This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0898

Nicholas C Vezzetti,
Respondent,

vs.

The City of Minneapolis,
Appellant.

Filed January 21, 2025
Reversed
Harris, Judge

Hennepin County District Court
File No. 27-CV-23-13851

Wilbur W. Fluegel, Fluegel Law Office, Minneapolis, Minnesota; and

Jacob E. Jagdfeld, Johnson Becker, PLLC, St. Paul, Minnesota (for respondent)

Kristyn Anderson, Minneapolis City Attorney, Gregory P. Sautter, Chase Webber, Assistant City Attorneys, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Harris, Judge; and Halbrooks, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this interlocutory immunity appeal, appellant city challenges the district court's order denying the city's motion to dismiss respondent's claims for damages arising from personal injuries suffered when he was hit by a police car while operating a motorcycle. The city argues that the district court erred in applying the law and that it is entitled to official immunity. Because evidence establishes that the squad vehicle's emergency sirens were on continuously, and because we conclude that exercising caution and due care is a discretionary duty, we reverse.

FACTS

The following summarizes the factual allegations in the complaint served on appellant the City of Minneapolis. When helpful to understanding the issues on appeal, these facts also summarize documents referenced in the complaint, including the city's policy on emergency driving, and a police squad video.

In 2020 shortly before midnight, respondent Nicholas C Vezzetti was riding his motorcycle on Minnehaha Parkway in South Minneapolis. Around this time, Minneapolis Police Department (MPD) officers received an emergency call about an armed suspect and two victims at a nearby shooting.

According to the squad vehicle's footage, MPD officers began driving to the location and activated the squad vehicle's emergency lights and siren. Approximately four minutes later—still en route to the emergency call—the officers approached a red light at an intersection, where a black truck was passing through with two motorcycles following

closely behind. The squad vehicle slowed down and shortly before turning left at the intersection, the passenger officer said, "clear." After turning left onto Minnehaha Parkway, the black truck slowed down and pulled over to the right while both motorcycles continued ahead. The squad vehicle's red and blue emergency lights were still activated and reflected off the road, grass, and nearby trees and lampposts, and the siren can be heard in the squad vehicle's footage.[1] The squad vehicle moved toward the left-most lane to pass the two motorcyclists. The first motorcyclist braked and pulled over to the right to let the officers pass on the left side of the road, but Vezzetti activated his left-turn signal and veered left into the path of the squad car, leading to the collision.

Vezzetti sued the city in a three-count civil complaint alleging: negligence, negligence per se, and respondeat superior/vicarious liability. In the complaint, Vezzetti references the squad vehicle's footage and section 7-401 of the MPD's policy and procedure manual.

The city filed a motion to dismiss for failure to state a claim upon which relief could be granted under Minnesota Rule of Civil Procedure 12.02(e). The city argued that Vezzetti's negligence claim failed because the officers were protected by official immunity, that Vezzetti alleged no facts suggesting that the officers acted beyond the discretion afforded to them in emergencies, and that his negligence per se claim failed because the officers did not violate any ordinance or statute. The city also argued that his

[1] The squad vehicle's video contains "triggers," which indicate whether the vehicle's emergency lights and sirens are on or off. Here, the "lights" trigger was not illuminated, suggesting that the officers had not activated the emergency lights. However, the video clearly shows that the squad vehicle's red and blue lights were on.

respondeat superior claim should be dismissed because the officers were protected by official immunity, and the city by vicarious official immunity.

The district court denied the city's motion to dismiss on all three counts. It reasoned that in referencing the officers duty to exercise caution and due consideration for the safety of the public, section 7-401(D)(5) used the word "shall" and, therefore, created a ministerial duty, affording the officers no discretion regarding caution and due consideration for public safety. The city appeals.

ANALYSIS

The city challenges the district court's denial of its motion to dismiss after the district court determined that MPD officers were obligated to "exercise caution" and use lights and sirens "continuously" while responding to an emergency, and respondent plausibly alleged that officers failed to satisfy these duties. The city argues that the district court misapplied the law in determining that "shall" imposed a ministerial duty, and that the officer's conduct violated that duty.

I. The district court properly considered the city's motion as a motion to dismiss.

Vezzetti contends that the district court should have converted the motion to dismiss to one for summary judgment because the district court considered material—section 7-401 and the squad vehicle's footage—that he asserts was not referenced in his complaint. He also claims that the district court failed to consider his expert report in reviewing the city's motion to dismiss. As a result, Vezzetti argues that the district court either applied the wrong standard of review or erroneously excluded favorable evidence. We are not persuaded.

Appellate courts "review de novo whether a complaint sets forth a legally sufficient claim for relief." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). Appellate courts "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019).

Here, we must determine whether the district court applied the correct standard when reviewing the city's motion to dismiss for failure to state a claim. "A claim is sufficient to survive a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh*, 851 N.W.2d at 600. If, on a motion to dismiss for failure to state a claim upon which relief can be granted, "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56," including by giving the parties "reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Minn. R. Civ. P. 12.02. On a rule 12.02 motion to dismiss, the district court may consider "documents referenced in the *complaint* without converting the motion to dismiss to one for summary judgment." *Northern States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004). The materials must be referenced in the complaint itself. *See id.* at 491 (concluding it was error to consider affidavits "not referenced in or a part of the pleading that was the subject of the motion to dismiss").

In his complaint, Vezzetti references section 7-401 of the city's policy on emergency driving and the squad video. His complaint states that officers "are heard on

video from the squad vehicle discussing that the suspect had dropped a weapon on the ground." (Emphasis added.) His complaint additionally explains that:

> From the squad vehicle's dash cam video leading into the collision, [p]laintiff and his motorcycle are clearly visible, his headlight and taillight were clearly illuminated, and his left turn signal was on, all of which would have been visible to [the officers] who were traveling in their MPD squad vehicle while approaching [p]laintiff at an unsafe speed.

Vezzetti then references section 7-401(B) in several paragraphs throughout his complaint. Because Vezzetti clearly refers to both pieces of evidence in his complaint, the district court did not erroneously consider them in ruling on the city's motion to dismiss.

Vezzetti also claims that the district court was "selective" in considering which evidence to consider on the city's motion to dismiss. The district court was not selective. As the city points out, Vezzetti never referenced the expert report in his complaint, nor did he move for leave to amend the complaint. Moreover, he references the expert report for the first time in opposition to the city's motion to dismiss.

In sum, because the squad video and section 7-401 were both referenced in Vezzetti's complaint, the district court correctly considered the city's motion as a motion to dismiss under rule 12.02 and not a summary judgment motion under rule 56.

II. The district court misapplied the doctrine of official immunity in denying the city's motion to dismiss.

The city does not contest the ministerial nature of the officers' requirement to "continuously" maintain emergency lights and siren while emergency driving. It argues, however, that the district court erroneously concluded that the requirement to "exercise caution and due consideration for public safety" imposes a ministerial duty. First, we

examine the doctrine of official immunity and the district court's analysis of discretionary and ministerial duties. Then, we consider whether vicarious official immunity extends to the city.

A. The district court erroneously concluded that the word "shall" necessarily created a ministerial duty.

The doctrine of official immunity protects public officials "charged by law with duties which call for the exercise of [their]judgment or discretion" from personal liability to individuals unless there is evidence of malice or willful wrongdoing. *Vassallo ex. rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014) (quotation omitted). The doctrine also provides "immunity from suit, not just from liability." *Thompson v. City of Minneapolis*, 707 N.W.2d 669, 675 (Minn. 2006) (quotation omitted). "Official immunity enables public employees to perform their duties effectively, without fear of personal liability that might inhibit the exercise of their independent judgment." *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006). This is because public officials who respond to emergencies often have "little time for reflection" and must act "on the basis of incomplete and confusing information." *Pletan v. Gaines*, 494 N.W.2d 38, 41 (Minn. 1992).

"[A]t first step of the official immunity analysis, it is essential to identify the *precise* governmental conduct at issue." *Raymond v. Pine Cnty. Sheriff's Office*, 915 N.W.2d 518, 525 (Minn. App. 2018), *rev. denied* (Minn. July 17, 2018) (quotation omitted). To determine whether official immunity applies, we must first determine "the conduct at issue," and then "whether that conduct is discretionary or ministerial." *Vassallo*, 842 N.W.2d at 462. If the conduct is discretionary, we then consider whether the official acted

willfully or maliciously.[2] *Id.* "The applicability of immunity is a legal question that we review de novo." *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599 (Minn. 2016).

To begin, the conduct at issue is the officer's use of emergency lights and sirens in responding to an emergency call.[3] Focusing on this specific conduct, we must determine whether the officer's actions were discretionary or ministerial. "A discretionary duty involves individual professional judgment that necessarily reflects the professional goal and factors of a situation." *Vassallo*, 842 N.W.2d at 462 (quotation omitted). A ministerial duty, on the other hand, "is one that is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." *Id.* (quotations omitted). A government policy that sufficiently narrows the standard of conduct "will make a public employee's conduct ministerial if he is bound to follow the policy." *Mumm*, 708 N.W.2d at 491. "Whether a particular statute or policy creates a ministerial duty is ordinarily a question of law." *Vassallo*, 842 N.W.2d at 464 (citing *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 664 n.5 (Minn 1999)).

The relevant policy here is section 7-401(D), which states, in relevant part:

> 4. Ordinarily, all MPD officers shall use department authorized red lights and sirens *continuously* during *any* emergency driving.
>
> 5. Officers performing emergency driving shall *exercise caution* and *due consideration* for the safety of the public.

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[2] Vezzetti does not allege that the city engaged in malicious or willful conduct.

[3] Vezzetti asserts that the conduct at issue here is the officer "rearending an uninvolved vehicle." This is a *consequence* of the allegedly wrongful conduct by the officers. Vezzetti's framing would suggest that the officer consciously rearended him, undermining the basis of his negligence claim.

> a. The use of the red lights and siren does not exempt officers from the need for caution nor does it exempt them from criminal or civil liability.

(Emphases added).[4]

Based on this language, the district court denied the city's motion to dismiss, stating:

> The Court finds that the language in Section 7-401(D)(5) uses the word "shall" and therefore does not give the Officers discretion regarding caution and due consideration for public safety. Further, Section 7-401(D)(4) requires the Officers to have the siren and red lights on continuously which is also not discretionary. The squad car video provided with [the motion] does not provide clear evidence.

Here, the district court only analyzed the word "shall" and, based on that alone, concluded that a ministerial duty existed. Although "shall" typically creates a mandatory duty, the official immunity analysis requires us to go a step further and evaluate the nature of the duty that is, in this case, modified by the word "shall." *See Travis v. Collett*, 17 N.W.2d 68, 71 (Minn. 1944) (concluding that the language "shall slow down as necessary" is not an absolute duty because the words "slow down as necessary" calls for the driver's independent judgment under the circumstances).

In *Vassallo*, the supreme court held that the duty to "proceed cautiously" meant "to go forward in the exercise of *due care* to avoid a collision." 842 N.W.2d at 463. The court concluded that this was a discretionary duty because the requirement to use due care "calls] for the exercise of independent judgment." *Id.* In contrast, an emergency vehicle's

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[4] Section 7-401(D)(4a) provides exceptions to "continuously" using red lights and sirens, such as those circumstances that warrant an "unannounced approach." Neither party claims this exception applies here.

requirement to "sound its siren or display at least one lighted red light to the front before proceeding" was a ministerial duty because it was "absolute, certain, and imperative" and left no discretion to the individual. *Id.* at 463-64.

Parts 4 and 5 of section 7-401(D) each create a mandatory duty, as evidenced by the word "shall." Part 4 creates a ministerial duty to use lights and sirens "continuously" during emergency driving—the city does not contest this. But we conclude that part 5 imposes a discretionary duty because exercising "caution and due consideration for public safety" is a broad mandate that may turn on the officer's professional judgment under the circumstances. Even though officers should always "exercise caution and due consideration for the public safety," ministerial duties are specific duties that arise from "fixed and designated facts," and the language in subdivision 5 is not sufficiently narrow to create a specific duty. *See Wiederholdt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998) (holding that an ordinance imposed a ministerial duty on a sidewalk city inspector to immediately repair "any sidewalk slab projecting more than one inch above the adjacent slab"); *Mumm*, 708 N.W.2d at 491-92 (holding that the policy imposed a ministerial duty because it required officers to discontinue pursuit whenever officers could "establish the identification of the offender so that an apprehension [could] be made at another time," leaving no room for independent judgment).

Here, section 7-401(D)(5)'s provision that "[o]fficers performing emergency driving shall exercise caution and due consideration for the safety of the public" leaves room for an officer's independent professional judgment, which necessarily encompasses the exercise of discretion. *See Black's Law Dictionary* 630 (12th ed. 2024) (defining "due

consideration" as "[t]he degree of attention properly paid to something, as the circumstances merit"). In addition, the requirement to exercise caution and "due consideration" is too broad to conclude that there is an "absolute, certain, and imperative" ministerial duty that leaves nothing to the discretion of the official.

In sum, the district court misapplied the doctrine of official immunity because it relied on the word "shall" to determined that a ministerial duty existed and did not sufficiently evaluate the nature of the officer's conduct. The officers' duty to "exercise caution and due consideration" is a discretionary duty. And because Vezzetti does not allege, nor is there any evidence of, malicious or willful wrongdoing, we conclude that the police officers in this case did not violate their discretionary duty and therefore are entitled to official immunity. The officers' duty to "exercise caution and due consideration" is a discretionary duty. And the officers here did not violate that discretionary duty.

B. The Officers did not violate the ministerial duty to "continuously" use lights and sirens.

The district court may dismiss a complaint upon a party's motion if it "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02. Dismissal under rule 12.02(e) is proper if "it appears to a certainty that the plaintiff can introduce no facts consistent with the complaint to support the claim for relief." *State by Smart Growth Minneapolis v. City of Minneapolis,* 954 N.W.2d 584, 596-97 (Minn. 2021) (quotation omitted). "We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A*, 851 N.W.2d 598,

606 (Minn. 2014) (citation omitted). "[W]hether official immunity applies turns on: (1) the conduct at issue; (2) whether the conduct is discretionary or ministerial and, if ministerial, whether any ministerial duties were violated; and (3) if discretionary, whether the conduct was willful or malicious." *Vassallo*, 842 N.W.2d at 462. "[T]he conduct of police officers in responding to a dispatch or making an arrest involves precisely the type of discretionary decisions, often split-second and on meager information, that [the supreme court] intended to protect from judicial second-guessing through the doctrine of official immunity." *Kelly*, 598 N.W.2d at 665. A motion to dismiss pursuant to rule 12.02(e) on the basis of official immunity may be granted only if the applicability of official immunity is clearly established by the allegations in the complaint. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn.2014)

The city concedes that the officer's duty to use emergency lights and sirens "continuously" during emergency driving is a ministerial duty, but it argues that its officers are still entitled to official immunity because they did not violate their ministerial duty to maintain emergency lights and sirens. More specifically, the city argues that (1) no rational jury could find that the siren was not on continuously; (2) the officers' entitlement to immunity does not extinguish the moment before the collision when the siren is allegedly deactivated; and (3) Vezzetti does not assert that his injuries stemmed from the officers' non-use of the siren. Vezzetti argues that the officers violated section 7-401(D)(4) because they only used a "pulsed" or intermittent siren, and the record allegedly shows that the siren was deactivated "before, during, and after the crash." The district court found that

the squad video did "not provide clear evidence" that the officers satisfied their ministerial duty and, therefore, could not be granted immunity.

The city presented the district court with the squad vehicle's footage capturing the officers driving en route to the emergency call and the collision with Vezzetti. Here, a simple review of the squad vehicle's footage referenced in the complaint establishes that the officers complied with their ministerial duty of continuously using emergency lights and sirens, as required by section 7-401(D)(4). From the beginning of the squad video, when the officers began driving to pursue the armed suspect, the vehicle's red and blue lights are seen flashing (reflecting off the road, sidewalk, trees, and other cars) despite the "lights" trigger not illuminating. The red and blue lights continue to flash, and the siren is activated approximately 15 seconds later. The officers maintain the vehicle's emergency lights and siren until the moment of collision with Vezzetti. Before turning left at the intersection, the driving officer slows down and the other officer can be heard saying, "clear." Approximately seven seconds later, and after turning left at the intersection onto Minnehaha Parkway, the squad video shows the driver of the black truck pulling over to the right, allowing the officers to pass by. Ten seconds later, Vezzetti's companion—also on a motorcycle—is seen pulling over to the right, also allowing the officers to pass by. Immediately after passing the companion, Vezzetti activates his left-turn signal and veers to the left in front of the squad car, resulting in the collision one second later. After the collision, the squad vehicle's red and blue lights continue to flash, which can be seen reflecting off the surroundings. And because Vezzetti does not allege, nor is there any

evidence of, malicious or willful wrongdoing, we conclude that the police officers in this case did not violate their discretionary duty and therefore are entitled to official immunity.

Based on this record, Vezzetti can introduce no facts consistent with the complaint to support the claim that the officers here did not continuously use their lights or siren. Vezzetti thus failed to state a claim upon which relief can be granted because the squad vehicle's footage clearly shows that the officers maintained the emergency lights and siren "continuously" until the collision.

C. The city is entitled to vicarious official immunity.

The city next asserts that it is entitled to vicarious official immunity because the police officers complied with their ministerial duty to "continuously" use emergency lights and sirens. The district court rejected the city's claim of vicarious official immunity because the squad video's "siren" checkbox was not illuminated. But because the squad video clearly shows the vehicle's lights and sirens are activated, we extend vicarious official immunity to the city.

"In general, when a public official is found to be immune from suit on a particular issue, his government employer will enjoy vicarious official immunity from a suit arising from the employee's conduct." *Schroeder v. St. Louis County*, 708 N.W.2d 497, 508 (Minn. 2006). "Vicarious official immunity is usually applied where officials' performance would be hindered as a result of the officials second-guessing themselves when making decisions, in anticipation that their government employer would also sustain liability as a result of their actions." *Id.* (quotation omitted). Vicarious official immunity is additionally applied "when the failure to grant it would focus stifling attention on an

official's performance to the serious detriment of that performance." *Id.* (quotations omitted).

Whether the government is entitled to vicarious official immunity turns on whether the public official was granted official immunity. *See Vassallo*, 842 N.W.2d at 465 (stating that the issue of the employer's vicarious official immunity "stands or falls" with whether the employee is immune). And "[w]hile we have generally extended official immunity vicariously to governmental entities after a government employee has been allowed official immunity, vicarious immunity is not an automatic grant." *Sletten v. Ramsey County*, 675 N.W.2d 291, 300 (Minn. 2004).

Here, the city is entitled to vicarious official immunity because the officers are entitled to official immunity. Both officers complied with their duties to use lights and sirens "continuously" and exercised "caution and due consideration" for the public safety while pursuing an armed suspect. The officers slowed down at intersections when necessary and always maintained emergency lights and siren while en route to the suspect.

In sum, because the officers are entitled to official immunity, the city is entitled to vicarious official immunity.

Reversed.