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 REPLY BRIEF

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INTRODUCTION

Appellee Amber Martinez seeks two stunningly radical holdings. First, she contends Sergeant Tjepkes acted recklessly because a collision involving a fleeing suspect was not just foreseeable, but a "virtual certainty." (Martinez Br. at 25). Second, she advocates for something resembling a strict liability standard, by characterizing a law enforcement vehicle as "probably more dangerous" than a firearm, "more so in some cases." (Martinez Br. at 28–29).

Taken together, these propositions, if accepted, would in practice prevent law enforcement officials from *ever* pursuing a fleeing suspect in a vehicle—even for the most wanted suspects in connection with the most heinous crimes. Under Martinez's formulation, a decision to pursue a suspect would presumptively place liability for any collision on law enforcement because officers know that fleeing suspects may cause collisions—and should instead shy away from any risk and allow an escape. In other words, law enforcement officers should defer to wanted criminals or suspects, rather than the other way around. The tail wags the dog. The concepts of responsibility and liability flip onto their heads.

The Court should reject that path and reverse the District Court.

REPLY ARGUMENT

I. Iowa Code § 321.231(5) doesn't establish either a duty of care *or* a private right of action.

Martinez's petition asserted common law claims for negligence and loss of consortium. It did *not* allege a standalone "violation of section 321.231(5)." In fact, it didn't even mention the statute. App. 9 (Petition). Yet on appeal, Martinez contends section 321.231(5) creates an independent statutory cause of action. (Martinez Br. at 19–20).

Whether it does is not properly before the Court. The District Court characterized Martinez as arguing section 321.231 established a duty necessary to pursue common law negligence claims—not as arguing that the statute provided a freestanding cause of action. App. 393 (Order Denying Def's MSJ, at 3). The difference is important because it distinguishes this case from *Estate of McFarlin v. State*, 881 N.W.2d 51, 57–58 (Iowa 2016), on which Martinez relies. In *Estate of McFarlin*, the plaintiff raised *both* a statutory claim and common law tort claims surrounding an accident that occurred after a boat "struck a submerged dredge pipe" in a lake. *Id.* at 52, 55–56. The relevant statutes informing the asserted statutory claim addressed dredging, provided "other users" of the waterway "shall not be endangered," and prohibited any person from operating a vessel carelessly, recklessly, or

negligently. *See id.* at 57; *see also* Iowa Code §§ 461A.55, 462A.12(1). But the Court unanimously concluded the statutes did not provide a private right of action for an alleged violation of them, despite that language. *Estate of McFarlin*, 881 N.W.2d at 57–58; *see id.* at 65 (Hecht, J., concurring in part and dissenting in part) ("I agree . . . that various provisions in chapter 461A, standing alone, do not create a private right of action for alleged violation of them.").

Here, however, Martinez did not raise a statutory claim *together with* her tort claims. Whether section 321.231(5) independently authorizes Martinez to sue, separately from her common law claims, is therefore not properly before the Court. But regardless, there is no independent cause of action. The recklessness language in section 321.231(5) is like the language in *Estate of McFarlin* that, despite referring to legal standards, did not provide a cause of action. *See Estate of McFarlin*, 881 N.W.2d at 57–58 (majority opinion). Thus, the Court can safely ignore this red herring. Rather than evaluating whether section 321.231(5) establishes a cause of action, the question is whether the statute establishes a legal duty supporting a *common law* cause of action. *See id.* at 69 (Hecht, J., concurring in part and dissenting in part) (explaining the difference between whether a

statute contains a private right of action and whether that statute "is relevant to the existence of . . . [a] common law duty").

It doesn't do that either. Martinez notably offers no Iowa authority to support her argument beyond trying to explain away *Morris v. Leaf*, 534 N.W.2d 388 (Iowa 1995).[1] But the purported distinctions are illusory. The difference between an officer beginning a pursuit after observing a speeding violation (as in *Morris*) and beginning a pursuit after an attempted vehicle *stop* (as here) is not material, especially when Sergeant Tjepkes, like the officer in *Morris*, "was acting on orders . . . to pursue [the fugitive] because of his involvement" in other crimes. *Id.* at 391. In both instances, an officer made a "decision to pursue the fleeing suspect." *Id.* at 390. As *Morris* instructs, that decision is not relevant to any duty owed under or because of section 321.231. *See id.* (Concluding section 321.231 addresses "the officer's manner of driving" rather than "his decision to pursue"). Thus, Martinez's attempted distinction between a "fleeing

[1] Martinez also relies on some decisions from other jurisdictions that assume or establish a duty informed by statutory analogs to section 321.231(5). But whatever those decisions say about duty, *Morris* says otherwise, and the Court should "not create a conflict in the [Iowa] decisions by disregarding precedents which are concededly applicable." *Bratt v. City & Cty. of San Francisco*, 123 Cal. Rptr. 774, 777 (Ct. App. 1975).

driver [who] is already fleeing" (Martinez Br. at 20), as in *Morris*, and Grimes under this record, exposes the weakness in Martinez's claim: it challenges the pursuit decision rather than any act illustrating the manner of driving. App. 393 (Order Denying Def's MSJ, at 4 n. 15). *Cf. City of Sacramento v. Super. Ct.*, 182 Cal. Rptr. 443, 449 (Ct. App. 1982) (distinguishing between the decision to pursue, which results in no liability, and "an allegation that having decided to pursue the suspect the officers did so in a negligent manner by failing to sound their siren and flash their red lights").

Morris also rebuts Martinez's contention that it is "actually a proximate cause, not a no duty case." (Martinez Br. at 20). The Court stated its holding unambiguously. First, it found "*no duty* owing from the employee to the public." *Morris*, 534 N.W.2d at 391 (emphasis added). Second, it was unnecessary "to address the other issues raised" because "[t]he district court concluded . . . the police officer did not owe a duty to the plaintiffs, and we agree." *Id.* These statements are unequivocal. *Morris* is a no-duty case that applies when the plaintiff does not challenge the manner of driving, and the District Court should have relied on it to grant summary judgment for the State here.

II. Recklessness under section 321.231(5) is a high standard, and it was not met as a matter of law.

Below, the State relied on *Estate of Fritz v. Hennigar*, No. C19-2046-LTS, 2020 WL 6845944, at *6 (N.D. Iowa Nov. 20, 2020), to demonstrate recklessness analysis under section 321.231(5). Since then, the United States Court of Appeals for the Eighth Circuit issued a ruling on appeal in the *Estate of Fritz* case. *See Estate of Fritz v. Hennigar*, 19 F.4th 1067, 1069 (8th Cir. 2021). The Eighth Circuit's ruling confirms that "recklessness is a difficult standard to meet in Iowa." *Id.* at 1070. And it also confirms that emergency vehicle operators who exceed the speed limit or proceed through an intersection while engaged in emergency response do not commit reckless acts of unreasonable character making it highly probable that harm will follow. *See id.* A speeding emergency vehicle proceeding through an intersection with siren and flashing lights activated is "insufficient to establish . . . recklessness." *Id.*

The same is true here. Martinez offers few specifics about what purportedly made Sergeant Tjepkes' pursuit reckless. *See Delgado v. Pawtucket Police Dep't*, 668 F.3d 42, 52 (1st Cir. 2012) (noting a litigant argued recklessness "in lackluster and conclusory fashion"). Rather, she contends Sergeant Tjepkes acted recklessly by *not*

"back[ing] off slightly," enabling Grimes to turn onto a side street, abandon the vehicle, and escape (Martinez Br. at 25); that it was reckless for Sergeant Tjepkes to pursue *at all* once Grimes fled, because once a chase starts, "it only ends in a certain way" (Martinez Br. at 25);[2] and that pursuing Grimes on a four-lane street with a 35-mile-per-hour speed limit, while proceeding through some intersections, was reckless (Martinez Br. at 26). But these resemble the facts in *Estate of Fritz*, where summary judgment was still proper. There, "traffic had stopped, the road was straight, and the 'lane ahead' was clear." *Estate of Fritz*, 19 F.4th at 1070. Here, as the dashcam footage shows, despite the District Court's finding that the chase occurred "during rush hour traffic" App. 394 (Order Denying Def's MSJ, at 5), that traffic had stopped or moved aside, the road was straight (albeit a little inclined), and the lane ahead was clear. No reasonable jury could find Sergeant Tjepkes was reckless under those facts. *See Estate of Fritz*, 19 F.4th at

[2] On this point, Martinez relies on a quote from Sergeant Nathan Ludwig in a 2015 newspaper article generally discussing police pursuits, which (according to Martinez) demonstrates that police officers often pursue simply because they like the excitement of chases. (Martinez Br. at 16). But Martinez's reliance is misplaced. For one, Ludwig acknowledged the remark was unwise and not reflective of any official State policy. But more importantly, a comment Ludwig made in 2015 indicates nothing about *Sergeant Tjepkes* and his pursuit of Grimes years later.

1070. Indeed, "[t]o call this 'reckless' would be to extend the label—a demanding standard—far beyond" its moorings. *Delgado*, 668 F.3d at 53.

Moreover, the contention that summary judgment was properly denied because Grimes "drove his vehicle . . . based on Tjepkes' driving" (Martinez Br. at 25) "would, in effect, shift the blame from the law violator to the law enforcer" and prevent summary judgment in pursuit cases. *Parish v. Hill*, 513 S.E.2d 547, 555 (N.C. 1999). If the Court accepts that a driver only fled because the police gave chase, summary judgment would be inappropriate whenever the evidence suggests a suspect "was aware of a continued pursuit at the time of the accident and was actively attempting to elude arrest." *Id.* That result "is contrary to our established jurisprudence," *id.*, and the Court should reject it. *See Jones v. Murray*, 250 So. 2d 481, 483 (La. Ct. App. 1971) (concluding a suspect's affidavit that his actions "would have been considerably different" if the police had not chased him at high speeds "really adds nothing to the position of plaintiff"). Tort liability for the State and recklessness by an officer should not turn on fugitives' choices to flout the law. *See Draper v. City of Los Angeles*, 205 P.2d

46, 48 (Cal. Dist. Ct. App. 1949) ("Pratt's actions were distinct from [the officers' actions] and placed no responsibility upon them.").

Several decisions from other jurisdictions—even some on which Martinez relies—reach similar results under the frameworks applicable in those jurisdictions. *See, e.g.*, *Delgado*, 668 F.3d at 53 (finding no recklessness when "police did little more than attempt for a couple of minutes to keep a fleeing car in sight"); *Mfon v. Cty. of Dutchess*, 722 F. App'x 46, 48 (2d Cir. 2018) (finding no recklessness after a ten-minute chase in which the suspect "illegally passed other vehicles, ran five red lights, and . . . drove the wrong way around a traffic circle"); *Dist. of Columbia v. Walker*, 689 A.2d 40, 47–48 (D.C. 1997) (finding no breach of duty even though some factors "weighed against the pursuit"); *Robbins v. City of Wichita*, 172 P.3d 1187, 1190–91, 1198 (Kan. 2007) (finding no recklessness in a 2-minute chase through residential areas that reached speeds of 70 miles per hour); *Broome v. City of Columbia*, 952 So. 2d 1050, 1053–54 (Miss. Ct. App. 2007) (finding no recklessness in a 2-minute chase on a rainy day, even though the pursuit decision "indicate[d] poor judgment" by the officer); *Tice v. Cramer*, 627 A.2d 1090, 1095 (N.J. 1993) (summarizing New Jersey law as establishing that even negligent

pursuits are "not to be submitted to a jury" because "there is no liability as a matter of law"); *Saarinen v. Kerr*, 644 N.E.2d 988, 992–93 (N.Y. 1994) (finding no recklessness, even considering "the wet condition of the road, the possibility of other vehicular traffic in the vicinity," and overall speed); *Parish*, 513 S.E.2d at 555–56 (finding no breach of duty, even though the fugitive "saw that he was being followed" and "attempted to evade arrest by increasing his speed"); *Bullins v. Schmidt*, 369 S.E.2d 601, 604 (N.C. 1988) (finding no recklessness in pursuing a vehicle that was itself driving recklessly, when officers used lights and sirens, "kept their vehicles under proper control, and did not collide with any person, vehicle, or object"), *overruled on other grounds by Young v. Woodall*, 471 S.E.2d 357, 359 (N.C. 1996); *Sergent v. City of Charleston*, 549 S.E.2d 311, 318–19 (W. Va. 2001) (finding no recklessness in a 3-minute chase on a slightly curved road when officers drove a marked vehicle, used lights and sirens, and remained behind the suspect at all times); *Peak v. Ratliff*, 408 S.E.2d 300, 310 (W. Va. 1991) (finding no gross negligence when a pursuit was short and officers did not attempt to overtake the suspect or force him off the road—even though the chase reached 100 miles per hour and proceeded through moderate traffic). It is highly persuasive that, under

circumstances resembling those presented here, other jurisdictions have found no recklessness in police pursuit cases, sometimes as a matter of law, even when a duty is assumed or otherwise established. These decisions provide further support for reversal.

CONCLUSION

The State is not liable for Martinez's injuries, but that's not to say she never had any remedy. Grimes is the tortfeasor, but Martinez did not sue Grimes. Instead, she seeks to shift Grimes's responsibility to the State.

The United States Court of Appeals for the Seventh Circuit has explored the negative consequences of this type of shift threatening to make government liable for collisions resulting from attempts to flee law enforcement:

> [S]ociety must consider not only the risks to passengers, pedestrians, and other drivers that high-speed chases engender, but also the fact that if police are forbidden to pursue, then many more suspects will flee—and successful flights not only reduce the number of crimes solved but also create their own risks for passengers and bystanders. . . .
>
> Burries was a reckless driver, his flight from the police an ongoing crime. Plaintiffs' injuries were the result of criminal behavior by a private actor—behavior that Officer Cherry tried in vain to suppress.
>
> One can say that Burries' crime was a response to Cherry's attempt to make an arrest, and that the high speed

> of flight was attributable to Cherry's decision to pursue. These facts do not make what Burries did less a crime, or less essential to the harm. Cherry's actions played a causal role, no doubt, but not the *kind* of cause the law recognizes as culpable. . . .
>
> Lax law enforcement emboldens criminals and leads to more crime. Zealous pursuit of suspects jeopardizes bystanders and persons accompanying the offender. Easy solutions rarely work, and *ex post* assessments—based on sympathy for those the criminal has injured, while disregarding the risks to society at large from new restrictions on how the police work—are unlikely to promote aggregate social welfare.

Mays v. City of E. St. Louis, 123 F.3d 999, 1003–04 (7th Cir. 1997), *overruled on other grounds by Cty. of Sacramento v. Lewis*, 523 U.S. 833, 843–44 (1998).

Put another way, an "effort to shift the blame—the proposition that it is law enforcement that causes crime—is not one that any legal system can accept." *Id.* at 1004. The "nation's social and legal traditions do not give passengers [or other drivers] a legal right—as opposed to a moral claim—to have police officers protect them by letting criminals escape." *Id.* at 1003; *accord Draper*, 205 P.2d at 48 ("Although the pursuit no doubt contributed . . . to [the suspect's] reckless driving, the officers were under no duty to allow him to make a leisurely escape."). "To find otherwise would be implementing the use of judicial hindsight to the many split-second decisions that are

made by law enforcement officers under the stress of protecting the lives and safety of the public . . . ." *Robbins*, 172 P.3d at 1198.

Yet that is what Martinez seeks to do here. The Court shouldn't accept the invitation. It should find that (1) Sergeant Tjepkes owed no legal duty; (2) even if he did owe a duty, he did not breach it by acting recklessly; or (3) Sergeant Tjepkes did not cause Martinez's injuries—Grimes did.

The Court should reverse and remand for the District Court to enter summary judgment for the State.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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