NO. 22-2773

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DERRICK JEROME BATES,

Plaintiff/Appellant,

vs.

TYLER RICHARDSON, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Iowa, Cedar Rapids Division
18-CV-30-CJW
The Honorable Judge C.J. Williams

BRIEF OF DEFENDANTS-APPELLEES

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RESPONSE TO BATES' SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

Defendants-Appellees Tyler Richardson, Wayne Jerman and the City of Cedar Rapids, Iowa (collectively "Defendants") disagree with Plaintiff-Appellant Derrick Bates' ("Bates") allegation that "Defendants overstates [*sic*] the importance of *State v. Wilson…"* and that "[t]his case should be left to the trier of fact and summary judgment should have been denied and should be denied by this Court for the second time." (Br. at 1). *State v. Wilson*, 968 N.W.2d 903 (Iowa 2022), is an Iowa Supreme Court case that was decided after this Court's determination of Bates' first appeal. *Wilson* did not change the law in Iowa, but it provides crucial clarity as to the standard for establishing a violation of Iowa's interference with official acts statute, which was not available to this Court when it made its determination of Bates' first appeal. Although this Court originally found it could not conclude, as a matter of law, that Defendant-Appellant Tyler Richardson ("Officer Richardson or "Richardson") had probable cause to arrest Bates for interference, with the clarity provided by *Wilson*, this Court can and should now find that the undisputed facts establish, as a matter of law, that there was probable cause to arrest Bates for interference with official acts.

With regard to oral argument, Defendants respectfully request 15 minutes of oral argument per side as well.

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JURISDICTIONAL STATEMENT

Defendants concur with the substance of Bates' Jurisdictional Statement (Br. at 6), except to add, pursuant to Fed. R. App. 28(a)(4)(D), that Bates' appeal is from a final order disposing of all parties' claims.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. WHETHER BATES HAS WAIVED AND/OR FAILED TO PRESERVE HIS RIGHT TO CHALLENGE THE DISTRICT COURT'S GRANT OF LEAVE TO FILE A SECOND MOTION FOR SUMMARY JUDGMENT AND, IF NOT, WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT GRANTED SUCH LEAVE

Most apposite cases:

Aaron v. Target Corp., 357 F.3d 768 (8th Cir. 2004)

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Lach v. United States, No. 2:08 cv 251, 2012 WL 1189619 (N.D. Ind. Apr. 6, 2012)

II. WHETHER BATES' APPEAL IS MOOT AND, IF NOT, WHETHER THE DISTRICT COURT PROPERLY FOUND THE ARREST OF BATES WAS SUPPORTED BY PROBABLE CAUSE

Most apposite cases:

Irvin v. Richardson, 20 F.4th 1199 (8th Cir. 2021)

Kuessner v. Wooten, 987 F.3d 752 (8th Cir. 2021)

Lawyer v. City of Council Bluffs, 361 F.3d 1099, 1107 (8th Cir. 2004)

State v. Wilson, 968 N.W.2d 903 (Iowa 2022)

Other authority:

Fed. R. Civ. P. 56(c)

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III. WHETHER THE DISTRICT COURT PROPERLY FOUND *MONELL* LIABILITY CANNOT BE IMPOSED IN THIS MATTER

Most apposite cases:

Connick v. Thompson, 563 U.S. 51 (2011)

Krenik v. Cnty. of Le Sueur, 47 F.3d 953 (8th Cir. 1995)

Sinclair v. City of Des Moines, 268 F.3d 594 (8th Cir. 2001)

Waters v. Madson, 921 F.3d 725 (2019)

Other authority:

Fed. R. Civ. P. 56(e)

STATEMENT OF CASE

A. Factual Background. At approximately 3:21 p.m. April 14, 2016,[1] Officer Richardson and Officer Jared Jupin ("Officer Jupin" or "Jupin") were on police patrol in Cedar Rapids, Iowa when a dispatch appeared on the computers in their respective squad cars. (App. 450; R. Doc. 68-2, at p. 3, ¶¶7-9). That dispatch alerted them to the fact that a 911 caller reported a disturbance involving three people at the corner of Higley Avenue SE and Wellington Street SE in Cedar Rapids, Iowa during which the caller saw one of the three subjects display a weapon. (App. 450; R. Doc. 68-2, at p. 3, ¶7). Both Officer Richardson and Officer Jupin responded to the incident with their in-car recording systems, known as Arbitrator, activated. (App. 451 & 453 – 458; R. Doc. 68-2, at pp. 4 & 6 - 11, ¶¶17, 26, 32 through 42, 49 - 57, and 60 – 62). As soon as Officer Richardson turned the corner from Higley onto Wellington, he saw two subjects on Wellington walking with their backs toward him. (App. 454; R. Doc. 68-2, at p. 7, ¶¶32 – 34). Officer Richardson decided to conduct a subject stop and investigate further. (App. 460; R. Doc. 68-2, p. 13, ¶75).

[1] Defendants will occasionally use times stated on the basis of a 24 hour clock because recordings and other documents on which the parties rely are so stated. Thus, for example, 3:21 p.m. would be stated as 1521, and 3:21 p.m. plus 16 seconds would be stated as 1521:16.

This Court, in its December 16, 2021 ruling in this matter (*Irvin v. Richardson*, 20 F.4th 1199 (8th Cir. 2021), determined that Officer Richardson had reasonable suspicion to conduct an investigative stop of Bates and the other individual with him (later identified as Larenzo Irvin ("Irvin")), so the lawfulness of that stop is not at issue.

Officer Richardson told dispatch he was "out with them," stopped his car, got out, and yelled to the two subjects "Stop. Stop." (App. 454-455; R. Doc. 68-2, pp. 7-8, ¶¶33 &35). At that point, Irvin turned further to his right to face Officer Richardson, and the other individual, later identified as Bates, turned to his left and looked in Richardson's direction. (App. 455; R. Doc. 68-2, p. 8, ¶36). Officer Richardson then said, "Yeah, you guys," after which Bates immediately said "no, we didn't do nothing" while simultaneously gesturing toward Richardson with his arm in a waving motion. (App. 455 & 461; R. Doc. 68-2, pp. 8 & 14, ¶¶ 37 & 82). Seeing Bates wave him off and start to walk again, Officer Richardson immediately yelled "stop right now, stop!" and pointed his right hand in the direction of Irvin and Bates. (App. 455 & 457; R. Doc. 68-2, pp. 8 & 10, ¶¶38 and 53). Officer Richardson saw Bates continue to walk away in response to Richardson's second set of commands to stop, and because his focus was on Bates, he did not see at that time whether Irvin took any additional steps. (App. 455, 457 & 461; R. Doc. 68-2, pp. 8, 10 & 14, ¶¶38, 50 & 82). The Arbitrator video shows

that as Bates was gesturing toward Officer Richardson, Richardson was pointing at them while giving his second set of commands to stop, and both Irvin and Bates rotated in the direction toward the alley running perpendicular to Wellington and continued walking. (App. 455; R. Doc., p. 8, ¶38). Seeing that Bates was not complying with his directive to stop, Officer Richardson drew his weapon and began giving successive commands as follows:

> Get on the ground now!
>
> Get on the ground!
>
> Get on the ground right now!
>
> Get on the ground!
>
> Get on the ground!
>
> Face down!
>
> Face down!
>
> Face down now!
>
> Get on the ground now!
>
> Face down!
>
> All the way down!

(App. 455 & 457; R. Doc. 68-2, pp. 8 & 10, ¶¶39 and 53 – 55). According to the Arbitrator recording from Officer Richardson's squad car, Richardson gave Irvin and Bates the first command to get on the ground at 1526:26. (App. 455-456; R. Doc. 68-2, pp. 8-9, ¶¶39 – 40). By about 1526:47, Bates can be seen in Officer

Richardson's Arbitrator recording on his stomach. (App. 458; R. Doc. 6802, p. 11, ¶57).

In the meantime, Officer Jupin arrived on scene from the opposite direction as that of Richardson's approach. (App. 457; R. Doc. 68-2, p. 10, ¶49). As seen from the perspective of Officer Jupin's in car camera, Jupin had fully turned his squad car around the corner from Higley onto Wellington at 1526:24, and Officer Richardson's squad car was visible in the distance, with Richardson standing outside his squad car on the driver's side and somewhat forward of it. (App. 457; R. Doc. 68-2, p. 10, ¶49). From 1526:25 to 1526:28, as Officer Jupin's squad car proceeded forward, Irvin and Bates came into view toward the left of the screen and were walking. (App. 457; R. Doc. 68-2, p. 10, ¶50). Between 1526:28 and 1526:29, Bates stopped walking and turned to his right until his chest was facing Jupin, and then continued to rotate toward his right so his chest was oriented somewhere between Officer Jupin and Officer Richardson, but he was looking toward Richardson at 1526:29. (App. 457; R. Doc. 68-2, p. 10, ¶51). At 1526:29, Officer Jupin stopped his squad car and put it in park. (App. 457; R. Doc. 68-2, p. 10, ¶52). At 1526:32, Irvin started lowering his torso as Officer Richardson can be heard yelling "Get on the ground!" then "Get on the ground right now!" (App. 457; R. Doc. 68-2, p. 10, ¶53). Based on Officer Richardson's Arbitrator recording, those two commands are the second and third commands Richardson gave after drawing

his weapon. (App. 457; R. Doc. 68-2, p. 10, ¶53). The commands Richardson gave prior to drawing his weapon, and the first command he gave after drawing his weapon are difficult or impossible to hear on Officer Jupin's Arbitrator recording. At 1526:33, Bates was standing upright and turned slightly to face Officer Jupin, as Officer Richardson yelled two more times to get on the ground (i.e., the fourth and fifth times after having drawn his weapon). (App. 457; R. Doc. 68-2, p. 10, ¶54). At 1526:35 -- 1526:42 both Irvin and Bates went to their knees while Richardson yelled "Face down!" (App. 457; R. Doc. 68-2, p. 10, ¶55). During that time, Bates can be seen in the video moving his hands to the ground, but then raising up again prior to going all the way down to his stomach. (App. 457-458; R. Doc. 68-2, pp. 10-11, ¶53-57).

Before Officer Richardson and Officer Jupin finished cuffing Irvin and Bates, they saw another subject further away from them, on the same alley or street where they were handcuffing Irvin and Bates. (App. 461; R. Doc. 68-2, p. 14, ¶ 83). That individual appeared to match the description put out by dispatch for the person who had displayed a handgun in the disturbance at the corner of Higley and Wellington. (App. 461; R. Doc. 68-2, p. 14, ¶ 83). Officer Richardson then proceeded in his squad car to make contact with the third subject, later identified as Nyle Brocks ("Brocks"). (App. 456; R. Doc. 68-2, p. 9, ¶¶41 and 42). Brocks complied immediately with all of Officer Richardson's verbal commands and

submitted to a pat down, such that Officer Richardson did not need to draw his weapon or use handcuffs on Brocks. (App. 456 & 462; R. Doc. 68-2, p. 9 & 16, ¶¶42 & 92).

Both Bates and Irvin filed Personnel Complaint Reports with CRPD, Bates being first on or about May 3, 2016. (App. 452; R. Doc. 68-2, p. 5, ¶¶18 & 19). Craig Furnish ("Furnish"), who, at that time was the Lieutenant in charge of Professional Standards for CRPD, conducted an investigation into Bates' complaint by: interviewing Bates, officers Richardson, Jupin, and Northland, Sergeant Kern, Port, eyewitnesses Louise and Clarence Ellis; reviewing the Arbitrator recordings from both Richardson's and Jupin's squad cars, dispatch transmissions and recordings and applicable CRPD directives; and preparing an Investigative Summary with his findings that the allegations of Bates' complaint were unfounded. (App. 452; R. Doc. 68-2, p. 5, ¶¶20-22). Furnish determined Bates' complaint to be unfounded and thereafter Chief of Police Wayne Jerman ("Chief Jerman") sent a letter to Bates to the same effect. (App. 453; R. Doc. 68-2, p. 6, ¶25).

In addition to the above referenced facts, this Court made factual findings that are relevant to this appeal in its December 16, 2021 determination, including the following:

- That Richardson and Jupin did not point their weapons at a compliant suspect. *Irvin,* 20 F.4th at 1206.
- "Though Irvin and Bates acknowledged Richardson's initial command to 'stop,' they continued walking away despite repeated commands to stop." *Id*.
- "They finally stopped but did not immediately comply with a command to 'Get on the ground now.'" *Id.*
- "In response to this refusal to cooperate with a lawful directive to stop and to answer reasonable questions, the officers drew their weapons, pointed them in Irvin's and Bates's direction, and then handcuffed the two when they finally lay on the ground." *Id*.

B. Relevant Procedural Background

The relevant procedural history leading up to the District Court's rulings that are the subject of this appeal is detailed in the District Court's July 25, 2022 ruling. There the Court stated:

> Plaintiff brought a five-count complaint in this Court. (See Doc. 28). Count One, which was brought against all defendants, was brought under Title 42, United States Code, Section 1983, and alleged that defendants violated plaintiff's rights to be free from illegal searches and seizures, to remain silent, and "to due process and equal protection of the law, including the right to be free from arrest without probable cause or to be the subject of custodial interrogation without Miranda[-]styled warnings." (Id., at 9-13). Count Two asserted a state law

false arrest and conspiracy claim against defendants Richardson, Northland, Jupin and Kern, and against the City of Cedar Rapids on a respondeat superior theory. (Id., at 13-14). Count Three asserted a state law Malicious Prosecution claim against defendants Richardson, Northland, Jupin, and Kern, and against the City of Cedar Rapids on a respondeat superior theory. (Id., at 14-15). Count Four asserted a state law perjury claim against defendants Richardson, Northland, Jupin, and Kern, and against the City of Cedar Rapids on a respondeat superior theory. (Id., 3 Captain Furnish was recently promoted to the rank of Police Captain. (See Doc. 41-3, at 31). At the time Captain Furnish investigated the April 24, 2016 incident, he held the rank of Lieutenant. (Id.). Case 1:18-cv-00030-CJW-MAR Document 72 Filed 07/25/22 Page 7 of 26 8 at 15-16). Count Five asserted a state law false reports claim against defendants Richardson, Northland, Jupin, and Kern, and against the City of Cedar Rapids on a respondeat superior theory. (Id., at 16-17). The Court dismissed with prejudice the claims against defendants Kern and Northland, in their individual and official capacities, the claims against Officer Jupin, and Counts Three through Five, at plaintiff's concession. (Doc. 49, at 10, 31). Plaintiff maintained "that he was wrongfully arrested, searched and detained in violation of the Fourth Amendment to the United States Constitution and briefed those claims." (Id.). Plaintiff made those claims in Count One of his complaint. In Count Two of his complaint, plaintiff continued to "assert[ ] a claim for false arrest under Iowa law when he was detained and handcuffed against his will without justification or probable cause" and plaintiff fully briefed that claim. (Doc. 44-1, at 12-13). The Court addressed defendants' motion for summary judgment as to the claims in Counts One and Two of plaintiff's complaint as to defendants Richardson, Jupin, Cedar Rapids Police Chief Wayne Jerman, and the City of Cedar Rapids. After consideration, the Court granted defendants' motion for summary judgment on Counts One and Two. (Doc. 49, at 40). Plaintiff appealed

> to the Eighth Circuit Court of Appeals. (Doc. 51). The Eighth Circuit affirmed in part and reversed in part. (Doc. 55, at 14). The Court of Appeals agreed "that the officers had reasonable suspicion—at a minimum arguable reasonable suspicion—and therefore are entitled to qualified immunity" as to the initial stop. (Doc. 55, at 8). The Court of Appeals also agreed that the Terry stop did not evolve into an arrest and affirmed the "grant of qualified immunity dismissing these Fourth Amendment claims." (Doc. 55, at 10). The Court of Appeals found that there were genuine issues of material fact, however, as to whether Officer Richardson had probable cause to arrest plaintiff for interference with official acts. (Doc. 55, at 11). The Court of Appeals thus reversed and remanded the state false arrest claim and Section Case 1:18-cv-00030-CJW-MAR Document 72 Filed 07/25/22 Page 8 of 26 9 1983 false arrest claim. The Court of Appeals did not consider Iowa statutory immunities. (Id., at 11). The Court of Appeals also reversed and remanded the dismissal of the Monell claims against Chief Jerman and the City attached to the false arrest claims finding that the Court's "reasoning no longer applies" given the reversal of the false arrest claims and that Chief Jerman's liability for Officer Richardson's actions is a "fact intensive" issue. (Doc. 55, at 13). Thus, the matters on remand are whether Officer Richardson's arrest of plaintiff was unlawful; if so, whether Officer Richardson is entitled to qualified or statutory immunity; and whether Chief Jerman and the City of Cedar Rapids are liable under theories of failure to train and/or supervise and/or implementation of policy, practice, custom, or procedure that led to the alleged violation.

(App. 603 – 605; R. Doc. 72, at 7 – 9).

Following the remand by this Court, on February 16, 2022, Defendants filed a Motion for Leave to File Successive Dispositive Motion After Remand and supporting brief. (App. 384 – 393; R. Doc. 62 & 63). Bates resisted that Motion

on March 2, 2022, and the District Court granted the Motion for Leave on March 3, 2022. (App. 394 – 406; R. Doc. 64 & 65). Defendants' then filed their Second Motion for Summary Judgment and supporting documents on April 4, 2022, Bates resisted that Motion on May 19, 2022, and Defendants filed their reply to that resistance on June 2, 2022. (App. 407 - 596; R. Doc. 68, 68-1, 68-2, 68-3, 70 & 71). On July 25, 2022, the District Court granted Defendants' Second Motion for Summary Judgment as to all of Bates' remaining claims and dismissed Bates' case with prejudice. (App. 597 – 622; R. Doc. 72). It is from that July 25, 2022 ruling that Bates appeals.

SUMMARY OF ARGUMENT

This appeal can be disposed of without the need to review its merits, based upon Bates' failure to timely designate the District Court's grant of leave to file a second motion for summary judgment as an issue in this appeal and the fact Bates has failed to challenge portions of the District Court's July 25, 2022 ruling on Defendants' second motion for summary judgment that dispose of the remaining claims in this case in Defendants' favor. Even if this Court deems it appropriate to reach the merits of this appeal, the relief requested by Bates must be denied because (1) the District Court had multiple good faith bases for granting Defendants leave to file a second motion for summary judgment, as well inherent authority to grant such leave; (2) after considering Iowa Supreme Court precedent that was not available to the District Court in ruling on Defendants' first motion for summary judgment, or this Court at the time of its December 16, 2021 determination of Bates' first appeal, namely *State v. Wilson*, the District Court properly determined that Officer Richardson had probable cause for the arrest of Bates for interference with official acts; and (3) after considering the issue of whether Bates' ratification claims against Chief Jerman survive if Officer Richardson's conduct was not lawful, an issue which the District Court did not need to analyze in ruling on Defendants' first motion for summary judgment, the District Court properly determined that the alleged ratification of Officer

Richardson's conduct could not have been a cause of that conduct and, therefore, Bates' *Monell*[2] claims fail.

[2] The full citation to *Monell* is *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

ARGUMENT

I. BATES HAS WAIVED AND/OR FAILED TO PRESERVE HIS RIGHT TO CHALLENGE THE DISTRICT COURT'S GRANT OF LEAVE TO FILE A SECOND MOTION FOR SUMMARY JUDGMENT AND, REGARDLESS, THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT GRANTED SUCH LEAVE

A. Standard of Review

Defendants agree with Bates that the standard of review applicable to the District Court's decision to grant Defendants leave to file a second motion for summary judgment is abuse of discretion, but Defendants disagree that Bates has properly preserved this issue or that any abuse of discretion occurred. *Cf. Kelly v. Ethicon, Inc.*, No. 21-1769, 2021 WL 4998930 (8th Cir. Oct. 28, 2021)(finding district court did not abuse its discretion in allowing defendants to file a supplemental motion for summary judgment). "The abuse of discretion standard means a court has a 'range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law.'" *Aaron v. Target Corp.*, 357 F.3d 768, 774 (8th Cir. 2004)(quoting *Verizon Commc'ns, Inc. v. Inverizon Int'l, Inc.*, 295 F.3d 870 (8th Cir. 2002)). "District Courts are afforded wide discretion to permit or restrict successive motions for summary judgment." *McCabe v. Macaulay*, 545 F. Supp. 2d 857, 865 (N.D. Iowa 2008)(citing *Mason v. Univ. & Cmty. Coll. Sys. of Nev.,* No. 06–17238, 2008 WL 215395, *2 (9th Cir. Jan. 25, 2008) ("A district court generally has discretion to

entertain successive motions for summary judgment."); *Sira v. Morton,* 380 F.3d 57, 68 (2d Cir.2004) ("[D]istrict courts enjoy considerable discretion in entertaining successive dispositive motions."); *Enlow v. Tishomingo County, Miss.,* 962 F.2d 501, 507 (5th Cir.1992) (same)).

B. Discussion of the Issue

At the outset, this Court need not even reach the issue of whether the District Court abused its discretion in granting Defendants leave to file a second motion for summary judgment because Bates failed to preserve, or and/or has waived, that issue. On September 6, 2022, Bates filed his Statement of Issues on Appeal as required by this Court's Appeal Briefing Schedule Order filed in this matter on August 23, 2022. That Statement of Issues failed to designate the District Court's grant of leave for Defendants to file a second motion for summary judgment as an issue in this appeal and Bates made no effort to amend his Statement of Issues after it was filed. It was not until Bates filed his brief in this matter on November 16, 2022, that he raised the issue of whether the District Court erred in granting Defendants leave to file the second motion for summary judgment. The designation of this issue was not timely and, therefore, this issue should not be considered by this Court.

Even if this Court deems it appropriate to consider this belatedly designated issue, the facts show that it was not an abuse of discretion for the District Court to

grant Defendants leave to file a second motion for summary judgment. The law regarding successive motions for summary judgment was thoroughly discussed by the District Court in its Order granting Defendants leave to file their second motion for summary judgment. (App. 404 – 405; R. Doc. 65, at 4 - 5). Of particular importance is the following excerpt from that Order:

> "Avoiding an unnecessary trial also may constitute good cause for considering a successive motion for summary judgment." *Lach v. United States*, No. 2:08 cv 251, 2012 WL 1189619, at *2 (N.D. Ind. Apr. 6, 2012); *see also Kim v. Conagra Foods, Inc*., No. 01 C 2467, 2003 WL 22669035, at *2 (N.D. Ill. Nov. 10, 2003). Although the good cause standard governs, a district court also "possesses inherent powers that are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Dietz v. Bouldin*, 136 S. Ct. 1885, 1891 (2016) (quoting *Link v. Wabash R.R. Co*., 370 U.S. 626 (1962)). Generally, successive motions for summary judgment have been permitted where they "may obviate the need for a trial and, therefore, conserve judicial resources." *Cleveland Air Serv., Inc. v. Pratt & Whitney Can.*, No. 4:13-CV-161-DMB-DAS, 2016 WL 7634674, at *4 (N.D. Miss. July 29, 2016); *see also Henderson v. Wal-Mart Stores, Inc.*, No. 1:14-cv-224, 2015 WL 3901755, at *3 (E.D. Tex. June 23, 2015) ("It would be a considerable waste of the court's and the parties' resources to have a trial on an issue that could be resolved through motion practice.").[3]

[3] Bates' suggests that a party must make a showing of extraordinary circumstances in order to be granted leave to file a second motion for summary judgment, quoting the district court's statement in *McCabe v. Bailey* that "[n]owhere in the Second Motion, however, do Defendants attempt to make a showing of extraordinary circumstances permitting them to file a second motion for summary judgment." (Br. at 13). However, in *McCabe v. Bailey*, the Trial Management Order

(App. 405; R. Doc. 65, at 5). Applying this law, it is clear there was good cause for granting Defendants leave to file a second motion for summary judgment and granting such leave was well within the District Court's inherent power to manage its own affairs so as to achieve an orderly and expeditious disposition of cases.

Bates appears to suggest that newly decided case law is the only ground upon which Defendants moved for leave to file a second motion for summary judgment. (Br. at 12 – 15). This is not accurate. Although, as argued later in this brief, newly decided case law certainly provided adequate good cause for permitting a successive motion for summary judgment, Defendants also sought leave to file the second motion for summary judgment to address the issue of Officer Richardson's statutory immunity pursuant to Iowa Code Chapter 670, which was left open by this Court in its December 16, 2021 Opinion. (App. 391; R. Doc. 63, at 5). *See Irvin v. Richardson*, 20 F.4th 1199, 1208 (8th Cir.

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governing the parties included a statement that, absent a showing of extraordinary circumstances, the district court would only consider one summary judgment motion. *McCabe v. Bailey*, No. 05-CV-73-LRR, 2008 WL 1818527, at *1 (N.D. Iowa Apr. 4, 2008). The "extraordinary circumstances" language Bates' cites from *McCabe v. Bailey* refers to a requirement of the particular Trial Management Order in that case, not any requirement of Iowa law. *Id.* (concluding that, because no showing of extraordinary circumstances had been made, "the Second Motion [for summary judgment] directly contravenes this court's Trial Management Order and shall be denied on that basis."). There is no order in this case that would impose any "extraordinary circumstances" requirement on Defendants and, therefore, no showing of extraordinary circumstances was required in order for the District Court to grant Defendants' leave to file a second motion for summary judgment.

2021)(noting that district court did not consider Iowa statutory immunities and declining to do so in the first instance, but stating "[i]f properly preserved, the district court can take [those issues] up on remand."). Defendants raised Iowa statutory immunities in both their answer and their first motion for summary judgment, but the District Court did not address these immunities in its Order granting the first motion for summary judgment because it was not necessary to do so. (App. 034, 074 – 078, & 084 – 085; R. Doc 36, at 7, R. Doc. 41-1, at 35 – 39 & 45 – 46). However, on remand, there was good cause to allow Defendants to bring those immunity defenses back to the District Court with a second motion for summary judgment, as doing so could avoid the necessity of trial on Bates' remaining state law claim. Indeed, the District Court specifically referenced the Iowa statutory immunities and the procedural posture of the 8th Circuit's remand in finding that it was appropriate to permit the filing of the second motion for summary judgment. (App. 406; R. Doc. 65, at 6). The Iowa statutory immunities defenses provided good cause to grant Defendants leave to file a second motion for summary judgment even absent any newly decided Iowa Supreme Court case or any other basis for good cause.

Defendants did also move for leave to file a second motion for summary judgment based upon a newly decided Iowa Supreme Court case. Bates takes issue with the fact Defendants did not provide a citation to the newly decided case in

their motion for leave to file the second motion for summary judgment. However, Defendants explained the reason for this omission in their brief in support of the motion for leave, stating:

> Defendants are mindful of footnote 11 of the court's opinion in *Kelly [v. Ethicon],* which suggests that the court would prefer to rule on a motion for leave to file a dispositive motion as a threshold matter, before addressing the merits of an actual summary judgment motion. Accordingly, Defendants do not present with this motion the newly decided Iowa Supreme Court case or any arguments on the merits they would submit if granted leave to file a successive motion for summary judgment. That said, it is neither Defendants' intention nor purpose to withhold from the court any information the court deems necessary to rule on this motion for leave. Defendants would certainly comply with any court order to provide additional argument and/or authority the court deems warranted at this stage. Given the current procedural status, however, along with the *Kelly* case, and the court's directions at the trial scheduling conference in this case (i.e., to first seek leave to file a motion for summary judgment), Defendants have intentionally limited the scope of this motion to address why leave should be granted.

(App. 389 – 390; R. Doc. 63, at footnote 2). Defendants were not attempting to "hide the ball"; they were merely trying to avoid conflating the motion for leave to file a second motion for summary judgment with the second motion for summary judgment itself. If Bates thought it was necessary to review the newly decided Iowa Supreme Court case to which Defendants referred in their motion, he could have asked the Court to order disclosure of that case, or even asked Defendants to

voluntarily provide it, but he did neither. Instead, Bates proceeded on the assumption that Defendants request for leave to file a second motion for summary judgment was based on a change in law, despite the fact Defendants never actually represented as much. When Bates made assumptions instead of asking for any further details he apparently deemed necessary to properly resist Defendants' motion for leave, he proceeded at his peril.

Also important to the evaluation of good cause is the fact that Defendants did not engage in unnecessary delay in requesting leave to file their second motion for summary judgment. *See Kelly v. Ethicon, Inc.*, No. 20-CV-2036-CJW-MAR, 2020 WL 6120155, at *11 (N.D. Iowa Oct. 16, 2020)(citing diligence as a measure of good cause). This Court's decision in Bates' first appeal was filed on December 16, 2021, the new Iowa case Defendants believed could dispose of the entire case summarily, *State v. Wilson*, was not decided until January 14, 2022 (and was amended January 19, 2022), and Defendants filed their Motion requesting leave to file a second motion for summary judgment on February 16, 2022. (App. 384; R. Doc. 62). Particularly considering the holidays between December 16, 2021 and February 16, 2022, it cannot be said there was any unnecessary delay in the filing

of Defendants' motion for leave to file a second motion for summary judgment or any lack of diligence on Defendants' part.[4]

Although Defendants did not specifically raise this issue in their request for leave to file a second motion for summary judgment, there was also good cause to grant leave to file a second motion for summary judgment to address the issue of whether *Monell* liability for ratification could be imposed if the arrest of Bates was not lawful. Because the District Court found the arrest of Bates *was* lawful, it did not address this scenario in its ruling on Defendants' first motion for summary judgment. This Court, in its December 16, 2021 decision of Bates' first appeal left open the possibility that this issue could be taken up on remand, noting that the District Court reasoning as to the *Monell* claims was no longer applicable and stating "[w]e decline to resolve these Monell issues as a matter of law *on this summary judgment record*…" *Irvin*, at 20 F.4th at 1208 (emphasis added). It is reasonable to conclude, based upon these statements and the typical role of appellate courts, that this Court did not want to take up on appeal an issue that the

[4] At the time of the Court's December 16, 2021 decision on Bates' first appeal, the Cedar Rapids City Attorney's office was also in the process of transitioning to a new City Attorney, who started with the City on December 13, 2021. Prior to that time, the Cedar Rapids City Attorney's Office had been understaffed for over four months, with then-Counsel for Defendants Elizabeth Jacobi ("Ms. Jacobi) serving as Interim City Attorney. Given her status as Interim City Attorney, Ms. Jacobi was instrumental in transitioning the new City Attorney into her position in December 2021 and January 2022, but this work necessarily took time away from her work representing Defendants in this case.

District Court had not analyzed in the first instance, but that the District Court was not precluded from taking this issue up on remand.

For all of the foregoing reasons, there was good cause to allow Defendants to file a second motion for summary judgment and the District Court did not abuse its discretion in granting Defendants leave to do so.

II. BATES' APPEAL IS MOOT AND, REGARDLESS, THE DISTRICT COURT PROPERLY FOUND THE ARREST OF BATES WAS SUPPORTED BY PROBABLE CAUSE

A. Standard of Review

Defendants agree with Bates that the standard of review applicable to the District Court's grant of summary judgment is *de novo*.

B. Summary Judgment Standards

Fed. R. Civ. P. 56(c) provides that summary judgment is warranted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue of material fact and that the Defendants are entitled to a judgment as a matter of law. Summary judgment is appropriate if the record, viewed in the light most favorable to the non-moving party, reveals no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Baldwin v. Estherville, Iowa*, 333 F.Supp. 3d 817, 833 (N.D. Iowa 2018); *Peters v. Woodbury County*, Iowa, 979 F. Supp. 2d 901, 926 (N.D. Iowa 2013)(citing *Scott v. Harris*, 550 U.S. 372, 380 (2007));

Woods v. Daimler Chrysler Corp., 409 F.3d 984, 990 (8th Cir. 2005)(quoting *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986)). While the "movant 'bears the initial responsibility of informing the district court of the basis for its motion,'" and must identify the undisputed material facts of record, *Baldwin,* 333 F.Supp. 3d at 833 (citing *Torgerson v. City of Rochester,* 643 F.3d 1031, 1042 (8th Cir. 2011)(*en banc*) internal citations omitted), still, the non-moving party "'must do more than simply show that there is some metaphysical doubt as to the material facts.'" *Ibid.* "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574, 586-87 (1986).

Summary judgment is particularly appropriate when only questions of law are involved, rather than factual issues that may or may not be subject to genuine dispute. *Peters*, 979 F. Supp. at 926 (citing *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042-43 (8th Cir. 2011) (*en banc*)). Additionally, summary judgment is appropriate if qualified immunity is established because the doctrine provides not just a defense to liability but immunity from suit, such that the case should not even proceed if qualified immunity applies. *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 815, 172 L.Ed.2d 565 (2009). Rather than being just a defense to liability, qualified immunity immunizes certain parties from suit, and "'it is effectively lost if a case is erroneously permitted to go to trial.'" *Id.*

(quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985)). The law is clear that qualified immunity, including the determination of whether a constitutional right was clearly established, is a question of law for the court to decide. *Kelsay v. Ernest*, 933 F.3d 975, 981 (8th Cir. 2019); *Bishop v. Glazier*, 723 F.3d 957, 961 (8th Cir.2013) (citing *Rohrbough v. Hall*, 586 F.3d 582, 586 (8th Cir.2009)).

C. Discussion of the Issue

The qualified immunity test has two prongs. *Ashcroft v. al-Kidd,* 563 U.S. 731, 735, 131 S. Ct. 2074, 2080, 179 L. Ed. 2d 1149 (2011)(stating "Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct.")(quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). Therefore, it is crucial to note at the outset of this appeal that Bates has not raised or alleged as an issue in this appeal any error in the District Court's determination that "[Bates'] right to not be arrested for his conduct was not clearly established[,]"[5] the second prong of the qualified immunity analysis. (Br.

[5] Bates states that the law is clearly established several times in his brief, but this is not the same as designating the District Court's finding to the contrary as an issue for this Court to take up on appeal, which Bates did not do. Moreover, Bates' assertion that "Defendants admit that this clearly established law in Iowa has not changed – even post-*Wilson*" is misleading. (Br. at 17). While Defendants have

at 7; App. 615 – 617; R. Doc. 72, at pp. 19 – 21). Bates' brief only challenges the District Court's determination that there was probable cause to arrest Bates, the first prong of the qualified immunity analysis. This fact renders Bates' appeal as to his federal law claims moot. Even if this Court were to determine the issue of probable cause in Bates' favor, Officer Richardson would still be entitled to immunity because the District Court found in Officer Richardson's favor on the issue of whether the law was clearly established at the time of the arrest in question and Bates' has not challenged that finding. *Cf. Kuessner v. Wooten,* 987 F.3d 752, 756 (8th Cir. 2021)(noting that "even if Wooten acted without arguable probable cause, existing law did not give him 'fair warning' that his conduct was unconstitutional." (quoting *Sisney v. Reisch*, 674 F.3d 839, 845 (8th Cir. 2012)).

Bates also has not raised or alleged as an issue in this appeal any error in the District Court's determination that, even if Officer Richardson did not have probable cause to arrest him, "he had a reasonable, good-faith belief that he did" and, therefore, the arrest was lawful. (Br. at 7; App. 618; R. Doc. 72, at p. 19 – 22). By failing to include this determination by the District Court as an issue in this appeal, Bates has mooted his appeal as to his remaining state law claim because, even if this Court finds the District Court erred in determining Officer

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admitted that Iowa law on interference with official acts was not changed by *Wilson*, Defendants have never admitted that law was clearly established at the time Officer Richardson arrested Bates for interference.

Richardson had probable cause, the District Court's finding as to Officer Richardson's reasonable, good-faith belief has not been challenged and still stands, rendering the arrest of Bates lawful.

Even if this Court determines Bates did not moot his appeal by failing to challenge the aforementioned findings by the District Court, his appeal still fails because the District Court properly found in its July 25, 2022 Order that there was probable cause to arrest Bates. Approximately one month after this Court entered its December 16, 2021 decision in Bates' first appeal, the Iowa Supreme Court decided *State v. Wilson*, 968 N.W.2d 903. Bates contends *Wilson* has no impact on his remaining claims relating to his arrest for interference with official acts. (Br. at 16). This is not accurate. The *Wilson* case is important to the analysis of whether Officer Richardson had at least arguable probable cause to arrest Bates for interference with official acts under Iowa Code 719.1 in several respects. First, *Wilson* restated that the evidentiary standard required to sustain a criminal conviction for interference with official acts under Iowa Code §719.1 and clarified that the evidentiary standard is "fairly low."[6] While this is not a change in law, *Wilson* is the first time the Iowa Supreme Court has made the clear pronouncement that the standard is low, putting this fact beyond question or dispute. Second, *Wilson* is the first occasion on which the Iowa Supreme Court has cited to the 8th

[6] It follows that the threshold for probable cause to arrest and charge someone for interference with official acts is even lower.

Circuit decision in *Lawyer v. City of Council Bluffs* to emphasize that "[t]he key question is whether the officer's actions were hindered." *Wilson,* 968 N.W.2d at 918 (quoting *Lawyer v. City of Council Bluffs*, 361 F.3d 1099, 1107 (8th Cir. 2004)). Prior to *Wilson*, there was no indication that the Iowa Supreme Court agreed with the 8th Circuit's interpretation of Iowa law in *Lawyer.*

As an opinion of the Iowa Supreme Court, *Wilson* provides important guidance on Iowa law which was not available to the District Court when it ruled on Defendants' first motion for summary judgment or this Court when it decided Plaintiff's first appeal in December of 2021. *Wilson* brings the law on interference with official acts into clearer focus and makes it necessary to analyze the cases cited by the District Court and this Court in their prior opinions through the lens of *Wilson.* This is precisely what the District Court did in its Order granting Defendants' second summary judgment motion, stating "Reading *Lewis*, *Smithson*, and *Sullivan* consistently with *Wilson* allows for a clearer assessment of Iowa Code Section 719.1 than was available to either this Court or the Eighth Circuit Court of Appeals in their respective prior opinions." (App. 609; R. Doc. 72, at 13). The District Court then went on to properly find that, in light of *Wilson*, the cases upon which Bates relies are distinguishable from this case and Officer Richardson did, in

fact, have probable cause to believe Bates committed interference with official acts under Iowa law.[7]

Bates contends that this Court, in its December 16, 2021 determination of Bates first appeal, set forth *State v. Lewis,* 675 N.W.2d 516, 526 (Iowa 2004) as the applicable law in this case. (Br. at 16 – 17). This is not accurate. The language Bates quotes from this Court's determination of Bates' first appeal was this Court noting that the District Court acknowledged the holding in *Lewis* – this is not the same as pronouncing the law applicable to this case. *See Irvin* 20 F.4th at 1208. The law this Court actually relied in its determination of Bates' first appeal was the Iowa Court of Appeals interpretation of *Lewis* in *State v. Sullivan,* 08-0541, 2009 WL 250287, at *2 (Iowa App. Feb. 4, 2009), which this Court acknowledged was not controlling. *Irvin* at 1208. Because *Wilson* is the Iowa Supreme Court's pronouncement on the meaning of Iowa Code §719.1, however, its analysis of Iowa law should carry greater weight than *Sullivan*, now that it is available. As the District Court properly found, "[t]he blanket statement 'that a single instance of mere failure to cooperate cannot serve as a basis for a charge of interference with official acts[,]' while plausible before the guidance of *Wilson*, in now inaccurate

[7] In Defendants' Brief in Support of Second Motion for Summary Judgment, at section III(B), Defendants conducted a detailed analysis of *Wilson* and the interference cases that came before it. (App. 421 – 427; R. Doc. 68-1, at 11 – 17). Rather than repeat that analysis herein, Defendants incorporate those arguments herein by this reference.

given that *Lewis* depended heavily on the specific circumstances of that case." (App. 610, R. Doc. 72, at 14).[8]

Reading *Lewis'* statement regarding the "mere act of walking away" in the context of the language surrounding it supports the District Court's analysis as to that case post-*Wilson*. The entire paragraph containing the statement in question reads:

> In *Legg* and *Pink,* the officers observed activities taking place on public roadways, which gave them probable cause to believe a crime had been committed. As previously discussed, there was no probable cause to believe a crime was being committed on Lewis's property. The mere act of quickly walking away from the officer and ignoring his directions to stop under these circumstances is not interference with official acts. These individuals were free to go about their business on Lewis's property without police interference. *See People v. Lupinacci,* 191 A.D.2d 589, 595 N.Y.S.2d 76, 77 (N.Y.App.Div.1993) (holding if police were not authorized to detain defendant, defendant was free to walk away from the arresting officer and could not be charged with obstructing government administration or interfering with an officer in performance of an official function); *B.H. v. State,* 505 So.2d 14, 15 (Fla.Dist.Ct.App.1987) (holding walking away from police officers, refusing to answer their questions, and ignoring their directions to return cannot constitute obstruction of justice if the officers did not have lawful authority to detain the defendant).

[8] It is also worth noting that this case did not involve a single instance of failure to stop. Both this Court and the District Court determined Bates had repeatedly refused to comply with clear directions to stop. *Irvin* at 1206; (App. 612 – 613; R. Doc. 72, at 16 – 17).

Lewis, 675 N.W.2d at 526 (underlining added). It is clear from the underlined language in this excerpt that *Lewis*' statement regarding the "mere act of walking away" is limited to the circumstances of that particular case, namely that the officer lack of any lawful basis for being on Lewis' private property and had other options available for investigating the suspected trespass.

The circumstances of *Lewis* differ significantly from the undisputed facts in this case and the District Court properly found this case distinguishable from *Lewis*. At the time Bates committed the alleged interference with official acts, both he and Officer Richardson were on a public street and Officer Richardson had initiated a valid Terry stop. *Irvin*, 20 F.4th at 1203 – 1206. Unlike the officers in *Lewis,* Officer Richardson had a lawful basis for commanding Bates to stop. *See Irvin*, 20 F.4th at 1206 (stating with regard to the investigative stop of Bates "[w]e agree with the district court that the officers had reasonable suspicion – at a minimum arguable reasonable suspicion – and therefore are entitled to qualified immunity."). Moreover, both this Court and the District Court determined Bates had not just refused to comply with clear directions to stop once, but had done so repeatedly. *Irvin* at 1206; (App. 612 – 613; R. Doc. 72, at 16 – 17). In *Lewis*, the officer only issued one command to stop and it was unclear whether the individuals who were walking away heard the officer's command. *Lewis,* 675 N.W.2d at 520. In this case, the indisputable video evidence shows that Bates heard Officer

Richardson's command because, in response to that command, Bates turned in Officer Richardson's direction, but then waived his arm at him and continued to walk away, despite Officer Richardson's continued and repeated commands to stop. (App. 625, Richardson video starting at approx. 1526:18).[9] The vastly different circumstances of *Lewis* render it inapplicable to this case, particularly in light of *Wilson*. Moreover, the cases cited in the excerpt from *Lewis*, above, (*People v. Lupinacci* and *B.H. v. State*) make clear that the right to walk away exists *if* the officer does not have lawful authority to detain the individual; they do not stand for the proposition that an individual can walk away from a valid Terry stop such as the one both this Court and the District found in this case.

Citing *State v. Smithson*, 594 N.W.2d 1, 2-3 (Iowa 1999), Bates also argues that the interference must be "active," and then concludes that Bates' conduct was not "active interference" based upon "clearly established law", presumably *Lewis*. (Br. at 17). However, for the reasons previously discussed herein, and in the District Court ruling that is the subject of this appeal, *Lewis* does not clearly

[9] During the preparation of this brief, it came to the attention of the undersigned that the squad car videos (a.k.a. Arbitrator videos) at page 625 of the appendix for this appeal are provided on a CD. It is the undersigned's experience that these videos do not always play smoothly from this medium and a USB thumb drive often provides a smoother viewing experience. In the event this Court has difficulty playing the videos from the CD in the appendix, copies of the same videos can be found on USB thumb drives in the appendix to Defendants' second motion for summary judgment. (App. 569 – 570; R. Doc. 68-3, at 104 -105). Alternatively, Defendants will promptly provide new USB thumb drives containing the videos at this Court's request.

establish that Officer Richardson's conduct was a violation of Bates' constitutional rights. *See Ashcroft v. al-Kidd,* 563 U.S. at 741, 131 S. Ct. at 2083 (stating "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate."). Moreover, that Bates' conduct was "active" not "passive" is borne out by the indisputable video evidence showing he continued to walk and refused to stop as ordered. (App. 625). Bates could assert he was interfering passively or failing to cooperate if he had stopped in response to Officer Richardson's clear commands, and merely continued with his verbal protests. But his conduct stands in contrast to passive interference: actively walking away, Bates hindered Officer Richardson in the performance of a lawful Terry stop because he extended significantly the time it took to effect the stop and his conduct necessitated Richardson's and Jupin's otherwise unnecessary display of force by drawing their weapons and maintaining them in a ready position (though not pointed at either subject). Bates' conduct was the very type of conduct that Iowa Code §719.1(1)(a) prohibits: behavior that prevents law enforcement from carrying out their lawful duties in a way that is constitutional, efficient and safe for all concerned.

For all of the foregoing reasons, the District Court's findings as to Officer Richardson, and dismissal of all claims against him, was proper and should be upheld.

III. THE DISTRICT COURT PROPERLY FOUND *MONELL* LIABILITY CANNOT BE IMPOSED IN THIS MATTER

A. Standard of Review

Defendants agree with Bates that the standard of review applicable to the District Court's grant of summary judgment is *de novo*.

B. Summary Judgment Standards

The summary judgment standards detailed above are hereby reiterated herein.

C. Discussion of the Issue

As a threshold matter, it is not clear to Defendants whether the arguments contained on pages 19 through 22 of Bates' brief are intended as his arguments in support of the third issue listed in his Statement of Issues (Br. at 7). However, Defendants are proceeding on the assumption that is the case.

The District Court properly found that Defendants' *Monell* claims fail for multiple reasons. First, the *Monell* claims fail because, for all of the reasons discussed by the District Court and in Section II of this brief, Bates' false arrest claims fail. *Sinclair v. City of Des Moines*, 268 F.3d 594, 596 (8th Cir. 2001)("Because the police officers are absolved of liability, the City cannot be held liable for their actions."). S*ee also Veneklase v. City of Fargo*, 248 F.3d 738, 748 (8th Cir. 2001) (en banc); *Olinger v. Larson*, 134 F.3d 1362, 1367 (8th Cir. 1998) ("The City cannot be liable…whether on a failure to train theory or a municipal

custom or policy theory, unless [an officer] is found liable on the underlying substantive claim.") (quoting *Abbott v. City of Crocker*, 30 F.3d 994, 998 (8th Cir. 1994)). Second, the *Monell* claims fail because, even if the false arrest claim does not fail, Bates has presented no evidence that any official municipal actions caused his alleged injury. *Connick v. Thompson*, 563 U.S. 51, 60-61 (2011)("Plaintiffs who seek to impose liability on local governments under [Section] 1983 must prove that action pursuant to official municipal policy caused their injury")(citation and internal quotation marks omitted).

Bates' only challenge to the District Court's determination with regard to his *Monell* claims is in relation to his ratification claim. This is the only *Monell* claim that was preserved and remanded by this Court in its determination of Bates' first appeal. *Irvin*, 20 F.4th at 1209. Moreover, even with the record being viewed in the light most favorable to Bates, Bates presented absolutely no evidence to support any other potential basis for *Monell* liability.

With regard to Bates' ratification claim, the District Court noted that "Chief Jerman's review of the incident and subsequent decision to not act upon it could be seen as ratification." (App. 621; R. Doc. 72, at 25). Even assuming without admitting this is the case, this fact is not sufficient to impose *Monell* liability on the City or Chief Jerman; there must also be facts to establish causation. *See Waters v. Madson,* 921 F.3d 725, 743 (2019)(holding that the police chief's after-the-fact

ratification could not be the basis for *Monell* liability because the ratification did not cause the alleged constitutional violation). Citing *Waters,* 921 F.3d at 743, the District Court properly found that, because any ratification by Chief Jerman in this case did not exist prior to or during Officer Richardson's alleged unlawful conduct, it could not have been the basis for Officer Richardson's conduct and, therefore, the causation element necessary to establish *Monell* liability fails as a matter of law. (App. 621 – 622, R. Doc. 72, at 25 – 26).

Bates attempts to save his ratification claim by arguing that *Waters* is distinguishable from this case because it involved a grant of a motion to dismiss, rather than a grant of summary judgment. This distinction does not save Bates' ratification claim. The *Waters* court's finding that "[the police chief's] after-the-fact determination did not cause the alleged violations of Appellants' constitutional rights and that Appellants, therefore, cannot premise a *Monell* claim on [the police chief's] actions" did not and does not turn on the fact the court was reviewing a motion to dismiss. *See Waters*, 921 F.3d at 743. The causation requirement for *Monell* liability applies to all stages of the case and, even when a court is viewing the facts in a light most favorable to the non-moving party on a motion for summary judgment, the non-moving party still must come forward with *some* fact to show the ratification caused the alleged unlawful conduct. *See Connick v. Thompson*, 563 U.S. at 60-61 ("Plaintiffs who seek to impose liability on local

governments under [Section] 1983 must prove that action pursuant to official municipal policy caused their injury")(citation and internal quotation marks omitted); *Krenik v. Cnty. of Le Sueur*, 47 F.3d 953, 957 (8th Cir. 1995)(stating "The nonmoving party may not, however, 'rest on mere allegations or denials' but must demonstrate on the record the existence of specific facts which create a genuine issue for trial.")(citing Fed. R. Civ. P. 56(e)). Bates has not done so, nor can he do so in this case and, therefore, his *Monell* claims cannot survive summary judgment.

Bates argues that he "successfully argued that the issue of whether Chief Jerman ratified Officer Richardson's decision to unlawfully arrest him was a question of fact for the jury to decide." (Br. at 21). This is an overstatement of this Court's decision in Bates' first appeal. In that decision, this Court noted the rigorous standards that apply to Bates' ratification claim, and noted that "ratification issues are fact intensive[,]" but this Court's holding was that it was declining to resolve the ratification issues on the summary judgment record it had before it – i.e. on a record where the District Court had not addressed, in the first instance, the ratification claim in the scenario where Officer Richardson was found to have acting unlawfully. *Irvin*, 20 F.4th at 1209. This Court did *not* say that it would not resolve the ratification claim as a matter of law on a different summary judgment record – one, such as now exists, where the District Court analyzed the

ratification claim under the scenario where Officer Richardson was found to have acted unlawfully, and found evidence of a causal link between the alleged ratification and the alleged unlawful act completely lacking. Based upon the foregoing, it is also an overstatement by Bates to say "this Court specifically cited to *Waters* and still determined that ratification issues are fact-intensive and declined to resolve the *Monell* claims as a matter of law on summary judgment." (Br. at 21 – 22). This Court would not be "reversing itself" if it found that, now that the District Court has fully addressed the ratification issue, it can do so as a matter of law.

For all of the foregoing reasons, the District Court's dismissal of Plaintiff's *Monell* claims was proper and should be upheld.

CONCLUSION

For all of the reasons set forth above, Defendants request that the Court affirm the District Court in each and every respect.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) because the Brief contains 9,266 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(f).

2. This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type style requirements of Fed. R. App. P. 32(a)(6) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 using 14-point Times New Roman.

3. This Brief has been scanned for viruses and is virus free.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2023, I electronically filed the foregoing Brief with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit, and all counsel of record by using the CM/ECF system. I further certify that within five days of the Court's notice that the Brief has been reviewed and filed, I intend to mail one copy to:

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