IN THE SUPREME COURT OF THE STATE OF IOWA

No. 21-1072

Muscatine County No. LACV022876

SHARI L. MARTIN,	)
Plaintiff-Appellant,	)
	)
	)
vs.	)
	)
THOMAS A. TOVAR, Individually	)
And in his official capacity and	)
CITY OF MUSCATINE, IOWA,	)
Defendants-Appellees.	)

APPEAL FROM IOWA DISTRICT COURT FOR MUSCATINE COUNTY
THE HONORABLE STUART P. WERLING

PLAINTIFF-APPELLANT'S REPLY BRIEF AND REQUEST FOR ORAL ARGUMENT

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PROOF OF SERVICE

The undersigned attorney hereby certifies on December 30, 2021, I electronically filed the foregoing Plaintiff-Appellant's Reply Brief with the Clerk of the Supreme Court of Iowa using the EDMS system which will send notification of such filing to each of the attorneys of record of all parties.

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CERTIFICATE OF FILING

The undersigned attorney further certifies that the foregoing Plaintiff-Appellant's Reply Brief was electronically filed with the Supreme Court of Iowa by using the EDMS system, on this 30th day of December, 2021.

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. THE CITY OF MUSCATINE ERRONEOUSLY INDICATED THAT THE FACTS OF OTHER JURISDICTIONS IMPOSING AN AIDED-BY-AGENCY THEORY, OR VICARIOUS LIABILITY, FOR A SEXUAL ASSAULT OF A MEMBER OF THE PUBLIC BY A POLICE OFFICER ON DUTY, ARE FACTUALLY DISTINGUISHABLE FROM MARTIN'S CASE.

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I. THE CITY OF MUSCATINE ERRONEOUSLY INDICATED THAT THE FACTS OF OTHER JURISDICTIONS IMPOSING AN AIDED-BY-AGENCY THEORY, OR VICARIOUS LIABILITY, FOR A SEXUAL ASSAULT OF A MEMBER OF THE PUBLIC BY A POLICE OFFICER ON DUTY, ARE FACTUALLY DISTINGUISHABLE FROM MARTIN'S CASE.

In Issue 3(c)(8), the City of Muscatine indicates the facts of the cases cited that imposed police department or government liability for the acts of police officers, in committing sexual assaults on duty, are distinguishable from the case at hand. This is simply not correct. Contrary to the City of Muscatine's assertion, at least two (2) cases are almost exactly factually on point to the Martin sexual assault.

First, one of the most important cases, cited by Plaintiff, in her brief, discussing police department liability, is *Jane Doe v. Morris*, 213 WL 3933928 (Fed. Supp. E.D. LA 2013). In that case, Police Officer Morris gave a ride home, from a bar, to a 22-year-old woman attending Nicholls State University, in Thibodaux, Louisiana. The college student, Jane Doe, requested that Officer Morris, who was on duty as a patrolman, for the Thibodaux Police Department, drive her to her nearby on-campus apartment. Morris, like Officer Tovar

herein, was in full uniform, and driving a marked police car. The department, like the City of Muscatine, had a policy that an on-duty patrol officer would honor a request to drive intoxicated people home. In the case of Muscatine, the police department had a policy that would give intoxicated individuals, not under arrest, a courtesy ride home. Tovar followed that practice, still on duty, and escorted Martin a few blocks to the Clarion hotel near the traffic stop. (Vol.I.App.p.316,Ruling Summary Judgment,p.2,ll.1-2; Vol.I.App.pp.71,77-78,Muscatine Statement/Undisputed Facts,para.4-Exhibit A,paras.14-25; Vol.II.Conf.App.p.23, Plaintiff's Additional/Undisputed Facts filed 8/18/2017,para.9; Vol.II.Conf.App.pp.41-42,Exh.2-Tovar's Criminal Trial Transcript (hereinafter Tr.Transcript), p.292,ll.24-25,p.293,ll.1-25.) See *Doe v. Morris*, 213 WL 3933928 (Fed. Supp. E.D. LA 2013).

As with Tovar, Officer Morris escorted the intoxicated woman (college student) to her door, and entered her apartment. *Doe v. Morris*, 213 WL 3933928 (Fed. Supp. E.D. LA 2013). As with Officer Morris, Tovar contested, in his

criminal trial, whether the sex was consensual. *Doe v. Morris*, 213 WL 3933928 (Fed. Supp. E.D. LA 2013). In the Martin case, Officer Tovar escorted Shari Martin to the door of her Clarion hotel room. In *Doe v. Morris*, Jane Doe even testified she had trouble getting her key into the door, similar to what Officer Tovar indicated about Shari Martin. (Vol.I.App.p.316,Ruling Summary Judgment,p.2, ll. 1-2; App.pp.71,77-78, Muscatine's Statement of Undisputed Facts, para.4, Exh.A., para. 14-25; Vol.II.Conf.App.pp.23,41-42,Plaintiff's Additional Undisputed Facts, filed 8/18/2017, para. 9, Exh. 2-Tr.Transcript, p. 292, ll.24-25, p. 293, ll.1-24.) Officer Tovar told his supervisor, Lt. Kies, a story about Martin breaking her hotel key, as she tried to enter her room, and later retracted such as a lie, which caused Lt. Kies to become concerned. (Vol.II.Conf.App.pp.24,38,Plaintiff's Statement of Additional Material Facts,para. 18-Exh. 2- Tr.Transcript p.249,ll.2-25,p.250, ll.1-11.) *Doe v. Morris*, 213 WL 3933928 (Fed. Supp. E.D. LA 2013).

Very similar to Shari Martin, Jane Doe testified that she heard and felt things, but was too intoxicated to move her

body. She did not recall Morris walking in, but recalled hearing the steps of someone walking around, and the sound of Velcro. Also, similar to Martin, she said that she felt someone flip her over onto her back and his penis in her mouth, but she could not remember the vaginal intercourse. When she awoke, she knew she had had vaginal intercourse. *Doe v. Morris*, 213 WL 3933928, pp. 1-2 (Fed. Supp. E.D. LA 2013).

Like Jane Doe, in *Doe v. Morris*, Martin did not remember the assault (sexual intercourse) until the next morning, when her boyfriend, Faust, arrived back to the hotel room. (Vol.I.App.p.85, City of Muscatine's Motion for Summary Judgment Reply, Exh.J,p.145-146.) *Doe v. Morris*, 213 WL 3933928, p.2 (Fed. Supp. E.D. LA 2013). Neither Shari Martin, nor Jane Doe, were under arrest. Officer Morris later pleaded guilty to a malfeasance in office. *Doe v. Morris*, 213 WL 3933928, p.2 (Fed. Supp. E.D. LA 2013). Tovar was convicted of a Class C Felony of Sex Abuse in the 3rd Degree, based on his rape of Martin at the Clarion hotel, Case No. FECR 049753. (Vol.II.Conf.App.p. 21,Plaintiff's Response/

Muscatine's Statement Material Facts, para. 2; Vol.II.Conf.App.pp.32-33, Certified copy of jury verdict, Exh. 1; Vol.I.App.p.71, Muscatine's Statement/Undisputed Facts-para. 8.)

The Defendant would have you believe that *Doe v. Morris* is significantly distinguishable, from the Tovar/Martin case. In fact, it is almost as factually on-point as is possible for two cases to be. As pointed out, in *Doe v. Morris*, by the Federal Court, like other precedence in the State of Louisiana, including *Applewhite v. City of Baton Rouge*, 380 So.2d 119, (LA.App.1979); *Latullas v. State*, 658 So.2d 800, 805 (LA 1995); *Turner v. State*, 494 So.2d 1292, 1296 (LA.App.2nd Cir. 1986), Officer Morris was in a position to commit the sexual act, only because of the authority of his position and the policies of the police department. *Doe v. Morris*, 213 WL 3933928, p.4 (Fed. Supp. E.D. LA 2013).

In the *Morris* case, the Defendant, Travelers Insurance, attempted to distinguish *Morris* from the other line of cases involving police sexual assaults, while on duty, by indicating that it was different because he did not force the Plaintiff into

a private area, or make the Plaintiff believe she must allow him to have sexual contact with her. Nevertheless, the Court, in *Doe v. Morris*, found that the police officer was in the unique position, of authority and trust, given to police officers in society, that created the context in which Officer Morris was able to take Plaintiff back to her bedroom alone. *Doe v. Morris*, 213 WL 3933928, p.4 (Fed. Supp. E.D. LA 2013).

Like in the previously cited Louisiana cases, the Court, in *Doe v. Morris*, found that when an officer's position of authority creates a relationship between the officer and a member of the public, within the context of the officer's official duties, and that relationship gives rise to the opportunity and commission of a rape, or sexual assault, the harm is attributable to the employer. *Doe v. Morris*, 213 WL 3933928, p.4 (Fed. Supp. E.D. LA 2013).

In any event, in this case, we do not know if the jury, who convicted Thomas Tovar, thought he had coerced Plaintiff into sexual activity, or whether she was unable to consent due to her being so intoxicated when he engaged in sexual intercourse with her. We do, however, know that he was

convicted of Sex Abuse in the 3rd Degree, a Class C Felony. (Vol.II.Conf.App.p.21, Plaintiff's Response/Muscatine Statement Material Facts, para.2; Vol.II.Conf.App.pp.32-33, Certified copy of jury verdict-Exh.1; Vol.I.App.p.71, Muscatine's Statement Undisputed Facts, para.8.) In the *Morris* case, like in this case, the parties did not dispute that it was within the duties and practice, of an officer, to take intoxicated individuals home, and to ensure their safety. *Doe v. Morris*, 213 WL 3933928, pp.4-5 (Fed. Supp. E.D. LA 2013). Like Tovar, Morris was acting within the scope of the course of his duties when he had sex with Plaintiff. *Doe v. Morris*, 213 WL 3933928, p.5 (Fed. Supp. E.D. LA 2013).

Interestingly enough, like Tovar, Morris had his police radio on the entire time. *Doe v. Morris*, 213 WL 3933928, p.2 (Fed. Supp. E.D. LA 2013). Tovar, although turning off his camera, in his vehicle, and body microphone, did have his radio on, and received another dispatch call to respond to a domestic disturbance, while at the hotel with Martin. (Vol.I.App.pp.72,104,109, Muscatine Statement/Undisputed Facts, para. 10, Exh. D, pp. 457, 494-495;

Vol.II.Conf.App.pp.92-93-Exhibit 14; Vol.I.App.pp.72,106,109, Muscatine Statement/Undisputed Facts, para. 14, Exh. D, pp. 468, 496.)

To assert that these two factual patterns are not similar, in the City of Muscatine's argument 3, related to the aided-in-agency theory, is incorrect and highly misleading.

In fact, this isn't the only case where a police department was held liable wherein an intoxicated woman was sexually assaulted by a police officer in uniform. In *Cox v. Evansville Police Department*, an Indiana case, two (2) sexual assaults, of intoxicated women, committed by police officers, while on duty, were addressed. *Cox v. Evansville Police Department*, 107 N.E.3d 453,457, 458 (IND 2018).

In the first instance, two females had been drinking and arguing at one of their apartments. Two officers responded, but Officer Montgomery called off the other officer to handle the situation alone. *Cox v. Evansville Police Department*, 107 N.E.3d 453,457 (IND 2018). Officer Montgomery then drove Plaintiff Cox home and reported to dispatch that he had "cleared the run". Officer Montgomery then accompanied Cox

to her door. After she opened it, Officer Montgomery followed her in without invitation or force. Officer Montgomery then had sex with the intoxicated woman, Jennifer Cox, who was not under arrest. This included vaginal intercourse. Officer Montgomery was convicted of two (2) counts of felony criminal deviant conduct. *Cox v. Evansville Police Department*, 107 N.E.3d 453,457 (IND 2018).

Unfortunately, as pointed out by the Indiana Court, there was also another Indiana police officer who took advantage of an intoxicated woman. Officer Mark Rogers responded to a call where a woman was pulled off the road and intoxicated, in the driver's seat, teetering in and out of consciousness. *Cox v. Evansville Police Department*, 107 N.E.3d 453,457 (IND 2018). Officer Rogers then drove the intoxicated Babi Beyer to lockup for booking, but because she became sick and vomiting, he drove her to the hospital. *Cox v. Evansville Police Department*, 107 N.E.3d 453,457 (IND 2018). After Ms. Beyer was treated at the hospital, changed clothes into scrubs, and received an alcohol blood test, she was released into police custody, by the physician. *Cox v. Evansville Police Department*, 107 N.E.3d

453,457 (IND 2018). Officer Rogers then handcuffed Beyer, and put her into the backseat of his patrol car. Officer Tovar, in his patrol car, gave Martin a short ride to the Clarion hotel near the traffic stop, which was after he participated in a traffic stop of Martin's boyfriend, who was arrested for operating while intoxicated. (Vol.I.App.pp.70,76-77,89-90, Muscatine's Statement/Undisputed Facts-para.3-Exh.A, paras.7-11,Exh. B, paras.7-11; Vol.I.App.p.316, Ruling/Summary Judgment, p.2,ll.11-12; Vol.I.App.pp.71,77-78, Muscatine's Statement/Undisputed Facts-para.4-Exh. A-paras.14-25; Vol.II.Conf.App.pp.23,41-42, Plaintiff's Additional/Undisputed Facts filed 8/18/2017-para.9-Exh. 2-Tr. Transcript, p.292,ll.24-25,p.293,ll.1-24.)

Officer Rogers then took Ms. Beyer to a dark, quiet area, and removed her from the backseat of the car, and had sex with her on a bench. All of this was while he was in full police uniform, weapon belt included. Officer Rogers then drove his police car to a parking lot, and locked Ms. Beyer inside a crime scene van, where she was unconscious. Officer Rogers was convicted of three (3) felonies: official misconduct, sexual

misconduct, and rape. *Cox v. Evansville Police Department*, 107 N.E.3d 453,457-458 (IND 2018).

These cases are also similar in context, involving two different intoxicated women. One of the women, like Martin, was not under arrest.

The Court, in *Cox v. Evansville Police Department*, 107 N.E.3d 453,462-463 (IND 2018) found that when an officer misuses employer-conferred power and authority, to commit sexual assault, the city is liable for the assault, if it arose naturally and predictably from the officer's employment activities. *Cox v. Evansville Police Department*, 107 N.E.3d 453,462-463 (IND 2018).

As other courts have observed: "The danger that an officer will commit a sexual assault, while on duty, arises from the considerable authority and control inherent in the responsibilities of an officer enforcing the law." *Cox v. Evansville Police Department*, 107 N.E.3d 453,457 (IND 2018) citing *Mary M. v. City of Los Angeles,* 814 P.2d 1341,1350 (CA.App.1991). However, employees, without such authority and power, who commit sexual assaults, may be well acting

outside the scope of their employment as a matter of law. *Cox v. Evansville Police Department*, 107 N.E.3d 453,463 (IND 2018) citing *L.N.K. ex rel. Kavanaugh v. St. Mary's Medical Center*, 785 N.E. 2d 303, 308 (IN.Ct.App.2003).

In further explaining the unique authority, of a police officer as it affects the City's liability for sexual assaults, committed by the officer on duty, *Cox v. Evansville Police Department*, 107 N.E.3d 453,462-463 (IND 2018), explains as follows:

> "Cities assign police officers law-enforcement and community-protection duties. Those duties come with state authority to detain, arrest, frisk, search, seize, and even use deadly force when necessary." *Cox v. Evansville Police Department*, 107 N.E.3d 453,463 (IND 2018) citing *Plumhoff v. Rickard,* 572 US 765, 134, S. Ct. 2012, 2021-22 (2014) and *Terry v. Ohio*, 293 US 1, 29-30, 88 S. Ct. 1868 (1968).

The *Cox v. Evansville Police Department* case continues by providing the following analysis:

> "Cities also outfit their officers with visible signs of their employer-conferred authority – a marked car, uniform, badge, and weapons – which officers use to carry out their employment duties. These duties frequently authorize and involve entering homes, detaining criminal suspects at gunpoint; placing suspects in handcuffs and into police vehicles, and subjecting them to forceful, nonconsensual, and offensive contact." *Cox v. Evansville*

> *Police Department*, 107 N.E.3d 453,462-463 (IND 2018) citing *Arizona v. Johnson*, 55 US 323, 328, 332, 129 S. Ct. 781 (2009); *Los Angeles County v. Rettele*, 550 US 609, 611, 615, 127 S. Ct. 1989 (2007).

The *Cox v. Evansille Police Department* case correctly finds: "Investigating officers with these considerable and intimidating powers comes with an inherent risk of abuse." *Cox v. Evansville Police Department*, 107 N.E.3d 453,463 (IND 2018) citing *Doe v. Forrest*, 176 VT. 476,853 A.2d 48,61-62 (2004).

Felony abuse is a tortious act, arising naturally, or predictably, from the police officer's employment activities. It falls within the scope of employment, for which the City is liable. Thus, if an on-duty officer commits a sexual assault, by misusing official authority, the sexual assault is within the scope of employment. The employment context naturally, or predictably, gave rise to the abuse of official authority. *Cox v. Evansville Police Department*, 107 N.E.3d 453,463 (IND 2018).

The Court went on to describe policy underlying this reasoning. First, the City benefits from the lawful exercise of police power. Therefore, when tortious abuse of that power

naturally, and predictably, flows from employment activities, the City equitably bears the cost of the victim's loss. Further, holding the City liable encourages it to guard against recurrent assaults or provides deterrence. Because cities vest considerable power and authority in police officers, the Supreme Court of Indiana wanted cities to exercise vigilance in hiring and supervising police officers. *Cox v. Evansville Police Department*, 107 N.E.3d 453,463 (IND 2018).

In any event, the above two cases involved intoxicated women, like the Martin case. Certainly, the case of *Jane Doe v. Morris*, 213 WL 3933928 (Fed. Supp. E.D. LA 2013) and the first instance involving Jennifer Cox and Officer Montgomery, in *Cox v. Evansville Police Department*, 107 N.E.3d 453,463 (IND 2018) are highly factually similar to Officer Tovar's rape of Shari Martin while on duty. *Jane Doe v. Morris*, 213 WL 3933928 (Fed. Supp. E.D. LA 2013); *Cox v. Evansville Police Department*, 107 N.E.3d 453 (IND 2018).

Plaintiff was not out of line to argue the policies and reasoning, imposing liability upon the City, or police department, for the officer's rape, in Martin's case, by citing

these cases and the analysis applied by the appellate courts therein. See *Jane Doe v. Morris*, 213 WL 3933928 (Fed. Supp. E.D. LA 2013) and *Cox v. Evansville Police Department*, 107 N.E.3d 453 (IND 2018).

II. THE AIDED-BY AGENCY THEORY DOES NOT DIRECTLY CONFLICT WITH THE IOWA MUNICIPAL TORT CLAIMS ACT.

A. Issue Preservation.

Martin asserts that the Defendant did not preserve whether the aided-by-agency theory conflicts with the Iowa Municipal Tort Claims Act because such issue was not raised in Defendant's Summary Judgment motion. (Vol.I.App.pp.56-58,Defendant's Motion for Summary Judgment; Vol.I.App.pp.59-69 Defendant's Memorandum of Authorities in Support of Motion for Summary Judgment; Vol.I.App.pp.315-328,Ruling on Motion for Summary Judgment.) The Supreme Court will not review issues on appeal unless they were properly preserved at trial. *Bill Grunder's Sons Construction Inc. v. Ganzer*, 686 NW 2d 193, 196-197 (IA 2004) citing *Weltzin v. Nail*, 618 N.W. 2d 293, 296 (IA 2000) and *In re Marriage of Hitchcock*, 265 N.W. 2d 599, 606 (IA 1978).

Specifically quoting the Iowa Supreme Court:

> "[B]ased upon consideration of fairness, . . . this court is not ordinarily a clearinghouse for claims which were not raised in the district court[.] '[I]t is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider. Furthermore, it is unfair to allow a party to choose to remain silent in the trial court in the face of error, taking a chance on a favorable outcome, and subsequently assert error on appeal if the outcome in the trial court is unfavorable." *Bill Grunder's Sons Construction Inc. v. Ganzer*, 686 NW 2d 193, 197 (IA 2004) citing *Sorci v. Iowa District Court,* 671 N.W. 2d 482, 489 (IA 2003).

It is a doctrine of appellate procedure that issues must ordinarily be both raised and decided by the district court before the appellate court will decide them on appeal. *Bill Grunder's Sons Construction Inc. v. Ganzer*, 686 NW 2d 193, 197 (IA 2004) citing *Strand v. Rasmussen*, 648 N.W. 2d 95, 100 (IA 2002). A party must at least preserve error by raising the issue at the summary judgment level. If a Motion for Summary Judgment presented the issue, to the District Court, and the District Court ruled on it, the rule requiring the District Court to first consider issues raised on appeal is satisfied. *Otterberg v. Farm Bureau Mutual Insurance Company*, 696 N.W. 2d 24, 28 (IA 2005).

In this case, the conflict with the Iowa Municipal Tort Claims Act, by the aided-in-agency theory was not considered by the district court. (Vol.I.App.pp.56-58,Defendant's Motion for Summary Judgment; Vol.I.App.pp.59-69,Defendant's Memorandum of Authorities in Support of Motion for Summary Judgment; Vol.I.App.pp.315-328, Ruling on Motion for Summary Judgment.) Error is not preserved.

B. Scope and Standard of Review

This appeal is directed to Motion for Summary Judgment granted in favor of Muscatine. The standard of review, for a district court ruling, on Summary Judgment, is for corrections of law. *Kunde v. Estate of Bowman*, 920 N.W. 2d 803, 807 (IA 2018); see also *Mason v. Vision Iowa Board*, 700 N.W. 2d 349, 535 (IA 2005). Evidence is viewed in the light most favorable to the party opposing summary judgment. *Murtha v. Kahalan*, 745 N.W. 2d 711, 713-714 (IA 2008). Again, this issue was not argued or raised, to the trial court, that granted City of Muscatine's Motion for Summary Judgment. (Vol.I.App.pp.56-58,Defendant's Motion for Summary Judgment; Vol.I.App.pp.59-69,Defendant's Memorandum of Authorities in

Support of Motion for Summary Judgment; Vol.I.App.pp.315-328, Ruling on Motion for Summary Judgment.)

C. There is No Conflict with Iowa Municipal Torts Claims Act.

The Defendant, City of Muscatine, correctly indicates the Iowa Municipal Torts Claim Act ("IMTCA") provides:

> "Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function." Iowa Code § 670.2(1) (2021).

The Iowa Municipal Tort Claims Act ("IMTCA") does not exempt a claim in reference to a police officer sexually assaulting a woman while on duty. Therefore, it is not a separate exemption set forth in the claims exempted section of the IMTCA. Iowa Code § 670.40 (2021). It seems reasonable that interpretation of Iowa Code § 670.2(1) could proceed under interpretation of the common-law, as to what arises out of a governmental or proprietary function. This is true in particular as it relates to police officers who have a heightened amount of contact with the community due to their policing activities (a patrol car, gun, uniform, ability to arrest, ability to

subdue, and a heightened duty to act on the benefit of the community) in their position of power in a one-on-one interaction with the public.

For context, the Delaware Court is correct, as are many of the other courts imposing city (or police department) liability, including Louisiana, California, Vermont, New Mexico, and Indiana. As pointed out by the Delaware Court: Victims are poorly positioned to protect themselves from wrongful sexual misconduct by a police officer, because, by law, they are not supposed to use even peaceable means to resist arrest, and the gauntlet required to successfully bring and prove a case (as in the Delaware case, and the case at hand) is daunting at best. *Sherman v. State Department of Public Safety*, 198 3d 148, 188 (DEL 2018).

Police agencies, however, are well-positioned to do careful hiring and other practices to address the risk of sexual misconduct by their officers. *Sherman v. State Department of Public Safety*, 198 3d 148, 188 (DEL 2018). These activities include training officers on the proper way to interact with the public, tips to monitor time officers spend with arrestees, to

ensure it is not suspiciously long, and police technology, such as body cameras. Police departments are in a better position to deter and prevent sexual wrongdoing by police officers, than available to individual members of the public. *Sherman v. State Department of Public Safety*, 198 3d 148, 189 (DEL 2018).

To quote the Delaware Court: "Absent the potential for *respondeat superior* liability, however, the incentives for police agencies to take these steps will be diminished and the risk of misconduct placed on a class of victims poorly positioned to protect themselves." *Sherman v. State Department of Public Safety*, 198 3d 148, 189 (DEL 2018).

We know, in this case, that Tovar was a seriously deficient officer with a history of poor performance reviews, insubordination, interference with investigations, disciplinary actions, and suspensions. (Vol.I.App.pp.321-322, Ruling/Summary Judgment,pp. 7-8.)

Again, it is persuasive that the claims exemption under the Iowa Municipal Tort Claims Act does not list sexual assault by a police officer on duty. Iowa Code § 670.4 (2021).

The Court could impose *respondeat superior* liability in light of Iowa Municipal Tort Claims Act in relation to an officer committing a sexual assault while on duty.

CONCLUSION

First, in reply to Muscatine's Brief, Shari Martin did cite cases imposing police liability, in other states, which are quite factually similar to her case. The two most factually similar being *Doe v. Morris*, 213 WL 3933928 (Fed. Supp. E.D. LA 2013) and *Cox v. Evansville Police Department*, 107 N.E.3d 453 (IND 2018).

Second, the Iowa Municipal Tort Claims Act does not prohibit holding the city, or police department, responsible for an officer who commits a sexual assault, on duty. Iowa Code §670.2(1) and §670.40 (2021).

In today's world, public policy begs for the public to be protected by a police officer on duty. The community benefits from the use of city police officers. It should also bear the burden of the cost to damaged individual hurt by a police officer who commits sexual abuse on duty. Public policy begs

for this protection of the individual, subject to the powerful interaction with a police officer on duty.

STATEMENT REGARDING ORAL ARGUMENT

Appellant, Shari Martin, requests the Court to grant oral argument on all issues submitted in this matter.

Respectfully submitted,
Shari Martin, Plaintiff-Appellant

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ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing Appellant's Reply Brief was $0.00.

/s/ M. Leanne Tyler
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