

Claims Case Study

T.F. and S.H. v. City of Helena

Avoiding and defending sexual assault
claims.

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#METOO



Background of S.H. and T.F. Cases

S.H. and T.F. brought separate cases against the City of Helena, one of its former officers and Lewis and Clark County.

Both alleged they were forced to have sex with an MRDTF Officer while working as confidential informants (C.I.s) for the MRDTF.

S.H.: addicted to meth and had a very hard life, including previous sexual assaults, watching her father commit suicide when she was a child, etc.

T.F.: sexually abused as a child, struggled with drugs and committed suicide over the course of the civil case after her child was removed from her custody.



Co-Defendant Matt Thompson



- In 2007, described his wife as his “best friend”
- Was an involved member of his church and community, teaching Senior High Bible Study, serving on two missions trips and coaching his daughters’ softball teams.
- He reported enjoying his (previous) job as a School Resource Officer, because he enjoyed “building relationships” with students and providing them with “a strong law enforcement and adult commitment.”

MRDTF

- To further his career, Thompson applied and was selected for the MRDTF
- Multi-agency Drug Task Force which collaborates in working toward the goal of detecting, apprehending and prosecuting illegal drug crimes
- Necessary part of law enforcement
- Often work irregular hours, without “direct” supervision



Rural Task Force of the Year

- During Thompson's tenure, the Task Force was successful.
- It appeared to everyone that Thompson – and the Task Force – was doing a good job.
- In fact, the MRDTF was the most successful drug task force in Montana during Thompson's tenure.



Inappropriateness Reported

- In 2012, a report was made that Thompson was having an inappropriate relationship with a C.I. -- this was NOT S.H. or T.F.



- The City immediately placed Thompson on leave and opened an investigation

Thompson (eventually) admitted to:

- Having sex with 4 C.I.'s.
 - This included Plaintiff S.H., but did not include Plaintiff T.F.
- He stated the sex was consensual and NOT the result of force, coercion or intimidation.



Thompson resigned in lieu of termination.

He resigned only 5 days after the investigation began.

Despite the resignation, the investigation continued . . .



- Plaintiff S.H. was interviewed as a part of the ongoing investigation.
- She admits to having sex with Thompson, but claims it was consensual and that it had nothing to do with her cases.

INVESTIGATION COMPLETED

- The Police Chief forwarded the investigation to the County Attorney's Office for potential criminal charges.
 - Evidence determined ALL sex occurred between consenting adults
- Montana DCI also reviewed investigation
 - DCI determined it was a "thorough and complete investigation" and that there were "no aspects of this case that were not meticulously investigated."



Reporting Thompson to POST

- ⦿ The City notified POST of resignation right away
- ⦿ Spoke with them before making a formal complaint regarding his behavior
- ⦿ The City, County and POST had concerns about protecting the identities of C.I.s
 - POST “flagged” Thompson’s file, but didn’t pull his certificate since that would have triggered Thompson’s ability to have a public hearing where potential C.I. identities could have been disclosed.

Four Years Later . . .

Litigation ensues

- S.H. sued the City, Thompson and the County
- Claimed the sex was non-consensual
- Claimed local authorities were aware of ongoing sexual abuse

Former Helena cop accused of sexually assaulting confidential informant

ANGELA BRANDT Independent Record Jun 8, 2016 1

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Former Helena police officer Matt Thompson is seen in a file photo from 2007. Thompson is named in lawsuits alleging sexual abuse.



f t e p b

A former Helena detective is accused of repeatedly sexually assaulting a confidential informant for a drug task force in a lawsuit. The suit names the City of Helena, Lewis and Clark County and Matt Thompson, who left the force in 2012, the same year of the alleged abuse.

Thompson forced the woman to engage in sex acts while on duty, according to the suit. He also is accused of physically attacking the victim and threatening her with criminal charges. The suit says Thompson told the woman her children would be taken away if she did not comply with his advances.

Attorneys for the victim claim Thompson admitted to having sexual relations with multiple confidential informants, including the woman suing him. They also say local authorities were aware of the ongoing abuse of informants.

A few months later . . .

- T.F. also filed suit
- Claimed Thompson groomed her in High School while he was an SRO.

Second suit accuses former Helena officer of sex assault



TOM KUGLIN Independent Record Oct 21, 2016 3

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Former Helena police officer Matt Thompson is seen in a file photo from 2007. Thompson is named in lawsuits alleging sexual abuse.



A former Helena detective has been accused of sexually assaulting a second confidential informant in a new civil lawsuit filed this week. Both suits name the city of Helena, Lewis and Clark County and Matt Thompson, who left the force in 2012, as defendants.

The latest suit filed Oct. 18 alleges that when Thompson was a school resource officer at Capital High School, he interacted with the alleged victim, identified as T.F. After going to work for the Missouri River Drug Task Force, the suit goes on to say that Thompson recruited T.F. as a confidential informant.

The suit alleges the victim was provided alcohol by Thompson while she was underage, and he sexually assaulted her on two occasions, all while she worked as an informant.

[MORE INFORMATION](#)

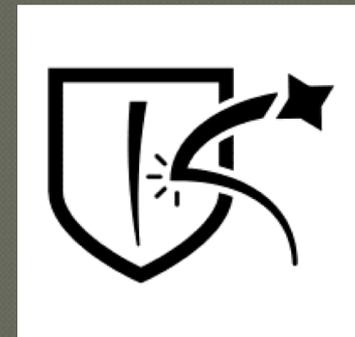
S.H.'s and T.F.'s claims

- ◉ Direct Liability against the City
 - Alleged the City negligently hired, trained and supervised Thompson
- ◉ Vicarious Liability against the City
 - Alleged the City was vicariously responsible for Thompson's actions
- ◉ State Constitutional Claims



Defense and Indemnity

- The City (and the MMIA) did not defend Thompson.
- Montana law requires a City to defend and indemnify an employee who is sued civilly for actions taken within the course and scope of employment. MCA § 2-9-305(2); *see also* § 2-9-305(4).
- However, Thompsons' ADMITTED acts of consensual sex were outside the course and scope of employment—let alone the alleged act of rape. *See id.* § 2-9-305(6) (employee may not be defended for crimes or acts outside the course and scope of employment).
 - Rape and even consensual sex are NOT part of an officers' job duties.



To Defend or Not Defend . . .

- Employees need not be defended or indemnified by the employer if a judicial determination is made that:
 - 1) “the conduct upon which the claim is based . . . does not arise out of the course and scope of the employee's employment;” or
 - 2) “the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7.” MCA § 2-9-305(6)(a), (b).
- When a judicial determination has not been made (as in our cases), “the governmental entity employer may determine whether those exclusions apply.” *Id.* § 2-9-305(7).
- If whether the exclusions of subsection (6) apply is **disputed** and **the governmental entity employer concludes that it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action**, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in that action holding that the employer did not have an obligation to defend the employee. The governmental entity employer does not have an obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.



Compare with Koon v. City of Fort Benton

- Alleged acts outside the course and scope. However, the officer there DENIED the allegations.
- The City via the MMIA defended that officer, but did not indemnify him.



Liability Considerations

◉ How do we win?

- Vicarious Liability Claims

- Sexual assault is OUTSIDE the Course and Scope of the job of a police officer. *Maguire v. State*, 835 P.2d 755 (Mont. 1992).
- Employers are not liable for CRIMES committed by employees. MCA § 2-9-102; *see also* MCA § 2-9-305(b)(6) (defense and indemnity)

- Direct Liability Claims

- Public Duty Doctrine
- Nothing indicated to anyone that Thompson had a propensity to commit sexual assault.

Maguire v. State

- Mental health caretaker responsible for dressing and bathing a woman with a mental disability raped and impregnated her.
 - Facts can be likened to those of an officer. Disabled patient was held or “in custody” of the hospital. Caretaker only had access to this patient by virtue of his employment situation.
- The Court specifically considered whether rape was outside the course and scope of employment.
- Held: “It is clear this rape was outside the scope of Lloyd Drummond’s employment.”



What conduct is within an officer's course and scope of employment?

- Generally speaking, acts done for the employers' interest and benefit.
- Factors to be considered include:
 - Is the conduct commonly done by such employees?
 - Time, place and purpose of the conduct.
 - Employer reasonably expects the conduct will be done.
 - The extent of the departure from the normal method of accomplishing an authorized result.



Typical Legal Arguments in Response to *Maguire* . . .

- Adopt the California Absolute Exception, which allows claims against municipalities when the officer had an opportunity to sexually assault someone simply by virtue of their employment. *See Mary M. v. City of Los Angeles*, 54 Cal. 3d 202 (Cal. 1991)
- Attempts to utilize Montana’s “Common Carrier”/ Non-Delegable Duty Exception/*Restatement (Second) of Agency* § 214.
- The *Maguire* Court declined to create an exception when the tort “is committed only because of or by virtue of the employment situation.” 835 P.2d at 759.
- This was argued and considered in *Maguire*, but the Court held “such a major change to the *respondeat superior* doctrine is best left to the legislature.” 835 P.2d at 759.

Arguments Against Plaintiffs' Direct Liability Claims

● Public Duty Doctrine - No duty was owed

● Even if owed a Duty - No breach

- Thompson was properly hired and worked as an officer for years without any evidence of sexual impropriety.
- Thompson was properly trained.
 - He knew it was wrong to even MEET alone with C.I.'s, let alone have sexual relationships with them.
- Thompson was supervised.
 - Had to educate the Court regarding the nature of Drug Task Forces, why they are important and how they work.
 - They are not generally “directly” supervised due to the nature of their work.
 - Regardless, NO ONE knew Thompson was having these relationships, not even his partner with whom he worked extremely closely.



Statute of Limitations



Summary Judgment Granted!

- Judge Menahan found:

- Claims were Barred by the Statute of Limitations and the Direct Liability Claims Failed.
 - “S.H. has offered no evidence that City or County officials knew Thompson would use his position of authority to force her to engage in sexual activity.”
- Defendants Cannot be Vicariously Liable for Thompson’s Conduct.
 - MCA § 2-9-305(6)(b), Employers cannot indemnify for criminal offenses.
 - Only liable for acts taken in the course and scope of employment. Plaintiffs and their expert repeatedly alleged Thompson committed a crime.

Takeaways

- Investigate Promptly

- The City started its investigation right away
- Forward to another agency such as DCI to review
- Forward it to the County Attorney's Office
- Report to POST
- Preserve the necessary records



- Determine whether you are required to defend

- Review MCA § 2-9-305 and make your next move

Takeaways Continued

○ Preserve confidentiality



- This case had the problem of potentially disclosing the confidential identity information of C.I.s.
- Resulted in extensive discovery discussions, disputes and motion practice, but we eventually prevailed.

○ Utilize relationships with co-defendant law enforcement agencies

- Interesting relationship with the other agencies due to the nature of MRDTF.
- Judge's former career.

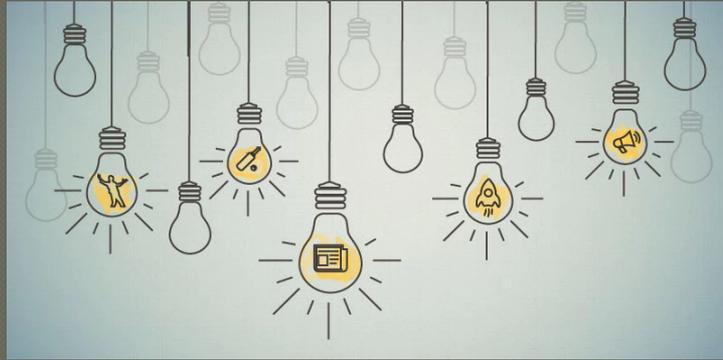
Tips to Avoid Potential Claims: What worked for the City of Helena

- Properly Vet Employees
 - However, the reality is many individuals who are prone to this behavior are VERY good at hiding their propensities.
 - Thompson provided NO warnings that he would do these things
 - EVERYONE was SHOCKED
- Incorporate Suitable Policies and Procedures/Training/Supervision
 - MRDTF Rules prohibit meeting alone with C.I.s
 - Searches are required to be performed by same gender officers
 - Do you need to train not to have sex?
 - We utilized the City's Sexual Harassment Training Acknowledgments.

Tips to Consider in Litigation

- Removal to Federal Court?
 - Hidden § 1983 Claims
- Allow use of the Initials in the Pleadings?
- If alleged abuser is not a party, consider making a third-party claim
 - Use of the settled party defense if he/she makes a deal with the Plaintiff
- Consider potential Joint Liability regarding Task Force Claims





Tips, Thoughts, Questions regarding these types of claims?

Share your experience.

