

Docket Number 81940

In the
SUPREME COURT
For the
STATE OF NEVADA

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Curtis Wilson, as an individual;

Appellant,

v.

Las Vegas Metropolitan Police Department, a governmental agency, Police
Officer E. Vonjaga, and Police Officer Tennatn, an individual,

Respondents.

*On Appeal from the Granting of Respondents' Motion to Dismiss
Eighth Judicial District Court Case No. A-19-805368-C*

APPELLANT'S OPENING BRIEF

BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC
BRANDON L. PHILLIPS, ESQ.
Nevada Bar No. 12264
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89119
(702) 795-0097, (702) 795-0098 fax
Attorney for Appellants

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS WILSON,

Appellant,

vs.

LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT, a
governmental agency, POLICE
OFFICER E. VONJAGAN an
Individual; POLICE OFFICER
TENNANT, an Individual,

Respondent(s).

SUPREME COURT CASE
NO. 81940

DISTRICT COURT CASE
NO.:
A-19-805368-C

APPEAL

From the Eighth Judicial District Court, Department IV

Clark County, Nevada

The Honorable Gloria J. Sturman

—

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representation are made in order that the judges of this court may evaluate possible disqualification or recusal:

The Appellant, Curtis Wilson is an individual, there are no parent corporations or publicly held companies owning 10 percent or more of the party's stock.

Attorney Brandon L. Phillips began representation in 2019, and is the only attorney for the Appellant expected to present for argument.

Dated this 23rd day of March, 2021

BRANDON L. PHILLIPS, ESQ
Nevada Bar No. 12264
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89119
(702) 795-0097, (702) 795-0098 fax
blp@abetterlegalpractice.com
Attorney for Appellant, C. Wilson

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I. JURISDICTIONAL STATEMENT

This is an appeal from an order of the Eighth Judicial District Court in and for the City of Las Vegas of Clark County, issued on , granting Respondents' Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5) and NRS 11.190. (See Order Granting Mot. ("Order"), Bates No. Wilson 00001 - 00006). The district court's Order is appealable pursuant to N.R.A.P. 3A(b)(3). On October 12, 2020, Appellant timely filed and served a notice of appeal, and then filed the Case Appeal Statement on November 4, 2020.

II. ROUTING STATEMENT

This matter is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(7), because this case originated in the District Court.

III. STATEMENT OF THE ISSUES

- I. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT APPELLANT WAS NOT ENTITLED TO TOLLING WHILE PURSUING ADMINISTRATIVE REMEDIES.**
- II. WHETHER THE DISTRICT COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT PURSUANT TO NRCP 12(b)(5) and NRS 11.190.**

IV. STATEMENT OF FACTS

Appellant's Complaint arose after Respondents' wrongfully detained the Appellant following an alleged illegal lane change, moving violation. On August 22, 2017, Wilson was stopped for a routine traffic violation. Wilson is a retired Las Vegas fireman. He is also an African American. Wilson alleged that before learning of Wilson's public service, the Las Vegas Metropolitan Police Department ("LVMPD") officers who stopped Wilson, Officer Vonjagan ("Vonjagan") and Officer Tennant ("Tennant"), only saw the color of his skin.

Officers Vonjagan and Tennant treated Wilson in a horrifically humiliating and inhumane manner solely because of his skin color. Without cause, Wilson was placed in not one - but two - sets of handcuffs that were so tight they left visible marks on his wrists, cut off circulation to his hands, and caused injuries, some permanent in nature. The Officers gave Wilson conflicting instructions, which Wilson could not comply with based on the nature of the conflicting statements. Instead of recognizing the conflicting the statements, the Officers physically engaged Wilson and demanded that he stop resisting and adhere to there instructions.

Even after placing him in two sets of handcuffs and patting him down – *all for a routine traffic stop* – Officers Vonjagan and Tennant then forced Wilson to stand in the sun in 100°F heat for more than 30 minutes without offering him any shade or water while they purportedly investigated his background. At no time did the officers

who conducted this routine traffic stop have probable cause to believe Wilson was guilty of anything other than an illegal lane change.

Only after the officers learned of Wilson's service as a Las Vegas firefighter did they remove Wilson's restraints. In fact, as demonstrated by the body camera footage from the incident, after spending more than thirty minutes in handcuffs Wilson is asked his occupation, and when he reveals that he is a retired firefighter the officer questioning Wilson immediately calls for the handcuffs to be removed.

By the time the handcuffs were removed the damage was done. Despite receiving prompt medical treatment for the injuries to his hands and wrists, Wilson has been informed by his treating physicians that his injuries will never fully heal. He has been diagnosed with permanent injuries including bilateral medial neuropathy consistent with carpal tunnel syndrome.

After the altercation Wilson went directly home. Shortly after he walked in the door, he received a telephone call from a Las Vegas Metropolitan Police Chief regarding the incident. He was asked to come to LVMPD headquarters where he spoke with the Police Chief in person and submitted to photographs of his hands and wrists.

In response to the treatment, to which he was subjected by Officers Vonjagan and Tennant, Wilson filed a complaint ("Administrative Complaint") with the Metropolitan Police Department Citizen Review Board ("CRB") on October 5, 2017,

thereby commencing the administrative process provided for in NRS 289.387 and Las Vegas City Ordinance Chapter 2.64. A true and correct copy of Wilson's Administrative Complaint (Wilson 00076-00077).

The CRB determined it had jurisdiction over Wilson's Administrative Complaint and provided a copy of the Administrative Complaint to Defendant Officers Vonjagan and Tennant. *See* <https://citizenreviewboard.com/ComplaintProcess.aspx> ("Once the director determines that the CRB has jurisdiction to review the complaint, an acknowledgment letter goes out to the complainant with the assigned case number. A copy of the complaint is sent to the subject officer as well as to the Internal Affairs Bureau (IAB). The officer notification letter states the alleged type of misconduct as well as a date by which the officer may submit a response in writing to the CRB.").

On December 21, 2017, the CRB issued a finding that, "This complaint should be referred to a Hearing Panel of the [CRB] for further review." A true and correct copy of the CRB's December 21, 2017 Findings. (See Wilson 00079). In the correspondence Wilson received from the CRB with its findings, the CRB states, "If you are not satisfied with the decision of the panel, you may contact legal counsel to pursue any other legal remedies available." (See Wilson 00081 Wilson, trusting in the administrative process and satisfied with the decision of the CRB to refer the case

for further review, reasonably believed he did not need to contact legal counsel to pursue other legal remedies at that time.

While Wilson awaited the outcome of the hearing scheduled by the CRB, the LVMPD Internal Affairs Bureau (“IAB”) also reviewed the matter.

On January 11, 2018 the CRB held its initial hearing and found, “The Hearing Panel disagrees with the findings of Internal Affairs and this complaint will be scheduled for an evidentiary hearing with all subject officers, the complainant and any witnesses to be subpoenaed.” (See Wilson 00083 – 00085).

On February 12, 2018, Sheriff Joseph Lombardo and the IAB sent a letter to Wilson informing him that, “After a thorough and impartial review, the investigation failed to produce sufficient evidence to clearly prove or disprove the allegation(s), or it was determined the actions taken by the employee(s) did not rise to the level of misconduct, or was not a policy violation(s).” (See Wilson 00087).

In addition to informing Wilson of the results of the preliminary investigation conducted by the IAB, the correspondence advised Wilson as to what steps he should take in response to the determination: “If you are not satisfied with this finding, and the complaint was against a Police or Corrections Officer, you may file a complaint with the Citizen Review Board . . . Please note you only have one year from the date of the incident to file a complaint with them.” (See Wilson00087).

Just a few days later, the CRB issued subpoenas to Wilson, Officer Vonjagan, Officer Tennant, and several other members of the LVMPD commanding their appearance at an administrative hearing on March 14, 2018. (See 00089 – 00095). Although extremely disheartened by the results of the IAB preliminary investigation, Wilson continued to follow the administrative process through.

On March 14, 2018, Wilson attended the CRB hearing. Much to his disappointment, the CRB issued findings and recommendations that agreed in part with the IAB. The CRB's March 14, 2018 Findings. (See Wilson 00097 – 00100).

While the CRB findings also recommended improved officer training, they did not go nearly far enough to address the grave injustice, humiliation, and egregious treatment Wilson suffered at the hands of Officers Vonjagan and Tennant.

Accordingly, after seeing the administrative process through to its conclusion Wilson realized that he had no other choice but to pursue his legal remedies. Thus, Wilson was entrenched in the administrative proceedings from October 5, 2017 through March 14, 2018. Wilson argued at the District Court level and herein on appeal that during the time in which Wilson proceeded through the administrative process the statute of limitations on his legal claims was tolled.

Time Line of Events

Date	Event
10/05/2017	Wilson Filed LVMPD Citizen Review Board (CRB) Complaint
12/21/17	CRB Screening Panel Findings Issued
12/21/17	CRB Letter to Wilson Re. Findings
1/11/18	CRB Letter Hearing Panel Letter and Panel Disposition Report
2/12/18	LVMPD Internal Review Findings
2/21/18	CRB Subpoenas
3/15/18	CRB Final Hearing Panel Disposition Report following hearing
11/13/19	Wilson Initial Complaint Filed w/District Court

V. PROCEDURAL HISTORY

1. On November 13, 2019, Appellant filed initial Complaint.
2. On April 30, 2020, Appellant filed First Amended Complaint. (See Wilson 00007 – 00021).
3. On June 25, 2020, Respondents filed Motion to Dismiss. (See Wilson 00022 – 00061).
4. On July 21, 2020, Appellant filed an Opposition. (See Wilson 00062 – 00100).
5. On September 14, 2020, Notice of Entry of Order Granting Defendants Motion to Dismiss (See Wilson 00001 – 00006).
6. On October 12, 2020, Wilson filed the Notice of Appeal.

VI. LEGAL ARGUMENT

A. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT APPELLANT WAS NOT ENTITLED TO TOLLING WHILE PURSUING ADMINISTRATIVE REMEDIES.

The basic and critical facts, at present issue, are not disputed by the Parties. The timeline of events, is not disputed by the Parties. The issue before the Supreme Court is an issue of public policy and tolling. The Supreme Court must consider the critical purpose of the administrative process and its importance in the legal process. If an administrative remedies exists, the claimant should be afforded the benefit of tolling while the claimant exhausts the administrative remedies available to him/her. Regardless of whether the administrative remedies are a pre-requisite to the filing of legal claim, one of the purposes of the administrative process is to ease the burden on the already overcrowded judicial system. Claimants who diligently exercise the administrative process should be afforded the benefit of tolling their legal claims.

At the District Court level, the Court ignored the critical benefit the administrative process affords claimants and the judicial system. By failing to place a premium on the administrative process the District Court's ruling essentially renders the administrative process meaningless. As further detailed herein, even

Nevada courts have found the administrative process an essential tool in streamlining the legal process for not only the claimant, but the courts as well.

The question of whether statutes of limitation are tolled during the pendency of administrative proceedings was answered in the affirmative by the Nevada Supreme Court in *State, Dep't Human Resources v. Shively*, 110 Nev. 316, 317 (Nev. 1994). There the Court held, “the statute of limitations applicable to [the plaintiff’s] legal claim for relief was tolled while the litigants were trying to obtain an administrative solution to the underlying dispute.” *Id.* The court explained that a plaintiff must not “be penalized for pursuing an administrative resolution to its dispute.” *Id.* Because the tolling question presented in *Shively* was one of first impression, the Court looked to other jurisdictions and found as follows:

While Nevada has not specifically addressed this issue, decisions from other jurisdictions recognize this sound principle. For example, in *Myers v. County of Orange*, 86 Cal.Rptr. 198 (Ct.App. 1970), the trial court found that a one-year claims limitations statute on plaintiff’s wrongful termination claim had expired, even though the plaintiff had previously pursued an administrative remedy. On appeal, plaintiff argued that the limitations period was tolled while she sought review of the same employment termination dispute with the Retirement Board of the County of Orange. The California Court of Appeals agreed. The court held that **even where exhaustion of administrative remedies was not a prerequisite to filing suit, the limitations period was tolled while plaintiff was entrenched in the administrative process.** The court reasoned that **the law favored resolution of disputes in the administrative forum and that the plaintiff should**

not have the "clock of limitations tick in his ear" while pursuing administrative action: "When an injured person has several legal remedies and, reasonably and in good faith, pursues one designed to lessen the extent of the injury or damages, the statute of limitations does not run on the other while he is thus pursuing the one[.]" *Id.* at 203-04; *see also Zipes v. Transworld Airlines*, 455 U.S. 385 (1982) (timely filed administrative claim tolls limitations period of second action filed in federal court); *Campbell v. Graham-Armstrong*, 509 P.2d 689, 694 (Cal. 1973).

As evidenced by the foregoing authorities, it does not make sense for NSWDC to lose its cause of action simply because it was pursuing, and was required to pursue, administrative remedial action.

Id. at 318.

The reasoning the Nevada Supreme Court cited with approval in *Shively* should have applied in favor of the Appellant at the District Court level. Even though exhaustion of administrative remedies was not a prerequisite to filing suit, the limitations period should be tolled while Wilson was entrenched in the administrative process. The law favors resolution of disputes in the administrative forum and citizens aggrieved by the conduct of LVMPD Officers should not have the "clock of limitations tick in [their] ear[s]" while pursuing administrative action. Indeed, the Respondents, throughout the administrative process, urged Wilson to seek redress through the administrative process, informing him that if he was not satisfied with the findings of the IAB investigation, "you may file a complaint with the [CRB]." *See Wilson 00087*. Wilson or other similarly situated citizens to lose their causes of

action simply because they are pursuing the very administrative remedial action recommended by LVMPD. The District Court placed emphasis on the argument that all of Wilson's claims could not have been resolved by the administrative process. Regardless, there are issues that could/should have been resolved during the administrative process, which would have streamlined any future legal proceedings. As the California Court of Appeals clearly stated, even when the administrative process was not a prerequisite to the filing of a complaint, the limitations period should be tolled during the administrative process. As argued by the Appellant, the administrative process, afforded to claimants is rendered meaningless if the claimant is required to pursue the legal claim at the same time.

Likewise the policy and equitable considerations underlying the Nevada Supreme Court's decision in *Shively* apply here. As explained in *Shively*,

[T]he concerns alleviated by traditional statute of limitations law simply do not apply. The defendant is not caught off guard when faced with legal claims for relief that were just examined in the administrative process. The administrative process puts the defendant on notice that his actions are in dispute and may spur additional and separate legal battling.

110 Nev. 316 at 318-19. Here, it is undeniable that Respondents had notice of Wilson's claims. Not only did the administrative process put Respondents on notice that their actions were in dispute, they were clearly aware that conduct was in dispute. Defendant LVMPD had an opportunity to conduct, and did in fact conduct,

its own investigation, which it admits was “thorough,” “went through two levels of review,” and took into account “all reports and available investigative resources from the incident.” *See Wilson 00087*. Moreover, Respondents, Vonjagan and Tennant were both subpoenaed to appear and give testimony at the March 14, 2018 CRB hearing. *See Wilson 00089 - 00095*. As the Respondent admitted, “The Nevada Supreme Court had held that the primary purpose of statutes of limitations is to ‘[prevent] surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.’” *See Wilson 00026*, p.5:5-7.

At the District Court, the Respondents failed to assert, nor could they assert, that Wilson’s Complaint came as a surprise, that any evidence has been lost, any memories have faded, or any witnesses have disappeared. The Respondents have all been on active and continued notice of Wilson’s claims since at least October 5, 2017 when he filed his Administrative Complaint with the CRB. Moreover, the incident itself was captured on a “body cam” worn by one of the involved officers, and this recording was supplied to Wilson and continues to be preserved by Wilson for production in this case. There is no doubt the Respondents are in possession of a copy of the “body cam” video as well. Therefore, there was no potential for loss of evidence during the interim.

Further, in *Siragusa*, the appellant asserted fraud claims against a lawyer and law firm she alleged masterminded a scheme to allow her ex-husband to deprive her of property awarded to her in the divorce settlement agreement. The district court applied the discovery rule and found that the plaintiff's claims accrued at the latest on the day she became aware that a "sham" transfer had been concocted. The Nevada Supreme Court also based its decision on the discovery rule, but reversed the District Court, holding "[W]e conclude that such awareness did not, as a matter of law, constitute discovery . . . of facts constituting the fraud allegedly perpetrated by Brown." *Id.* at 1391. The Nevada Supreme Court remanded the case to the district court with the following instructions, "Thus, on remand the trier of fact must determine whether [plaintiff's] discovery of [defendant's] involvement was delayed due to her alleged attempts to conceal her role and whether [plaintiff] could have, nonetheless, discovered her identity earlier through diligent inquiry." *Id.* at 1394-95.

In *Siragusa*, the Court's only mention of *Shively* appears in a footnote which states, "However, we specifically reject appellants' argument that because they were litigating the same issues against Brown in the bankruptcy proceedings as were set forth in the instant complaint, the limitations periods were tolled during the pendency of those bankruptcy proceedings. . . . we hold that our prior cases tolling the statutes of limitations during the pendency of other proceedings are limited to their facts and have no broader application in the instant case." The Court then cited *Shively* and

another case as examples of such prior jurisprudence. *Id.* at 1395 fn7. The equitable tolling sought by the plaintiff in *Siragusa* would have significantly extended the application of the Court's ruling in *Shively*, and the mere fact that the Court declined to make such a sweeping extension does not counsel against application of *Shively* where, as it was here, it is squarely on point.

As presented at the District Court level, the facts here are remarkably similar to those at issue in *Shively*, whereas the facts at issue in *Siragusa* were readily distinguishable. *Shively* involved fraud claims asserted by the State of Nevada, Department of Human Resources, Welfare Division ("NSWD") against the personal representative of a Medicaid applicant. Before filing suit NSWDC notified Shively of the suspected fraud and afforded him an opportunity to prove the transaction giving rise to the suspicion had not been undertaken for an improper purpose. As presented at the District Court, Wilson argued, that before filing suit the Respondents were notified of the wrongdoing, giving rise to the claims and gave Respondents an opportunity to meaningfully address the wrongdoing and take corrective action through the administrative process. Like the administrative process at issue in *Shively*, the CRB was established for the express purpose of resolving the claims at issue. Indeed, the LVMPD's own website urges citizens to utilize the administrative process to resolve complaints of officer misconduct. Specifically, it states, "The [CRB] was established for the purpose of receiving and investigating complaints of

misconduct by peace officers of the [LVMPD].” <https://www.lvmpd.com/en-us/Pages/InternalAffairs-CitizenReviewBoard.aspx> (last visited July 20, 2020); *see also* <https://www.lvmpd.com/en-us/Pages/InternalAffairs-Complaints.aspx> (last visited July 18, 2020) (“If you feel that you have a complaint against an employee of the Las Vegas Metropolitan Police Department, please use the form below.”)

Therefore, as clearly established, the administrative process exists for the express purpose of resolving claims like those asserted by Wilson. The Respondents and the CRB actually invited Wilson to seek resolution of his complaints through the administrative process. The administrative process provided for relief of Wilson’s claims and afforded the parties an opportunity to resolve the issues without litigation.

In *Siragusa*, there was no administrative process through which the plaintiff sought redress of her claims against the lawyer and law firm she ultimately sued. Neither the lawyer nor the law firm was a debtor in the bankruptcy proceeding, and although she sought to have the bankruptcy court exercise supplemental jurisdiction over the defendants her adversary claims against them were dismissed. Thus, even if bankruptcy proceedings were administrative proceedings (which they are not), they were not designed to provide a forum to resolve the types of claims at issue in *Siragusa*. Simply put, *Siragusa* is distinguishable from both *Shively* and Wilson’s claims.

Respondents argued, and the District Court based its ruling on the argument that the administrative process was not mandatory, and therefore Wilson should not receive the benefit of tolling. Although the Nevada Supreme Court has not addressed this issue head on, it did comment on the question in *Shively*. There the Court cited with approval the California case, *Myers v. County of Orange*, 86 Cal.Rptr. 198 (Ct.App. 1970), where it was “held that even where exhaustion of administrative remedies was not a prerequisite to filing suit, the limitations period was tolled while plaintiff was entrenched in the administrative process.” 110 Nev. 316 at 318. Moreover, where Nevada law is silent, the Nevada Supreme Court looks to California case law as instructive. See *Platinum Unit-Owners' Ass'n v. Residential Constructors, LLC*, 2015 WL 1186530, at *5 (D. Nev. Mar. 16, 2015) (“Nevada courts often look to California law where Nevada law is silent.”). Thus, as indicated by the Nevada Supreme Court’s discussion in *Shively*, and in line with the California case law cited with approval in *Shively*, even where exhaustion of administrative remedies is not made mandatory, Wilson should not be penalized for attempting to avoid litigation by placing his faith in the very administrative processes that have been established for the purpose of resolving such claims.

In *Wisenbaker v. Farwell*, 341 F. Supp. 2d 1160 (D. Nev. 2004), the United States District Court for the District of Nevada interpreted Nevada law on equitable

tolling, including in its analysis a discussion of the Nevada Supreme Court's decision in *Shively*. The court noted,

Although there is no controlling law, the Nevada courts have dealt with the issue of equitable tolling in other contexts. In dealing with Nevada's anti-discrimination statutes, the Nevada Supreme Court set out Nevada's doctrine of equitable tolling as follows:

“Without limiting or restricting the application of the doctrine of equitable tolling, we note that there are several factors which have been mentioned by the above authorities in determining whether the doctrine should apply in a given case. Those factors include: the diligence of the claimant; the claimant's knowledge of the relevant facts; the claimant's reliance on authoritative statements by the administrative agency that misled the claimant about the nature of the claimant's rights; any deception or false assurances on the part of the employer against whom the claim is made; the prejudice to the employer that would actually result from delay during the time that the limitations period is tolled; and any other equitable considerations appropriate in the particular case.”

Copeland v. Desert Inn Hotel, 99 Nev. 823, 826, 673 P.2d 490, 492 (Nev. 1983). The Nevada Supreme Court has applied this standard in subsequent cases. See State, Dep't of Human Resources v. Shively, 871 P.2d 355 (Nev. 1994) (tolling a statute of limitations where the state was required to pursue administrative action); and Siragusa v. Brown, 971 P.2d 801, 808 n. 7 (refusing to toll the statute of limitations during the pendency of prior bankruptcy proceedings).

Wisembaker v. Farwell, 341 F. Supp. 2d 1160, 1164-65 (D. Nev. 2004).

Of the factors outlined by the Nevada Supreme Court in *Copeland*, and relied upon by the Federal District Court in *Wisembaker*, four (4) are applicable here: (1) the

diligence of the claimant; (2) the claimant's reliance on authoritative statements by the administrative agency that misled the claimant about the nature of the claimant's rights; (3) the prejudice to the defendant that would actually result from delay during the time that the limitations period is tolled; and (4) any other equitable considerations appropriate in the particular case.

Wilson was indisputably diligent in pursuing his claims. He filed his Administrative Complaint less than two months after the incident that gave rise to his claims. He actively participated in the administrative process, and promptly upon its unsatisfactory conclusion sought legal counsel to pursue other legal remedies.

The Respondents instructed Wilson to seek redress through the administrative process, and made statements indicating that legal action would only be necessary if he were dissatisfied with its outcome. *See Wilson 00081* ("If you are not satisfied with the decision of the panel, you may contact legal counsel to pursue any other legal remedies available."); see also *Wilson 00087*, ("If you are not satisfied with this finding, and the complaint was against a Police or Corrections Officer, you may file a complaint with the Citizen Review Board . . . Please note you only have one year from the date of the incident to file a complaint with them."). Notably, although LVMPD advised Wilson of the one (1) year time limit to pursue an administrative claim, neither LVMPD nor the CRB ever advised Wilson of the two (2) year time limit to pursue a legal claim.

Respondents have suffer no prejudice due to delay. Respondents admitted that primary purpose of statutes of limitation is to guard against surprise and to avoid situations that would require defense of legal claims where evidence is missing due to delay. As the Court held in *Shively*, “the concerns alleviated by traditional statute of limitations law simply do not apply. The defendant is not caught off guard when faced with legal claims for relief that were just examined in the administrative process.” 318-19. Here, as in *Shively*, there was no surprise as Respondents have known of Wilson’s claims since commencement of the underlying administrative proceeding. Moreover, Wilson first sought redress of his claims by submitting to Respondents’ own internal and administrative review processes. As a result of those processes, all of the evidence – including a “body cam” recording of the incident itself - has been well preserved. And the witnesses who are likely to testify in this matter are the same witnesses who were subpoenaed to testify in the March 14, 2018 administrative hearing before the CRB.

Finally, Wilson argued at the District Court that equitable considerations weighed strongly in favor of tolling. The gravity of the claims at issue demands resolution on the merits. Wilson is a 71-year old retired Las Vegas firefighter. For more than twenty years he put his life on the line serving the people of Las Vegas. He is no doubt a man deserving of respect and admiration. Yet for some reason, on August 22, 2017 he was subjected to extreme and outrageous mistreatment at the

hands of Respondents. Wilson's claims are not trivial and must not readily be disposed of on procedural technicalities. The claims asserted by Wilson weigh heavy in the scales of justice. Such claims deserve resolution on the merits.

B. WHETHER THE DISTRICT COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT PURSUANT TO NRCP 12(b)(5) and NRS 11.190.

In short, the District erred in dismissing Wilson's claims because the District Court should have afforded Wilson the requested tolling. Wilson's Complaint would have been timely if he would have been afforded the tolling requested. As the Order of Dismissal is based solely on the determination of the Court that no tolling should apply and Wilson missed the two year statute of limitations for filing his claim, should the Supreme Court side in Wilson's favor then dismissal would be improper and should be set aside.

VII. Conclusion

The issues on Appeal all stem from the dismissal of Appellant's Complaint. The District Court erred in dismissing the Complaint at the initial stage of the litigation. The Dismissal was based on not affording Wilson any tolling while he exhausted the administrative remedies. Based on the case law, as cited by Wilson, directly on point through *Shivley*, the District Court should have granted the tolling arguments and confirmed that the Complaint was timely filed.

Based on the foregoing, the District Court erred in Dismissing the Complaint.
The Orders should be set aside and Appellant's Complaint must be reinstated.

BRANDON L. PHILLIPS, ESQ
Nevada Bar No. 12264
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC
1455 E. Tropicana Ave., Suite 750
Las Vegas, NV 89119
P: (702) 795-0097; F: (702) 795-0098
blp@abetterlegalpractice.com
Attorney for Appellant, C. Wilson

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Opening Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This Opening Brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size;

2. I further certify that this brief complies with the page -or- type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more and contains 5,000 words; and Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompany brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 23rd day of March, 2021.

BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

/s/ Brandon L. Phillips, Esq.
BRANDON L. PHILLIPS, ESQ.
Nevada Bar No. 12264
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89119
Attorney for Appellant, C. Wilson

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on March 23, 2021.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that I am not aware of any of the participants in the case that are not registered CM/ECF users.

DATED this 23rd day of March, 2021.

BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

/s/ Brandon L. Phillips, Esq.
BRANDON L. PHILLIPS, ESQ.
Nevada Bar No. 12264
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89119
Attorney for Appellant, C. Wilson