IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-0980

AMBER MARTINEZ, individually and on behalf of her minor child I.M., and ISABEL ASHLEY,
Appellees,

vs.

STATE OF IOWA,
Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE SAMANTHA GRONEWALD

APPELLANT'S FINAL BRIEF

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ROUTING STATEMENT

This case involves fundamental and urgent issues of broad public importance surrounding police pursuits, which occur regularly. Additionally, the District Court entered a decision in direct conflict with the Supreme Court's published decision in *Morris v. Leaf*, 534 N.W.2d 388 (Iowa 1995). Further, this case presents substantial questions as to the law on third-party collisions and the application of Iowa Code § 321.231(5)—especially because the Court decided *Morris* years before beginning to adopt principles from the Restatement (Third) of Torts. Therefore, the State recommends retention. *See* Iowa R. App. P. 6.1101(2)(b), (f).

STATEMENT OF THE CASE

I. Nature of the Case

This case arises out of a law enforcement vehicle pursuit of a multi-state fugitive. On August 22, 2016, then-Sergeant Brett Tjepkes of the Iowa State Patrol ("Sgt. Tjepkes") engaged in a brief vehicle pursuit of fugitive Scott Grimes ("Grimes"), but quickly terminated the pursuit based on Grimes's increasingly dangerous driving. Tragically, Grimes's driving—which included Grimes running a red light, accelerating close to 90 miles per hour, and swerving into oncoming traffic—resulted in him colliding head-on with a vehicle driven by

Plaintiff Amber Martinez ("Martinez") shortly after Sgt. Tjepkes terminated the pursuit. Martinez, along with her two children, I.M. and Isabel Ashely (collectively, "Plaintiffs"), subsequently filed a negligence petition against the State (but not against Grimes).[1] Plaintiffs asserted law enforcement officers should not have chased or continued to chase Grimes—even as momentarily as they did—when he fled. The State appeals from the District Court's April 20, 2021, Order Denying Defendant's Motion for Summary Judgment, and its June 18, 2021, Order Denying Defendant's Motion to Reconsider, Enlarge, and Amend.

II. Course of Proceedings

Plaintiffs filed their petition on February 13, 2019, raising negligence and associated consortium claims, and the case proceeded through discovery to the summary judgment stage. App. 9 (Plfs' Petition). On January 4, 2021, the State filed a motion for summary judgment, contending Sgt. Tjepkes owed no particularized duty, did not breach any duty if one existed, and did not cause the collision. App.

[1] Plaintiffs also sued the United States of America and the FBI—whose officers also participated in the pursuit—in federal court, but that lawsuit was unsuccessful. *See* Order at 7, *Martinez v. United States*, No. 4:19-cv-00240-JAJ-SBJ (S.D. Iowa Aug. 9, 2021) (Doc. No. 55) (granting the federal government's motion to dismiss).

52 (Def's Motion for Summary Judgment); App. 55 (Def's MSJ Brief). On April 20, 2021, the District Court denied the State's motion, concluding that Iowa Code § 321.231(5) imposed a duty of care owed by Sgt. Tjepkes to Martinez. App. 390 (Order Denying Def's MSJ (4/20/21), at 3-4). Further, the District Court determined that a genuine issue of material fact existed as to whether Sgt. Tjepkes acted with reckless disregard for public safety when he continued to engage in a vehicle pursuit of Grimes for several seconds on Meredith Drive, despite some traffic and Grimes' increasingly dangerous driving. *Id.* at 4-5. The District Court did not address causation. *Id.*

The District Court's ruling effectively placed State officers in "a conundrum wherein they have a sworn duty to apprehend suspected lawbreakers yet simultaneously face legal liability if anyone but the fleeing driver is injured when they give chase." *Robinson v. City of Detroit*, 613 N.W.2d 307, 312 (Mich. 2000). Accordingly, on April 30, 2021, the State filed a motion to reconsider, enlarge, or amend, asking the District Court to reconsider its analysis of section 321.231(5) and its determination that the evidentiary record created a genuine issue of material fact as to recklessness. App. 396. The District Court denied

the State's motion to reconsider on June 18, 2021. App. 407 (Order Denying Def's Motion to Reconsider (6/18/21)).

The State timely sought interlocutory review, (App. 412 (Def's App. for Interlocutory Review)), and on August 27, 2021, this Court granted the application.

III. Facts of the Case

On August 14, 2016, Grimes escaped custody from the Warren County Jail, where he was being held for various offenses, including Assault on a Police Officer. App. 132 (Carico Criminal Complaint and Affidavit); App. 152 (Warren County Law Enforcement Bulletin). After escaping jail, Grimes and his girlfriend, Kayla Schultz ("Schultz"), embarked on a multi-state crime spree, stealing multiple vehicles across Iowa, Missouri, and Kansas. App. 138-39. Schultz also had a substantial criminal history, including a history of violence towards law enforcement. App. 27 (Waymire Depo. Exh. A). Shortly after Grimes' escape, the Warren County Sheriff's Office sought the assistance of the Federal Safe Streets Task Force in locating and taking Grimes and Schultz into custody. App. 132; App. 143 (Kitsmiller Depo. pp. 13-15); App. 110 (Mackaman Depo. pp. 12). Task Force Officer Joseph Carico initiated a criminal complaint against Grimes for

Unlawful Flight to Avoid Prosecution and obtained a federal warrant for his arrest on August 17, 2016. App. 132; App. 143 (Kitsmiller Depo. p. 13).

Federal and state law enforcement soon became aware that Grimes and Schultz may be in the Des Moines area, driving a vehicle that was stolen in Kansas. App. 132; App. 143-44 (Kitsmiller Depo. pp. 16-18); App. 119-20 (Mackaman Depo. pp. 45-49). At around 5:30 p.m. on August 22, Special Agent Craig Mackaman ("Agent Mackaman") of the Iowa Department of Public Safety spotted the suspect vehicle driving on Interstate 80 ("I-80") near the 2nd Avenue exit. App. 121-22 (Mackaman Depo. pp. 56-57); (Radio Traffic Recording 0:00-0:45). Agent Mackaman requested a marked law enforcement vehicle assist with stopping the suspect vehicle. App. 123-24 (Mackaman Depo. pp. 64-65); (Radio Traffic Recording 0:35-0:45). Sgt. Tjepkes, driving a marked patrol vehicle, and Iowa Department of Transportation Investigator Aaron Liebe ("Inv. Liebe"), driving an unmarked vehicle, were in the area and responded to Agent Mackaman's request. App. 123-26 (Mackaman Depo. pp. 64-73); App. 94-95 (Tjepkes Depo. pp. 20-23); App. 83-85 (Liebe Depo. pp. 38-45); (Radio Traffic Recording 1:00-4:25). Both Sgt. Tjepkes and Inv. Liebe were generally aware,

based upon previous law enforcement notices, that Grimes and Schultz were fugitives, were wanted on state and federal warrants, and were known to be assaultive towards law enforcement officers. App. 92-94 (Tjepkes Depo. pp. 11-17); App. 76 (Liebe Depo. pp. 12).

Due to the heavy rush hour traffic on the interstate, the officers decided to follow the suspect vehicle to a safer, less busy location to initiate a stop. App. 94 (Tjepkes Depo. pp. 19-20); (Radio Traffic recording 5:00-7:00). The suspect vehicle exited I-80 at the 86th Street exit and proceeded south towards Meredith Drive. App. 95 (Tjepkes Depo. pp. 23-24); App. 87 (Liebe Depo. pp. 54-55); App. 145-46 (Kitsmiller Depo. pp. 24-25); (Radio Traffic Recording 5:00-7:00). Agent Mackaman, Sgt. Tjepkes, and Inv. Liebe followed the suspect vehicle until it turned onto a side street at 80th Place. *Id.* At that point, Inv. Liebe pulled ahead of the suspect vehicle and activated his emergency lights, and Sgt. Tjepkes pulled up behind the vehicle and activated the emergency lights and siren on his marked patrol car. App. 95 (Tjepkes Depo. pp. 23-24); App. 87 (Liebe Depo. pp. 54-55); App. 145-46 (Kitsmiller Depo. pp. 24-25); (Radio traffic Recording 5:00-7:00); (Dashcam Video 17:46;18-17:46:52). Dashcam footage shows that the location where the stop was attempted had little to no traffic

(other than following law enforcement vehicles) or pedestrian activity. (Dashcam Video 17:46:18-17:46:52). Rather than stopping, however, Grimes drove up over the curb, around Inv. Liebe's vehicle, and took off down the road at increasing speed. (Dashcam Video 17:46:52-17:47:06); (Radio Traffic Recording 7:00-7:16); App. 95-96 (Tjepkes Depo. pp. 24-25); App. 87-88 (Liebe Depo. pp 54-57); App. 145-46 (Kitsmiller Depo. pp. 24-25). Sgt. Tjepkes then initiated a vehicle pursuit of Grimes, with his emergency lights and siren continuously activated. At the time of the pursuit, the weather was clear, with dry roads and strong visibility. App. 95-96 (Tjepkes Depo. pp. 24-25); App. 87 (Liebe Depo. pp. 54-56); (Dashcam Video 17:46:52-17:47:06).

Approximately 72 seconds after initiating the pursuit, and after seeing Grimes run a red light and swerve into oncoming traffic on Meredith Drive, Sgt. Tjepkes terminated the pursuit, deactivating his emergency lights and siren. App. 96, 101 (Tjepkes Depo. pp. 25, 46); App. 147 (Kitsmiller Depo. pp. 29); (Dashcam Video 17:47:06-17:48:10); (Radio Traffic Recording 8:09-8:25). Seconds after Sgt. Tjepkes terminated the pursuit, Grimes ran his stolen vehicle head on into the vehicle driven by Martinez. (Dashcam Video 17:48:09-17:48:28); (Radio Traffic Recording 8:09-8:25); App. 101 (Tjepkes

Depo. pp. 47); App. 128 (Mackaman Depo. pp. 82-83); App. 148 (Kitsmiller Depo. pp. 33). Numerous state and federal law enforcement officers were at the scene of the collision within seconds of it occurring. App. 148 (Kitsmiller Depo. pp. 33-34).

ARGUMENT

I. Iowa Code § 321.231(5) Does Not Establish a Duty of Care Between Sgt. Tjepkes and Martinez.

Preservation of Error

Error was preserved with regard to Brief Points I, II and III. Preservation occurs when an issue is raised in the district court and a party has received an adverse ruling. *Fenceroy v. Gelita USA, Inc.*, 908 N.W.2d 235, 248 (Iowa 2018). Here, as part of its Motion for Summary Judgment and Motion to Reconsider, Enlarge, and Amend, the State argued that Sgt. Tjepkes owed no particularized duty to Martinez, including any duty under section 321.231(5), and that there was no genuine issue of material fact as to whether Sgt. Tjepkes' actions constituted a reckless disregard for public safety. In denying both motions, the District Court held that section 321.231(5) did create a particularized duty of care, and that there was a genuine issue of material fact as to recklessness. As a result, error on these issues was preserved for appeal.

Standard of Review

The Court reviews a district court's ruling on a motion for summary judgment for correction of errors of law. *See Financial Mktg. Servs., Inc. v. Hawkeye Bank & Trust*, 588 N.W.2d 450, 455 (Iowa 1999). Summary judgment is appropriate if the moving party shows there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *See* Iowa R. Civ. P. 1.981(3). In reviewing a motion for summary judgment, the Court considers the evidence in a light most favorable to the non-moving party. *See Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). The Court must also consider every legitimate inference that can be "rational, reasonable, and otherwise permissible under the governing substantive law." *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 718 (Iowa 2001). If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists. *Id.* A factual issue is "material" only if "the dispute is over facts that might affect the outcome of the suit." *Id.* at 717.

Merits

The question whether the State owed Martinez a particularized duty is a threshold issue. *Mastbergen v. City of Sheldon*, 515 N.W.2d

3, 4 (Iowa 1994). Iowa courts have long held that under many circumstances state employees, including law enforcement personnel, do not owe a particularized duty to protect individuals, but rather owe a duty to the general public. *See e.g.*, *McFarlin v. State*, 881 N.W.2d 51, 64 (Iowa 2016); *Kolbe v. State*, 625 N.W.2d 721, 727, 730 (Iowa 2001); *Morris v. Leaf*, 534 N.W.2d 388-89, 391 (Iowa 1995); *Dooley v. City of Cedar Rapids*, 800 N.W.2d 755 (Table), at *2-6 (Iowa Ct. App. Mar. 30, 2011). Iowa appellate courts have specifically applied the public duty doctrine to claims arising under circumstances identical to this case. *See Morris*, 534 N.W.2d at 391 (affirming no duty for the government in case of third party struck by fleeing vehicle pursued by police); *Dooley*, at *4 (no duty for the government in case of person fleeing police who collided with plaintiff's vehicle).

While the District Court agreed the public duty doctrine applied to this case, it erroneously held that Iowa Code § 321.231(5) could provide a statutory duty of care owed by Sgt. Tjepkes to Martinez. App. 392-93 (Order Denying Def.'s MSJ, at 3-4). Case law addressing and interpreting section 321.231(5) demonstrates why the District Court erred.

A. Iowa Case Law Regarding Section 321.231(5)

Section 321.231(5) states:

> The provisions of this section shall not relieve the driver of an authorized emergency vehicle or the rider of a police bicycle from the duty to drive or ride with due regard for the safety of all persons, nor shall such provisions protect the driver or rider from the consequences of the driver's or rider's reckless disregard for the safety of others.

Iowa Code § 321.231(5). The Iowa Court of Appeals in *Dooley v. City of Cedar Rapids* addressed whether this provision imposed an actionable duty overriding, or creating an exception to, the public duty doctrine. *See Dooley*, at *5. The *Dooley* court, relying on *Morris* and other Iowa Supreme Court authority, noted, "although a statute may articulate a duty or standard of care applicable to the performance of a governmental function, it does not thereby create a cause of action. Rather an actionable duty is defined by the relationship between individuals; it is a legal obligation imposed upon one individual for the benefit of another person or particularized class of persons." *Id.* (citing *Sankey v. Richenberger*, 456 N.W.2d 206, 208 (Iowa 1990)). Unless a statute establishes a special identifiable class of persons or a common law special relationship with the state employee in question, the public duty doctrine still precludes a plaintiff's cause of action. *Donahue v. Washington Cty.*, 641 N.W.2d 848, 851-52 (Iowa Ct. App. 2002).

Section 321.231 sets forth, at most, "a duty to the public." *Morris*, 534 N.W.2d at 390. And with respect to some other provisions in chapter 321, the Court has held that plaintiffs cannot "avoid the preclusive effect of the public duty doctrine" by relying on statutes within the chapter. *See Kolbe*, 625 N.W.2d at 729–30.

Of course, *Kolbe* did not address specifically Iowa Code section 321.231(5). However, case law establishes that section 321.231(5) only applies to specifications of negligence regarding an officer's *manner of driving*, not the decision whether to drive or keep driving. For example, in *Dooley*, the district court, upon a similar motion for reconsideration as filed in this case, held that "section 321.231 does not create an express or implied statutory duty, but rather assumes a tort which also assumes an existing duty and is not the basis for creating the duty." *Dooley*, at *2. Further, the district court held that the officer there "owed no duty to the plaintiffs unless the evidence show[ed] that he was directly involved in the collision or failed to perform an act which would have kept the collision from occurring." *Id.* This interpretation of section 321.231(5) was affirmed by the Court of Appeals. *Id.* at *5 (quoting *Morris*, 534 N.W.2d at 390-91) ("While section 321.231 provides that operators of emergency vehicles owe a

duty to the public to drive safely, *it is not the officer's manner of driving that is at issue here; it is his decision to pursue the fleeing suspect*.") (emphasis by court).

Further supporting this interpretation of section 321.231 liability, Iowa appellate courts have contrasted third-party police pursuit collisions like in *Dooley*, *Morris*, and the present case with cases where the emergency vehicle was directly involved in the collision. *See e.g.*, *Hoffert v. Luze*, 578 N.W.2d 681, 684 (Iowa 1998) (contrasting *Morris* with case where ambulance driver collided with plaintiff); *Bell v. Cmty. Ambulance Serv.*, 579 N.W.2d 330, 334 (Iowa 1998); *McClellan v. Orlando Ramirez*, No. 18-1974, 2019 WL 2375244, at *3 (Iowa Ct. App. June 5, 2019) (in case involving a collision with a police vehicle, describing recovery under section 321.231 as "against a driver of an emergency vehicle who violates the duty to *drive* with due regard for the safety of others") (emphasis added).

B. The District Court's Analysis and Interpretation of Section 321.231(5)

The District Court's analysis of the applicability of section 321.231 is brief. After acknowledging that the public duty doctrine applied, the District Court stated that its "analysis [did] not end [there]," because Plaintiffs pointed to section 321.231(5) as the foundation for a duty of

care owed by Sgt. Tjepkes to Martinez. App. 392 (Order Denying Def.'s MSJ, at 3). The District Court then concluded that a genuine issue of fact existed as to whether Sgt. Tjepkes acted recklessly in his "decision" to continue engaging in the pursuit of Grimes on Meredith Drive. *Id.* at 4-5. Implicit in this ruling is an embedded conclusion that, to determine whether section 321.231 applies to a case, there must first be a determination as to whether the emergency operator acted recklessly. However, this approach to section 321.231 is entirely backwards and contradicts on-point Iowa case law.

C. The Errors in the District Court's Analysis and Interpretation

The District Court's interpretation of section 321.231 erred in two important aspects: (1) it established a backwards analytical framework for when section 321.231 applies to a case; and (2) it relied upon a misguided fear that applying the State's interpretation would "lead to irrational results."

i. The District Court's Approach to Section 321.231(5) Skips a Threshold Step

At the outset, the District Court's approach to section 321.231 applicability skips a threshold step and turns the section on its head. Under the District Court's approach, a question of law appropriate for disposition by the court is transformed into a question of fact. As

demonstrated in the above discussion of section 321.231, the proper analysis for section 321.231 is to first determine whether the emergency operator's manner of driving is at issue in the case. Only then does section 321.231(5), and its established recklessness standard, apply to the case. *See Dooley*, at *5; *Morris*, 534 N.W.2d at 390-91. If the operator's manner of driving is not at issue, then section 321.231(5) does not apply, and the court need not evaluate recklessness.

Here, Plaintiffs don't assert Sgt. Tjepkes' *manner of driving* (such as his speed, his lane changes, or his conduct when driving through intersections) was the basis for his alleged recklessness. Indeed, the only individual whose manner of driving is directly addressed in the record or pleadings is Grimes. Instead, Appellees have challenged Sgt. Tjepkes' *decision* to continue engaging in his vehicle pursuit of Grimes after it proceeded onto Meredith Drive. But when the "decision to pursue the fleeing suspect" rather than the manner of driving is at issue, section 321.231 does not apply. *Morris*, 534 N.W.2d at 390; *accord Robinson*, 613 N.W.2d at 317 (concluding an "officer's decision to pursue" did not fit within a Michigan statutory analog to Iowa Code section 321.231(5) because including the pursuit decision as

a basis for tort liability would conflict with the "officer's duty to apprehend criminal suspects"). Further, there is no dispute that Sgt. Tjepkes was not directly involved in the collision between Grimes and Martinez; Sgt. Tjepkes' vehicle was not part of the collision, nor did Sgt. Tjepkes engage in any pursuit tactic that forced Grimes' vehicle to collide with Martinez's vehicle. As such, section 321.231(5) does not apply to this case.

ii. The District Court's Fear of an Irrational Result from Applying the State's Interpretation is Misguided

Despite the State raising these arguments in its Motion to Reconsider, the District Court did not address them with any substantive analysis. Instead, the District Court worried that the State's interpretation would "lead to irrational results," because "pursuits by law enforcement can develop and evolve from a relatively low-risk affair into a reckless chase, even if a resulting collision does not include an emergency vehicle." App. 393 (Order Denying Def.'s MSJ, at 4). However, this fear does not eliminate the Iowa case law supporting the State's position.

Additionally, the District Court's fear of irrational results instead established a framework for section 321.231 that would create a different, arguably more dangerous irrational result. Specifically, the

District Court's approach would give fugitive motorists an incentive to seek out higher-density traffic and higher-density communities so that law enforcement might shy away from further pursuit, knowing that any liability for a collision could be shifted from the fugitive to the State. A federal district court colorfully described this dilemma and firmly held the officer should not be liable:

> We are not prepared to hold an officer liable for damages inflicted by the driver of a stolen vehicle whom he was lawfully attempting to apprehend for the fortuitous reason only that the criminal drove through an urban area. To do so would open the door for every desperado to seek sanctuary in the congested confines of our municipalities, serene in knowledge that an officer would not likely give chase for fear of being liable for the pursued's recklessness. Such is not the law nor should it be the law.

West Virginia v. Fidelity & Cas. Co., 263 F. Supp. 88, 91 (S.D. W. Va. 1967).

This is precisely why the existing Iowa case law holds that section 321.231 only applies when the officer's *manner of driving* is at issue, *see Morris*, 534 N.W.2d at 390, and why the District Court's conclusion that section 321.231 applies in this case was erroneous.

II. No Reasonable Jury Could Find Sgt. Tjepkes Acted with Reckless Disregard for Public Safety.

Compounding the error of imposing a duty in the first place, the District Court also erroneously determined that a genuine issue of

material fact existed as to whether Sgt. Tjepkes' actions constituted reckless disregard for public safety, in violation of section 321.231(5). App. 394 (Order Denying Def's MSJ, at 5). Iowa courts have historically rejected a finding of recklessness in similar police pursuit cases.

A. Recklessness Standards for Police Pursuit Cases under Section 321.231

Two key cases analyze the recklessness standard for section 321.231(5) in the context of police vehicle pursuits: *Morris v. Leaf*, 534 N.W.2d 388 (Iowa 1995), and *Estate of Fritz v. Hennigar*, 2020 WL 6845944 (N.D. Iowa Nov. 20, 2020).

In *Morris*, this Court discussed the threshold a plaintiff must meet to establish recklessness on the part of a pursuing law enforcement officer. Specifically, "a plaintiff must show that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow." *Morris*, 534 N.W.2d at 391. In other words, the recklessness standard does not insulate drivers against all risk, but only against *undue* risk. *See id.* And it prevents officers from being forced "to exchange prudent caution for timidity in the already difficult job of

responsible law enforcement." *Pletan v. Gaines*, 494 N.W.2d 38, 41 (Minn. 1992).

In *Morris*, the record did not support a finding of recklessness because the pursuit occurred in the afternoon, with non-heavy traffic, clear weather, and dry streets. *Morris*, 534 N.W.2d at 391. Clear weather and dry streets were present in this case too, and the video footage illustrates that while there was *some* traffic on Meredith Drive, it was certainly not bumper-to-bumper. Similarly, *Morris* found no recklessness because the officer's pursuit was aimed at "stop[ping] Leaf 'before he hurt anyone else.'" *Id.* That factor, too, is present in this case.

Building on that foundation, the U.S. District Court for the Northern District of Iowa in *Hennigar* provided a recent, thorough, and in-depth analysis of Iowa law regarding recklessness. In *Hennigar*, the court granted summary judgment in favor of a law enforcement officer who collided with the plaintiff after proceeding through a busy four-way stop intersection at high speeds while responding to a call with emergency lights and siren activated. *Hennigar*, 2020 WL 6845944, at *2. The court further held that "even if Hennigar's speed under the circumstances was unreasonable and negligent, no

reasonable jury could find his driving was reckless under Iowa Code section 321.231." *Id.* at *7. The court emphasized that "[r]ecklessness is something more than 'the mere unreasonable risk of harm in ordinary negligence.'" *Id.* at *6 (quoting *Bell v. Cmty. Ambulance Serv.*, 579 N.W.2d 330, 335 (Iowa 1998)). Rather, recklessness "is this conscious disregard for, or indifference to, the rights and safety of others that elevates conduct from negligence to recklessness." *Hennigar*, at *6. And notably, *Hennigar* involved a *first-party* collision where the officer directly collided with the plaintiff—not the more attenuated third-party collision between Grimes and Martinez that is at issue here.

Together, *Morris* and *Hennigar* demonstrate the high bar set by the recklessness standard under Iowa law. The recklessness standard is appropriate and necessary because it "provides for vigorous law enforcement without placing innocent bystanders at undue risk." *Morris*, 534 N.W.2d at 391.

B. The District Court's Analysis and Findings

This District Court found a genuine issue of material fact regarding recklessness after distinguishing the facts of the present case

from the facts in *Morris*.[2] App. 393-94 (Order Denying Def's MSJ, at 4-5). The District Court summarized the relevant facts of *Morris* as follows: "1) the officer pursue Leaf (the fleeing driver) at 2:15 p.m. when traffic was not heavy; 2) the weather was clear and the streets were dry; 3) the officer followed Leaf only fast enough to keep his fleeing vehicle in sight; 4) the Leaf vehicle had already been speeding when the officer decided to pursue it; 5) the officer was acting on orders from the station to pursue Leaf because of his prior hit-and-run accident; and 6) the officer's pursuit of Leaf was designed to stop Leaf 'before he hurt anyone else.'" *Id.* at 4. According to the District Court, this contrasted with the present case, as Sgt. Tjepkes pursued Grimes on a "busy road at approximately 5:45 p.m., when traffic was heavy, at a high rate of speed," Grimes was not speeding at the time Sgt. Tjepkes initiated the pursuit, and the pursuit continued beyond slow speeds on residential side streets. *Id.*

Notably, the District Court limited the scope of its analysis to only a portion of the vehicle pursuit. *Id.* at 5. Specifically, Plaintiffs asserted that Sgt. Tjepkes' conduct became reckless "only for the

[2] The District Court did not address *Hennigar* in its ruling on the State's Motion for Reconsideration. App. 407 (Order Denying Def's MTR).

period of time the pursuit of Grimes continued after Grimes had accelerated his speed, ran through a red light, and began traveling the wrong direction on Meredith [Drive] during rush hour traffic." *Id.* at 4, n. 15. Thus, the District Court's analysis focused on whether Sgt. Tjepkes acted recklessly in continuing his pursuit of Grimes once Grimes turned onto Meredith Drive and escalated his evasion of police apprehension.

C. The Errors in the District Court's Analysis and Findings

When considering the rulings in *Morris* and *Hennigar*, as well as the limited scope of conduct Plaintiffs actually challenge, the District Court's findings are erroneous.

The undisputed facts of this case are: (1) Grimes and Schultz were the targets of a state and federal law enforcement manhunt and wanted for numerous multi-state crimes, including grand theft auto and, in the case of Grimes, for escaping custody; (2) at approximately 5:45 p.m., Sgt. Tjepkes attempted a vehicle stop of the Grimes vehicle on a "side street with little to no traffic or pedestrian activity"; (3) rather than stop when confronted by law enforcement, Grimes drove his vehicle over a curb, around another law enforcement vehicle, and took off down the road; (4) Sgt. Tjepkes then initiate a vehicle pursuit of Grimes

with his emergency lights and siren activated; (5) Grimes eventually made his way onto Meredith Drive and engaged in rapidly escalating and dangerous driving behavior, including increasing his speed, running through a red light, and eventually swerving into oncoming traffic; (6) after Grimes swerved into oncoming traffic, Sgt. Tjepkes terminated the pursuit; (7) seconds later, Grimes crashed his vehicle into the vehicle driven by Martinez; and (8) the pursuit in total last only approximately 72 seconds, so the portion of it that occurred on Meredith Drive was likely less than 60 seconds. App. 390-91 (Order Denying Def's MSJ, at 1-2); (Dashcam Footage 17:46:52-17:48:10).

The District Court's comparison of the present case with *Morris* focuses on superficial differences in the facts of either case. While the pursuit in question did occur during "rush hour" traffic,[3] there are other material similarities with *Morris*: the weather was clear, there was high visibility with full sunlight, and the roads were dry. (Dashcam Footage). Additionally, while it is true Grimes was not speeding prior

[3] Though the District Court characterized the traffic on Meredith Drive as "heavy," the dashcam footage of the pursuit speaks for itself. *See Scott v. Harris*, 550 U.S. 372, 381 (2007) (viewing facts in a police pursuit case "in the light depicted by the videotape").

to the initiation of the pursuit, this is irrelevant if the challenged conduct is Sgt. Tjepkes' continuation of the pursuit.[4]

Most confusingly, the District Court frames Grimes' dangerous conduct on Meredith Drive as if it happened simultaneously, as opposed to as a series of escalating actions. Indeed, when Grimes' actions are properly framed, no reasonable jury could find Sgt. Tjepkes acted with reckless disregard for public safety. The undisputed facts show that Sgt. Tjepkes' decided to *terminate* the pursuit precisely because Grimes' escalating driving behavior posed an increased danger to the rest of the vehicle and pedestrian traffic on Meredith Drive. App. 101 (Tjepkes Depo. at 47); App. 128 (Mackaman Depo. at 82-83); App. 148 (Kitsmiller Depo. at 33); (Dashcam Footage at 17:48:09-17:48:38). That decision alone provides a strong refutation of any conclusion that Sgt. Tjepkes was acting with reckless disregard for public safety.

Taken together, the decisions in *Morris* and *Hennigar*, along with the undisputed facts of this case, demonstrates that no reasonable jury could find Sgt. Tjepkes' continuation of a less-than-a-minute

[4] Again, Plaintiffs do not challenge Sgt. Tjepkes' decision to *initiate* the pursuit, but merely his "decision" to *continue* the pursuit once it progressed onto Meredith Drive. App. 393 (Order Denying Def's MSJ, at 4 n. 15); App. 370 (MSJ Hearing Transcript).

vehicle pursuit constituted reckless disregard for public safety. *See Bickel v. City of Downey*, 238 Cal. Rptr. 351, 355 (Ct. App. 1987) (finding no breach of duty when officers pursued "an armed robber at speeds of 50-90 miles per hour slowing at intersections, through an area of medium to light traffic at about 9:00 in the morning on a dry and sunny day, with their emergency lights and sirens activated"); *cf. Dist. of Columbia v. Walker*, 689 A.2d 40, 48 (D.C. 1997) (concluding no reasonable juror could find that officers' conduct during a pursuit constituted gross negligence—the applicable threshold for imposing liability in that jurisdiction).

III. There Is No Genuine Issue of Material Fact Regarding Causation Such That a Reasonable Jury Could Find Appellant Caused the Collision at Issue.

Standard of Review

Causation, like other issues decided at summary judgment, is reviewed for legal error. *See Wermerskirchen v. Canadian Nat'l R.R.*, 955 N.W.2d 822, 827, 835–36 (Iowa 2021).

Merits

Even though causation is usually a jury question, the court can decide it "in exceptional cases." *Crow v. Simpson*, 871 N.W.2d 98, 105 (Iowa 2015). And "[t]his is an exceptional case." *Wermerskirchen*, 955

N.W.2d at 836. The record demonstrates that no reasonable jury could find Sgt. Tjepkes' decision to continue his law enforcement vehicle pursuit was the cause of the collision between Martinez and Grimes.

A. Causation Standards for Negligence Cases under Iowa Law

In a negligence case, such as Appellees', the plaintiff must prove causation. *Garr v. City of Ottumwa*, 846 N.W.2d 865, 869 (Iowa 2014). While causation is generally a fact question best reserved for the jury, in "*very exceptional cases* where the facts are so clear and undisputed, and the relation of cause and effect so apparent to every candid mind, that but one conclusion may be fairly drawn therefrom," the court can resolve causation as a matter of law. *Thompson v. Kaczinski*, 774 N.W.2d 829, 836 (Iowa 2009) (emphasis by the court); *see also Garr*, 846 N.W.2d at 870 ("In some cases, however, causation may be decided as a matter of law.").

Causation includes two components: cause in fact and scope of liability. *Garr*, 846 N.W.2d at 870 (citing *Sweeney v. City of Bettendorf*, 762 N.W.2d 873, 883 (Iowa 2009); *Thompson*, 774 N.W.2d at 839). To determine if the defendant's actions were the cause in fact of plaintiff's injuries, courts use a "but-for" test. *Berte v. Bode*,

692 N.W.2d 368, 372 (Iowa 2005). As this Court described it, under the "but-for" test,

> the defendant's conduct is a cause in fact of the plaintiff's harm if, but-for the defendant's conduct, the harm would not have occurred. The but-for test also implies a negative. If the plaintiff would have suffered the same harm had the defendant not acted negligently, the defendant's conduct is not a cause in fact of the harm.

Id.

To assess the existence of a causal connection, the court "begin[s] with the claims of negligence" presented by the plaintiff. *Garr*, 846 N.W.2d at 870. While there may be more than one cause in fact of a plaintiff's injuries, if the record shows that the plaintiff's injury would have occurred regardless of the defendant's actions, causation will have failed as a matter of law. *Id.* at 871-72; *Berte*, 692 N.W.2d at 372 ("If the plaintiff would have suffered the same harm had the defendant not acted negligently, the defendant's conduct is not a cause in fact of the harm.").

B. The Evidentiary Record Demonstrates that No Genuine Issue of Material Fact exists as to Causation in this Case.

As noted previously, it is undisputed that Sgt. Tjepkes was not directly involved in the collision that injured Martinez. Rather, the collision was purely between Martinez and Grimes. Further, it is undisputed that Sgt. Tjepkes did not engage in any pursuit maneuvers

that forced Grimes to lose control of his vehicle, leading to the collision with Martinez.

Instead, it appears Plaintiffs' theory of causation is that, absent Sgt. Tjepkes' law enforcement pursuit of Grimes, Grimes would not have engaged in the increasingly dangerous evasion tactics he chose to do, including driving into oncoming traffic. This theory of causation is fundamentally flawed and, if accepted by the Court, lead to wholly irrational results.

Further, this theory of causation would lead to irrational results. Namely, it would establish that the State can be held responsible for the illegal and reckless decisions of a criminal fugitive unlawfully eluding police. And it would incentivize criminal fugitives to seek out high-density communities while fleeing from law enforcement, under the knowledge that the State may be on the hook for any damages caused by the fugitive's evasion tactics. Recognizing this quandary, courts in some other jurisdictions have concluded that plaintiffs in third-party collisions occurring during or shortly after police pursuits could not show causation as a matter of law. *See, e.g.*, *Robinson*, 613 N.W.2d at 311 ("[P]laintiffs' injuries did not, as a matter of law, result from the operation of the police cars where the police cars did not hit

the fleeing car or physically cause another vehicle or object to hit the vehicle that was being chased . . . ."); *Stanley v. City of Independence*, 995 S.W.2d 485, 488 (Mo. 1999) ("[O]fficer Hill's conduct was not a proximate cause of the collision. The suspects in the van made the initial decision to flee, sped through red lights and in the wrong lane of traffic, and collided with the [plaintiffs]."); *Roll v. Timberman*, 229 A.2d 281, 284–85 (N.J. Super. Ct. App. Div. 1967) ("To argue that the officer's pursuit caused Timberman to speed may be factually true, but it does not follow that the officer is liable at law for the results . . . ."). On this record, Plaintiffs likewise cannot show causation, for similar reasons.

CONCLUSION

"[A]s a matter of law, the police officer did not owe a duty to the plaintiffs." *Morris*, 534 N.W.2d at 391. No reasonable jury could find the officer's manner of driving in this case was reckless. Further, the State did not cause this third-party collision as a matter of law. "[T]he community cannot expect its police officers to do their duty and then ... second-guess them when they attempt conscientiously to do it." *Pletan*, 494 N.W.2d at 41. The Court should reverse and remand for the district court to enter summary judgment for the State.

REQUEST FOR ORAL ARGUMENT

The State requests oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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Dated: March 25, 2022

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