App. at 76–77). Jason appealed both his initial liability finding and the district court's denial of his petition to vacate, which were consolidated and heard by this Court.

On appeal, this Court considered Jason's arguments—the same arguments Jason makes here—that the civil judgment must be vacated because, *inter alia*, (1) newly discovered evidence points to different people who could be responsible for the murder; (2) the State had "extreme bias and tunnel vision by ignoring exculpatory evidence and unwillingness to consider other suspects"; (3) the State conducted a "faulty investigation"; (4) the "large number of reports pointing to other suspects alone would change the outcome of the trial"; (5) "there was not enough time for him to have shot his mother"; (6) his lack of a motive; (7) photos of him assembling the gun safe explain the presence of his fingerprints; and (8) he was prejudiced by DCI's decision to provide incomplete criminal information and meet with civil plaintiffs' to discuss the scope of the subpoena response. *Carter*, 957 N.W.2d at 634–43.

The Court affirmed both Jason's civil judgment and the denials of his petitions to vacate. *Id.* at 646. It concluded much of the "newly discovered" evidence was either not actually newly discovered or would not change the outcome of the trial. *Id.* at 637–42. The Court also found that "most of the information disclosed" in the additional witness statements was "uncorroborated, incomplete, refuted by others, or implausible based on the known facts of Shirley's death." *Id.* at 641. It also affirmed the district court's findings that "law enforcement did in fact consider other suspects," found

sufficient evidence to support a financial motive for Jason to commit the crime, and concluded that although the timeline was "tight, a reasonable mind could determine he had time." *Id.* at 635–36, 642. Thus, Jason's $10 million civil liability remains intact.

While his civil appeals were pending, Jason filed suit in the Iowa District Court alleging Agent Ludwick and the State of Iowa violated his constitutional and common law rights. Specifically, Jason raised (1) a *Godfrey*-type claim based on an unreasonable seizure in violation of article I, section 8 of the Iowa Constitution; (2) a *Godfrey*-type claim based on a deprivation of his rights to freedom, liberty, and happiness in violation of article I, section 1 of the Iowa Constitution; (3) a *Godfrey*-type claim based on a deprivation of substantive due process in his civil proceeding in violation of article I, section 9 of the Iowa Constitution; (4) a *Godfrey*-type claim based on a deprivation of substantive due process in the criminal investigation in violation of article I, section 9 of the Iowa Constitution; (5) a *Godfrey*-type claim based on a deprivation of his right to equal protection in violation of article I, section 6 of the Iowa Constitution; (6) a common law negligent-investigation claim; (7) a tortious infliction of emotional distress claim against the State; (8) a tortious infliction of emotional distress claim against Agent Ludwick individually; (9) a common law false-arrest claim; (10) a common

law abuse-of-process claim; (11) a common law malicious prosecution claim; and, most untenably, (12) a claim for attorneys' fees for this suit, the civil wrongful-death suit, and the criminal proceeding.

The State moved to dismiss all claims. The district court initially stayed its consideration of the motion pending the resolution of Jason's civil appeals. When this Court issued its ruling affirming Jason's civil liability and denying the petitions to vacate, the district court resumed its consideration and granted the State's motion in full. This appeal follows.

## ERROR PRESERVATION AND ISSUE WAIVER

Defendants generally agree that Jason has preserved error on the issues discussed herein by resisting Defendants' motion to dismiss before the district court. However, the Appellant Brief confirms that many Counts dismissed by the district court are not before this Court. It is well settled that failing to brief or offer authority in support of an issue waives the issue on appeal. Iowa R. App. P. 6.903(2)(*g*)(3); *Baker v. City of Iowa City*, 750 N.W.2d 93, 102–03 (Iowa 2008) (waiving issue on appeal where appellant only offered a "conclusory statement" that district court erred on particular issue, explaining lack of authority and argument in brief would require court to "'assume a partisan role and undertake the appellant's research and advocacy'" (quoting *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974)). And

the Court cannot consider issues raised for the first time in a Reply Brief. *Young v. Gregg*, 480 N.W.2d 75, 78 (Iowa 1992).

Accordingly, the State will not address the district court's dismissal of Count II (violation of article I, section 1 of the Iowa Constitution); Count V (violation of article I, section 6 of the Iowa Constitution); Count VI (common law negligent-investigation claim); Counts VII and VIII (tortious infliction of severe emotional distress claims); and Count XII (attorney fees).[1] The State will only address the viability of three claims preserved for appeal: Count I (violation of article I, section 8 of the Iowa Constitution), Count III (violation of article I, section 9 of the Iowa Constitution), and Count IV (violation of article I, section 9 of the Iowa Constitution).

## STANDARD OF REVIEW

A motion to dismiss is generally reviewed for correction of errors at law. *Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 298 (Iowa 2020). However, questions of constitutional interpretation are reviewed de novo. *State v. Sanchez*, 692 N.W.2d 812, 816 (Iowa 2005). The Court may consider the factual allegations contained in the Petition, as well as "documents referenced in the petition regardless of whether they have been attached." *Karon v. Elliott*

[1] Jason voluntarily dismissed Count IX (false arrest), Count X (abuse of process), and Count XI (malicious prosecution) before the district court.

*Aviation*, 937 N.W.2d 334, 347–48 (Iowa 2020) (citing *King v. State*, 818 N.W.2d 1, 6, n.1 (Iowa 2012)).

Relevant here, when reviewing a motion to dismiss, this Court "accepts as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). Accordingly, the numerous legal conclusions contained within the Petition are not entitled to any weight—particularly the legal conclusions that have been directly and adversely decided by other courts. *Compare* Pet. ¶ 78, App. at 12 ("The Petition to Vacate was based on newly discovered evidence that was material and would have changed the outcome of the civil trial"), *with Carter*, 957 N.W.2d at 637–43 (holding district court did not abuse its discretion in denying the petition to vacate).

## ARGUMENT

### I. The district court properly dismissed count I because the State is sovereignly immune, the arrest warrant was supported by probable cause, and the State exercised all due care to comply with the law.

Count I seeks constitutional damages against the State alleging Jason was arrested and taken into custody without probable cause in violation of article I, section 8 of the Iowa Constitution. The district court properly dismissed this claim, concluding the claim is the functional equivalent of false arrest, malicious prosecution, and abuse of process pursuant to Iowa Code section 669.14(4). The district court also held, in the alternative, that even if the claim was not barred by sovereign immunity, Jason failed to state a claim upon which relief can be granted because the warrant was supported by probable cause and the State is entitled to all-due-care qualified immunity. The district court's dismissal was correct and each basis to support dismissal will be addressed in turn.

#### A. Sovereign immunity, *Godfrey*-type claims, and the Iowa Tort Claims Act.

Jason argues that once this Court determines that a constitutional provision is self-executing, sovereign immunity is implicitly waived and the Supremacy Clause prohibits the legislature from imposing any limits on obtaining damages for constitutional violations. Jason is incorrect.

"Prior to the passage of the Iowa Tort Claims Act ["ITCA"] in 1965, the maxim that 'the King can do no wrong' prevailed in Iowa." *Hook v. Trevino*, 839 N.W.2d 434, 439 (Iowa 2013) (quoting Don R. Bennett, *Handling Tort Claims and Suits Against the State of Iowa: Part 1*, 17 Drake L. Rev. 189, 189 (1968)). Following the ITCA's passage, the State became amenable to suit, but "only in the manner and to the extent to which consent has been given by the legislature." *Hansen v. State*, 298 N.W.2d 263, 265 (Iowa 1980).

It is well established that only the legislature is authorized to waive state sovereign immunity. In 1964, prior to the ITCA, this Court was confronted with the continued viability of state sovereign immunity in light of significant criticism and growing sentiment that the doctrine was "outmoded, harsh, and not in keeping with the modern trend of the law." *Boyer v. Iowa High Sch. Athletic Ass'n*, 127 N.W.2d 606, 607 (Iowa 1964). This Court explained it had "held many times that if the doctrine of governmental immunity is to be changed it should be done by the legislature." *Id.* at 609. This Court found "whether or not the state or any of its political subdivisions or governmental agencies are to be immune from liability for torts is largely a matter of public policy. The legislature, not the courts, ordinarily determines the public policy of the state." *Id.* at 612. *Boyer* has never been overturned.

In 2017, a split majority of this Court recognized a direct cause of action, in the limited circumstances of that case, for damages under the Iowa Constitution against the state and state employees acting in their official capacities. *Godfrey v. State*, 898 N.W.2d 844, 881 (Iowa 2017) (Cady, C.J., concurring in part and dissenting in part). But the plurality opinion was clear in its scope: the "holding [was] based solely on the legal contentions presented by the parties" and the opinion "express[ed] no view on *other potential defenses* which may be available to the defendants." *Id.* at 880 (emphasis added).

The plurality decision made sure to note that the *Godfrey* defendants made no "direct or indirect argument with respect to the . . . Iowa Tort Claims Act, Iowa Code chapter 669, or to the doctrine of sovereign immunity." *Id.* at 873, n.7. Thus, the *Godfrey* decision in no way stands for the proposition that once a constitutional provision is deemed self-executing, fifty years of caselaw regarding the legislature's authority to waive and retain sovereign immunity simply melts away.

And whatever ambiguity existed post-*Godfrey* regarding sovereign immunity and constitutional torts, the ambiguity has been affirmatively resolved. In June of 2021, the legislature amended the ITCA to explicitly state that the chapter "shall not be construed as a waiver of sovereign immunity for

a claim for money damages under the Constitution of the State of Iowa." Iowa Code § 669.26. Thus *Godfrey*-type claims, which fall within the definition of "claim" under the ITCA, are subject to the legislature's carefully crafted scheme for when funds may be used to satisfy or defend tort claims, including its waivers and retentions of sovereign immunity.

Further, Jason's position is directly refuted by this Court's recent constitutional-tort precedent. In *Baldwin II*, this Court has held that the Iowa Municipal Tort Claims Act applies to constitutional torts against local governments and actors, including the Act's retention of sovereign immunity over certain classes of tort claims. *Baldwin v. City of Estherville (Baldwin II)*, 929 N.W.2d 691, 697–98 (Iowa 2019). This Court has therefore acknowledged that the legislature is empowered to wholesale prohibit certain classes of torts when exercising its authority to waive or retain sovereign immunity—even if those torts arise out of self-executing constitutional provisions—without running afoul of the Supremacy Clause. *See also Malley v. Briggs*, 475 U.S. 335, 339 (1986) (explaining constitutional torts should be read "in harmony with general principles of tort immunities and defenses rather than in derogation of them").

Contrary to Jason's assertions, affirming the legislature's authority to waive and retain sovereign immunity would not relegate the Iowa

Constitution to something less than the supreme law of the land. "The right to recover damages for a constitutional violation does not need to be congruent with the constitutional violation itself." *Baldwin v. City of Estherville (Baldwin I)*, 915 N.W.2d 259, 278 (Iowa 2018). Instead, this scheme recognizes that when tort liability, rather than the state's ability to convict, is at issue, the reasonableness of the officer's conduct is the gravamen of the action. And applying traditional tort principles to constitutional torts "does not imply a redefinition of the rights themselves nor any limitation of their traditional application." John C. Jeffries, Jr., *Compensation for Constitutional Torts: Reflections on the Significance of Fault*, 88 Mich. L. Rev. 82, 100 (1989).

"[W]hether or not the state or any of its political subdivisions or governmental agencies are to be immune from liability for torts is largely a matter of public policy. The legislature, not the courts, ordinarily determines the public policy of the state." *Boyer*, 127 N.W.2d at 612. While courts must discern whether conduct offends the Iowa Constitution and are empowered to enjoin unconstitutional conduct, the legislature decides, as a matter of public policy, whether and under what circumstances public funds may be used to satisfy tort claims. As with applying the exemptions within the IMTCA,

applying the exemptions within the ITCA does not diminish the reach or scope of constitutional rights.

**B. Count I is barred by section 669.14(4).**

This Court has previously considered the interplay between the ITCA's exempted claims and constitutional torts. In *Greene*, this Court considered whether a § 1983 action could lie against the state in state court, in light of the inapplicability of the Eleventh Amendment. *Greene v. Friend of Court of Polk Cty.*, 406 N.W.2d 433, 435–36 (Iowa 1987). The court, relying on traditional concepts of sovereign immunity, found that the action was in fact barred absent a waiver by the state, but that the ITCA could constitute a limited waiver of immunity for § 1983 claims. *Id.* However, in that case, the plaintiff's § 1983 claim alleging he was jailed in violation of the Due Process Clause of the Fourteenth Amendment was the "functional equivalent" of false imprisonment, and the ITCA preserved the state's sovereign immunity against such claims. *Id.* at 436. Accordingly, the constitutional tort action was barred by the ITCA. *Id.*

Recently, this Court held that the procedural aspects of constitutional tort claims are always subject to the ITCA, and the substantive components could also be, but are not necessarily, governed by the ITCA. *Wagner v. State*, 952 N.W.2d 843, 860–61 (Iowa 2020). Instead, the substantive components

are reviewed on a case-by-case basis for consistency with constitutional principles. *Id.* For instance, the Court held that parties must always administratively exhaust their claims with the state appeal board, because that is a procedural requirement of the ITCA. *Id.* at 859. The Court then noted that the availability of punitive damages is a substantive issue, rather than procedural, and is thus not *automatically* governed by the ITCA. *Id.* at 860. Yet the Court, on its own review, ultimately concluded that the ITCA's bar on punitive damages should be applied to the plaintiff's excessive-force case. *Id.* at 862.

So too here. The ITCA's retention of state sovereign immunity for claims arising out of false arrest, abuse of process, and malicious prosecution should apply to Jason's claim for several reasons. First, after *Wagner* was decided, the legislature amended the ITCA to add section 669.26, which affirmatively retains sovereign immunity authority over constitutional tort claims. Thus, section 669.14's retentions of sovereign immunity must apply. Second, the *Wagner* decision favorably discusses *Greene*, which applied the ITCA's exemptions to prohibit a false-imprisonment constitutional tort claim, indicating that a similar result is appropriate here. *Id.* at 855.

Third, if it is constitutionally permissible for the legislature to block constitutional tort claims against a municipality, as was expressly recognized

in *Baldwin II*, how can it be unconstitutional for the legislature to block tort claims against the State? Given that municipalities have historically enjoyed *less* immunity than the State, it would be entirely incongruent to find that the legislature can constitutionally exempt classes of claims against municipalities but not against the State. *See id.* at 852, n.3. Finally, and fundamentally, Jason pled and then dismissed common law tort claims for false arrest, abuse of process, and malicious prosecution, as such claims were barred by the ITCA. It is hard to conceive of a principled scheme that would allow these *exact same claims* dressed in constitutional clothing to now proceed.

"Constitutional torts are torts." *Baldwin I*, 915 N.W.2d at 281. "The doctrine of sovereign immunity dictates that a tort claim against the state or an employee acting within the scope of his office or employment with the state must be brought, if at all, pursuant to chapter 669." *Dickerson*, 547 N.W.2d at 213. As established in *Greene*, that these torts are of constitutional station does not justify invading the legislature's exclusive jurisdiction to determine the scope of the state's sovereign immunity, nor does it permit the *Godfrey* plurality to undo decades of precedent. It is squarely within the province of the legislature to determine when and under what terms the state may be called

upon to answer for the torts of its officers, regardless of how "outmoded" or "harsh" some may find that result. *Boyer*, 127 N.W.2d at 607.

Turning to the merits, Count I falls squarely within section 669.14(4) and must be dismissed. Although Jason attempts to salvage his claim by alleging it goes beyond mere false arrest, his characterizations are unavailing. Count I alleges the State "took [Jason] into custody without having probable cause to believe he was responsible for the homicide." (Pet. ¶ 442, App. at 52). This is plainly a false-arrest claim. *See Children v. Burton*, 331 N.W.2d 673, 678–80 (Iowa 1984) (discussing false-arrest claims and explaining the claim requires showing a detention or restraint and a lack of probable cause).

Count I also alleges the State "use[d] the civil trial to unconstitutionally collect evidence." (Pet. ¶ 444, App. at 52). But the district court correctly acknowledged that this merely alleges an abuse-of-process claim, which is similarly exempted by section 669.14(4). *See Iowa Supreme Ct. Att'y Disciplinary Bd. v. Barnhill*, 885 N.W.2d 408, 419-20 (Iowa 2016) (explaining abuse-of-process claims require proving "(1) use of the legal process, (2) in an improper or unauthorized manner, and (3) that damages were sustained as a result of the abuse"). Ultimately, Jason is seeking to hold the State liable under article I, section 8 of the Iowa Constitution for seizing

him without probable cause. Because the State is sovereignly immune from such claims for money damages, dismissal should be affirmed.

### C. Jason was arrested pursuant to a valid warrant supported by probable cause.

In addition to dismissing Count I because the State is sovereignly immune, the district court also held that the arrest warrant was supported by probable cause and thus Jason failed to state a claim for a violation of article I, section 8 of the Iowa Constitution. (App. at 109–11). Thus, even if this Court finds that the state's retentions of sovereign immunity within section 669.14(4) should not apply to Jason's claim, dismissal must still be affirmed because Jason failed to state a claim upon which relief can be granted.

Like its federal counterpart, the Iowa Constitution safeguards "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and instructs "no warrant shall issue but on probable cause." Iowa Const. art. I, § 8. "Probable cause is present 'if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed and that the arrestee committed or is committing it.'" *State v. Freeman*, 705 N.W.2d 293, 293 (Iowa 2005) (quoting *State v. Bumpus*, 459 N.W.2d 619, 624 (Iowa 1990)).

An arrest warrant may be issued if a judge determines that probable cause exists to believe that an offense was committed, and that the arrestee committed the offense. Iowa Code § 804.1(1). "Because warrants are preferred, [Iowa courts] resolve all doubts in favor of their validity." *State v. Bishop*, 387 N.W.2d 554, 558 (Iowa 1986). Moreover, reviewing courts "do not make [their] own independent determination of probable cause. Rather, [they] give great deference to the prior determination of probable cause by a judge or magistrate." *Id.* On review, a court will only inquire into "whether the magistrate or judge had a 'substantial basis for . . . conclud[ing] that probable cause existed.'" *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238–39 (1983)) (internal quotation omitted) (alteration in original).

Jason was arrested pursuant to a facially valid warrant. When an arrest is predicated on an impartial judicial officer finding probable cause to issue a warrant, the arrestee's self-interested disagreement with the court's probable-cause calculus is insufficient to survive a motion to dismiss. *Baker v. McCollan*, 443 U.S. 137, 143 (1979). Jason's only path to sustain a false-arrest claim is to pierce the arrest warrant. *See generally, Franks v. Delaware*, 438 U.S. 154 (1978); *Christenson v. Ramaeker*, 366 N.W.2d 905, 910 (Iowa 1985) (adopting the *Franks* test for determining the validity of a warrant).

To overcome the substantial deference afforded to judicial probable-cause determinations, Jason must meet the high burden of alleging sufficient facts to show (1) that an officer knowingly, intentionally, or recklessly included false statements in the affidavit, or omitted facts to make the affidavit misleading; and (2) the affidavit would not support probable cause if the false statements were excluded or omitted facts were included. *See Hawkins v. Gage Cty.*, 759 F.3d 951, 959 (8th Cir. 2014); *United States v. Box*, 193 F.3d 1032, 1034–35 (8th Cir. 1999). Even taking all 439 paragraphs as true, Jason cannot succeed and the claim must be dismissed.

To support the arrest warrant, Agent Ludwick provided the following affidavit:

> On June 19th, 2015, Mrs. SHIRLEY DENE CARTER was shot to death in her home in rural Marion County. At approximately 11:11 A.M., The Marion County Sheriff's Office received a 911 call from JASON CARTER. JASON CARTER was the individual whom discovered SHIRLEY CARTER deceased. JASON CARTER advised 1st arriving law enforcement that his mother SHIRLEY CARTER was shot and the residence was burglarized.
>
> During the investigation, it was discovered that JASON CARTER provided information to law enforcement incriminating himself. JASON CARTER gave multiple inconsistent statements regarding his involvement during the course of the investigation. Additionally evidence provides that: (1) there was a staged burglary at the home of the victim at the time of the murder (2) JASON CARTER testified under oath that he has never touched evidence at the crime scene and evidence later established that JASON CARTER's latent prints were

> found on the evidence (3) JASON CARTER had knowledge of the crime that no one other person present at the time of the crime could have known (4) JASON CARTER withheld vital information from initial interviews with law enforcement.

(App. at 74).

Although the Petition makes the conclusory allegation that Agent Ludwick "intentionally provided false and misleading material information" in his affidavit supporting the arrest warrant, (Pet. ¶ 60, App. at 10), nowhere in the interminable Petition[2] does Jason actually dispute the material aspects of Agent Ludwick's affidavit. Rather, taking all of Jason's facts as true, (1) Jason told the 911 dispatcher that his mother had been lying on the floor for two hours, which was knowledge only the killer would know; and (2) Jason swore he had no knowledge of the victim's gun safe, Jason's prints were found on the victim's gun safe, and the victim was shot to death.

A confirmed lie about knowledge of and access to a gun safe, when the victim was shot to death, is plainly sufficient to establish probable cause. Jason's theory on appeal is that Agent Ludwick should have disclosed that

[2] Jason makes many assertions in his Appellant Brief that appear nowhere in his Petition, and such assertions are therefore not entitled to the presumption of truth. Jason's departure from his Petition is most pronounced when he attempts to pierce the gun-safe portion of the arrest warrant by exclusively relying on assertions not contained within his Petition. This he may not do. But, as discussed herein, even if the Court does consider Jason's extra-Petition assertions, probable cause remains and his claim must fail.

Jason later provided an explanation for why his fingerprints were on the gun safe (although he does not dispute that he indeed disclaimed knowledge of the gun safe). But as this Court noted in denying Jason a new civil trial based on the years-old photographs of Jason assembling the gun safe, "the significance of Jason's fingerprints on the gun safe was not that they were there without a reasonable explanation." *Carter*, 957 N.W.2d at 643. Instead, "the significance of the fingerprint evidence was that Jason had told law enforcement in an interrogation shortly after the murder he had never touched the gun safe and did not even know his parents owned one at the time of the murder." *Id.* Thus, even considering Jason's extra-Petition factual allegations, Jason never disputes that he denied any knowledge of the gun safe, proof was adduced that he had indeed accessed the gun safe, and probable cause remains.

Additionally, while Jason makes another conclusory allegation that Agent Ludwick omitted material information in his affidavit, (Pet. ¶ 61, App. at 10), the Petition does not actually identify a specific fact that should have been included in the affidavit but was not. Thus, on the face of the Petition there is nothing for this Court to weigh under *Franks*—the warrant was supported by probable cause.

On appeal, Jason again departs from his Petition and asserts—through argument rather than pleading—that three pieces of information should have

been included and failure to include such information renders the warrant deficient. *See* Appellant Brief at 55 (citing Pet. ¶¶ 198, 204, 289, and 292 as containing information that should have been included in the warrant). Yet Jason's claim still fails because even if all three pieces of information had been included in the warrant, none undermine probable cause and the warrant survives.

The first piece of information is a statement by Christa Norris. (Pet. ¶¶ 198, 292, App. at 25, 36). Ms. Norris' statement relayed information Ms. Norris purportedly learned from Nichole Sedlock, who herself relayed information she "heard" from other unknown individuals, that some other individuals were involved in the murder. *Id.* Agent Ludwick declined to credit the statement of someone who heard from someone that some third person did it. But even if it had been included, the information does not contradict or undermine that Jason lied about accessing the gun safe and his prints were located on the safe after his mother was shot. Thus, probable cause remains even if Ms. Norris's dubious, multi-level hearsay statements are included.

The second piece of information is a statement by Michelle Daniels. (Pet. ¶ 204, App. at 26–27). Like Ms. Norris, Ms. Daniels lacked firsthand knowledge of the crime and instead relayed statements she heard from others, who themselves heard from others. *Id.* And like Ms. Norris, Ms. Daniels's

dubious, multi-level hearsay statements do not undermine or contradict the material allegations in the warrant and probable cause remains.

The final piece of information is a statement by Charity Roush. (Pet. ¶ 289, App. at 35). But Ms. Roush was not interviewed until November of 2018. As Jason explained, the only issue for this Court is "whether there was probable cause on December 17, 2017," the day Jason was arrested. (Appellant Brief, at 55). Thus, Agent Ludwick could not have knowingly withheld statements not yet in his possession. But even if Ms. Roush had been interviewed prior to the arrest, her statements do not undermine probable cause. Like Ms. Norris and Ms. Daniels, Ms. Roush has no firsthand knowledge of the crime and instead relayed statements she purportedly heard from others. Again, none of this information contradicts or undermines the fact that Jason lied about accessing the gun safe and then his prints were located on the gun safe after his mother was shot.

Thus, taking all well-pled facts as true and including all of the information Jason believes was erroneously excluded, the warrant survives. Affording the appropriate "deference to the prior determination of probable cause by a judge or magistrate," the warrant was supported by probable cause. *Bishop*, 387 N.W.2d at 558. Jason has failed to state a claim for a violation of

his rights under article I, section 8 of the Iowa Constitution and the district court properly dismissed Count I.

### D. The State is qualifiedly immune from claims arising out of false arrest.

Finally, the district court also held that Count I must be dismissed because the State was entitled to all-due-care qualified immunity. Jason asserts that (1) all-due-care immunity cannot be resolved through a motion to dismiss, and (2) even if it could, his Petition precludes such a ruling at this stage. Jason is incorrect on both points.

*1. All-due-care immunity, generally*. In *Baldwin I*, this Court announced that defendants, which includes both officers and their government employers, are entitled to immunity from *Godfrey*-type claims if they "exercised all due care to comply with the law." 915 N.W.2d at 280. Although the Court has not yet elaborated on how the immunity operates, a number of guiding principles can be readily established.

First, it is well settled that an Iowa officer cannot be held liable in tort for a negligent investigation, and thus an officer cannot be stripped of all-due-care immunity based on a merely negligent investigation. *See Smith v. State*, 324 N.W.2d 299, 301 (Iowa 1982) (en banc) (declining to recognize common law tort claim for negligent law enforcement investigation). The *Smith* court emphasized that, "to assure continued vigorous police work, those charged

with that duty should not be liable for mere negligence." *Id.* Because "constitutional torts are torts," *Baldwin I*, 915 N.W.2d at 265, and officers are not liable in tort for merely negligent investigations, it would be entirely incongruent to find that officers cannot be sued for the tort of negligent investigation while also allowing officers to be held liable in tort for negligent investigations. Qualified immunity therefore cannot be lost based on allegations of mere negligence for claims based on the adequacy of law enforcement investigations.

Second, all-due-care immunity can be decided at the motion-to-dismiss stage. Qualified immunity is "*immunity from suit*, rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if the case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Immunity must be decided "by the court long before trial" to preserve a defendant's right to avoid the burdens of litigation. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991) (per curiam). *See also Nelson v. Lindaman*, 867 N.W.2d 1, 7 (Iowa 2015) (finding Iowa Code section 232.73 offers a type of "qualified immunity" and explaining "'[q]ualified immunity is a question of law for the court") (quoting *Dickerson v. Mertz*, 547 N.W.2d 208, 215 (Iowa 1996)).

Moreover, in *Baldwin I*, the Court described all-due-care immunity as an "affirmative defense" that must be "plead[ed]" by the defendants. 915

N.W.2d at 279. Federal qualified immunity is described in precisely the same terms and is universally litigated and resolved at the motion-to-dismiss stage. *See Dickerson*, 547 N.W.2d at 214 ("[Federal] qualified immunity is an affirmative defense which the defendant official must plead."). Finally, the legislature recently enacted an additional statutory immunity, instructing that such qualified immunity is resolvable at the pleading stage and adverse decisions are immediately appealable. *See* Iowa Code § 669.14A. This statute confirms the legislature intends for qualified immunity determinations to be made as early as possible to dispose of insubstantial claims prior to engaging in costly discovery and litigation at taxpayer expense. Thus, the question of immunity for *Godfrey*-type claims can be raised and resolved at the motion-to-dismiss stage.

Third, qualified immunity is a purely objective inquiry. Should the court introduce a subjective component to qualified immunity, it would inflict "special costs" on governments and their officers. *See Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982). "Judicial inquiry into subjective motivation . . . entail[s] broad-ranging discovery and the deposing of numerous persons, including an official's professional colleagues. Inquiries of this kind can be peculiarly disruptive of effective government." *Id.* at 817. If all-due-care immunity contained a subjective component, and thereby "inherently

require[ed] resolution by a jury," the right to immunity from suit would be little more than words on a page. "Objective legal reasonableness" must be the polestar. *Id.* at 819.

While the United States Supreme Court chose to measure reasonableness by the degree to which the underlying constitutional law was settled at the time of the infringement, the Iowa Supreme Court chose to measure reasonableness by the steps a reasonable officer would take to conform to the requirements of the law. *Baldwin I*, 915 N.W.2d at 279–81. In deviating from the Supreme Court's *measure* of reasonableness, however, the court in no way deviated from the doctrine's fundamental purposes—to promptly resolve lawsuits and promote the unflinching discharge of lawful duties. All-due-care immunity, therefore, is an objective standard properly resolved by the court at the earliest possible stage of litigation.

Fourth, although the Court declined to comprehensively adopt the federal *Harlow* standard, all-due-care immunity necessarily contemplates the degree to which the law was settled at the time of the alleged misconduct. In adopting the new standard, the Court explained that *Harlow* "in some ways resembles an immunity for officers who act with due care." *Id.* at 279. Further, if it was unclear at the time of action whether an officer's conduct offended the constitution, and the plaintiff's injury therefore stemmed from an officer's

"failure to predict the course of [the court's] constitutional jurisprudence," then the officer's conduct was clearly not unreasonable. *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 717 (1978) (Rehnquist, J., dissenting). And if an officer acted contrary to clear, well-settled law, such evidence would likely support a finding that the officer failed to exercise adequate care.

Finally, "the right to recover damages for a constitutional violation does not need to be congruent with the constitutional violation itself." *Baldwin I*, 915 N.W.2d at 278. This means that although a constitutional violation could result in evidence being excluded from a criminal trial, that same violation does not necessarily require the availability of a damages claim against the officer. For example, an Iowa officer's good-faith reliance on a warrant cannot cure an unconstitutional search, and the exclusionary rule applies despite any reasonable reliance on a warrant. *State v. Prior*, 617 N.W.2d 260, 268 (Iowa 2000). However, the principles animating the exclusionary rule are distinct from those animating the qualified immunity doctrine. Even if reasonable reliance on a warrant does not alleviate a constitutional violation, a court may still find that *tort damages* for that violation are inappropriate against an officer who reasonably relied on a judge's probable-cause determination.

In *Prior*, the Court found that "the integrity of the judicial process and an individuals' rights under our state constitution" required applying the exclusionary rule, regardless of the lack of bad faith by the officers involved. *Id.* at 268. Yet, in practice, "officer[s] cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient." *United States v. Leon*, 468 U.S. 897, 921 (1984). "'[O]nce the warrant issues, there is literally nothing more the [officer] can do in seeking to comply with the law.'" *Id.* (quoting *Stone v. Powell*, 428 U.S. 465, 495 (1976) (Burger, C.J., concurring)) (first alteration in original). Again, when tort liability, rather than the state's ability to convict, is at issue, the culpability of the officer is the gravamen of the action. And when a neutral judge issues a warrant, this fact is often "the clearest indication that the officer acted in an objectively reasonable manner." *Williams v. City of Alexander*, 772 F.3d 1307, 1311 (8th Cir. 2014). Thus, a constitutional violation that gives rise to the exclusion of evidence during a criminal trial will not per se give rise to an actionable tort claim against the offending officer.

In sum, all-due-care immunity arising from an allegedly deficient law enforcement investigation (1) cannot be overcome by allegations that do not rise above negligence, (2) should be resolved at the earliest possible stage of

litigation, (3) is an objective question of law for the court, (4) contemplates the degree to which the underlying constitutional law was settled at the time of the alleged infringement, and (5) is not lost unless there is greater culpability than the mere fact of unconstitutional conduct.

*2. Applying all-due-care immunity.* Applying these principles, the district court correctly held that the State is qualifiedly immune from Count I. A careful review of the Petition reveals that law enforcement received tips implicating the following individuals in Shirley Carter's murder: Joel Followill, John Followill, Joseph Sedlock, Matt Kamerick, Callie Shinn, Michelle Daniels, Jason Beaman, Jeremiah Laird, Amber Shinn, Chris Brees, Kory Ford, Nichole Sedlock, Rory Pearson, Sue Dabb, Jim Dabb, Bill Carter, and Jason Carter. The Petition demonstrates the tips were based on various levels of hearsay, provided conflicting accounts of the murder, and came from a wide array of individuals who were motivated by a wide array of subjective interests. The Petition further demonstrates that Agent Ludwick and his team were actively investigating the murder, receiving tips on suspects, and making credibility determinations as to which leads were worthy of expending limited resources to investigate further. An officer does not violate the Iowa Constitution by declining to assign credibility to aspiring informants who lack first-hand knowledge of the crime.

Importantly, "law enforcement's decisions about whom to investigate and how, like a prosecutor's decision whether to prosecute, is ill suited to judicial review." *Flowers v. City of Minneapolis*, 558 F.3d 794, 798 (8th Cir. 2009). Reviewing courts "are not well-equipped to evaluate whether a particular lead warrants investigation, because that decision may depend on the strength of the information provided, an agency's enforcement priorities, and how a particular investigation relates to an overall enforcement plan." *Id.* Moreover, "judicial review of investigative decisions, like oversight of prosecutions, tends to 'chill law enforcement by subjecting the [investigator's] motives and decisionmaking to outside inquiry.'" *Id.* (quoting *Wayte v. United States*, 470 U.S. 598, 607 (1985)).

Here, Jason has not identified any actual exonerating evidence that was ignored, but rather speculates as to other people who could have committed the crime. Clearly, Jason believes that any tip that did not implicate him is per se exonerating. But officers cannot be said to have failed to take all due care with the law simply because they made credibility determinations that were adverse to a suspect who went on to be acquitted by a jury of his peers.

The facts and procedures of this case demonstrate that all-due-care immunity is required. Taking all facts as true, Agent Ludwick applied for a warrant and a judge determined probable cause existed to support an arrest. A

prosecutor reviewed the evidence and decided to seek a First-Degree Murder charge. After a contested preliminary hearing, another court confirmed probable cause existed to support the charges and proceeded with a trial. At the conclusion of evidence, which included a full exploration of Agent Ludwick's investigation, the judge took Jason's motion for directed verdict under advisement and sent the question of Jason's guilt to the jury. Jason was entitled to, and in fact utilized, the full panoply of constitutional procedures designed to safeguard the integrity of arrests and criminal charges. At every juncture, probable cause was found. The State must be said to have taken all due care to comply with the law and are entitled to qualified immunity for Count I.

## II. Count III was properly dismissed because it is an improper collateral attack on Jason's civil judgment, the claim is barred by judicial-process immunity, the claim is barred by sovereign immunity, the State is entitled to all-due-care immunity, and the State did not violate Jason's due process rights during the civil proceeding.

Count III[3] alleges the State violated Jason's substantive due process rights under the Iowa Constitution by participating in the civil wrongful-death

[3] Counts III and IV were analyzed jointly at the district court, with good reason. Count III raises a substantive due process claim based on the State's conduct during the civil wrongful-death proceeding. (Pet. ¶¶ 457–63, App. at 54–55). Count IV is also a substantive due process claim, which appears to encompass the same civil-proceeding complaints as Count III, as well as additionally allege that the State's criminal investigation was constitutionally

proceeding, namely by providing some but not all criminal investigative information in response to the civil plaintiffs' subpoena, purportedly providing the civil plaintiffs with questions to ask Jason in his civil deposition, and otherwise "aiding in the entry of a $10 million judgment against" Jason. (Pet. ¶ 475, App. at 56–57; Appellant Brief, at 68, 78).[4] The district court dismissed this claim, finding (1) it was the functional equivalent of abuse-of-process and thus barred by the State's retention of sovereign immunity within section 669.14(4); (2) the complained-of conduct falls within the judicial-process immunity; and (3) Jason failed to state a claim upon which relief can be granted.

---

deficient. (Pet. ¶¶ 464–85, App. at 55–56). Because of the overlap between counts, the State will use Count III to assess the viability of Jason's substantive due process claim based on the civil proceeding and use Count IV to assess the viability of Jason's substantive due process claim based on the adequacy of the criminal investigation leading to his arrest.

[4] Jason also repeatedly seeks to hold Agent Ludwick liable in tort for filing and pursuing criminal murder charges against him, as well as alleges Ludwick "leverage[d] [the civil] verdict into criminal charges." (Appellant Brief at 20, 68; Pet. ¶¶ 48, 499, 502, 505, 535, 539, 546, 547, 554; App. at 9, 60, 65, 67, 68). Of course, it is a prosecutor, not a law enforcement officer, who decides which criminal charges to bring and when. Even if the acts of filing and pursuing criminal charges could be assignable to Agent Ludwick, which they cannot, such conduct is absolutely immune from tort liability under the judicial-process immunity recognized in *Venckus v. City of Iowa City*, 930 N.W.2d 792, 803 (Iowa 2019). And Jason's wrongful-death verdict is not mentioned anywhere in Agent Ludwick's affidavit giving rise to Jason's arrest. (App. at 74).

As discussed above, section 669.14(4) applies to Jason's constitutional tort claim, and Count III is plainly an abuse-of-process tort against the State. Thus, the district court correctly dismissed Count III for want of jurisdiction. The district court's remaining bases for dismissal are similarly well supported, and each will be discussed in turn, as well as an additional basis urged before, but not decided by, the district court.

### A. Count III is an improper collateral attack on Jason's $10 million civil judgment.

As a threshold matter, the State urged to the district court, which did not reach the issue, that Count III is an improper collateral attack on Jason's $10 million civil wrongful-death judgment. According to Jason, but for the DCI's failure to produce the entire file during the civil proceeding and Agent Ludwick's cooperation with the civil plaintiffs, he would not have been found civilly liable for the death of his mother. But this is the wrong forum to litigate the deficiencies and errors of the civil wrongful-death proceeding.

"[A] final judgment is conclusive on collateral attack, even if the judgment was erroneous, unless the court that entered the judgment lacked jurisdiction over the person or subject matter." *Schott v. Schott*, 744 N.W.2d 85, 88 (Iowa 2008). Here, all of Jason's allegations regarding the civil case were either litigated during the actual civil proceeding or the subsequent motions to vacate the civil judgment. For example, Jason emphatically argues

in this case that his constitutional rights were violated by the DCI providing incomplete investigative information to the civil parties. But on his appeal of his civil judgment, this Court affirmed his wrongful-death liability, specifically finding that Jason *never subpoenaed* the same information he now claims was *unconstitutionally withheld* from him. *Carter*, 957 N.W.2d at 639.

Moreover, the DCI's provision of evidence in response to a lawful subpoena was done exactly as directed by the civil district court. *See* App. at 75–76. ("This Court authorized Plaintiffs' counsel to share information with the DCI on such terms as the DCI and Plaintiffs agreed, provided Plaintiffs promptly gave defense counsel the same information. . . . The Court's order, both directly and indirectly, presumed the DCI would not provide all the information in its files to Plaintiffs. Thus, both parties knew or should have known, only the information DCI agreed to give Plaintiffs would be available during the civil trial."). Thus, Jason's entire argument—that the DCI improperly cherry-picked which information to disclose—is a blatant collateral attack on Judge Mertz's discovery ruling directing the DCI to do just that.

Jason is clearly displeased with many of the civil proceeding's outcomes and rulings. But if he was erroneously denied access to discovery, his remedy was to seek relief from the appellate courts, not file a constitutional

tort claim. And if evidence that was obtained after the civil proceeding would have a material impact on the outcome of the case—such as purportedly "exculpatory" criminal investigative information or information that calls material testimony into question—Jason can seek to have the state court judgment corrected, vacated, or modified in light of the new evidence. This is an improper forum to attack conduct and rulings giving rise to a now-final judgment. Count III, and all of Jason's claims premised on conduct that purportedly prejudiced him in the civil proceeding, must be denied as improper collateral attacks on his wrongful-death judgment.

**B. Count III is barred by judicial process immunity.**

Turning to the district court's bases for dismissal, Count III seeks to hold the State liable for actions Agent Ludwick and the State took in the wrongful death lawsuit against Jason. The district court properly applied the judicial-process immunity and dismissed Count III.

Agent Ludwick testified at the civil trial as a fact witness and Jason now wants constitutional damages because Agent Ludwick's testimony was injurious. The DCI responded to a lawfully issued subpoena and Jason now wants constitutional damages because its response to the subpoena was injurious. Jason's claim falls squarely within the judicial process immunity. *Venckus*, 930 N.W.2d at 800.

Relevant here, the United States Supreme Court has previously considered whether to create an exception to absolute immunity for state police officers who are alleged to have committed perjury, such that a constitutional tort claim could lie against such officers for giving false testimony resulting in a conviction. *See Briscoe v. LaHue*, 460 U.S. 325, 329 (1983). The Supreme Court readily found that such liability was inconsistent with historical precedent and public policy. *Id.* at 330. First, the "immunity of parties and witnesses from subsequent damages liability for their testimony in judicial proceedings was well established in English common law." *Id.* at 330–31. Second, the Court explained a "witness's apprehension to subsequent damages liability might induce two forms of self-censorship," as a witness would both be deterred from testifying at all, as well as deterred from testifying forcefully against a party he believes may sue him. *Id.* at 333. The Court reasoned "the truth-finding process is better served if the witnesses' testimony is submitted to the 'the crucible of the judicial process so that the factfinder may consider it, after cross-examination, together with the other evidence in the case to determine where the truth lies." *Id.* (quoting *Imbler v. Pachtman*, 424 U.S. 409, 440 (1976) (White, J., concurring)).

Third, the Court was wary of precisely the type of claim Jason brings here, noting that a "loser in one forum will frequently seek another . . .

Absolute immunity is thus necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation." *Id.* at 335 (quoting *Butz v. Economou*, 438 U.S. 478, 512 (1978)). Fourth, Jason argues that Agent Ludwick's employment as a law enforcement officer, and thus an arm of the State, makes immunity inappropriate, but the Supreme Court determined the opposite is true. *Id.* Rather, "considerations of public policy support absolute immunity more emphatically for [government witnesses] than for ordinary witnesses." *Id.* at 343 (emphasis added).

Finally, and significantly in this case, the Court also considered whether to limit the cause of action to just constitutional-tort plaintiffs "who have already vindicated themselves in another forum," that is, plaintiffs who were later exonerated and thus their claims of testimony-injury have "substance." *Id.* at 344. Again, the Court declined the invitation to loosen absolute immunity. *Id.* The Court recognized that "absolute witness immunity bars another possible path to recovery" for individuals who were wrongly convicted, but "the alternative of limiting the official's immunity would disserve the broader public interest." *Id.* at 345. Thus, testifying witnesses—including law enforcement officers who got it wrong and whose testimonies

caused a wrongful judgment—are protected by the absolute immunities afforded to those who participate and testify in judicial proceedings.

So too here. Jason clearly disputes Agent Ludwick's credibility determinations, views of evidence, and views of his guilt. Jason believes Agent Ludwick testified falsely and the DCI should have objected to a subpoena. But compliance with a subpoena and providing testimony are functions essential and integral to the judicial process. Because judicial process immunities apply with equal force in constitutional tort actions, and Jason improperly seeks to hold the State liable in tort for the conduct of its employees intimately associated with the judicial process, Count III is barred.

### C. The State's participation in the civil case was not conscience shocking and the State is entitled to qualified immunity.

Turning to the merits, Jason cannot establish a constitutional violation based on the civil case. As a threshold matter, the State did not file a civil wrongful-death claim against Jason—the civil plaintiffs and their sophisticated counsel did. *See Green v. Racing Ass'n of Cent. Iowa*, 713 N.W.2d 234, 241–43 (Iowa 2006) (explaining "mutual benefit" between state and private party is not enough to create state action, instead the state must have "controlled" the decision and be "responsible for the violation"). And the State did not depose Jason and decide which questions to ask him—the

civil plaintiffs' experienced counsel did. *Cf. Zelman v. Simmons-Harris*, 536 U.S. 639, 649 (2002) (finding no state action endorsing religion when use of state funds on religious school materials was the "result of the genuine and independent choices of private individuals"). Jason's attempt to characterize the civil proceeding as anything other than Jason's father zealously pursuing a civil claim against the person he believed killed his wife is unavailing—the private case was not state action.

Even assuming the conduct could be viewed as state action, Jason cannot demonstrate that constitutional requirements attached to his civil proceeding, nor can he demonstrate any such requirements were violated. Jason alleges Agent Ludwick violated his constitutional rights by "work[ing] in concert with the Civil Plaintiffs and abus[ing] the civil discovery process in order to unlawfully gain information from Carter and in order to achieve a liability verdict in the civil matter." (Pet. ¶ 460, App. at 54). Specifically, Jason alleges Agent Ludwick violated the Iowa Constitution by (1) encouraging Bill Carter to file a civil suit, (2) purportedly providing deposition questions to the civil plaintiffs, and (3) meeting in private with the civil plaintiffs.

But Jason does not identify a single case where such conduct was deemed state action subject to constitutional scrutiny, let alone a case where

such conduct was deemed unconstitutional. Jason merely alleges, without supporting authority, that Agent Ludwick engaged in "unconstitutional discovery" and "gave the civil plaintiffs questions to ask Jason under oath, in violation of Jason's constitutional rights." (Appellant Brief at 61, 78). Failure to provide authority in support of an argument waives the issue on appeal. Iowa R. App. P. 6.903(2)(*g*)(3).

And the overwhelming weight of authority demonstrates Jason has failed to allege a constitutional violation. First, because Jason was acquitted of his criminal charge, any failure to produce "exculpatory" information during the criminal proceeding would not have resulted in a different verdict and he therefore has categorically failed to allege a due-process, *Brady*-type claim. *See Strickler v. Greene*, 527 U.S. 263, 281 (1999); *Livers v. Schenck*, 700 F.3d 340, 359 (8th Cir. 2012). Similarly, because Jason was acquitted of his criminal charge, any reliance on improperly obtained statements would not have resulted in a different verdict and he again has categorically failed to allege a due process claim. *Livers*, 700 F.3d at 359.

Second, to the extent *Brady*-type claim relates to the nondisclosure of certain evidence during a civil proceeding, "*Brady* rarely is applicable in civil proceedings, and then only where potential consequences are same or greater than those in most criminal convictions." *Williamson v. Missouri Dep't of*

*Corr.*, 740 Fed. Appx. 513, 514 (8th Cir. 2018). Jason's civil-damages liability is plainly not a consequence that is the "same or greater than those in most criminal convictions," as his liberty was never at risk. *Id.*

Moreover, the "Supreme Court has never imposed [*Brady*'s] absolute duty on law enforcement officials other than the prosecutor." *Villasana v. Wilhoit*, 368 F.3d 976, 979–80 (8th Cir. 2004) (declining to extend *Brady* obligations to law enforcement officers who were part of the prosecutor's "team," finding that extension to be an improper "device to avoid the impact of the prosecutor's absolute immunity from § 1983 damage liability"). Thus, any claim arising out of failure to produce evidence during the civil case cannot lie against the State.

And the district court properly concluded that, as a matter of law, Agent Ludwick's participation in the civil proceeding does not shock the contemporary conscience. "[A] violation of substantive due process may arise [under the Iowa Constitution] from government action that 'shocks the conscience.'" *Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 550 (Iowa 2019). The conscience-shocking standard under the Iowa Constitution is identical to the conscience-shocking standard under the United States Constitution, and thus Iowa courts look to federal cases when interpreting our due process clause. *Atwood v. Vilsack*, 725 N.W.2d 641, 647 (Iowa 2006)

(explaining "the federal and state due process provisions [are] equal in scope, import, and purpose" and adopting the federal shocks-the-conscience standard).

A substantive due process claim "is not easy to prove." *Blumenthal Inv. Trusts v. City of W. Des Moines*, 636 N.W.2d 255, 265 (Iowa 2001). A plaintiff "must show that the behavior of the [official] was so egregious, so outrageous, that it may be fairly said to shock the contemporary conscience." *Terrell v. Larson*, 396 F.3d 975, 978 (8th Cir. 2005) (internal quotations and citations omitted). The claim is "reserved for the most egregious governmental abuses against liberty or property rights, abuses that 'shock the conscience or otherwise offend . . . judicial notions of fairness . . . [and that are] offensive to human dignity.'" *Blumenthal Inv. Trusts*, 636 N.W.2d at 265 (alterations in original) (quoting *Rivkin v. Dover Twp. Rent Leveling Bd.*, 671 A.2d 567, 574–75 (1996)). Whether conduct is conscience-shocking is a question of law. *Terrell*, 396 F.3d at 981.

This Court's affirmance of Jason's $10 million judgment sheds light on the non-shocking nature of Jason's allegations. Indeed, if the DCI's withholding of criminal investigative information or Agent Ludwick's alleged bias against Jason had truly been so shocking, sadistic, and malicious that it amounted to a substantive due process violation, this Court would have

ordered a new trial. And if the additional information gathered during the investigation relating to other suspects and additional evidence had been so compelling that no reasonable person could conclude Jason killed his mother, this Court would have ordered a new trial. That an investigating officer would cooperate in a civil wrongful-death proceeding is not conscience-shocking as a matter of law. Jason cannot possibly succeed on this claim, and district court correctly dismissed Count III for failure to state a claim.

Finally, the State is entitled to all-due-care qualified immunity for Count III. As discussed at length above, Jason has not identified any clearly established boundary that was crossed. In fact, the entire legal basis for Jason's claim remains unstated. Agent Ludwick and the DCI responded to subpoenas and provided information precisely as directed by the district court, demonstrating all due care to comply with the law. Accordingly, Count III can alternatively be dismissed because the State is qualifiedly immune from the claim.

## III. Count IV was properly dismissed because the claim is barred by sovereign immunity, the criminal investigation does not shock the contemporary conscience, and the State exercised all due care to comply with the law.

The final claim, Count IV, alleges that Jason's substantive due process rights[5] were violated because he was arrested based on a criminal investigation that was so deficient that it shocks the contemporary conscience and violates the Iowa Constitution. The district court determined this claim was barred by section 669.14(4), that Jason failed to state a claim because the investigation was not conscience-shocking as a matter of law, and the State was entitled to all-due-care qualified immunity.

As discussed above, the State's retentions of sovereign immunity contained in section 669.14(4) apply to Jason's claim. Count IV alleges Jason was taken into custody without probable cause because the State failed to investigate other leads that would have implicated other suspects. (Pet. ¶¶ 477–78, App. at 57). Thus, Jason alleges that but for the inadequate investigation, he would not have been subject to an arrest that was unsupported by probable cause. *See Minor v. State*, 819 N.W.2d 383, 408

[5] In the Petition, Count IV is labeled "Procedural and Substantive Due Process." (App. at 55). However, neither before the district court nor on appeal has Jason identified a procedural deficiency in his criminal proceeding, and thus the district court properly treated this claim as only raising substantive due process.

(Iowa 2012) (dismissing claim that was pled as an IIED claim, but was deemed the functional equivalent of misrepresentation and deceit because "the basis of Minor's claim would not exist but for" the exempted causes of action). The district court properly dismissed Count IV for want of jurisdiction.

Turning to the specific allegations, Jason has failed to plead a conscience-shockingly inadequate criminal investigation such that his due process rights could have been violated. Again, a substantive due process claim "is not easy to prove." *Blumenthal*, 636 N.W.2d at 265. "With the exception of certain intrusions on an individual's privacy and bodily integrity, the collective conscience of the [court] is not easily shocked." *Id.* (quoting *Rivkin v. Dover Twp. Rent Leveling Bd.*, 671 A.2d 567, 575 (N.J. 1996)). Rather, the claim is reserved for the most egregious governmental abuses against liberty or property rights, abuses that 'shock the conscience or otherwise offend . . . judicial notions of fairness . . . [and that are] offensive to human dignity.'" *Id.* (quoting *Rivkin*, 671 A.2d at 574–75).

"[S]ubstantive due process is concerned with violations of personal rights . . . so severe . . . so disproportionate to the need presented, and . . . so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience." *Akins v. Epperly*, 588 F.3d 1178, 1183

(8th Cir. 2009) (quoting *Moran v. Clarke*, 296 F.3d 638, 647 (8th Cir. 2002)) (alterations in original). "[T]he Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 328 (1986). Mere negligence cannot "wor[k] a deprivation in the constitutional sense." *Id.* (quoting *Parratt v. Taylor*, 451 U.S. 527, 548 (1981) (Powell, J., concurring)) (alteration in original).

Importantly, "[o]nly the most severe violations of individual rights that result from the 'brutal and inhuman abuse of official power' rise to this level." *White v. Smith*, 696 F.3d 740, 757–58 (8th Cir. 2012) (quoting *C.N. v. Willmar Pub. Schs., Indep. Sch. Dist. No. 347*, 591 F.3d 624, 634 (8th Cir. 2010)). "[C]onduct intended to injure in some way *unjustifiable by any government interest* is the sort of official action most likely to rise to the conscience-shocking level." *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) (emphasis added).

Jason alleges that Agent Ludwick failed to follow up on certain leads and his questioning of Jason's family members was too leading. (Pet. ¶¶ 477–81, App. at 57). However, "[n]egligent failure to investigate other leads or suspects does not violate due process." *Wilson v. Lawrence Cty.*, 260 F.3d 946, 955 (8th Cir. 2001). "Even allegations of gross negligence fail to

establish a constitutional violation." *Clemmons v. Armontrout*, 477 F.3d 962, 966 (8th Cir. 2007) . Here, Jason merely makes conclusory allegations of recklessness and has not alleged any facts that rise beyond negligence.

Jason's heavy reliance on *Wilson v. Lawrence County* is unavailing. In *Wilson*, officers obtained a dubious confession from a young man with known cognitive disabilities, which was prompted by a statement implicating him by another young man with known cognitive disabilities. 260 F.3d at 950. This was the extent of the officers' investigation. *Id.* The Eighth Circuit found that the presence of a coerced confession of a disabled young man, *coupled with* a wholesale failure to seek any other evidence, could give rise to a plausible finding of recklessness. *Id.* at 955. Failure to investigate additional leads alone was insufficient to establish recklessness. *Id.* The conduct in *Wilson* bears no resemblance to the investigation at issue, and *Wilson* in fact confirms that Jason's claim must fail.

The Petition demonstrates that "law enforcement did in fact consider other suspects," including receiving many tips, from many different people, motivated by an array of subjective interests, that identified a number of different participants in Shirley's death. *Carter*, 957 N.W.2d at 642. Agent Ludwick ultimately declined to assign credibility to these individuals, whose

information was "uncorroborated, incomplete, refuted by others" or "involved at least another level of hearsay." *Id.*

Jason clearly disagrees with these credibility determinations. But it is in no way outrageous, egregious, or conscience-shocking for an investigating officer to make tough calls or credibility determinations that are adverse to a criminal defendant, even if that defendant is later acquitted. Nor can it be said that Agent Ludwick was "so inspired by malice or sadism," that his decision not to find certain individuals credible, or his alleged statements during witness interviews, "amounted to a brutal and inhumane abuse of official power literally shocking to the conscience." *Akins*, 588 F.3d at 1183 (quoting *Moran*, 296 F.3d at 647). Jason has failed entirely to allege conduct that could be construed as even negligent, let alone reckless or intentional, and this claim must be dismissed.

Finally, the district court did not err in granting qualified immunity to the State for Count IV. As discussed at length, Agent Ludwick acted with all due care when conducting the criminal investigation. Agent Ludwick was actively receiving tips and making credibility determinations regarding which tips required further investigation. Jason's allegations do not rise anywhere near the level of "malice or sadism" required to sustain a substantive due process claim and the State clearly did not act contrary to settled law when

the arrest was the result of a valid warrant. *Akins*, 588 F.3d at 1183. Accordingly, the district court correctly dismissed Count IV because the State is qualifiedly immune from the claim.

## CONCLUSION

The Appellant's Brief emotes but does not reason. Stripping away the polemical, hyperbolic rhetoric, Jason offers no path forward. Merely alleging a violation of the Iowa Constitution does not make "a lawsuit impervious to a motion to dismiss and guarantee[] a ticket to the discovery phase of litigation." *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 222 (Iowa 2018) (Mansfield, J., concurring in part and dissenting in part). The claims must be cognizable and colorable. Jason's claims are neither.

For every reason Jason's claims can be dismissed, they should. The State has retained its sovereign immunity. Constitutional torts are not permissible vehicles to attack the validity of final civil judgments. The State exercised all due care to comply with the law. The State is absolutely immune for its actions during the civil proceeding. And Jason has failed to state a claim under the Iowa Constitution. The district court properly dismissed this suit and its judgment should be affirmed.

## REQUEST FOR ORAL SUBMISSION

The State respectfully requests to be heard in oral argument.

## CERTIFICATE OF E-FILING AND SERVICE

I, Tessa M. Register, certify that on the 19th day of April 2022, I, or a person acting on my behalf, did serve Appellees' Final Brief on all registered parties to this appeal via EDMS:

Christine E. Branstad
Nathan A. Olson
BRANSTAD & OLSON LAW OFFICE
2501 Grand Avenue, Suite A
Des Moines, Iowa 50312
Branstad@BranstadLaw.com
Olson@BranstadLaw.com

Alison F. Kanne
WANDRO & ASSOCIATES, P.C.
2501 Grand Ave. Suite B
Des Moines, IA 50312
akanne@2501grand.com

Glen S. Downey
LAW OFFICES OF GLEN S. DOWNEY
5214 Ingersoll Ave.
Des Moines, IA 50312
glen@downey-law.net

*/s/ Tessa M. Register*
TESSA M. REGISTER
Assistant Attorney General

## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(*d*) and (1)(*g*)(1) because this brief has been prepared in a proportionally spaced typeface using

Times New Roman in size 14 font and contains 12,049 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(*g*)(1).

*/s/ Tessa M. Register*
TESSA M. REGISTER
Assistant Attorney General