IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JASON CARTER, **Plaintiff,** **vs.** **STATE OF IOWA, MARK D. LUDWICK, Special Agent of the Iowa Department of Public Safety, and MARK D. LUDWICK in his individual capacity,** **Defendants.**	**Case No. LACL148061** **RULING ON DEFENDANTS' MOTION TO DISMISS**

Due to COVID-19 pandemic precautions, video conference hearings took place on October 23, 2020 and April 13, 2021, on Defendants' Motion to Dismiss. Plaintiff was represented by Attorneys Nathan Olson and Christine Branstad. Defendants were represented by Assistant Attorney Generals Jeffrey Peterzalek and Tessa M. Register. Having considered the arguments of counsel and reviewed the court file, including the briefs and other documentation filed by both parties, the Court now enters the following ruling.

I. PRIOR PROCEEDINGS AND PROCEDURAL HISTORY.

On June 19, 2015, Shirley Carter (Shirley) was killed by an assailant in her farm home in Lacona, Marion County, Iowa (the homicide). Petition (Pet.) ¶ 11. Bill Carter (Bill) was Shirley's husband and the executor of her estate. Billy Carter (Billy) and Plaintiff Jason Carter (Plaintiff or Jason) were two of Bill and Shirley's children. On January 5, 2016, Bill, Billy, and Shirley's estate (the civil plaintiffs) filed a civil action (the civil suit) against Jason in Marion County Case No. LACV095809, alleging Jason had caused Shirley's death. *Id.* ¶¶ 28-31. At that point no criminal charges were pending. *Carter v. Carter*, No. 18-0296, 2021 WL 1044341, at *2 (Iowa Mar. 19, 2021). The civil case went to jury trial on December 5, 2017. *Id.* at *3.

At the close of the civil plaintiffs' case Jason moved for a directed verdict on the negligence and battery claims. *Id.* The district court granted his motion as to the negligence claim and denied it as to the battery claim. *Id.* He moved again for directed verdict at the close of all evidence. *Id.* The Court denied the motion. *Id.* On December 15, 2017, the jury found Jason civilly liable for Shirley's death and ordered him to pay $10 million in damages. Pet. ¶¶ 49, 435. On December 18, 2017 Jason moved for judgment notwithstanding the verdict (JNOV). *Carter,* 2021 WL 1044341, at *3. On that same date, Jason was arrested and charged with murder in the first degree for Shirley's death. *Id.* That criminal case went to jury trial in Marion County Case No. FECR029316. On February 14, 2018, the district court denied Jason's JNOV motion. *Id.* On March 21, 2018, the criminal jury did not find beyond a reasonable doubt that Jason committed first-degree murder and an acquittal was entered. Pet. ¶ 552.

On May 30, 2018, Jason filed a petition requesting that the judgment in the civil suit be vacated based on new evidence discovered through criminal trial discovery about law enforcement's investigation surrounding Shirley's murder. *Carter,* 2021 WL 1044341, at *3. More specifically, he presented interviews completed by the Iowa Department of Criminal Investigations (DCI), a division of the Iowa Department of Public Safety (DPS), or local law enforcement of several individuals claiming to have knowledge of Shirley's murder. On January 31, 2019, the district court entered an order denying the petition to vacate on the merits. *Id.* The court concluded the evidence was discovered after trial and could not have been discovered earlier. *Id.* at *9. However, the court found even if the newly discovered evidence was material, it would not have changed the outcome of the civil suit because the evidence was inadmissible hearsay. *Id.* Additionally, the court found the evidence was not corroborated and was unreliable. *Id.*

On February 7, 2019, Jason filed a motion to amend or enlarge the denial of his petition to vacate. On June 7, 2019, the court amended and enlarged its ruling by more specifically addressing the newly discovered evidence relied upon by Jason, but confirmed its decision to deny relief. *Carter v. Billy Dean Carter et al.,* EQCV097282, Ruling on Defendants' Motion to Dismiss (Marion Cnty Dist. Ct., July 13, 2020). The court specifically addressed and rejected the following arguments and evidence as insufficient to vacate the civil suit and/or grant a new trial: (1) Bill Carter's recorded statement regarding rigor mortis; (2) photographs of Jason assembling the gun safe; (3) the unidentified fingerprints on the gun safe; (4) Curt Seddon's statements regarding "two holes"; (5) Jason's statements regarding "evidence receipts"; (6) alleged failure by law enforcement to investigate numerous suspects; and (7) alleged misconduct by plaintiffs' civil counsel and the detective for the Marion County Sheriff's Office. *Id.* The court also determined it was not proper to take judicial notice of the criminal case. *Id.* Jason filed an appeal with the Iowa Supreme Court.

On August 30, 2019, Jason filed a second petition for relief in the civil case in Marion County Case No. LACV095809. The second petition was also based on claims of newly discovered evidence that was uncovered during the criminal case, as well as alleged irregularities and violations of constitutional rights in obtaining the civil verdict. On February 24, 2020, the district court denied the petition based on the one-year limit to file a motion to vacate judgment under Iowa Rule of Civil Procedure 1.1013(1). *Carter,* 2021 WL 1044341, at *3. Jason filed an appeal. The Iowa Supreme Court consolidated Jason's appeals. Oral arguments in the combined appeal were heard by the supreme court on January 21, 2021, and the case was submitted to the court at that time. *See Carter v. Carter,* Iowa Supreme Court, Docket No. 180296.

On March 23, 2020, Jason filed another case, Marion County Case No. EQCV097282 wherein he asked the court, in equity, to vacate the judgment entered against him in the civil suit. A motion to dismiss was filed by Defendants and the action was stayed pending Jason's appeals.

Prior to filing the present state court action in Polk County, Jason filed an action in the Federal District Court for the Southern District of Iowa against Mark Ludwick (in his individual capacity), Marion County, Marion County Deputy Reed Kious (in his individual capacity), and Billy Gene Carter. Ludwick is an agent for the DPC in the DCI division. In that federal action Jason made claims of false arrest, malicious prosecution, abuse of process, and due process claims under 42 U.S.C. section 1983. *See* Ex. 2 to Defendants' Reply. Defendants in the federal action filed a motion to dismiss arguing that Jason's constitutional tort claims were nothing more than attempts to undermine the $10 million wrongful-death judgment against him which was on appeal to the Iowa Supreme Court. The federal court dismissed the action concluding that Jason sought in the federal action to "undermine the Iowa civil judgment against him. Every theory of recovery pleaded by plaintiff in this federal lawsuit has been raised or could have been raised by him in the Iowa trials, so in essence, he is asking this federal court to cancel the Iowa civil judgment against him." *Carter v. Ludwick Et. Al.,* 4-19-CV-401-CRW-CFB (Order, S.D. Iowa Aug. 26, 2020). Therefore, the court concluded it lacked subject-matter jurisdiction over the lawsuit, based on the federal *Rocker-Feldman* doctrine, because the action was seeking review and rejection of a state court judgement. *Id.*

On December 11, 2019, Jason filed claims with the Iowa Department of Management, State Appeal Board in order to exhaust his administrative remedies pursuant to Iowa Code section 669.3. Pet. ¶ 8. On June 11, 2020, six months after submitting the claim with no disposition by the State Appeal Board, he withdrew his claim pursuant to Iowa Code section 669.5(1). *Id.* ¶ 9; Attachment

1 to the Pet. On the same date, June 11, 2020, Jason filed the present Petition alleging 12 counts. This Petition in Polk County raised a number of claims against Ludwick, either in his official or individual capacity, and the State of Iowa regarding the investigation of Shirley's death and actions taken surrounding the civil wrongful death action. Plaintiff asserts the murder investigation was "egregiously incomplete."

Defendants filed a Motion to Dismiss in the case at bar on August 4, 2020, alleging they are immune from all of the alleged claims under the Iowa Tort Claims Act (ITCA) and as such this Court lacks subject matter jurisdiction. In the alternative, Defendants argue they are immune, either qualifiedly or absolutely, from various claims. Again, an initial hearing was held on Defendants' Motion on October 23, 2020. At hearing and in his Resistance to the Motion to Dismiss, Jason stated to the Court he was dismissing Counts 9, 10, and 11.[1] At hearing both parties agreed that a stay may be appropriate based on the pending appeals before the Iowa Supreme Court.

On December 22, 2020, this Court stayed its ruling on the substantive merits of Defendants' Motion to Dismiss pending the ruling by the Iowa Supreme Court on Plaintiff's combined appeals. In *Carter,* 2021 WL 1044341, the Iowa Supreme Court affirmed the district court in all respects, including finding the court did not abuse its discretion in denying Jason's motion for continuance, judgment notwithstanding the verdict, first petition to vacate the judgment, and motion for recusal. The Court further concluded his motion to quash the subpoena to DCI was properly denied, and the district court lacked jurisdiction to hear Jason's second petition to vacate the judgment because it was untimely. *Id.* at *1.

[1] The counts that were dismissed were false arrest, abuse of process, and malicious prosecution.

This Court, as requested, dismissed Counts 9, 10, and 11 in its December 22, 2020 ruling. As such, there are currently the following nine counts remaining before the Court: (1) Violation of Article 1, Section of the Iowa Constitution (Right to be Free from Unreasonable Seizure, against all Defendants; (2) Violation of Article I, Section 1 of the Iowa Constitution (Right to Freedom, Liberty, and Happiness), against all Defendants; (3) Violation of Article I, Section 9 of the Iowa Constitution, against all Defendants; (4) Violation of Article I, Section 9 of the Iowa Constitution (Procedural and Substantive Due Process Claim), against all Defendants; (5) Violation of Article I, Section 6 of the Iowa Constitution (Right to Equal Protection), against all Defendants; (6) Negligence and Wrongful Investigation by State Agents Pursuant to Iowa Code Chapter 669 (Iowa Tort Claim) against Defendants State of Iowa and Mark Ludwick in his official capacity; (7) Tortious Infliction of Severe Emotional Distress by State Agents Pursuant to Iowa Code Chapter 669 (Iowa Tort Claim) against Defendants State of Iowa and Mark Ludwick in his official capacity; (8) Tortious Infliction of Severe Emotional Distress (Alternative Tort Claim) against Mark Ludwick individually; and (9) equitable claim for common law attorney fees, against all Defendants.

II. BACKGROUND FACTS.

This case has unusual facts that have been alleged. As set forth above, Shirley Carter was killed by an assailant in her home on June 19, 2015. Pet. ¶ 11. The DCI investigated her death. Plaintiff's Petition alleges that Defendant Ludwick targeted Jason as the primary suspect for Shirley's death even before he arrived at the homicide scene on June 19, 2015. *Id.* ¶ 14. He contends Ludwick then continued to focus on Jason despite the fact there was no forensic evidence implicating him in the homicide, and to the exclusion of considering other suspects. Pet. ¶¶ 67, 70. More specifically, Plaintiff alleges Ludwick intimidated witnesses, ignored expanding

exculpatory evidence and directed other law enforcement to do the same, filed false and misleading reports, made false statements about Jason to family members and others, and lost reports and audio recordings of exculpatory statements. *Id.* ¶¶ 15, 16, 18-20, 68, 96, 114-117, 174, 289, 438, 526, 526. For this Ruling, the Court takes these accusations and the remaining Plaintiff's allegations, as true.

Plaintiff alleges that Ludwick made statements about him to Bill, Billy, and Jason's other siblings, which Ludwick knew or reasonably should have known were false. Pet. ¶¶ 19-10. He contends Ludwick intended these statements to separate his previously close familial relationship, and such was the effect of such statements. Ultimately, these statements caused Jason's family to file the wrongful death civil suit against him in January 2016. *Id.* ¶¶ 22-31. Jason contends Defendants improperly involved themselves in the planning and coordination of discovery in the civil suit to obtain information from Jason. *Id.* ¶¶ 415, 460, 499, 547. The Petition avers that Defendants worked with Bill to plan discovery requests, interrogatories, and deposition questions to Jason and other witnesses. *Id.* ¶¶ 82, 420, 439, 475, 497, 546.

On July 5, 2016, the civil plaintiffs served a subpoena to DCI requiring it to produce the entire law enforcement investigation file on Shirley's homicide. Pet. ¶ 32. DCI moved to quash the subpoena. *Id.* ¶ 33. The civil plaintiffs met with DCI to discuss whether it would be willing to produce certain information. *Carter,* 2021 WL 1044341 at * 2. DCI agreed to produce certain information to them and to Jason. *Id.* However, neither Jason nor his counsel were a party to this meeting. Pet. ¶ 42. The civil plaintiffs filed a second subpoena on April 19, 2017, requesting the agreed upon information. *Id.* ¶ 37. Jason contends it was later determined that the documents DCI produced excluded a myriad of exculpatory evidence known to DCI and Ludwick. *Id.* ¶ 43. Plaintiff alleges the Defendants' motive in providing only inculpatory evidence was to assist the

civil plaintiffs in achieving a liability verdict against him and use such to leverage criminal charges against him. *Id.* ¶ 48. On May 1, 2017, Jason moved to quash the April 2017 subpoena to DCI. *Id.* ¶ 38. The district court denied the motion on August 18, 2017. *Carter,* 2021 WL 1044341, at * 2.

The civil trial began on December 5, 2017, and the jury found Jason civilly liable for Shirley's death on December 15, 2017. Pet. ¶ 54. Jason does not allege Defendants were obligated to provide exculpatory evidence in the civil suit. He contends they violated existing Iowa law by providing limited evidence for the purpose of helping the civil plaintiffs achieve a civil verdict against him, and that Defendants became a "silent plaintiff" in the civil suit with the power of discovery but lacking the obligation of reciprocal discovery. Thus, he alleges they provided only inculpatory evidence and none of the exculpatory evidence they had.

On December 16, 2017, Ludwick signed the criminal complaint and affidavit which was used to request the arrest warrant for Jason. Pet. ¶ 57. The affidavit stated that Jason gave multiple inconsistent statements, testified under oath that he never touched evidence at the crime scene yet evidence later established his latent prints were found on evidence, had knowledge of the crime that no one other than a person present at the time of the crime could have known, and withheld vital information from initial interviews with law enforcement. State's Ex. 1.[2] The warrant was issued and Plaintiff was arrested and charged with first degree murder on December 17, two days after the civil verdict. Pet. ¶ 58. Jason contends Ludwick provided false and misleading information in this complaint, and omitted information which directly weighed on the determination of probable cause to issue the warrant. *Id.* ¶¶ 62-72. In this civil action, and more specifically, Jason alleges Ludwick knew or should have known: Jason had an alibi; he had no

[2] "[E]ven in ruling on a motion to dismiss for failure to state a claim, the court may consider documents referenced in the petition regardless of whether they have been attached." *Karon,* 937 N.W.2d at 347-48.

motive to kill Shirley because he gained nothing financially from doing so; there was nothing to show Shirley was aware of Jason's extramarital affair or that she would have told Jason's wife if she did; there was no forensic evidence implicating Jason in the homicide; there was no cell phone tower evidence; and there were other suspects who were not followed up on or further investigated. *Id*.

Jason filed a petition to vacate the judgment in the civil wrongful death matter after he began receiving exculpatory information in criminal discovery. Pet. ¶ 76. On May 30, 2018, civil plaintiffs' counsel told the press with regard to the petition to vacate, they had "long been aware of the other suspects from early in the investigation" and "they were discounted as possibilities based on a complex analysis of lots of factors." *Id.* ¶ 79. He added, "There is nothing of substance new to our side in this motion." *Id*. Based on such, Plaintiff contends the exculpatory information was known by Defendants at the time of the civil proceedings and thus could have been used by Jason during the civil trial. *Id.* ¶¶ 77, 80-83.

Plaintiff contends for these civil claims that Defendants' investigation into the homicide was egregiously incomplete and biased against him. More specifically, he alleges Ludwick: admitted in his July 2018 deposition he did not enter an unidentified fingerprint from the gun safe that stored the believed murder weapon into the appropriate law enforcement database to look for matches, Pet. ¶¶ 92-93; negligently, recklessly, and with willful disregard lost or mislabeled multiple recordings and reports, and filed misleading, inaccurate, and false reports regarding witness interviews, *Id.* ¶¶ 95-139; Ludwick intentionally "sowed discord and distrust" within Jason's family, *Id.* ¶¶ 140-171; intimidated some witnesses and was late or failed to interview others, *Id.* ¶¶ 172-323; and intentionally and falsely testified regarding cell phone tower data. *Id.* ¶¶ 339-360. Jason further contends Ludwick removed Marion County Sheriff Jason Sandholdt

from the criminal investigation because Sandholdt did not believe Jason was responsible for the homicide. *Id.* ¶ 389. Plaintiff contends this action sent a message to every other law enforcement officer investigating the crime that they should support Ludwick's theory of the case without question or be removed. *Id.* ¶ 390.

Plaintiff alleges in Counts 1-6 that the Defendants acted with malice, deliberate indifference, and/or reckless disregard of his state civil and constitutional rights by their "unlawful and malicious prosecution," and such warrants a punitive damages award. Pet. ¶¶ 446-48, 455, 462, 482-83, 502-30, 506, 515.

III. LEGAL STANDARDS FOR MOTION TO DISMISS.

The legal issues are complex but determinative and the Court understands, "A motion to dismiss should not be liberally granted." *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001). The facts are unusual as has been plead in Jason Carter's numerous lawsuits and the Court accepts facts alleged in this petition as true. Defendants specifically move to dismiss this lawsuit on the basis of lack of subject matter jurisdiction, pursuant to Iowa Rule of Civil Procedure 1.421(1)(a), and failure to state a claim upon which relief can be granted, pursuant to Rule 1.421(1)(f). Rule 1.403(1) requires that a petition contain "a short and plain statement of the claim showing that the pleader is entitled to relief."

> A "petition need not allege ultimate facts that support each element of the cause of action[;]" however, a petition "must contain factual allegations that give the defendant 'fair notice' of the claim asserted so the defendant can adequately respond to the petition." The 'fair notice' requirement is met if a petition informs the defendant of the incident giving rise to the claim and the general nature of the claim.

U.S. Bank v. Barbour, 770 N.W.2d 350, 354 (Iowa 2009) (citations omitted). "A motion to dismiss is properly granted only if a plaintiff's petition on its face shows no right to recover under any state

of facts." *Trobaugh v. Sondag*, 668 N.W.2d 577, 580 (Iowa 2003) (quoting *Ritz v. Wapello Co. Bd. of Sup.* 595 N.W.2d 786, 789 (Iowa 1999)).

A motion to dismiss must be granted "when the petition's allegations, taken as true, fail to state a claim upon which relief may be granted." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). The court accepts as true the petition's well-pleaded factual allegations, but not its legal conclusions. *Id.* With regard to the claims that Plaintiff has failed to state a claim, the Court can only rely on the facts presented in the Petition, any documents attached to the Petition or referenced therein, and any facts of which the Court can take judicial notice. *See Karon v. Elliott Aviation*, 937 N.W.2d 334, 347–48 (Iowa 2020) (citing *King v. State*, 818 N.W.2d 1, 6 n.1 (Iowa 2012)) (finding when ruling on a motion to dismiss for failure to state a claim the court may consider documents referenced in the petition regardless of whether they have been attached).

"Every court has inherent power to determine whether it has jurisdiction over the subject matter of the proceeding before it. It makes no difference how the question comes to its attention. Once raised, the question must be disposed of, no matter in what manner or form or stage presented." *Tigges v. City of Ames,* 356 N.W.2d 503, 510 (Iowa 1984) (internal citation and quotation omitted). When the legislature does not waive the State's sovereign immunity for a claim under Iowa Code section 669.14, the courts lack subject matter jurisdiction to hear any such claim. *See Feltes v. State,* 385 N.W.2d 544, 546-47 (Iowa 1986) (finding that Iowa Supreme Court decisions consistently have described what is now Iowa Code chapter 669 as one "granting only a limited waiver of state immunity, and the basic issue one of subject matter jurisdiction.").

IV. MERITS.

Defendants contend they are sovereignly immune from all of Plaintiff's claims, except Count 6, under the Iowa Tort Claims Act (ITCA) as all of those are claims arise out of false arrest,

abuse of process, and/or malicious prosecution, or their functional equivalents. With regard to Count 6, Defendants claim there is no tort for negligent investigation in Iowa. The ITCA is found in Iowa Code chapter 669. Iowa Code § 669 (2021).

> The Iowa Tort Claims Act (ITCA) provides a limited waiver of the state's sovereign immunity. *See* Iowa Code ch. 669; *Hansen v. State,* 298 N.W.2d 263, 265 (Iowa 1980) ("The state may now be sued in tort only in the manner and to the extent to which consent has been given by the legislature."); *see also Thomas v. Gavin,* 838 N.W.2d 518, 521 (Iowa 2013) (citing Don R. Bennett, *Handling Tort Claims and Suits Against the State of Iowa: Part I,* 17 Drake L. Rev. 189, 189 (1968) ("Prior to passage of the Iowa Tort Claims Act in 1965, the maxim that 'the King can do no wrong' prevailed in Iowa.") (noting the ITCA is "viewed as abolishing traditional common law immunities")). "Generally, the State may be sued for damage caused by the negligent or wrongful acts or omissions of state employees while acting within the scope of employment to the same extent that a private person may be sued."

Hook v. Trevino, 839 N.W.2d 434, 439 (Iowa 2013). "Simply stated, the ITCA sets the metes and bounds of the State's liability in tort." *Wagner v. State,* 952 N.W.2d 843, 857 (Iowa 2020) (citing *Swanger v. State,* 445 N.W.2d 344, 349 (Iowa 1989)).

The Plaintiff's ability to sue the State and its employees is not absolute, but rather subject to the legislature's carefully crafted scheme under chapter 669. The limitations of Iowa's waiver of sovereign immunity "are most clearly manifested in the specific exceptions to the act, which describe the categories of claims for which the State has not waived its sovereign immunity." *Trobaugh,* 668 N.W.2d at 584. These exceptions are found in Iowa Code section 669.14(4), commonly referred to as the intentional tort exceptions. *Minor v. State*, 819 N.W.2d 383, 406 (Iowa 2012). The State's waiver of sovereign immunity from tort claims does not apply to "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." Iowa Code § 669.14(4). The Iowa Supreme Court construes this exception narrowly. *Minor*, 819 N.W.2d at 406. "Further, because the legislature intended the ITCA to have the same effect as the

Federal Tort Claims Act (FTCA), we give great weight to relevant federal decisions interpreting the FTCA." *Id.*

The exceptions in section 669.14(4) are a list of "excluded claims in terms of the type of wrong inflicted." *Id.* (quoting *Greene v. Friend of Ct., Polk Cnty.,* 406 N.W.2d 433, 436 (Iowa 1987)). "Therefore, where the basis of the plaintiff's claim is the functional equivalent of a cause of action listed in section 669.14(4), the government official is immune." *Id.* "It is the substance of the claim and not the language used in stating it which controls whether the claim is barred by an FTCA exception." *Id.* (citation omitted). The "focus is not on the terminology used to describe the claim but instead on the type of wrong inflicted." *Smith v. Iowa State Univ. of Sci. & Tech.*, 851 N.W.2d 1, 21 (Iowa 2014) (citation omitted). "Consequently, a defendant may successfully assert section 669.14(4) as a defense even though the tort complained of is not itself listed in section 669.14(4)." *Minor,* 819 N.W.2d at 406. However, there must be more than "[a] mere conceivable similarity" in order to establish "the nexus of functional equivalency" between the claimed tort and the type of wrong listed under section 669.14(4). *Trobaugh,* 668 N.W.2d at 585. Under the FTCA, factual overlap with a barred cause of action "is not enough to bring a claim under [FTCA] immunity." *Smith,* 851 N.W.2d at 22. As set forth above, Iowa gives great weight to federal decision interpreting the FTCA because the ITCA was intended to have the same effect. *Minor,* 819 N.W.2d at 406. If the gravamen of a plaintiff's claim is one of the exempted torts, then the State and its employees are immune from suit, regardless of plaintiff's chosen pleading language. *Hawkeye By-Products, Inc. v. State,* 419 N.W.2d 410, 411-12 (Iowa 1988).

The ITCA defines "claim," in part, as

> Any claim against an employee of the state for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the

> negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee's office or employment.

Iowa Code § 669.2(3)(b). A state employee is "[a]cting within the scope of the employee's office or employment" when they are "acting in the employee's line of duty as an employee of the state." *Id.* at § 669.2(1). The ITCA defines an "employee of the state" as "includ[ing] any one or more officers, agents, or employees of the state or any state agency." *Id.* at § 669.2(4)(a).

> The state employees who engage in the negligent or wrongful conduct that gives rise to the lawsuit may also be personally sued. *See id.* § 669.2(3)(*b*) (defining claims against coemployees). Yet, as long as the employee was acting within the scope of employment at the time of the incident at the center of the lawsuit, the suit is deemed to be an action against the state. *Id.* § 669.5(2). Once a lawsuit against a coemployee is deemed to be an action against the state under the ITCA, the state is substituted as a defendant in place of the coemployee in the event the state was not already a named defendant. *Id.* Furthermore, the state is normally required to indemnify the employee against any claim. *Id.* § 669.21.

McGill v. Fish, 790 N.W.2d 113, 117 (Iowa 2010). "For purposes of sovereign immunity, claims against the State's employees in their individual capacities for actions in the scope of the employees' employment are treated as suits against the State because the State may be vicariously liable for its employees' actions." *Est. of Henry through Barrett v. Schwab*, 2019 WL 4888575, at *4 (N.D. Iowa Oct. 3, 2019). *See also* Iowa Code § 669.5(2) (substituting the State as defendant for claims where the Attorney General has certified the actor as a state employee).

Plaintiff specifically states multiple times in his Petition that "at all material times" Ludwick was "an Agent for the [DPS]." Pet. ¶¶ 2, 510, 518. In addition, he states Ludwick was "assigned from the beginning of the investigation as lead case investigator for the DCI." *Id.* ¶ 13. Thus, it is undisputed the DPS is a state agency and that Ludwick was a state employee at all relevant times. Additionally, Plaintiff never states in his Petition that Ludwick was at any time acting outside of the scope of his state employment. Accordingly based on the well plead allegations in the extensive Petition, the ITCA controls here.

A. Count 1

Plaintiff's Count I is an Iowa Constitutional claim. "Constitutional torts are torts" for purposes of claims against the State or state officials under the ITCA. *Wagner,* 952 N.W.2d at 853-56 (citing *Baldwin v. City of Estherville (Baldwin I),* 915 N.W.2d 259, 281 (Iowa 2018)). Under Count 1 Jason contends Defendants violated his right to be free from unreasonable seizure under Article I, section 8 of the Iowa Constitution when they knew or should have known there was no probable cause to file a criminal complaint against him, arrest him, and restrict his personal freedom during the pendency of the criminal trial. Pet. ¶¶ 442-45. He further alleges Defendants collection of evidence through the civil case constituted an unreasonable search. *Id.* ¶¶ 443-44.

Defendants contend Plaintiff is seeking damages against the State for an arrest effectuated without probable case, which they assert is the functional equivalent of a false-arrest claim. "A false arrest is one way of committing the tort of false imprisonment—restraining freedom of movement." *Children v. Burton*, 331 N.W.2d 673, 678 (Iowa 1983). "The tort requires confinement of the person." *Id.* However, Plaintiff alleges he is challenging the underlying constitutional validity of the arrest warrant, not the arrest itself. He contends while certain facts may overlap between the two claims, this is not sufficient to establish they are functionally equivalent.

Plaintiff claims multiple alleged wrong actions by Defendants in his first Count. He expressly alleges Defendants "took him into custody without having probable cause," there was no probable cause to "arrest" him, and it was unreasonable "to restrict the travel and personal freedom of [Plaintiff] during the pendency of the criminal case." Pet. ¶ 442-45. These are clearly express and explicit claims of false arrest, i.e. confinement of his person, and as such are exempt under Iowa Code section 669.14(4) and must be dismissed. Plaintiff also contends he was subject

to an "unlawful and malicious prosecution." *Id.* ¶ 447. This cannot be read any other way than an express claim of malicious prosecution and it is therefore also exempt under the ITCA. Plaintiff further alleges Defendants had no probable cause to file a criminal complaint against him. Pet. ¶ 444. This claim is similar to the allegations Plaintiff made in his now dismissed Count 11 for Malicious Prosecution, which he admits was an exempt claim under the ITCA. As such in analyzing the legal implications, the Court concludes this is a functional equivalent to a claim of malicious prosecution and/or abuse of process and therefore must also be dismissed.

Plaintiff contends "no probable cause or other grounds existed for the unconstitutional collection of evidence through the civil case." Pet. ¶ 443. The Court concludes this claim by Jason is the functional equivalent of a claim for abuse of process and thus also exempt under the ITCA. "To prove a claim for abuse of process, a plaintiff must show (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." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Barnhill,* 885 N.W.2d 408, 419-20 (Iowa 2016) (citing *Stew-Mc Dev., Inc. v. Fischer,* 770 N.W.2d 839, 849 (Iowa 2009)). "The plaintiff must prove that they used the legal process primarily for an impermissible or illegal motive." *Wilson v. Hayes,* 464 N.W.2d 250, 266 (Iowa 1990).

> Malicious prosecution occurs when an action is instituted without foundation. Conversely, abuse of process may be found when [legal process] is . . . used to attain a collateral objective beyond that anticipated by the process. An ulterior motive does not alone satisfy the requirement for an action in abuse of process; a definite act or threat outside the process is required.

Id.

Plaintiff claims Count 1 is actually a challenge to the validity of the warrant that resulted in his arrest, not the arrest itself. He alleges no reasonable officer would believe probable cause existed to file a criminal complaint against him. *Id.* ¶ 444. To the extent this is Plaintiff

challenging the validity of the warrant, the Court will also address this claim as such. To overcome the strong deference afforded to judicial probable cause determination, a plaintiff must meet the high burden of alleging sufficient facts to show

> whether the affiant was purposely untruthful with regard to a material fact in his or her application for the warrant, or acted with reckless disregard for the truth. If the court finds that the affiant consciously falsified the challenged information, or acted with reckless disregard for the truth in his or her application for the warrant, the offensive material must be deleted and the remainder of the warrant reviewed to determine whether probable cause existed.

State v. Niehaus, 452 N.W.2d 184, 186–87 (Iowa 1990) (citing *Franks v. Delaware,* 438 U.S. 154, 171-72, 98 S. Ct. 2674, 2684-85, 57 L.Ed.2d 667, 682 (1978)). *See also Hawkins v. Gage Cty.,* 759 F.3d 951, 959 (8th Cir. 2014) ("A *Franks* violation exists based on (1) the police omitted facts with the intent to make, or in reckless disregard of whether they thereby made, the affidavit misleading, and (2) the affidavit, if supplemented by the omitted information would not have been sufficient to support a finding of probable cause." (internal quotation omitted)).

Plaintiff generally alleges Ludwick "intentionally provided false and misleading material information in the criminal complaint requesting the warrant" and "omitted material and necessary information from the criminal complaint."[3] Pet. ¶¶ 60-61. The only specific information provided in the warrant affidavit that Jason challenges here is that his alleged inconsistent statements were not sufficient to provide probable cause for the warrant. Pet. ¶ 69. However, the affidavit clearly sets forth more than just these alleged inconsistent statements as grounds for the issuance of the warrant[4]. It specifically states that Jason testified under oath that he never touched evidence at the

[3] We also have the issue of whether it is a prosecutor or a law enforcement officer, who decides which criminal charges to bring and when. And even if the acts of filing and pursuing criminal charges could be assignable to Agent Ludwick, it appears that process which involves a judicial officer is conduct that is 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). These issues will be reviewed later in the Ruling.

[4] "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, courts "do not make [their] own independent

crime scene yet evidence later established his latent prints were found on evidence, and that Jason had knowledge of the crime that no one other than a person present at the time of the crime could have known. State's Ex. 1. There are certain aspects in the affidavit that were not disputed in this civil petition. A judicial officer would be able to find there is a determination of probable cause even without any additional information included or other alleged false information omitted. Accordingly, when viewing the petition's allegations regarding that the Defendants knew or should have known there was no probable cause to file a criminal complaint and then the subsequent actions taken, and taken as true, this allegation fails to state a claim upon which relief may be granted. The Court concludes Defendants' Motion to Dismiss with regard to Count I must be granted.

B. Count 2

In Count 2, Plaintiff contends Defendants violated his right to freedom, liberty, and happiness guaranteed under Article 1, section 1 of the Iowa Constitution when they took him into custody without probable cause and illegally collaborated with the civil plaintiffs. *Id.* ¶ 452.

Plaintiff's claim is similar to the claim he made in Count 1. It is again a claim regarding confinement of his person and as such is a claim for false arrest or the functional equivalent of such a claim. *See Children,* 331 N.W.2d at 678. Therefore, this too is an exempted claim under the ITCA. The second claim in this Count is nearly identical to Plaintiff's Abuse of Process claim (Count 10) that he voluntarily dismissed in recognition that it is a count excepted by the ITCA, as well as very similar to the claim in Count 1 regarding Defendants' "collection of evidence during the civil trial." Accordingly, the Court concludes based on the previous analysis this is a claim of

determination of probable cause. Rather, [they] give great deference to the prior determination of probable cause by a judge or magistrate." *Id.*

abuse of process or the functional equivalent thereof and also an exempted claim. *See Barnhill,* 885 N.W.2d at 419-20. Defendants' Motion to Dismiss regarding Count 2 is also granted.

C. Counts 3 and 4

In Count 3, Plaintiff contends Defendants violated the guarantee that "no person shall be deprived of life, liberty, or property, without due process of law" under Article 1, section 9 of the Iowa Constitution when Defendants worked in concert with the civil plaintiffs and "abused the civil discovery process in order to unlawfully gain information" from Jason to "achieve a liability verdict in the civil matter." Pet. ¶460. Jason further asserts Defendants acted in concert with the civil plaintiffs because it created benefits for both, included sharing of evidence by Defendants with the civil plaintiffs and collection of evidence through the civil law process which the State would not otherwise have been lawfully able to collect. *Id.* ¶ 472.

In Count 4, Plaintiff states Defendants further violated his substantive due process rights under Article 1, section 9 when they provided only seemingly inculpatory evidence to the civil plaintiffs to assist in obtaining a civil judgment against Jason, suppressed or failed to disclose known exculpatory evidence to Jason in the course of the criminal trial, failed to discover exculpatory evidence through avenues provided or known to law enforcement but not explored, provided discovery requests to the civil plaintiffs, collected sworn statements and other evidence from Jason, made a choice not to investigate several leads that did not inculpate Jason, and took Jason into custody without probable cause to believe he committed a criminal offense. *Id.* ¶¶ 469, 475, 477-78. He contends all this was conduct that "shocks the conscience or interferes with rights implicit in the concept of ordered liberty." *Id.* ¶ 459.

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. *See Atwood v. Vilsack*, 725 N.W.2d 641, 647 (Iowa 2006) (finding "the federal and state due process provisions to be 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 for the court. *Terrell*, 396 F.3d at 981 (citing *Collins v. City of Harker Heights,* 503 U.S. 115, 126, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992)).

The Court concludes each of these claims, though worded differently and more detailed in some regards, are in essence the same as those made in Counts 2 and 3. They arise out of and are the functional equivalent of false arrest and abuse of process claims. Moreover, the Court further concludes that none of these allegations "shocks the conscience." Agent Ludwick declined to assign credibility to several individuals who, based on varying levels of hearsay and motivated by an array of subjective interests, implicated multiple different people in the murder. Plaintiff clearly disagrees with these decisions. However, it is not 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. Accordingly, the Court concludes Counts 3 and 4 must also be dismissed.

D. Count 5

Count 5 involves an allegation that the State treated Plaintiff differently than similarly situated persons. In essence, the Plaintiff contends the state meddled in his civil suit. In Count 5 Plaintiff again alleges several of the same claims as in Counts 2-4, which the Court has determined are the functional equivalent of false arrest and/or abuse of process and therefore are exempt under the ITCA. As such, these claims in Count 5 are also dismissed for the same reasons discussed above. The only additional and new allegation in Count 5 is that Defendants violated Plaintiff's right to equal protection under the law by "treating him differently than similarly situated persons by participating in civil prosecution prior to criminal prosecution . . . by agreeing to provide evidence from an ongoing criminal investigation for use in a civil trial," privately meeting and collaborating with the civil plaintiffs, "leveraging the finding of civil liability into criminal charges," and failing to adequately investigate the homicide by discounting substantial evidence implicating other suspects. Pet. ¶¶ 498, 505. Plaintiff believes that when law enforcement submitted questions for the civil Plaintiffs to ask, the State unconstitutionally violated Plaintiff's rights.

Such equal protection claims must be based on "an unjustifiable standard, i.e. race, religion, or other arbitrary classification." *State v. Walker,* 236 N.W.2d 292, 295 (Iowa 1975). Similarly, such alleged arbitrary prosecution is unconstitutional only when it is "deliberately based upon an unjustifiable standard such as race, religion or other arbitrary classification." *State v. Apt,* 244 N.W.2d 801, 804 (Iowa 1976). Plaintiff has not alleged the actions taken by Defendants were in any way related to his membership in any protected class or that they were taken because of any protected classification. Further, a "threshold question in an equal protection case is whether the plaintiff is similarly situated to others who allegedly received preferential treatment." *Domina v.*

Van Pelt, 235 F.3d 1091, 1099 (8th Cir. 2000). In order to prove a selective-prosecution claim, "the claimant must show that similarly situated individuals [of a different protected class] were not prosecuted." *United States v. Armstrong*, 517 U.S. 456, 465, 116 S. Ct. 1480, 1487 (1996). The Court concludes Plaintiff has failed to identify any person(s) that was similarly situated to him or allege how such similarly situated person(s) were treated differently or preferentially.

In addition, to the extent Jason is attempting to allege a "class-of-one" claim based on Ludwick's purported bias against him individually such claim must also fail. The Eighth Circuit noted that the U.S. Supreme Court circumscribed the class-of-one theory, finding it a "poor fit" in cases that involved "discretionary decisionmaking." *Flowers v. City of Minneapolis*, 558 F.3d 794, 799 (8th Cir. 2009) (citing *Engquist v. Oregon Dep't of Agriculture*, 553 U.S. 591, 605, 128 S. Ct. 2146, 2155 (2008)). A "police officer's decisions regarding whom to investigate and how to investigate are matters that necessarily involve discretion," an officer's investigative decisions "may not be attacked in a class-of-one equal protection claim." *Id.* at 799-800. The Court concludes Plaintiff cannot proceed on a class-of-one theory, nor has he alleged a plausible claim that Defendants acted with class-based animus. Therefore, this last remaining claim in Count 5 must also be dismissed because Plaintiff has failed to state a claim upon which relief may be granted. Accordingly, Count 5 is dismissed in its entirety.

E. Count 6

In Count 6, Plaintiff contends the Defendants had a duty to reasonably investigate the homicide and collect all pertinent evidence relating to all suspects. *Id.* ¶ 512. He alleges they breached this duty by failing to identify suspects other than Jason, collect inculpatory evidence relating to those suspects, collect exculpatory evidence relating to Jason, and maintain an

investigation file sufficiently organized to allow access to identification and all other information required to be disclosed to a criminal defendant. *Id.* ¶ 513.

Defendants contend there is no tort of negligent misrepresentation in Iowa and thus Count 6 must be dismissed for failure to state a claim upon which relief may be granted. The Iowa Supreme Court in *Smith v. State,* 324 N.W.2d 299 (Iowa 1982), considered whether a claim for negligent investigation could lie against DCI agents. The court noted that although law enforcement officer's judgment may not always be right; "to assure continued vigorous police work, those charged with that duty should not be liable for mere negligence." *Id.* at 301. The court concluded that "for persuasive public policy reasons, law enforcement officers have no liability for mere negligence in the investigation of crime, we do not believe the legislature, in enacting the Iowa Tort Claims Act, intended to create a new and hitherto unrecognized tort." *Id.* at 302. In 2015, the Federal District Court for the Northern District of Iowa affirmed that "Iowa does not recognize a tort for negligent law enforcement response and investigation in the absence of a special relationship between the plaintiff and law enforcement." *Wilson v. Lamp*, 142 F. Supp. 3d 793, 811. (N.D. Iowa 2015). This "rule not only applies when the person allegedly harmed by a negligent investigation has been charged and arrested, but also when the allegedly negligent investigation results in no arrest." *Hildenbrand v. Cox*, 369 N.W.2d 411, 415 (Iowa 1985).

Plaintiff asks this Court to go against *Smith* because this case is distinguishable from *Smith* in the following ways. First, Jason alleges he is asserting more than "mere negligence" and instead alleges the Defendants' actions were "willful and wanton, and done with malice or in reckless disregard" for Jason's rights. Second, the court in *Smith* noted there was no allegation there "that the criminal action was without probable cause or that it was brought maliciously." *Smith,* 324 N.W.2d at 299. Here, Jason alleges the criminal action was both without probable cause and it

was brought maliciously. Finally, the *Smith* court relied on public policy to come to its conclusion. It stated the "public has a vital stake in the active investigation and prosecution of crime. Police officers . . . must make quick and important decision as to the court an investigation shall take." *Id.* at 301. In the case at bar, the State did not charge Jason with murder until two and a half years after the homicide. As such, Plaintiff contends the State did not have to make any "quick" decisions and had ample time to conduct a complete investigation yet failed to do so. Thus, the public policy that supported *Smith* is not present in this case.

However, in refusing to recognize a tort for negligent investigation of a crime by law enforcement officers the *Smith* court also relied upon the overarching public policy that the "protection of society from crime would likely be adversely affected if law enforcement agents were subject to liability in damages for simple negligence in the performance of their duties if the citizens they charge with crime should not be convicted." *Smith,* 324 N.W.2d at 301 (citation omitted). The court was concerned with the public policy regarding the "interest of the public in vigorous and fearless investigation of crime." *Id.* In addition, the alleged "malice and reckless disregard" Plaintiff alleges here as a higher standard than "mere negligence" is covered by a claim for malicious prosecution. "[N]o sufficient reason appears why this time-honored requirement in malicious prosecution should be now discarded in favor of an action of negligence, as here, for careless performance of duty and failure to make due inquiry." *Id.* (citation omitted). All of these same important issues and public policy interests are present in the case at hand and militate against recognizing a new tort for negligent investigation. Accordingly, the Court concludes the distinctions Plaintiff points out between his case and *Smith* are not sufficient for this Court to come to a determination inapposite to *Smith.*

Moreover, in the nearly 40 years since *Smith* the Iowa Supreme Court has not recognized such a tort and *Smith* is still currently controlling law. As a general rule, the task of recognizing a cause of action, especially one that has previously been rejected by our supreme court, is best left to the General Assembly or the Supreme Court of Iowa. *See Spencer v. Philipp,* 856 N.W.2d 3 (Table), 2014 WL 4230223, at *2 (Iowa Ct. App. Aug. 27, 2014) ("As our court has previously stated, '[w]e leave it up to the legislature or our supreme court to establish new causes of action even when they appear to have merit.'" The Court declines to recognize a tort of negligent investigation by a law enforcement officer for the first time in Iowa based on the specific facts and circumstances of the case at hand.

Additionally, Plaintiff cites to Chapter 669 as the basis for his claim of negligent investigation. However, the ITCA "does not itself create a cause of action." *Sanford v. Manternach*, 601 N.W.2d 360, 370 (Iowa 1999). It "'merely recognizes and provides a remedy for a cause of action already existing which would have otherwise been without remedy because of the common law immunity.'" *Id.* (quoting *Engstrom v. State,* 461 N.W.2d 309, 314 (Iowa 1990)). Thus, Chapter 669 cannot act as the basis for the hitherto unrecognized tort of negligent investigation.

Therefore, the Court concludes no tort for negligent investigation is recognized in Iowa and as such the Defendants' Motion to Dismiss with regard to Count 6 is granted.

F. Counts 7 and 8

In Counts 7 and 8, Plaintiff alleges tortious interference of emotional distress against Defendants. He contends Defendants acted "outrageously and intentionally" in their investigation in all the ways discussed in the prior Counts, as well as intimidating and threatening witnesses who came forward with potentially exculpatory information and "failing to fulfill all other duties

and obligations placed on law enforcement officers in the investigation of" a potential homicide. *Id.* ¶¶ 520, 526.

Defendants contend Plaintiff's claims for intentional infliction of emotional distress (IIED) must be dismissed.[5] The Iowa Supreme Court in *Smith* and *Minor* provide good guides for this Court. The ITCA does not foreclose claims for IIED. *Smith,* 851 N.W.2d at 20. However, Defendants aver that Jason's cause of action for IIED is the functional equivalent of a false arrest claim. As set forth above, false arrest is a claim that is exempted in section 669.14(4) and functional equivalents of exempted claims are also barred under the ITCA.

In *Minor,* a mother whose child had been removed from her care sued the State and two Iowa Department of Human Services (DHS) employees after the child-in-need-of-assistance proceeding was dismissed and the child had been returned. *Minor,* 819 N.W.2d at 389. The mother alleged IIED based on the fact the DHS worker obtained false information and presented it to the juvenile court. *Id.* at 407. Our supreme court concluded the mother's IIED claims were the functional equivalent of misrepresentation or deceit and thus excluded by the ITCA. *Id.* at 408. The court found, "[T]he basis of Minor's claims would not exist but for [the DHS employee's] alleged misrepresentation to the juvenile court." *Id.*

However, in *Smith* our supreme court court found that a state employee's actions for IIED, brought against his supervisor, was not the functional equivalent of defamation so as to be barred by the ITCA. *Smith,* 851 N.W.2d at 25-26. The court found that the actions of the supervisor in *Smith* were much broader than those traditionally associated with defamation, including such things as lying to the employee about putting him up for promotion, isolating him, changing the

[5] It is noted Plaintiff calls these claims "tortious infliction of emotional distress." However, the Iowa Code, the Restatement 2nd of Torts, and the vast majority of Iowa cases refer to such claims as intentional infliction of emotional distress or IIED. As such, this Court will refer to it Counts 7 and 8 as claims for IIED.

funding source for his job, and denying him a salary increase. *Id.* Being guided by the FTCA, which again was the model for the ITCA, the *Smith* court concluded a factual overlap with a barred cause of action is not enough to bring a claim under the immunity of the ITCA. *Id.* at 22.

> In cases alleging negligent or intentional infliction of emotional distress, when the court determines the underlying conduct is broader or more extensive than the conduct underlying a tort enumerated in 2680(h) or the conduct is relevant for a reason not contemplated by the excepted tort, the plaintiff will be allowed to proceed with claims despite underlying conduct that overlaps with excepted torts.

Smith, 851 N.W.2d at 22 (citation omitted). "The inquiry is 'whether conduct that constitutes an enumerated tort is 'essential' to a plaintiff's claim.'" *Id.* (quoting *Sabow v. United States,* 93 F.3d 1445, 1456 (9th Cir.1996)).

Defendants contend Plaintiff is alleging that he was harmed by Defendants' negligent criminal investigation, and but for the alleged subpar investigation, Plaintiff would never have been arrested and forced to endure criminal proceedings. Plaintiff alleges the arrest lacked probable cause because the criminal investigation was insufficient to establish the requisite degree of culpability. He avers that his claim is much broader than just the false arrest, including years of Ludwick telling community members and Jason's wife that he was responsible for the homicide, the Defendants' collaboration with the civil plaintiffs, the State's unwillingness to follow viable leads while ignoring evidence showing its theory of guile to be "fantasy," and being subjected to public and private humiliation while Ludwick exploited Jason's extramarital affair. Pet. ¶¶ 19, 31, 70, 361, 365, 367, 387-88.

For the reasons set forth above, each of these allegations is the functional equivalent of one of the claims specifically excluded in the ITCA, including false arrest, malicious prosecution, and/or abuse of process. The Court concludes Plaintiff's claims are not boarder or more extensive than his underlying excluded torts, nor is the conduct relevant for a reason not contemplated by

the excepted torts. The Court takes as true that there was emotional distress suffered by the Plaintiff in the time period alleged. But, the IIED claims in the instant case are more akin to those in *Minor* because they would not exist but for Defendants' alleged false arrest, malicious prosecution, and/or abuse of process. Therefore, the Court concludes Defendants' Motion to Dismiss is granted as to Counts 7 and 8.

G. Count 12

In Count 12 Plaintiff requests an equitable judgment for common law attorney fees. However, because the Court has determined all of Plaintiff's remaining claims should be dismissed and that there is no express statutory authorization for attorney fees, Plaintiff is not entitled to any attorney fees. Count 12 is dismissed.

H. Immunity

The Court finds that all of the claims except for Count VI, the Defendants are sovereignly immune and are dismissed because this Court lacks jurisdiction. Because this Court does not find in Iowa that there is a tort for negligent investigation in Iowa, Count VI is also dismissed. The Court understands that this is an important case for the Plaintiff and he has filed numerous court cases in different forums to advance his ideas. In analyzing this particular set of claims the Court believes it is necessary to also look at additional reasons why these claims further lack merit.

In the alternative, Defendants contend the Court must dismiss all claims alleging, in whole or in part, false arrest because they are qualifiedly immune. They also allege they have absolute immunity to Counts 3 and 4 to then extent they relate to Ludwick's participation as a witness or in responding to subpoenas in the civil proceeding.

Qualified immunity is "immunity from suit, rather than a mere defense to liability; and like an absolute immunity, is effectively lost if the case is erroneously permitted to go to trial." *Mitchell*

v. Forsyth, 472 U.S. 511, 527, 105 S. Ct. 2806, 2815 (1985). To be entitled to qualified immunity a defendant must "plead and prove as an affirmative defense that she or he exercised all due care to comply with the law." *Baldwin I,* 915 N.W.2d at 280. "Qualified immunity is a question of law for the court" and "readily determinable prior to trial." *Dickerson v. Mertz,* 547 N.W.2d 208, 215 (Iowa 1996). "In addressing [a] claim of qualified immunity, we consider, in any order, whether the facts alleged by the plaintiff 'make out a violation of constitutional right' and whether that right was '"clearly established" at the time of defendant's alleged conduct.'" *Minor*, 819 N.W.2d at 400 (citing *Pearson v. Callahan*, 555 U.S. 223, 232, 236, 129 S. Ct. 808, 815-16, 172 L. Ed. 2d 565, 573, 576)). Plaintiff "must . . . point to authority sufficiently analogous to make the violation of the constitutional right apparent." *Id.* at 401.

The Petition reveals that law enforcement received tips implicating various individuals in Shirley's murder. It also 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 shows that 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 constitution simply by declining to assign credibility to aspiring informants who lack first-hand knowledge of the crime. The Eighth Circuit has explained,

> Law enforcement's decision about whom to investigate and how, like a prosecutor's decision whether to prosecute, is ill-suited to judicial review . . . *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*. . . . And 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."

Flowers, 558 F.3d at 798 (emphasis added) (quoting *Wayte v. United States*, 470 U.S. 598, 607, 105 S. Ct. 1524, 1530 (1985)).

Importantly, the Iowa Supreme Court concluded the law enforcement investigating this case "did in fact consider other suspects," and the district court in the civil suit did not abuse its discretion in concluding "law enforcement did a thorough investigation and 'at some point, continuing to interview individuals involved in the drug world with no first-hand knowledge and whose story will contravene the facts from the crime scene becomes problematic.'" *Carter,* 2021 WL 1044341, at * 13. The supreme court also concluded the interview summaries Jason points to in order to show Defendants did not fully investigate and had no probable cause for his arrest warrant were "uncorroborated, incomplete, refuted by others, or implausible based on the known facts of Shirley's death. Even where the person speaking to law enforcement was noted as seemingly earnest, their statement often involved at least another level of hearsay." *Id.* at *12. As such, the Iowa Supreme Court concluded the district court did not abuse its discretion in concluding the evidence was hearsay and thus would not have been admissible. *Id.*

Taking all the facts in the Petition as true, Ludwick applied for a warrant, a judge determined probable cause existed and issued a warrant, a prosecutor reviewed the information and decided to seek first-degree murder, and after a contested preliminary hearing another court confirmed probable cause existed to support the charges and proceeded with trial. At every juncture of the judicial process probable cause was found. The Court concludes due care was taken to comply with the law and therefore Ludwick, and vicariously the State, are qualifiedly immunity from all false-arrest claims, which the Court has determined are included in Counts 1, 2, and 4. Accordingly, in addition to the reasoning and rational for dismissal under the ITCA as

discussed in detail above, the Court concludes these claims must be dismissed based on qualified immunity as well.

"To advance the practical administration of government, the law recognizes certain government officials should be absolutely immune from suit for conduct relating to the discharge of certain government functions." *Venckus v. City of Iowa City*, 930 N.W.2d 792, 800 (Iowa 2019). "One well-established immunity is the judicial process immunity. Under the judicial process immunity, government officials are absolutely immune from suit and damages for conduct 'intimately associated with the judicial phase of the criminal process.'" *Id.* (quoting *Minor*, 819 N.W.2d at 394). "It is well established that the judicial process immunity applies to common law torts," but the *Venckus* court considered as a matter of "first impression whether the judicial process immunity applies to torts arising under the Iowa Constitution." *Id.* Our supreme court then expressly held that "the judicial process immunity applies to state constitutional torts." *Id.* "The immunity benefits the public by protecting government officials involved in 'the judicial process from the harassment and intimidation associated with litigation.'" *Id.* at 801 (quoting *Minor*, 819 N.W.2d at 394). "The 'immunity applies even when the [official] is accused of acting maliciously and corruptly because as a matter of policy it is in the public interest that [officials] should exercise their function without fear of consequences and with independence.'" *Id.* at 804 (quoting *Blanton v. Barrick,* 258 N.W.2d 306, 308 (Iowa 1977)). "Absolute immunity extends to police officer functions falling within the scope of the judicial process immunity, e.g. testifying as an ordinary witness." *Id.* at 806.

"When faced with a question of whether a government official has absolute immunity from civil liability resulting from his or her acts, we employ a 'functional approach' to determine whether those actions 'fit within a common-law tradition of absolute immunity.'" *Minor*, 819

N.W.2d at 394 (citing *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S. Ct. 2606, 2613, 125 L.Ed.2d 209, 223 (1993)). "A government official may be entitled to absolute immunity where the official performs a function analogous to that of a government official who was immune at common law." *Id.* The *Minor* court specifically addressed the immunity available when state employees are acting as witnesses. If they are acting as a complaining witness there they are not entitled to absolute immunity because complaining witnesses are not absolutely immune at common law. *Id.* at 397 (citation omitted). However, if the employee is functioning as an ordinary witness, then they are entitled to absolute immunity. *Id.* "Even if absolute immunity does not shield an official from liability, 'the doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."'" *Id.* at 400 (quoting *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 815, 172 L. Ed.2 d 565, 573 (2009)).

The Court concludes that to the extent Counts 3 and 4 are based on Defendants responding to lawful subpoenas as directed by the district court and Ludwick's participation as an ordinary witness in a judicial proceeding, Defendants have absolute immunity from those claims. The claims, therefore, must also be dismissed on this ground in addition to the ITCA grounds discussed above.

V. CONCLUSION AND DISPOSITION.

For all of the reasons set forth above, the Court concludes Plaintiff's Counts 1, 2, 3, 4, and 5 are either expressly stated as, or arise out of and are the functional equivalent of, claims of false arrest, malicious prosecution, and/or abuse of process. Thus, the Court lacks subject matter jurisdiction of these claims and they must be dismissed. Plaintiff's remaining claim regarding

equal protection violations in Count 5 does not identify how the alleged actions were related to his membership in a protected class, anyone who was similarly situated and was treated preferentially, and he cannot bring a class-of-one claim against a law enforcement officer's investigatory decisions. Therefore, this claim must be dismissed for failure to state a claim upon which relief may be granted. Plaintiff's Count 6 for negligent investigation is not a recognized tort in Iowa to date and should be dismissed. Counts and 7 and 8 for IIED are no broader than his express claims and/or functional equivalent claims for false arrest, malicious prosecution, and/or abuse of process and would not exist but for those claims. As such, the Court also lacks subject matter jurisdiction over these claims and they must be dismissed.

In addition, Defendants are qualifiedly immune from the claims of false arrest in Counts 1, 2, and 4. They also have absolute immunity for any claims relating to information they provided in responding to lawful subpoenas and Ludwick's participation as an ordinary witness in any judicial proceedings. As the Court has concluded all of Plaintiff's claims must fail and are dismissed for the reasons detailed herein, Plaintiff is not entitled to any attorney fees. Accordingly, the Court concludes Defendants' Motion to Dismiss is **GRANTED in its entirety.**

Court costs are taxed to Plaintiff.

State of Iowa Courts

Case Number	**Case Title**
LACL148061	JASON CARTER VS STATE OF IOWA AND MARK LUDWICK
Type:	ORDER REGARDING DISMISSAL

So Ordered

William P. Kelly, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2021-06-03 12:20:31