Citation: Vergeson v. Kitsap County, 145 Wash.App. 526, 186 P.3d 1140, Wash.App. Div. 2, (2008).

Parties: Plaintiff-Appellant = Magdalina Quitorio Vergeson
Defendant-Respondent = Kitsap County

Facts: On May 24, 1985 Magdalina Vergeson was charged with Forgery and Unlawful issuance of a Bank Check. She was charged under the name "LINA Q. VERGESON a/k/a MAGDALINA QUITARIO CUDDIE." When the charge was entered into the city's database, her name was entered only as Lina Q. Vergeson. Magdalina Vergeson was not entered as an alias. Later, in 1985, the Plaintiff was arrested and a second warrant was issued.

18 years later, Ms. Vergeson was arrested by U.S. Customs Officials on the second warrant issued in late 1985.

On August 18, 2003, county employee Pamela Morris located the warrant and removed it both from both the national and state databases. She found no other warrants under the Plaintiff's name or aliases.

In September 2003, the first warrant was squashed, under the names of "Lisa Vergeson" and "Magdalina Q. Cuddie." A Kitsap County Superior Court clerk called Morris and told her the court had quashed a warrant for a "Magdalina Cuddie" The court order quashing the warrant read: "State of Washington vs. Lisa Vergeson AKA Magdalina Q Cuddie," with Vergeson's names handwritten on the order.

Morris checked the national and Washington State databases, but found no warrants under the name "Magdalina Cuddie" or other names or causes they possessed for Ms. Vergeson. " Morris concluded that this cause number must have been attached to the warrant cause number, which Morris had removed from the databases back on August 18, 2003. Thus, Morris did not find and remove the warrant from the database.

The plaintiff was again arrested on this same warrant in 2004. The court squashed said warrant and it was properly removed from the databases.

On February 13, 2006, the plaintiff sued both the city and county alleging that they had been negligent and had

violated her civil rights by failing to remove all records of her court-quashed warrants from the Washington and national databases.

Prior Proceedings: The trial court granted the city and county's summary judgment motions and dismissed Vergeson's claims.

Issue: Did the trial court err in granting the city and county's motion for summary judgment and dismissing Vergeson's negligence claim? **Note: At oral argument, Vergeson conceded that she does not have a negligence claim against the City. She explained that she had included the City in her complaint to avoid having the County blame the City for the alleged negligence.

Holding: No, the trial court did not err in granting the motion for summary judgment. The mere existence of a court order, without express assurances by the County to a potential plaintiff such as Vergeson, does not create an actionable civil negligence duty either on its own or as a special relationship exception to the public duty doctrine.

Reasoning: To sustain her negligence action, Vergeson must be able to plead and to prove that the County (1) owed a duty to her; (2) breached that duty; and (3) caused her damages, both legally and proximately. *Hartley v. State*, 103 Wash.2d 768, 777, 698 P.2d 77 (1985)

The justices reasoned that a duty of care is owed by the defendant to the plaintiff. Whether the defendant is a governmental entity or a private person, to be actionable, the duty must be one owed to the injured plaintiff and not one owed to the public in general.

Vergeson failed to show that the county owed duty to her individually, much less breached said duty.

There are four exceptions to the Public Duty Doctrine. These exceptions are: (1) legislative intent, (2) failure to enforce, (3) the rescue doctrine, and (4) a special relationship. *Babcock*, 144 Wash.2d at 785-86, 30 P.3d 1261.

For legislative intent to be applicable there must be a statute or regulation in place that protects a specific class of persons. That does not exist in this case.

In failure to enforce, the government employee must possess knowledge of the actual statutory violation, fail to act, and the victim must be within a specific class of persons protected by the state statute. That does not exist in this case.

Vergeson meets none of these failure-to-enforce exception requirements: She fails to identify (1) any statute that was intended to protect her, (2) any statute that was violated, (3) a government agent that had knowledge of a statutory violation, or (4) a government agent failing to take corrective action required by a statute.

The rescue exception to this doctrine does not apply to this brief and is purposely omitted.*

For the Special Relationship exception to the Public Duty Doctrine, the Plaintiff must show a direct contact between herself and a public official who gave her specific assurances, and that she relied on the assurances. While the judge squashed her arrest warrant, no one in the county uttered any assurance to Ms. Vergeson.

The U.S. Supreme Court is clear regarding implied assurances. A government duty cannot arise from implied assurances. *"It is only where a direct inquiry is made by an individual and incorrect information is clearly set forth by the government."* *Babcock*, 144 Wash.2d at 789, 30 P.3d 1261 (quoting *Meaney v. Dodd*, 111 Wash.2d 174, 180, 759 P.2d 455 (1988)) (emphasis added)

The Plaintiff went on to claim that county employee Morris had a duty to further investigate the missing warrant. The U.S. Supreme Court has held that no such duty exists. *Stalter*, 151 Wash.2d at 160, 86 P.3d 1159.

Disposition: Trial court's dismissal of Plaintiff's negligence action on summary judgment affirmed.