IN THE SUPREME COURT OF IOWA

NO. 21-1327

DAVINA VALDEZ,
Plaintiff/Appellant

v.

WEST DES MOINES COMMUNITY SCHOOLS
And DESIRA JOHNSON
Defendants/Appellees

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
CASE NUMBER: LACL146607

THE HONORABLE JEFFREY FARRELL

APPELLEES' AMENDED FINAL BRIEF

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ROUTING STATEMENT

The Iowa Supreme Court should transfer this case to the Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1101. This case involves the application of existing legal principles. The issues of this case are appropriate for summary disposition.

STATEMENT OF THE CASE

I. Nature of the Case.

Plaintiff/Appellant Davina Valdez ("***Valdez***") was an employee of Defendant/Appellee West Des Moines Community Schools ("***the District***"). On December 13, 2019, she filed the present lawsuit against the District and Defendant/Appellee Desira Johnson ("***Johnson***"), a teacher in the District. Valdez alleged four claims:

1) Race discrimination/hostile work environment harassment in violation of the Iowa Civil Rights Act ("***ICRA***") (Count I);
2) Unequal pay in violation of the ICRA (Count II);
3) Retaliation under the ICRA (Count III); and
4) Wrongful termination in violation of public policy (Count IV).

(First Am. Petition; App. 0008-0023). Prior to trial, Valdez dismissed her unequal pay claim. (Partial Dismissal of Certain Claims; App. 0024-0025).

II. Disposition of the Case in the District Court.

On April 11, 2021, the trial court entered a ruling granting summary judgment in Appellees' favor on several of Valdez's claims but denying summary judgment on her claims of coworker and

supervisor harassment, coworker "retaliatory harassment", constructive discharge, and wrongful termination in violation of public policy allegedly protecting a school employee's complaints about bullying or harassing of students. (Ruling on Mot. for Summary Judgment; App. 0044-0087).

Trial by jury began on April 12, 2021 and lasted seven days. Following the close of Valdez's case, Johnson moved for directed verdict, which was granted by the district court. (Tr. Tran. Vol. VIII at 109-111; App. 0298-0300); (Def. Mot. for Directed Verdict at Close of Pl. Case; App. 0093-0111). The remaining claims against the District proceeded to verdict, which the jury returned in the District's favor on all remaining claims. (Verdict Form and Special Interrogatories; App. 0116-0118).

On May 3, 2021, Valdez filed a motion for a new trial. (Pl. Mot. for New Trial Br.; App. 0121-0149). Appellees filed a resistance on June 1, 2021. (Def. Res. to Mot. for New Trial; App. 0150-0167). The court held a hearing on July 16, 2021 and denied the motion for new

trial on August 28, 2021 by written ruling. (Ruling on Mot. for New Trial; App. 0171-0194). Valdez filed a notice of appeal on September 20, 2021. (Notice of Appeal; App. 0195-0196).

STATEMENT OF THE FACTS

Davina Valdez was a special education teacher's associate at West Des Moines Valley High School from 2015 through 2019.[1] Valdez identifies as a Black American. (Tr. Tran. Vol VII at 66:16-18; App. 0292).

During 2018-2019, Valdez worked primarily with a particular student in the classroom of special education teacher Kylene Simpson. (Tr. Tran. Vol. IV at 78:12-80:9; App. 0286-88). Although she worked in Simpson's classroom, Simpson was not Valdez's supervisor (nor was any other teacher). Rather, as an associate, her supervisor was Associate Principal and Head of Special Education Jill Bryson ("***Bryson***"). (Tr. Tran. Vol. III at 54:7-18; App. 0283); (Def. Ex. A-2; App. 0251-52). Simpson did not complete the school year,

[1] Valley High School is owned and operated by the District.

however, and resigned in March 2019. (First Am. Petition at ¶ 12; App. 0012). The district assigned a substitute teacher, Jo Yochum, to complete the school year in Simpson's classroom. (Tr. Tran. Vol. III at 82:11-17; App. 0284). The District provided Yochum with some assistance in the transition from Johnson, another special education teacher, who also retained responsibilities for her own, separate classroom.

Following an April 15, 2019 meeting with Principal David Maxwell ("***Maxwell***") and Bryson,[2] Valdez submitted a complaint to Associate Superintendent of Human Resources Carol Seid ("***Seid***") and Dr. Lisa Remy ("***Remy***") with vague accusations complaining about being counseled for not being a team player, that Johnson had

[2] Maxwell and Bryson met with Valdez one-on-one because she had been gone when they had a group discussion with other associates. The purpose of the conversation was to discuss the transition since Simpson left and to let associates know that the District valued them and that there would be additional changes because the student Individualized Education Plans ("IEPs") had been audited. The meeting was prompted because Yochum said the associates in her room were not following directions. Additionally, Maxwell and Bryson wanted to discuss reports they had received regarding Valdez's frequent use of her cell phone and not being a team player.

a conflict of interest with an individual working in the classroom, and that Johnson micromanaged Valdez. (Pl. Ex. 1; App. 0197-98). Notably, the April 18, 2019 complaint does not mention racial discrimination. (*Id.*). To the contrary, it references alleged mistreatment of "all staff". (*Id.*) ("All staff will be gone by the end of the year.").

Valdez subsequently met with Director of Human Resources, Jesse Johnston (now deceased) ("***Johnston***") regarding her complaint. On April 30, 2019, Valdez emailed Seid asking who she should contact with further information or questions. (Def. Ex. B-3; App. 0253). Seid responded, stating that she and Johnston would "coordinate the investigation together." (*Id.*).

On May 14, 2019, Valdez emailed Johnson and Seid indicating that she had not heard back regarding her April 18, 2019 complaint. (Pl. Ex. 2; App. 0199). She also reported that Johnson was no longer spending her whole day in the classroom. (*Id.*). Valdez stated: "I feel now more than ever discriminated against and work is more tense

and hostile than ever." (*Id*.). She also claimed: "I've seen Jill Bryson twice since the complaint letter and she did not speak to me either time." (*Id*.). Again, Valdez's email does not mention race discrimination or harassment. (*Id.*). Seid responded to Valdez later that same day, informing Valdez that her complaint was "under investigation." (Def. Ex. B-6; App. 0203-07).

On May 27, 2019, and after conducting various interviews, Johnston issued an investigation report regarding Valdez's complaint, pursuant to the District's written policies and procedures. (Pl. Ex. 4; App. 0200-02). Johnston concluded that the complaint was unfounded. (*Id.*). She reached out to Valdez the following morning, May 28, 2019 at 7:56 a.m., advising that the investigation was complete and that Johnston "would like the opportunity to discuss the resolution of the matter with you." (Def. Ex. 8; App. 0212).

Later than same day, at 4:51 p.m., Valdez's attorney, Megan Flynn, sent a demand letter to the District threatening litigation and instructing the District not to speak to Valdez. (Pl. Ex. 7; App. 0208-

11). Flynn sent a follow-up letter on June 17, 2019, this time to the District's outside counsel, demanding $225,000. (Pl. Ex. B-11; App. 0216-63). On June 25, 2019, the District's outside counsel, Kristy Latta, responded to Flynn's letters of May 28, 2019 and June 17, 2019. (Def. Ex. B-12; App. 264-65). Latta informed Flynn that the District had investigated Valdez's complaint, including interviews of Valdez, Johnson, Bryson, and other witnesses, and "it was determined that a violation of District policy was not likely to have occurred." (*Id.*). Latta declined Valdez's demand for $225,000, but also advised:

> It is regrettable that Ms. Valdez is not enjoying her time at the District. If Ms. Valdez is interested in a reassignment to another supervisor or building, the District welcomes the opportunity to work with her in that regard.

(*Id.*).

On June 26, 2019 Valdez resigned from her employment. (Pl. Ex. 8; App. 212). Valdez wrote in her resignation letter to Jesse Johnston: "It is apparent to me that the District performed a deficient investigation, and has not, and will not, protect me from additional harassment and discrimination should I return to work." (*Id.*). At

the time of Valdez's resignation, students had already left for the summer vacation, as had Valdez. For her part, Johnson was unaware that Valdez had filed a complaint against her until the end of the school year, on or around June 11, 2019. (Tr. Tran. Vol. VII at 21:14-22:1; App. 0290-91).

Valdez initiated litigation shortly after resignation by filing her complaint with the Iowa Civil Rights Commission on July 1, 2019.

ARGUMENT

I. The Court Should Affirm the District Court's Ruling that Valdez Was Not Entitled to a New Trial Based on Her *Batson* Challenge.

A. Error Preservation.

Appellees do not contest that Valdez preserved error on her *Batson* Challenge.

B. Standard of Review.

Batson challenges are constitutional questions, which the Court reviews de novo. *See State v. Veal*, 930 N.W.2d 319, 327 (Iowa 2019). However, the Court gives "a great deal of deference to the district

court's evaluation of credibility when determining the true motives of the attorney when making strikes." *Id.* at 327.

C. The Court should decline Valdez's request to extend *Batson*.

In *Batson v. Kentucky*, the United States Supreme Court held, "[T]he Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race . . . ." 476 U.S. 79, 89 (1986). The *Batson* court adopted a burden-shifting standard for determining whether use of a peremptory strike violates the Equal Protection Clause:

1. The moving party must first prove a prima facie case of purposeful discrimination by showing that (a) one or more peremptory challenges were used to remove from the venire members of a racial minority; and (b) that these facts and other relevant circumstances raise an inference of discrimination. *Id.* at 94.

2. If the moving party successfully shows a prima facie case, the burden shifts to the non-moving party to articulate a "permissible racially neutral selection criteria." *Id.* at 94 (quoting *Alexander v. Louisiana*, 405 U.S.625, 632 (1972)).

3. The district court then determines whether the challenging party has established purposeful discrimination. *Id.*

The Iowa Supreme Court has adopted the federal *Batson* framework in determining whether peremptory strikes violate the Iowa Constitution. *See Veal*, 930 N.W.2d at 328 n.5.

In this appeal, Valdez argues that the Court should go "beyond *Batson*" and provide a more stringent test for preemptory strikes than is currently applied by either the United States Supreme Court or the Supreme Court of Iowa. (Appellant's Br. at 22-23). Valdez suggests an assortment of modifications to the *Batson* analysis, each of which have been previously considered and rejected by the Iowa Supreme Court.

Valdez's main argument is that a striking party should be required to "provide a specific challenge related to the facts of the case" when striking minority jurors. (*Id.* at 37). However, in *Veal*, the Iowa Supreme Court declined to adopt a heightened standard for assessing a preemptory strike against a final African-American juror. *See Veal,* 930 N.W.2d at 334 ("Veal insists that a nondiscriminatory reason for striking the last African-American juror is insufficient and

that we should adopt something like a cause requirement in those circumstances. This is contrary to our precedent."). Other courts have reached this same conclusion. *See, e.g., Dunham v. Frank's Nursery & Crafts, Inc.*, 957 F.2d 1121, 1124 n.3 (7th Cir. 1992) (declining plaintiff's invitation to "establish a higher standard for civil *Batson* cases, 'approaching that of cause' and requiring an explanation that would 'show an essential difference related to the case to be tried between the juror challenged and the other jurors accepted'"). Valdez provides no theory or data unavailable to this Court when it rejected her present argument only three years ago.

Veal aside, Valdez's proposed standard is incompatible with the competing purposes of *Batson*. Her depiction of *Batson* is an over-simplified one in which heightened standards lead only to heightened constitutional protection. In actuality, the United States Supreme Court and the Iowa Supreme Court have developed the current standard for *Batson* challenges in order to maintain a balance of the rights of all litigants and minority jurors while at the same time

preserving judicial resources. *See Powers v. Ohio*, 499 U.S. 400, 406 (1991) ("*Batson* 'was designed to serve multiple ends,' only one of which was to protect individual defendants from discrimination in the selection of jurors.") (quoting *Allen v. Hardy*, 478 U.S. 255, 259 (1991)).

As Valdez thoroughly addresses, "The Equal Protection Clause guarantees [a litigant] that the State will not exclude members of his [or her] race from the jury venire on account of race." *Batson*, 476 U.S. at 86. *Batson* also protects "the equal protection rights of jurors." *See State v. Mootz*, 808 N.W.2d 207, 215 (Iowa 2012). Yet *Batson* and its progeny were developed with an eye to other important rights as well. Had *Batson* only intended to guard the equal protection rights of minority litigants and minority jurors, peremptory strikes could have been done away with entirely. This certainly would have been the most effective way to prevent racial discrimination in use of peremptory strikes. Instead, the courts have consistently recognized "the continuing viability and importance of peremptory challenges as

a means of achieving an impartial jury." *U.S. v. Annigoni*, 96 F.3d 1132, 1142 (9th Cir. 1996).

Critical to our judicial system is the ability to provide a fair and impartial jury. *See* U.S. Const. amend VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ."); Iowa Const. Art. I Sec. 10 ("In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right to a speedy and public trial by an impartial jury . . . ."); *Olson v. Bradrick*, 645 F.Supp. 645, 653 (D. Conn. 1986) ("A civil litigant's right to a trial by an impartial jury is guaranteed by the United States Constitution."); *Johnson v. Waterloo*, 119 N.W. 70, 71 (Iowa 1909) (discussing a litigant's right to "insist upon . . . a competent and impartial jury"). The use of peremptory strikes has long guarded the impartiality of the jury. *See Holland v. Illinois*, 493 U.S. 474, 483 (1990) (discussing the "assurance of impartiality that the system of peremptory challenges has

traditionally provided"); *Batson*, 476 U.S. at 98 (discussing "the fair trial values served by the peremptory challenge"); *Ingebretsen v. Minneapolis & St. L. R. Co.*, 155 N.W. 327, 329 (Iowa 1915) ("The statute provides for each litigant five peremptory challenges. This number the Legislature apparently deemed sufficient to protect the average party in his right to an impartial jury . . . ."). Moreover, the use of peremptory strikes prevents any appearances of partiality. *Swain v. Alabama*, 380 U.S. 202, 219 (1965) ("The function of the [peremptory] challenge is not only to eliminate extremes of partiality on both sides, but to assure the parties that the jurors before whom they try the case will decide on the basis of the evidence placed before them, and not otherwise."); *see also Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 633 (1991) (O'Connor, J., dissenting) ("[T]he peremptory challenge fosters both the perception and reality of an impartial jury.").

Further, Iowa Rule of Civil Procedure 1.915(6) governs challenges of jurors for cause in civil actions. That rule sets forth

particular circumstances under which the court should exclude individuals from serving on a jury for cause. However, peremptory strikes allow parties to remove jurors who fall short of the limited "for cause" justifications, yet still threaten the impartiality of trial. *See Staiger v. Gaarder*, 258 N.W.2d 641, 645 (N.D. 1977) ("The purpose of peremptory jury challenges in a civil action is to afford each litigant an opportunity to exclude, without showing cause, potential jurors whom the litigant believes would not be impartial in deciding the case.").

Finally, another consideration in crafting the limits of *Batson* is the burden on judicial resources and the length of litigation. The extension of *Batson* necessarily . . . provides[s] the basis for extensive collateral litigation . . . ." *J.E.B. v. Alabama*, 511 U.S. 127, 162 (1994) (Scalia, J., dissenting). "Another consequence, . . . is a lengthening of the *voir dire* process that already burdens trial courts." *Id.* Valdez invites the court to lower the bar to prove a *Batson* challenge. Lowering that bar would undoubtedly open the floodgates to *Batson*

challenges, grinding voir dire to a halt and increasing the number of post-trial appeals. *See id.* at 147 (O'Conner, J., concurring) ("In further constitutionalizing jury selection procedures, the Court increases the number of cases in which jury selection—once a sideshow—will become part of the main event.").

While adding additional "teeth" to *Batson* may decrease the use of racially-motived peremptory strikes, it would do so at the cost of the impartiality created by peremptory strikes. It would also increase the length of voir dire and the judicial costs of litigation as a whole. For these reasons, the Court should defer to its precedent and decline Valdez's invitation to move "beyond *Batson*." *See State v. Prentiss*, No. 02–0053, 2003 WL 21360908 at *2 n.2 (Iowa Ct. App. June 13, 2003) ("Prentiss urges us to adopt a more restrictive test under the Iowa Constitution than has been applied under the United States Constitution. We find no reason to depart from the *Batson* analysis our courts have applied on more than one occasion.").

D. The district court did not err in finding that Appellees' strike of Juror 13 was proper.

1. Valdez did not establish a prima facie case of purposeful discrimination.

A *Batson* challenge first requires that the moving party make out a prima facie case of purposeful discrimination. *Veal*, 930 N.W.2d at 332. That is established by "showing that the [striking attorney] has exercised one or more peremptory challenges to remove from the venire members of a racial minority and that these facts and other relevant circumstances raise an inference of discrimination." *Id.* A moving party's observation that it doesn't see "any relevant reason" for the strike "falls short of establishing a prima facie case of purposeful racial discrimination." *State v. Mootz*, 808 N.W.2d 207, 218 (Iowa 2012), *as corrected* (Feb. 22, 2012), *as corrected* (Apr. 9, 2012). That is precisely what occurred here. The entire basis for Valdez's *Batson* challenge was that Juror 13 is Black and Valdez's counsel subjectively believed that Juror 13 was a desirable defense juror

because he was in management. That is insufficient to establish a prima facie case of discrimination.

The district court considered Valdez's *Batson* challenge because "a race-neutral reason to strike was not apparent." (Ruling on Mot. New Trial at 13; App. 0183). Respectfully, this turns the relevant inquiry on its head—Valdez was required to come forward with "facts and other relevant circumstances [that] raise an inference of discrimination." *Veal*, 930 N.W.2d at 332. While "a trial court may raise the issue of purposeful racial discrimination sua sponte, . . . [this Court] insist[s] upon a clear indication of a *prima facie* case of purposeful discrimination *before* trial courts are authorized to act." *Mootz*, 808 N.W.2d at 217 (emphasis in original). Because that simply did not occur, the *Batson* challenge should have been denied at the threshold.

2. Appellees struck Juror 13 for permissible reasons.

Even if Valdez could have made a prima facie case of discrimination, Appellees identified numerous permissible racially-neutral selection criteria for striking Juror 13. This Court need only find one of these selection criteria was racially-neutral to affirm the trial court's ruling. S*ee Kiray v. Hy-Vee, Inc.*, 716 N.W.2d 193, 197 (Iowa Ct. App. 2006). For these reasons, the district court was correct in overruling Valdez's *Batson* challenge.

a. Juror 13's response that "something happened" was a permissible, racially-neutral reason for Appellees' strike.

Appellees' counsel's primary reason for striking Juror 13 was, and has always been, Juror 13's response to the following question:

> MS. GRAHAM: The other thing that -- again, I'm just going to kind of ask you as a group for agreement. Does anybody think that just because we're here, we're in this beautiful courtroom, that it means that there's something to this case? In other words, you already feel like we must have done something wrong just because we're here? Does everybody understand that we start out on equal footing? Can everybody agree that they're not going to put one side

above the other just because we're here and we're taking up resources?

[. . .]

MS. GRAHAM: [Juror 13], you agree with that?

[JUROR 13]: Yes. But, I mean, something happened. But what it is, I guess you are trying to figure out.

(Tr. Tran. Vol. I at 33:2-33:15). This response to counsel's question created concern regarding Juror 13's ability to hear the case with an open mind. (Def. Res. to Pl. Mot. New Trial at 3; App. 0152). Appellees' counsel has consistently[3] identified this as the primary reason for striking Juror 13. (Tr. Tran. Vol II at 52:14-16; App. 0281) ("And I think the main thing was when he said there must be

[3] Valdez's Motion for New Trial argued that Appellees' sole reason for the strike was lack of rapport. (Pl. Mot. for New Trial Br. at 5; App. 0154). As argued in Appellees' resistance to that motion, evidenced by the record, and found by the district court's ruling on the motion, that argument was patently false. (Def. Res. to Pl. Mot. New Trial at 2; App. 0151); (Ruling on Mot. New Trial at 13; App. 0183). Valdez now argues that Appellees' reasons for the strike have changed over time. (Appellant's Br. at 51). As discussed below, this too is demonstrably false. Appellees' reasons for the strike have remained consistent both before the trial court and during this appeal.

something to it. We wouldn't be here if there wasn't something to it."); (Trans. Mot. New Trial at 31:4-9; App. 0306) ("[N]umber one, . . . [Ms. Graham asked], hey, just because there's a lawsuit, can you accept the fact that you start at ground zero. And the juror responded, well, something happened."); (Def. Res. to Pl. Mot. New Trial at 3; App. 0152) (identifying the "'main reason for the strike' as Juror's 13's response, "But, I mean, ***something happened***.") (emphasis in original).

Appellees' concern with Juror 13's response to this question was noted by the district court in is Ruling on Motion for New Trial:

> The 'something happened' comment was not prompted by the question. Certainly, this could be a wholly innocent response – cases do reach trial for a reason. It would not be a ground to strike for cause. However, that is not the standard in a *Batson* challenge. This response could make a defense attorney hesitant when considering her strikes.

(Ruling on Mot. New Trial at 13; App. 0183). The district court confirmed—correctly—that Juror 13's response to this question "about placing both parties in equal positions [] supports the

defense's position." (*Id.*). Obviously, concern that a juror will be unable to hear the case with an open mind is a permissible racially-neutral criteria for striking that juror. *See, e.g., Lockhart v. Janda*, No. C 13–00014 EJD (PR), 2015 WL 1531239 at *9 (N.D. Cal. Mar. 31, 2015) (finding prosecutor's peremptory strike was not discriminatory when he had reason to believe "the prospective juror would not approach the . . . case with an open mind"); *People v. Fagan*, No. 01–039, 2002 WL 76981 at *1 (N.Y. App. Div. Jan 10, 2002) (finding prospective juror's statement that he "would have 'some difficulty' in keeping an open mind and being fair to the defendant in view of the defendant's prior convictions . . . cast doubt on the prospective juror's ability to render an impartial verdict").

Appellees' strike of Juror 13 for this reason was both constitutional and consistent with the purposes of peremptory strikes—maintaining an impartial jury. The district court's rejection of Valdez's *Batson* challenge should be affirmed for this reason. S*ee Kiray*, 716 N.W.2d at 197.

b. The fact that Appellees' counsel did not have good rapport with Juror 13 was a permissible, racially-neutral criteria for Appellees' strike.

Although Juror 13's statement that "something happened" constitutes the primary reason for Appellees' strike, counsel has consistently provided other racially-neutral reasons supporting the strike. For example, the lack of rapport between Appellees' counsel and Juror 13. (Tr. Tran. Vol. II at 52:12-13; App. 0281) ("He seemed at points that we did not have a good rapport once I was the one questioning him.") (Def. Res. to Pl. Mot. for New Trial at 5; App. 0154) ("To suggest rapport cannot be considered, in addition to the various other factors identified by defense counsel, has no basis in the law."); (Tran. Mot. New Trial at 30:7-8; App. 0305) (discussing the "rapport issues"). An example of this lack of rapport is evident through the following line of questioning:

> MS. GRAHAM: Yeah. So I'm asking if there's a whole -- if an attorney just makes a tactic or a trial strategy to put in a whole bunch of information, you know, again, you might think, well, just on the volume that might be important. And I

want to make sure you can look at, okay, there's a whole volume of evidence, but I can still consider just the smallest piece of evidence just as important and that you're going to weigh them equally against each other. Not just that you're going to find, oh, there's a whole bunch of it, so that's why I think it's important.

JUROR [13]: I would say yes, you have to weigh it out. You're basically asking just because it's a lot doesn't mean that.

MS. GRAHAM: Exactly.

JUROR [13]: If you just asked that, I would have better understood it.

(Tr. Tran. Vol II at 40:21-41:12; App. 0278-79).

Demeanor and rapport are racially-neutral criteria for striking a juror. *See, e.g., U.S. v. Jackson*, 347 F.3d 598, 602 (6th Cir. 2003) (finding juror's "attitude" and "demeanor" were racially-neutral criteria for a peremptory strike); *Blackman v. State*, 414 S.W.3d 757, 770 (Tex. Crim. App. 2013) (holding that there was no error in the trial court's finding that the prosecutor provided a race-neutral reason for a peremptory strike where the prosecutor stated that he

believed the stricken juror had established "a stronger rapport with the defense than with the State"); *People v. Miranda*, 220 A.D.2d 459, 459 (N.Y. App. Div. 1995) ("[T]he reason proffered by the defense counsel suggested lack of rapport with the prospective juror. This was an acceptable race-neutral reason for the challenge . . . ."); *Holman v. State*, 772 S.W.2d 530, 533 (Tex. 1989) (upholding peremptory strike based "lack of rapport between the venireman and the prosecutor during voir dire"). Here, when Appellees' counsel questioned the panel regarding their understanding of evidence, other panel members answered her question—including Juror 13. However, Juror 13 not only answered the question, but also criticized Appellees' counsel's phraseology. This remark called into question the clarity of communication between Appellees' counsel and Juror 13. Certainly, a communication gap and lack of rapport between counsel and a prospective juror may be detrimental during trial—especially during opening and closing arguments, when counsel presents their case to the jury. *See, e.g., People v. Nichols*, No. B158324,

2003 WL 21061411 at *11 (Cal. May 13, 2003) ("A prosecutor's concern that a prospective juror will be unable to understand and to communicate is a valid, race-neutral reason for exercising a peremptory challenge.").

Importantly, the district court also observed the same lack of rapport observed by Appellees' counsel. Noting that it must "carefully scrutinize[]" this reason for a strike, the district court stated:

> In this case, based on my observation of the interaction between attorney and juror, I understand counsel's explanation. It is difficult to show on the transcript, but the juror appeared to be measured or reticent before or as responding to counsel's questions. This is not a bad trait, but it supports defense counsel's belief that he might be a questionable juror for her case.

(Ruling on Mot. New Trial at 13; App. 0183). This court should defer to the trial court's observation of the lack of rapport between Appellee's counsel and Juror 13. *State v. Miller*, No. 16-0331, 2017 WL 1088104 at *3 (Iowa Ct. App. Mar. 22, 2017) ("Race-neutral reasons for peremptory challenges often invoke a juror's demeanor (e.g.,

nervousness, inattention), making the trial court's firsthand observations of even greater importance.") (quoting *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008)). The district court's rejection of Valdez's *Batson* challenge should be affirmed for this additional reason. S*ee Kiray*, 716 N.W.2d at 197.

c. The fact that Juror 13 was a manager who had not had a complaint filed against him was a permissible racially-neutral criteria for Appellees' strike.

Appellees' counsel also had concern that Juror 13 had substantial management experience, but never had a subordinate file a complaint against him:

> MS. GRAHAM: Yeah. Have you -- given your supervisory role, to your knowledge, have you ever had to -- or had someone file a workplace complaint against you saying you did something wrong?
>
> JUROR [13]: I've been in management 15 years. Nothing comes rights off the top of my head. It's possible, but nothing that I would remember.

(Tr. Tran. Vol. I at 32:16-22; App. 0268). Appellees have consistently provided this as one of the bases for the strike. (Tr. Tran. Vol. II at

52:8-12; App. 0281) ("I really like him in the very beginning because of his supervisory experience. But when he was asked the question about whether anyone complained against him, he had no experience with that."); (Def. Res. to Pl. Mot. New Trial at 4; App. 0153) ("[D]espite being in management for fifteen years, Juror No. 13 could not recall a single instance where a subordinate had a workplace complaint against him.").

Juror 13 was one of two division managers for the Fifth Judicial District, who had oversight over the Fort Des Moines facility services fugitive apprehension unit, the parole unit, and the probation unit and had also previously conducted workplace investigations. (Tr. Tran. Vol. I at 12:2-5 & 13:17-16:4). Juror 13 may simply be an exemplary manager, with some measure of good fortune. However, in counsel's experience, this is atypical for a long-term management-level employee who has oversight over entire divisions, even exemplary employees. It raises the questions: Does Juror 13 have a "by the book" management style and disposition, thus avoiding gray

areas where conflict often arises? Or does Juror 13 have a lax, permissive, conflict-avoidant management style that defers to individual personalities and needs? Either of these characteristics, in counsel's mind, and coupled with his other responses, raised concern about Juror 13 as a juror.[4] As Appellees' counsel stated, Juror 13 "was a little bit of a wild card for us." (*Id.* at 52:20-24). This basis for a strike is permissible and race-neutral. *See State v. Vandyke*, A171426, 2022 WL 698517 (Or. Mar. 9, 2022) (finding juror's managerial

[4] Managers bring real-world experience and perspective to jury deliberations, which by its very nature, may be persuasive and compelling to other jurors. Operating under the assumption that such jurors—in the abstract—will be favorable to a defendant employer, plaintiffs tend to strike management-level employees from the panel. For example, that is what Plaintiff did here, striking the two other management-level employees in this case. (Tr. Tran. Vol. I at 27:5-6, 51:19-21 & 55:12-13; App. 0267, 0270-71); (April 21, 2021 Judge's List; App. 0112-13). However, defendant employers must exercise caution in leaving management-level employees on a panel for a similar, and perhaps a more compelling reason. When such a juror—with his real-world experience and perspective—is oriented against an employer, such a view may hold great weight with other members of the panel. Put simply, it is overly simplistic to claim that management-level employees are always desirable jurors for defendants in employment cases.

experience was a race-neutral explanation for a challenged peremptory strike).

Because Appellees have set forth several permissible, racially-neutral criteria supporting the strike of Juror 13, the Court should affirm the trial court's ruling that Valdez was not entitled to a new trial based on her *Batson* challenge. (Ruling on Mot. New Trial at 14; App. 0184) ("In this case, defendants have two legitimate race-neutral reasons for striking the juror in question. Particularly considering them in combination, they had reasonable grounds to strike Juror 13.").

II. The Court should affirm the district court's directed verdict in Johnson's favor.

A. Error Preservation.

Appellees do not contest that Valdez preserved error regarding the district court's directed verdict in favor of Johnson.

B. Standard of Review.

The "standard of review concerning appeal from the grant of a motion for directed verdict is for correction of errors at law." *Dettman v. Kruckenberg*, 613 N.W.2d 238, 250 (Iowa 2000). The Court "review[s] the evidence presented in the light most favorable to the nonmoving party to determine whether a fact question was generated." *Id.*

C. The district court did not err in directing verdict in Johnson's favor on Valdez's ICRA claims.

1. Johnson was not, and has never been, Valdez's supervisor.

The district court's directed verdict in Johnson's favor was entered before the Iowa Supreme Court's June 25, 2021 decision in *Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W.2d 9 (Iowa 2021). Prior to *Rumsey*, it was well-established that only a "supervisory" employee may be subject to individual liability for unfair employment practices under the Iowa Civil Rights Act. *See Vivian v. Madison*, 601 N.W.2d 872, 874 (Iowa 1999); *Godfrey v. State*, 898

N.W.2d 844, 878 n.8 (Iowa 2017) ("To the extent the individual defendants are not 'supervisors' of Godfrey, they are not within the scope of the Iowa Civil Rights Act and there is no adequate remedy as to them."). The district court correctly found that Johnson was not Valdez's supervisor (or a "supervisory employee"), and granted directed verdict in Johnson's favor for that reason. (Tr. Tran. Vol. VIII at 109-112; App. 0298-301).

Valdez continues to argue that Johnson was, in fact, a supervisor. That is incorrect, and Valdez presented no evidence at trial to the contrary. Instead she makes several immaterial allegations, such as that Johnson "took over" the classroom in which Valdez worked, that Johnson "gave instructions to Plaintiff through [a] substitute," and that Johnson "observe[d]" Valdez. (Appellant's Br. at 55). None of these allegations support a finding that Johnson was Valdez's supervisor. *See Cheshewalla v. Rand & Son Const. Co.*, 215 F.3d 847, 851 (8th Cir. 2005) (defining a supervisor as an individual with "the authority to hire, fire, promote, or reassign to

significantly different duties"). *See also* (Ruling on Mot. New Trial at 18; App. 0188) ("There was no evidence to show that Ms. Johnson was a supervisor or controlled plaintiff's employment."). Johnson was a public-school teacher, not a supervisor. Individual liability under the ICRA has never been expanded to a person in Johnson's position, and should not be here.

The district court did not err in finding that Johnson was not Valdez's supervisor and in granting directed verdict in Johnson's favor for that reason. (Tr. Tran. Vol. VIII at 109-112; App. 0298-301).

2. Johnson is not liable under *Rumsey v. Woodgrain Millwork, Inc.*

Valdez also argues that, even if Johnson was not a supervisor, she is individually liable under the standard set forth in *Rumsey.* The district considered *Rumsey*, post-trial, and properly concluded that Valdez "did not present evidence that would create a fact issue on the individual liability issue, even in light of *Rumsey*." (Ruling on Mot. New Trial at 21; App. 0191).

Rumsey involved claims arising out of an employee's termination, not alleged harassment or the maintenance of a hostile work environment. There, following his termination, the plaintiff employee alleged "three specific claims: disparate treatment disability discrimination, failure to accommodate, and retaliation for requesting an accommodation. *Rumsey*, 962 N.W.2d at 19. Rumsey brought each claim against his employer and two individuals—a human resources manager, and former production manager. *Id.* Following a jury verdict against all defendants, the two managers appealed arguing, in part, that individual liability under the ICRA is limited to "supervisory employees, which they define narrowly as those with final decision-making authority." *Id.* at *16.

The Court rejected a limitation of ICRA liability to "supervisors" for adverse employment actions, finding such a title "neither sufficient nor necessary to create liability." *Id.* (citation omitted). "Rather, it is the individual's ability to effectuate the

adverse employment action at issue that can subject them to personal liability." *Id.* The Court ultimately held:

> We conclude that an individual who is personally involved in, and has the ability to effectuate, an adverse employment action may be subject to individual liability for discrimination under section 216.6 or retaliation under section 216.11(2), assuming the other elements of each claim are satisfied with respect to the individual defendant. Whether an individual has the requisite involvement and ability to effectuate the challenged adverse action will depend on the facts of the particular case.

Id. at 36.

By its plain terms, *Rumsey* is limited to the claims asserted therein: (1) disparate treatment discrimination; (2) failure to accommodate a disability; and (3) retaliation in the form of a termination. The case did not involve or address hostile work environment law, and there is no indication the Court intended to overrule its long-standing precedent in that arena. That is clear from *Rumsey's* holding itself: For individual liability to attach, an individual employee must be (a) "personally involved in", and (b) have "the ability to effectuate", (c) "an adverse employment action".

Id. at 36. While a co-worker accused of harassment, logically, may be "personally involved in" the alleged harassment, she does not have "the ability to effectuate" a hostile work environment.

That is because a hostile work environment—like any work environment—is, by definition, maintained by an *employer*. Indeed, an actionable hostile work environment based on co-worker harassment exists *only* where "the employer knew or should have known of the [coworker] harassment and failed to take proper remedial action." *See, e.g., Christensen v. Cargill, Inc.*, No. C14-4121-MWB, 2015 WL 5734439 at *5–6 (N.D. Iowa Sept. 30, 2015) (setting forth elements of hostile work environment based on co-worker harassment) (citing cases). *See also (*Jury Instruction No. 15; App. 0115) (requiring that the District knew or should have known of alleged harassment, and that the District failed to correct).[5] In other

[5] The jury was instructed on employer vicarious liability for harassment by a co-worker. (Jury Instruction No. 15; App. 0115). There, the jury was permitted to consider the conduct of "Desira Johnson and/or other co-workers," but nonetheless found in favor of the District. (*Id.*).

words, it is the employer's failure to properly respond to that harassment that creates—or "effectuates"—an actionable hostile work environment. To hold otherwise would subject *every* employee in *every* workplace in the State of Iowa to liability under the ICRA. That is not the law, nor does *Rumsey* suggest—much less hold—to the contrary. Thus, a co-worker, like Johnson, cannot be individually liable for harassment under the ICRA.[6] The ICRA would not be furthered by permitting direct co-worker harassment claims, which would not take into consideration the essential element of what the employer knew or did in response.

The same is true, logically, of a claim of a "constructive discharge" based on alleged coworker harassment—whether "retaliatory" or otherwise. "Constructive discharge exists when the *employer* deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation." *Van Meter Indus. v. Mason City Hum. Rts. Comm'n*, 675

[6] Valdez's harassment claim against Johnson was based on co-worker harassment, not supervisory harassment.

N.W.2d 503, 511 (Iowa 2004) (quotation omitted) (emphasis added). Conditions generally "will not be considered intolerable unless the *employer* has been given a reasonable chance to resolve the problem."[7] *Id.* (citations omitted) (emphasis added). Like a hostile work environment claim, actionable constructive discharge occurs when the employer has been given a reasonable chance to resolve the problem and failed to do so. Even under *Rumsey*, then, a coworker cannot "effectuate" a constructive discharge.

Finally, the inapplicability of *Rumsey* to hostile work environment claims can be inferred from its limitation to "adverse employment actions". An employer's maintenance of a hostile work environment is not generally referred to as an "adverse employment

[7] This principle is, of course, not absolute: "On the other hand, an employee need not stay if he or she reasonably believes there is no possibility the employer will respond fairly." *Van Meter Indus.*, 675 N.W.2d at 511. *See also Haskenhoff v. Homeland Energy Solutions, LLC*, 897 N.W.2d 553, 604 (Iowa 2017) (Cady, J., concurring) ("At times, it would not be reasonable for an employee to quit without giving the employer a chance to resolve the problem. But, at other times, it would not be reasonable to require an employee to remain in intolerable working conditions.").

action". Rather, it is a change in "the terms or conditions of the plaintiff's employment, which makes harassment 'actionable'". *Bunda v. Potter*, 369 F. Supp. 2d 1039, 1054 (N.D. Iowa 2005) (stating an "adverse employment action" relates to disparate treatment discrimination or retaliation, which a hostile work environment claim relates an "adverse change in the terms or conditions of the plaintiff's employment"). *See also Channon v. United Parcel Service, Inc.*, 629 N.W.2d 835, 861 (Iowa 2001). While an "adverse employment action" may embrace "a wide variety of facts", such action is generally limited to tangible outcomes such as "disciplinary demotion, termination, unjustified evaluations and reports, loss of normal work assignments, and extension of probationary period", and internal transfers that affect future career prospects. *Farmland Foods, Inc. v. Dubuque Human Rts. Comm'n*. 672 N.W.2d 733, 741-42 (Iowa 2003). The holding in *Rumsey*—again, a case involving disparate treatment discrimination—was deliberate and specific in its limitation to

"adverse employment actions", with no mention of harassment or hostile work environment law.

While few employees can demote or terminate in the workplace, nearly any employee can act in a harassing manner. The problems created by applying *Rumsey* to ICRA harassment claims are demonstrated by the case at bar. Johnson is a public-school teacher. Should this Court find that Johnson may be held liable for harassment so long as she effectuated the adverse employment action at issue, the floodgates would open wide for actions against public school teachers such as Johnson.[8] Surely this was not the intent of the legislature when enacting the ICRA, or the Iowa Supreme Court's limited holding in *Rumsey*. The Court should retain the bright line test with respect to ICRA harassment claims, limiting individual liability to supervisors.

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[8] This increased liability would greatly upset the balance of employment law, likely increasing the costs of employment. *See Haskenhoff v. Homeland Energy Solutions, LLC*, 897 N.W.2d 553, 585 (Iowa 2017) ("Predictability and stability are especially important in employment law.").

For all of these reasons, *Rumsey* is inapplicable to Valdez's claims against Johnson in this case. The Court did not err when it directed verdict in Johnson's favor.

D. The district court did not err in finding Johnson was not individually liable for tortious discharge against public policy.

1. Individual liability for tortious discharge against public policy is limited to corporate officers who authorized or directed the discharge.

Valdez also argues the district court erred in entering a directed verdict on Valdez's tortious discharge against public policy claim against Johnson (Count IV). Again, this argument is not supported by Iowa law.

In *Jasper v. H. Nizam, Inc.*, the Iowa Supreme Court recognized individual liability in tortious discharge claims to "individual officers of a corporation who authorized or directed the discharge of [the employee." 764 N.W.2d 751, 776 (Iowa 2009). Johnson—a public-school teacher—is not an officer of a corporation. *See also Johnson v. Dollar General*, 880 F.Supp.2d 967, 998 (N.D. Iowa 2012) (finding

district manager of corporate defendant could not be held liable under a tortious discharge claim as he "was not an officer" of the corporate defendant). Nor was Johnson authorized to discharge Valdez. Thus, the district court did not err in granting Johnson's motion for a directed verdict on Valdez's tortious discharge claim against her.

2. The Court should not extend individual liability beyond that recognized in *Jasper*.

In the alternative, Valdez suggests that her tortious discharge claim against Johnson should have gone to the jury because "tort law should be applied to encourage responsible behavior for all individuals . . . ." (Appellant's Br. at 57). In other words, she invites the Court to extend individual liability well-beyond that recognized in *Jasper*. However, this proposed expansion of liability fosters more ambiguity than responsibility. If Johnson—a public-school teacher with no firing authority whatsoever—could be held liable for tortious discharge, so could virtually any rank-and-file employee. Valdez proposes no limiting principle.

Moreover, such an expansion would ignore the very purpose of the prohibition on discharge in violation of public policy—to provide a remedy for an "*employer's* [act of] retaliatory discharge." *Lara v. Thomas*, 512 N.W.2d 777, 782 (Iowa 1994) (emphasis added). *See also Phillips v. Gemini Moving Specialists*, 74 Cal.Rptr.2d 29, 37-38 (Cal. Ct. App. 1998) ("Luni did not commit the tort of wrongful discharge in violation of public policy because the tort has its basis in the employer-employee relationship and Luni was not plaintiff's employer."). The Court should decline to depart from the clear and well-reasoned standard of *Jasper* and affirm the district court's directed verdict in Johnson's favor.

III. The district court did not make prejudicial evidentiary rulings which require a new trial.

A. Error Preservation.

Appellees do not contest that Valdez preserved error regarding the evidentiary rulings at issue.

B. Standard of Review.

The Court reviews evidentiary issues for an abuse of discretion. *Andersen v. Khanna*, 913 N.W.2d 526, 535 (Iowa 2018). "A court abuses its discretion when its ruling is based on grounds that are unreasonable or untenable." *Id.* (citations omitted). A ground is unreasonable or untenable when it is 'based on an erroneous application of the law.' *Id.* (citations omitted). Reversal is required for the erroneous admission of evidence if prejudice results. *State v. Rodriquez*, 636 N.W.2d 234, 244 (Iowa 2001).

C. The district court did not abuse its discretion in admitting redacted copies of Appellees' Exhibits B-11 and B-12.

Iowa Rule of Evidence 5.408 does not provide that "compromise offers or negotiations" are inadmissible, as Valdez contends. Rather, the Rule states that such offers are "not admissible to prove liability for or invalidity of the claim or its amount". Iowa R. Evid. 5.408. In whole, it provides:

Rule 5.408 Compromise and offers to compromise.

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Iowa R. Evid. 5.408. These principles are "designed to exclude evidence only when it is tendered as an admission of weakness of the other party's claim or defense, not when it is tendered to prove a fact other than liability." *Bremicker v. MCI Telecommunications Corp.*, 420 N.W.2d 427, 428 (Iowa 1988) (citations omitted). A trial court is granted a broad range of discretion in determining the admissibility of evidence and for what purposes. *Bingham v. Marshall & Huschart Machinery*, 485 N.W.2d 78, 81 (Iowa 1992). Here, the district court correctly held that "the redacted letters were offered . . . to rebut an

allegation made by plaintiff in support of her constructive discharge claim" and "show no admission of weakness and no discussion of damage amounts claimed." (Ruling on Pl. Mot. New Tr. at 17; App. 0187). The admission of redacted Exhibits B-11 and B-12 was not an abuse of the district court's discretion.

Valdez takes issue with certain unredacted statements in the Exhibits, namely that "[w]e are amenable to negotiating between the lawyers or engaging in a mediation if that would be helpful"; "[i]n this case, the District can see no legal basis upon which it owes Ms. Valdez payment"; and "[i]f Ms. Valdez chooses to pursue legal action against the District regarding this matter, the District will vigorously defend itself." (Def. Ex. B-11 and B12; App. 0261-65). Based on this language, Valdez claims that "it was clear they discussed settlement." (Appellant's Br. at 60).

However, Valdez fails to inform the Court that it was *she* who first introduced Exhibit B-10 into evidence, which is a formal *demand letter* from her counsel to Defendants' counsel. (Def. Ex. B-10; App.

Vol. II 0005-0009). In that letter, Valdez expressly stated her demands and threatened "to file civil rights claims with the Iowa Civil Rights Commission, which will be followed by a lawsuit in District Court." (App. Vol. II 00008). As noted by the district court:

> Plaintiff sought admission of the first letter [Exhibit B-10] from her attorney. The other letters may never have come into evidence but for her desire to admit the first letter.

(Ruling on Pl. Mot. New Trial at 16; App. 0186) (alterations added). Valdez's complaints that Defendants' counsel referenced her demand and threat of litigation are without merit. She opened wide the door.

Further, Rule 5.408 does not apply "when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution." Iowa R. Evid. 5.408. Here, the jury was entitled to consider exhibits B-11 and B-12 for among other things, sequence and motive—particularly against the backdrop of Valdez's claim that she was constructively

discharged. The district court summarized this other purpose succinctly:

> The other two letters [Exhibit B-11 and B-12] were relevant for other purposes, specifically plaintiff's constructive discharge claim. She claimed that she was denied transfers outside the building, which she attributed to discrimination, harassment, and retaliation by defendants. This was referenced in exhibit B-11. WDM specifically offered to work with her on a transfer in exhibit B-12. As a result, the letters were offered for another purpose, which is allowed by Iowa R. Evid. 5.408(b).

(Ruling on Pl. Mot. New Tr. at 16; App. 0186).

The admission of redacted Exhibits B-11 and B-12 was not an abuse of the district court's discretion.

C. The district court did not abuse its discretion by excluding Valdez's Exhibit 6.

Valdez's Exhibit 6 is a set of notes, most likely written by a former District employee who was deceased by the time of trial. The district court properly excluded this document as hearsay and found it did not meet the definition of a business record and was not an

admission against interest. (Tr. Tran. Vol. VII at 174-75; App. 0293-94; Tr. Tran. Vol. VIII at 6:3-7:9; App. 0296-97).

Valdez devotes much of her argument to describing what this document allegedly reveals. That self-serving description aside, it says nothing about the *admissibility* of the document. At trial, the district court explained the lack of reliability of Valdez's Exhibit 6 in detail:

> This is a document that we know came from the District. We know it's likely created by Ms. Johnston because it wasn't created by Ms. Seid. But there are lots of problems with the reliability about that document. We don't know the timing. We don't know the style in which Ms. Johnston took her notes. We don't have any standards that the District used in creating notes of investigations. It's not a final report or anything like that. There are lots of questions about the reliability of information that's in that document. And that's my concern.
>
> It doesn't qualify under 804 under any of the exceptions there. It's not going to meet the definition of a business record because that standard hasn't been met, and I don't think there's enough supporting data to show that it can be used as an admission against interest to move away from the hearsay definition to begin with.
>
> So those are the reasons that I believe that the document cannot come into evidence. It's unfortunate Ms. Johnston

> passed away before the parties had a chance to review this with her and possibly get her deposed. That happens occasionally in cases. I think this is a document that just there is not enough information to support it's reliable under any of the Rules that have been offered. So for that reason, my ruling will be confirmed.

(Tr. Tran. Vol. VIII at 6:3-7:9; App. 0296-97).

Valdez now argues that Exhibit 6 was offered, not for its truth, but to establish the District was on notice as to issues Valdez allegedly discussed with Johnson. (Appellant's Br. at 63). However, as the district court properly noted: "The problem here is with *reliability* with the document." (Ruling on Mot. New Trial at 17-18; App. 0187-88) (emphasis added). The district court listed all of the other "more reliable" evidence admitted to show notice—Valdez's actual complaints, Johnston's final report, and Valdez's own testimony about what she told Johnston—and concluded that Exhibit 6 includes "another level of hearsay" with "no grounds to show the reliability of information in the document". (Ruling on Mot. New Trial at 18; App. 0188). The district court did not abuse its discretion in excluding Valdez's Exhibit 6.

D. The district court did not abuse its discretion by excluding evidence of an alleged "pinching" incident.

Valdez sought to admit evidence that Johnson allegedly pinched another student, who she alleges was Hispanic, and specifically that this student's mother has complained to Principal Maxwell following the alleged incident.[9] As noted by the district court, however, the alleged "pinching incident" came to light many months after the events in question—well after Valdez resigned. (Ruling on Mot. New Trial at 21; App. 0191); (Ruling on Pretrial Motions at 3-4; App. 0038-0039). Further, the district court held there was "no evidence that plaintiff or defendants were aware of the incident until [Valdez's] complaint was filed." (Ruling on Pretrial Motions at 4; App. 0039). Relying on *Salami v. Von Maur, Inc.*, No. 12–0639, 2013 WL 3864537 (Iowa Ct. App. July 24, 2013) (affirming district court's exclusion of so-called "me too" evidence), the district

[9] Johnson denied the alleged incident ever took place, which would have resulted in a "trial within a trial" on an alleged incident that the district court correctly held was disconnected from the events at issue.

court excluded evidence of this alleged event because it was too "disconnected from other events". (*Id.*).

The relevant inquiry is "how closely related the evidence is to the plaintiff's circumstances and the theory of the case." *Salami*, 2013 WL 3864537 at *8 (quotation omitted). Valdez has never articulated how the alleged pinching of a Hispanic student is related, in any way, to her claim of racial harassment against Johnson, or how an event coming to light months after the events at issue is relevant to her claims in this case. The district court's exercise of its "broad discretion" concerning the admissibility of this alleged evidence was not clearly abused here.[10] *See Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 149 (Iowa 2002) (noting the trial courts' "broad discretion", which extends to the balancing of probative versus prejudice under Iowa Rule of Evidence 5.403").

[10] There was also no evidence that the incident occurred because of a protected "trait or characteristic of the student" such that it would be relevant to a tortious discharge claim pursuant to Iowa Code § 280.28. The Court did not abuse is broad discretion in excluding this evidence. *Bingham*, 485 N.W.2d at 81. *See also* Iowa R. Evid. 5.403.

CONCLUSION.

Appellees respectfully requests that this Court affirm the judgment rendered in their favor.

Dated: June 9, 2022

Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

Comes now Appellees, by and through the undersigned attorneys, and requests oral argument pursuant to Iowa Appellate Rule 6.903(2)(i).

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of this Appellee's Amended Final Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon the following persons by EDMS on June 9, 2022:

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