Circuit Court for Prince George's County
Case No.: CAL20-17934

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1577

September Term, 2022

I.D.

v.

PRINCE GEORGE'S COUNTY, *et. al.*

Friedman,
Zic,
Curtin, Yolanda L.
(Specially Assigned),

JJ.

Opinion by Curtin, J.

Filed: May 7, 2024

* This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In the Circuit Court for Prince George's County Appellant I.D.[1] filed a complaint alleging several tort claims, collectively and individually, against Prince George's County, former Chief of Police Henry Stawinski ("Stawinski"), and former Officer Ian Lucas ("Officer Lucas"). The claims are premised on Officer Lucas' employment with the Prince George's County Police Department ("PGPD"). Before the circuit court, Prince George's County and Stawinski (collectively "Appellees") filed a motion for summary judgment arguing that I.D.'s claims were based on a personal sexual encounter that occurred between Officer Lucas and I.D., and which falls outside the scope of the officer's employment with the PGPD. On September 27, 2022, the circuit court granted summary judgment in favor of Appellees. I.D. filed this appeal challenging the circuit court's grant of summary judgment.[2]

In this appeal, I.D. raises three issues, which we have consolidated into two and

[1] In the proceedings below and in her brief, the Appellant indicated that her interaction with Officer Lucas occurred on a day when she was working as "a sex worker." Therefore to protect the identity of the Appellant her initials will be used.

[2] The summary judgment order did not pertain to any claims that are solely related to Officer Lucas, and those claims are still pending before the circuit court. Although there are still pending claims related to I.D.'s lawsuit, the parties filed in the circuit court a Joint Motion to Certify for Appeal and Motion to Stay to allow the appeal to proceed at this time. *See* Md. Rule 2-602. The circuit court granted the parties' motion on October 3, 2023. Maryland Rule 2-602 grants the circuit court discretionary authority to certify a case for appeal when there are still pending claims to adjudicate. *Miller Metal Fabrication Inc., v. Wall*, 415 Md. 210, 221 (2010). We therefore make our own independent determination as to whether the appeal at this time is warranted *See id.* at 228. Here, the parties filed a Joint Motion to Certify and included in the motion that since all claims against Appellees were fully litigated, further delay in entering a final judgment would result in economic hardship to the parties because of the potential for two trials regarding the same facts. We do not disagree with the circuit court's order in light of the issues raised in the appeal and the impact the resolution of the issues may have upon further litigation.

rephrased for clarity:[3]

> 1. Was the circuit court correct in concluding that there were no genuine disputes of material facts for a reasonable jury to conclude that Officer Lucas acted within the scope of his employment when he engaged in sexual acts with I.D.?
>
> 2. Was the circuit court correct in dismissing all counts against Appellees?

We answer both questions in the affirmative and affirm the circuit court's grant of summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. The facts revealed during discovery.

On November 9 and 10, 2018, Officer Lucas was employed as an officer with the

[3] I.D. listed the following issues in her brief:

> 1. Did the trial court err in finding that Appellees are completely immune to any liability arising out of their employee's false imprisonment, assault, and use of excessive force against Appellant, even though the officer was engaging in a police activity and would not have been able to commit the misconduct *but for* the police authority bestowed by Appellees?
>
> 2. Did the trial court err in granting judgment on the sole basis that sexual activity falls outside the scope of employment, where the majority of Appellant's claims arise out of conduct other than sexual activity, including Defendant Lucas' false imprisonment of Appellant and use of excessive force and Appellees' own misconduct?
>
> 3. Did the trial court err in concluding that Defendant Lucas' conduct was outside the scope of employment, despite Appellant reasonably believing that Defendant Lucas was an apparent agent for Appellees arresting her under their authority?

PGPD. He worked a shift that started the afternoon of November 9 and ended on November 10 at 1:30 a.m. After his shift was over, Officer Lucas went to Club Fuego, a strip club, to watch dancers. In his deposition testimony, Officer Lucas testified that although he drove his patrol vehicle to and from the strip club, he was not working in an official police capacity or engaging in any law enforcement investigative activities. While at the strip club, he consumed alcohol he brought with him and purchased with his own funds. After he left the strip club, Officer Lucas went to Eastern Avenue for the purpose of soliciting the services of a sex worker.[4] Although he was traveling in his police vehicle, he was wearing street clothes.

On November 10, 2018, I.D. was working as a sex worker. She encountered Officer Lucas on Eastern Avenue. Prior to encountering Officer Lucas, I.D. used her cell phone to video record all her interactions with Officer Lucas. The recording started prior to when she approached Officer Lucas in his police vehicle. She continued video recording throughout her interactions with Officer Lucas, including when two sexual acts occurred between the two.

The video of the incident that led to I.D.'s complaint was included as an exhibit for the trial court to review in addressing the Appellees' motion. The video showed that when I.D. first encountered Officer Lucas in his police vehicle, I.D. opened the back door of the

[4] The record was silent on the exact location, but because Officer Lucas was ultimately charged with the criminal offense of solicitation by Metropolitan Police in Washington, D.C., stemming from his interactions with I.D., the inference from the evidence is that the area where he met I.D. and his interactions with I.D. all occurred in Washington, D.C.

vehicle and engaged in a short conversation with the officer in which the officer asked her to sit in the front seat. Instead, I.D. sat in the backseat stating, "you don't want anyone to see me in the front." After I.D. got in the back seat of the patrol vehicle, Officer Lucas asked I.D. if he had picked her up before. In his deposition testimony, Officer Lucas testified that this question was related to whether he had arrested I.D. before. Thereafter, Officer Lucas asked I.D. where he should go and I.D. responded to pull ahead.

During the ride in Officer Lucas' police vehicle, Officer Lucas initiated discussions regarding sexual activity. He began by asking I.D. if she was "going to make [him] bust." Officer Lucas testified that this referred to his desire to ejaculate. In response, I.D. indicated yes but "don't arrest me." The officer did not respond to I.D.'s statement. A few minutes later, the officer asked I.D. to "please make me bust," and a few minutes later I.D. responded that the officer better not arrest her. During the ride in the police vehicle, I.D. told the officer where to drive. I.D. and the officer engaged in a general discussion regarding the payment of money by the officer to I.D., in which I.D. responded it depended on what the officer was looking for. Officer Lucas responded again that he "needed to bust." The parties did not settle on any specific amount of money, but Officer Lucas drove to a 7-Eleven convenience store to get money. While the officer was in the store, I.D. remained in the back of the police vehicle. While alone in the police vehicle I.D. is heard on the video stating that she was not sure what the officer was up to. The back doors of the police vehicle were locked.

When Officer Lucas returned and resumed driving the vehicle, I.D. continued to provide him with directions on where to go. The police radio was on during the drive.

While driving, Officer Lucas told I.D. that he needed to get his "shit off." I.D. responded, "don't arrest me" and Officer Lucas responded with "naw" and that he was just "backed up." During his deposition testimony, Officer Lucas was asked about I.D.'s references to being arrested, and Officer Lucas responded that he told I.D. no; he was just "backed up" and needed to ejaculate. In reference to this exchange, on the video I.D. responded that she wanted to make sure she was paid. I.D. then continued to provide the officer with directions regarding where to stop the vehicle.

Once Officer Lucas stopped the vehicle, I.D. told the officer to hold off giving her money and that he could tip her later. At this point in the video, I.D. then climbs over to the front seat. She performs oral sex on the officer, and then performs a second sexual act on him. After the sexual acts, Officer Lucas paid I.D. $80.00 and she left the vehicle.

I.D. filed a complaint with the PGPD's Internal Affairs Division and the Metropolitan Police Department against Officer Lucas. After an investigation, Officer Lucas was criminally charged in Washington, D.C. with solicitation and he pled guilty to the charge. Subsequently, Officer Lucas resigned from his employment with PGPD.

B. Procedural History

On October 26, 2020, I.D. filed an eleven count complaint against Appellees and Officer Lucas. The claims were based on her interactions with Officer Lucas, and include the following: violations of Maryland Declaration of Rights, false imprisonment, civil conspiracy, intentional infliction of emotional distress, negligent hiring, negligent training and supervision, negligent retention, pattern or practice of improper conduct, gross negligence, and general negligence. After the parties engaged in discovery, Appellees filed

a Motion to Dismiss or in the Alternative for Summary Judgment.[5] On September 27, 2022, the circuit court held a hearing on Appellees' motion.

At the hearing, Appellees argued that neither appellee was liable because Officer Lucas' actions were not within the scope of his employment. Specifically, Appellees presented the argument below:

> [Appellees' Counsel]: Basically, the facts are in this case the Defendant was a Prince George's County police officer. While he was off duty in street clothes, goes to a club and consumes alcoholic beverages. He leaves the club, drives his cruiser into Washington, D.C., parks his cruiser on the side of street.
>
> The Plaintiff [I.D.] is a sex worker, approaches the vehicle, a conversation takes place, the Defendant Lucas asks the Plaintiff to get into the front seat of the cruiser. She decides she wants to sit into [sic] the backseat.
>
> The Defendant drives to a 7-Eleven in Washington, D.C. removes cash from his ATM, goes back to the cruiser, the Plaintiff performs a sex act on the Defendant Lucas and that Defendant Lucas then gives her 80 dollars for the sex act.
>
> The next day the Plaintiff files a complaint with Prince George's County Internal Affairs. Investigation takes place. The Metropolitan Police Department get involved and charges the Defendant Lucas with the crime of solicitation.
>
> The Defendant pleads guilty in D.C. court. He is also charged administratively through the Internal Affairs with the Prince George's County Police Department with conduct unbecoming and he resigns before the Trial Board takes place.

[5] Appellees' motion was simply titled Motion to Dismiss, but the memorandum attached to the motion was titled Memorandum in Support of Motion to Dismiss or in the Alternative for Summary Judgment. As discussed *infra*, at the hearing, the Appellees argued for summary judgment relief. Therefore, our review here is to determine the appropriateness of the dismissal of I.D.'s complaint on summary judgment grounds.

In addition, Appellees pointed out that parts of Officer Lucas' deposition testimony supported the relief requested and the basis in law for the relief requested:

> [Appellees' Counsel]: In his deposition, Defendant Lucas admits that his actions were purely personal and no law enforcement interests were taken through the act. Now the test for this for scope of employment, Your Honor, is, was Lucas's actions in furthering of the employee's business and were they authorized by the employer. It is obviously, absolutely not.
>
> It's not the Police Department's business to pick up sex workers and pay them for sex acts and the Chief nor the County authorizes that type of behavior and, obviously, by the criminal charges and the internal administrative charges that Mr. Lucas faced.
>
> So based upon the law, it's obvious that his actions were truly personal, they were not in furtherance of the County Police Department's business or were they authorized by Chief Stawinski. So therefore . . . Mr. Lucas's actions were purely personal and not within his scope of employment.

In opposing the Appellees' motion, I.D.'s counsel argued that Officer Lucas was in a marked patrol vehicle, his client was working as a sex worker, and that because she was engaged in sex work and was committing a misdemeanor, she had no choice but to follow Officer Lucas' orders. Further, that even though Officer Lucas was in his plain clothes, I.D. argued that Officer Lucas' police radio was still on and calls could be heard in the background of I.D.'s video recording. Further, that "it happens all the time that police officers in the county and elsewhere might be in plain clothes and on their way home from a shift and if they see a crime, they are empowered to take action." This argument resulted in the following exchange:

> The Court: What crime was that?
>
> [I.D.'s Counsel]: She was a sex worker, Your Honor.

> The Court: But what was the crime that he observed?
>
> [I.D.'s Counsel]: He likely observed her soliciting people as a sex worker. That's what she was engaged in at the time.
>
> The Court: Well, does this record show that he observed her soliciting anyone as a sex worker?
>
> [I.D.'s Counsel]: It shows that he knew she was a sex worker and was calling her over for that purpose. So yes, it's very clear in his deposition that he went to hire a sex worker. He said he's gone to that area many times before. He was familiar with it. He was leaving a strip club and was, Your Honor, you know, not to be prurient, but he was in that mood and was going to this area for that purpose.

I.D. further argued that the officer "immediately invoke[ed] the authority of his office. Not just through being in a marked patrol car but also having the radio on, and she immediately is concerned about arrest." I.D.'s counsel pointed out that in the video, I.D. expressed concerns several times about either being under arrest or whether she was going to be placed under arrest. Further, at one point in the video, I.D. is locked in the vehicle and unable to get out of the vehicle. Lastly, according to I.D., because the officer never says no to I.D.'s inquiry regarding arrest, and she is locked in the police vehicle, the officer's "apparent authority," based on "looking at the mind of the victim and not the police officer," it can be inferred that Officer Lucas was acting within the scope of his employment, under the authority of his employer. At the hearing, I.D. presented no other argument related to the specific claims made against the Appellees.

In addition to the arguments each side presented to the circuit court, the parties supported their respective memoranda with excerpts of Officer Lucas' deposition,

references to the complaint, and the video of the interactions that occurred between Officer Lucas and I.D. There was no affidavit nor deposition provided on behalf of I.D.

After hearing from the parties, the circuit court granted the Appellees' motion and placed its ruling on the record, stating the following:

> Well, the law in this case is governed by Maryland law. And I find the Court of Special Appeals' opinion by Judge Moylan in the [*Wolfe*] case and the analysis which was affirmed by Judge Eldridge in the Court of Appeals and then the factors specifically identified in [*Sawyer v. Humphries*] as to scope of employment and reviewed by Judge Moylan to be governing here.
>
> Specifically, I can look at the factors and [*Sawyer v. Humphries*] says, 'to be within the scope of employment the conduct must be of the kind the servant is employed to perform and must occur during a period not unreasonably disconnected from the authorized period of employment in a locality not unreasonably distinct from the authorized area and actuated at least in part by a purpose to serve the master.'
>
> In determining whether or not the conduct although not authorized is nevertheless so similar to or incidental to the conduct authorized as to be within the scope of employment, ten factors are to be considered. First, whether or not the act is one commonly done by such servants. I find that it was not in this case.
>
> Second, the time, place and purpose of the act. The act was solicitation and engaging in sex which clearly was personal and not within the scope of employment or for the benefit of Chief Stawinski or the county government.
>
> Third, previous relations between the master and the servant. There's nothing here, nothing in the record that indicates that in their previous relationship that the county or its police department or police chief in any way indicated to the officer in this case that this kind of conduct was appropriate or authorized.
>
> Fourth, the extent to which the business of the master is apportioned between different servants. Well, again, clearly, the business of the Prince George's County and the Police Department is apportioned between probably a thousand different police officers, but none of

which are authorized to engage in prostitution, acts of soliciting and engaging in prostitution.

Next, whether the act is outside the enterprise of the master or within the enterprise -- I'm sorry. Let me just -- whether the act is outside the enterprise of the master or if within the enterprise has not been entrusted to any servant. It is outside the enterprise of the county and its police department to engage and solicit prostitution.

Next, whether or not the master has reason to expect that such an act will be done. There is no reason in this record to expect that the police officer will be engaging in acts of prostitution while off duty.

Next, the similarity and quality of the act done to the act authorized and that is the distinction between this case and [*Potts*] and [*James*]. [*Potts*] and [*James*], the officers were authorized to stop individuals, seize guns, arrest them and use force, if necessary, to effectuate that job.

That is, if they used excessive force or in attempting to do it they planted a gun that is perhaps not authorized, but similar in quality to the act that is authorized. That is completely different from what we have in this case where the act is not authorized in any manner and what took place doesn't in any manner appear to be similar to the acts that are authorized.

Whether or not the instrumentality by which the harm is done has been furnished by the master to the servant, yes. In this case, at least one of the instrumentalities, the vehicle, had been furnished by the county and its police chief to the officer. But that is not truly the instrumentality by which the harm was done.

Next, the extent of departure from the normal method of accomplishing an authorized result. This is in no way related to the normal method of accomplishing any authorized police action. To the contrary, it was engaging in a crime itself.

And next, whether or not the act is seriously criminal, indeed it is. So when we're talking about someone who is in a different, off duty -- I think I might have overlooked that one -- off-duty, so not on the time expected to be acting as a police officer; in a place out of the county jurisdiction out of the state, so again not expected to be authorized; and for a private purpose.

> I find that all those factors indicate that this conduct was not within the scope of employment. Further, as noted in [*Sawyer*] and quoted in [*Wolfe*], where the conduct of the servant is unprovoked, highly unusual and quite outrageous, courts tend to hold that this, in itself, is sufficient to indicate that the motive was a purely personal one and the conduct outside the scope of employment.
>
> And that's certainly the case here. It was unprovoked. It's highly unusual that a police officer would be engaging in or soliciting for and engaging in acts of prostitution and quite outrageous that they would do that. So I do find that there are no genuine disputes about material facts and no reasonable jury could conclude that the acts by the officer in this case were within the scope of employment.
>
> So I'm going to grant the motion for summary judgment for Prince George's County and Henry Stawinski who was then the Chief of Police.

At the conclusion of the hearing, the circuit court issued an order consistent with its ruling. Thereafter, the parties filed a Joint Motion to Certify for Appeal and Motion to Stay, which was granted by the circuit court. Subsequently, I.D. filed an appeal challenging the circuit court's decision granting summary judgment in favor of Appellees.[6]

DISCUSSION

I. Parties' Contentions

I.D. raises two major contentions, primarily based on the premise that Officer Lucas acted within the scope of employment because, at the time of his interaction with I.D., he

[6] The Joint Extract includes a Renewed Notice of Appeal that was electronically filed on November 4, 2022. In the renewed notice, I.D. points out that an original notice was filed in the circuit court on October 3, 2022; however, the notice does not appear on the court's docket entries. We note that although the circuit court granted summary judgment at the conclusion of the September 27, 2022 hearing, and signed an order to that effect on October 3, 2022, the circuit court's order was actually docketed on October 26, 2022.

was engaged in the police activity of arresting I.D. First, I.D. contends that the determination of whether an officer's actions fall within the scope of employment is a fact intensive inquiry that ordinarily is reserved for the jury. As such, it was erroneous for the circuit court to undertake a review of the facts and grant summary judgment. Moreover, regarding the circuit court's determination that summary judgment was warranted, I.D. argues that the circuit court erroneously focused on the act of solicitation, rather than the police activity of arrest or threat of arrest. According to I.D., because there was evidence to conclude that Officer Lucas was exercising his police authority to conduct an arrest of a person whom he believed was engaged in a misdemeanor crime (i.e., prostitution), the act falls within the scope of his employment as a police officer. Therefore, the circuit court erroneously focused on the sexual act rather than on the police activity of arrest in determining that Officer Lucas' acts were not within the scope of his employment.

Second, I.D. argues that the circuit court made no independent analysis of the other claims against the Appellees. According to I.D., the claims against the Appellees, collectively and individually, stand irrespective of the circuit court's findings because Officer Lucas engaged in other misconduct, for example false imprisonment and use of excessive force, for which an independent analysis should have been made by the circuit court. Also, there were facts to show that Officer Lucas was an apparent agent of Appellees and, as such, the Appellees remain liable for Officer Lucas' misconduct.

In sharp contrast, the Appellees contend that scope of employment becomes an issue for the jury only if there is conflict in the evidence. If only one inference can be drawn from the evidence, then there is no conflict and the question becomes one of law for the

court to determine. Here, Officer Lucas' undisputed testimony was that he was not performing any police action, was outside his jurisdiction when he interacted with I.D., and solicited her for a personal sexual act. Since there were no other facts to support another conclusion, Appellees argue that it was proper for the circuit court to make a determination that Officer Lucas was not acting within the scope of employment.

Further, the Appellees contend that the circuit court did not err in granting summary judgment in Appellees' favor on all claims. For the Appellees to be liable under the Local Government Tort Claims Act (LGTCA), the acts of an employee must have been committed within the scope of employment. As such, when conduct falls outside the scope of employment, there can be no liability against the agency/employer, and liability falls squarely on Officer Lucas. Lastly, since there was no evidence to support I.D.'s argument that Officer Lucas was acting as an apparent agent of Appellees during his interactions with I.D., the rest of the claims against Appellees cannot stand.

II. Standard of Review

A circuit court will grant summary judgment when the "motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). A circuit court's decision to grant summary judgment is a legal decision, which we review without deference. *Asmussen v. CSX Transp., Inc*., 247 Md. App. 529, 558 (2020).

In reviewing the circuit court's decision, this Court "review[s] the record in the light most favorable to the nonmoving party[,] . . . and construe[s] any reasonable inferences that may be drawn from the facts against the moving party." *Baltimore City Police*

Department v. Potts, 468 Md. 265, 282 (2020), (quoting *Kennedy Krieger Inst., Inc. v. Partlow*, 460 Md. 607, 632-33 (2018)). Moreover, if there are undisputed facts that are susceptible to more than one inference, the inferences must be drawn in the light most favorable to the party opposing the motion and drawn least favorable to the movant. *Jones v. Mid-Atlantic Funding Company,* 362 Md. 661, 675 (2001). Consequently, when the facts "are susceptible to more than one inference, those inferences should be submitted to the trier of fact" and summary judgment would not be appropriate. *Hill v. Cross Country Settlement, LLC.*, 402 Md. 281, 294 (2007). If there is no genuine dispute of material fact, and the moving party is entitled to judgement as a matter of law, then summary judgment is appropriate. Md. Rule 2-501(f).

"For the purposes of summary judgment, a material fact is a fact the resolution of which will somehow affect the outcome of a case." *Romeka v. RadAmerica II, LLC*, 485 Md. 307, 330 (2023); *Carter v. Aramark Sports and Entertainment Services, Inc.*, 153 Md. App. 210, 224 (2003). While the moving party bears the burden of establishing the absence of a material fact, the non-moving party must produce admissible evidence to establish a genuine dispute of material fact. *Id.* The party opposing summary judgment cannot simply rely on "conclusory statements, conjecture, or speculation." *Id.* Rather, the opposing party must "identify with particularity each material fact" that is in dispute and "identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute." Md. Rule 2-501(b).

Here, the facts and the rational inferences from the facts, based on the discovery supporting and opposing the motion for summary judgment, and viewed in the light most favorable to I.D., lead to only one conclusion – Officer Lucas' interaction with I.D. was purely personal and not within the scope of his employment with PGPD.

III. Analysis

A. The circuit court was correct to grant summary judgment.

Pursuant to LGTCA, "a local government [is] liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee *within the scope of employment* with the local government." Md. Code Ann., Cts. & Jud. Proc. § 5-303(b)(1) (2020) (emphasis added). An employee's conduct falls within the scope of employment if the conduct meets the two-prong *Sawyer* test. *Potts*, 468 Md. at 271 (relying on *Sawyer v. Humphries*, 322 Md. 247 (1991)). The first prong is "whether the employee's actions were in furtherance of the employer's business[,] and the second prong is whether the employer authorized the employee's actions." *Potts*, 468 Md. at 271 (quoting *Sawyer*, 322 Md. at 255) (internal quotations omitted).

As to the first prong of the *Sawyer* test, whether the employee's actions were in furtherance of the employer's business, the focus of the inquiry here is not "whether [the employee's actions] were done while prosecuting the [employer]'s business, but whether they were done by the [employee] in furtherance thereof[.]" *Potts*, 468 Md. at 288 (quoting *Sawyer*, 322 Md. at 255). The *Sawyer* Court explained further that:

> To be within the scope of the employment the conduct must be of the kind the [employee] is employed to perform and must occur during a period not unreasonably disconnected from the authorized period of

> employment in a locality not unreasonably distant from the authorized area, and actuated at least in part by a purpose to serve the [employer].

Sawyer, 322 Md. 255.

Regarding *Sawyer's* second prong, authorization by the employer, "the question is not whether the employer expressly conferred on the employee the authority to take the actions, but whether the actions were incident[al] to the performance of the duties [that were] entrusted to [the employee] by the [employer], even though in opposition to the [employer's] express and positive orders." *Potts*, 468 Md. at 288-89 (internal quotations omitted) (quoting *Sawyer*, 322 Md. at 255). In other words, "the employee's actions must be of the same general nature as that which was authorized, or incidental to the conduct that was authorized, by the employer—regardless of whether the employer intended or consciously authorized the employee's actions." *Potts*, 468 Md. at 289. To determine if an employee's conduct was similar or incidental to conduct authorized by the employer to fall within the scope of employment, a court must consider and weigh ten factors:

> (a) whether or not the actions are commonly done by such employees; (b) the time, place, and purpose of the actions; (c) the previous relations between the employer and the employee; (d) the extent to which the business of the employer is apportioned between different employees; (e) whether the actions are outside the enterprise of the employer or, if within the enterprise, have not been entrusted to any employee; (f) whether or not the employer has reason to expect that such actions will be done; (g) the similarity in quality of the actions that were done to the actions that were authorized by the employer; (h) whether or not the instrumentality by which the harm is done has been furnished by the employer to the employee; (i) the extent of departure from the normal method of accomplishing an authorized result; and (j) whether or not the actions are seriously criminal.

Potts, 468 Md. at 289-90 (cleaned up) (quoting *Sawyer*, 322 Md. at 256).

In *Sawyer*, the Court further elaborated on the legal principles it adopted by pointing out, particularly in cases with claims regarding intentional torts, that:

> [W]here an employee's actions are personal, or where they represent a departure from the purpose of furthering the employer's business, or where the employee is acting to protect his own interests, even if during normal duty hours and at an authorized locality, the employee's actions are outside the scope of his employment.

Sawyer, 322 Md. 256-57. Similarly, when an employee's conduct is "unprovoked, highly unusual, and quite outrageous," that would be "in itself sufficient to indicate that the [employee's] motive was a purely personal one" and the conduct would fall outside the scope of the employee's employment, and not authorized by the employer. *Id.* at 257.

Here, relying on the legal principles discussed above, the circuit court correctly determined that Officer Lucas' solicitation of, and engagement in sexual acts with, a sex worker was purely personal and not an act done in furtherance of Appellees' business nor authorized or incidental to the performance of duties that were entrusted to the officer by Appellees.

As to *Sawyer's* first prong, Officer Lucas' deposition testimony that he sought the services of I.D. for purely personal reasons and not as a result of any police action was unchallenged. The only sworn testimony provided in support and opposition to the summary judgment motion was that of Officer Lucas. Based on his sworn deposition, it is undisputed that Officer Lucas was off-duty, was not participating in any joint operation with any other police agency, and was not working undercover when he solicited I.D. to perform sexual acts on him. At no point during his testimony did Officer Lucas indicate that he engaged in any police activity at the behest of his employer after his shift had

concluded. Thus, there was no direct evidence or rational inference from the evidence that Officer Lucas engaged in an activity that was in furtherance of the business of the PGPD, as required under *Sawyer's* first prong. *Sawyer*, 322 Md. at 255.

Regarding Sawyer's second prong, we find that the evidence is also lacking that Officer Lucas' actions were authorized or in any way incidental to the performance of his duties as a police officer. The record is completely silent as to any initiative or order given by PGPD to Officer Lucas that he was to engage in any investigations after his shift ended. Thus, there is no evidence that he was authorized to engage in any police activity after his shift ended, and certainly there is no evidence in the record that either Appellee authorized him to engage the services of a sex worker and have those services performed in a police vehicle.

Further, regarding whether the acts he engaged in were incidental to the performance of his duties as a police officer, the evidence points to only one conclusion. Specifically, in reviewing the discovery that was submitted in support of and opposition to the summary judgment motion, the facts and inferences from the facts, viewed in light most favorable to I.D., Officer Lucas' solicitation of prostitution and sexual acts with I.D. were activities that were not incidental to any conduct authorized by Appellees. We address the ten *Sawyer* factors below.

First, Officer Lucas' conduct of soliciting a sex worker and engaging in sex acts with her, even if performed inside a police patrol vehicle, are not acts commonly engaged by law enforcement officers in furtherance of duties they are entrusted to perform. It is

undisputed that the solicitation of prostitution is a criminal act and Officer Lucas was in fact cited and convicted for engaging in this criminal act.

Second, it is undisputed that when Officer Lucas engaged in sexual acts with I.D. he did so while off-duty, after his shift had ended, and after he had gone to a strip club to watch dancers and consume alcohol he had purchased. His encounter with I.D. occurred in Washington, D.C., as evidenced by the fact that he was investigated and charged with the crime of solicitation by the Metropolitan Police Department.

Third, there was no evidence presented by I.D. that at any time Appellees had authorized Officer Lucas to engage in sexual acts with sex workers as part of his duties as a PGPD officer.

Fourth, there was no evidence to infer in any way that there are officers employed by PGPD who have been authorized to engage in sexual activities with sex workers as part of their duties as law enforcement officers.

Fifth, the evidence is lacking that Officer Lucas engaged in conduct that was within the enterprise of the Appellees for which officers employed by the PGPD are entrusted to perform. Here, the act of solicitation and engaging in sex acts with a sex worker fall outside the enterprise of the PGPD.

Sixth, there was no evidence offered by I.D. to directly show or to raise a rational inference that Appellees were aware or should have known that Officer Lucas would solicit and engage in a sexual act with a sex worker sometime after his normal shift ended. Regarding this factor, a court is required to consider whether the employee's actions were expected or foreseeable. *See Sawyer*, 322 Md. at 256. The record below is silent regarding

any past history or conduct by Officer Lucas or any other officer that would have placed Appellees on notice of Officer Lucas' conduct.

Seventh, the act of solicitation and the sexual acts that occurred between Officer Lucas and I.D. are not similar in any way to any duty that is to be performed by a law enforcement officer when engaged in official police duties. Although officers may work undercover to investigate individuals who engage in prostitution, here, the undisputed facts are that Officer Lucas was not working undercover or with any joint investigation when he engaged the services of I.D. Instead, Officer Lucas' undisputed testimony is that he solicited I.D. for personal reasons because, as stated during his deposition, he just "wanted to ejaculate."

Eighth, although the sexual acts that took place between Officer Lucas and I.D. occurred inside Officer Lucas' police vehicle, this fact does not create an inference that the officer's conduct was authorized in any way by the Appellees. Certainly, the police vehicle allowed for concealment during the sexual acts, but the police vehicle was not the instrumentality for the sexual act to occur.

Ninth, there are no facts or inferences from the facts which would support a conclusion that Officer Lucas engaged in authorized police activity at any point during his interaction with I.D. and then departed from authorized police activity to engage in sexual acts with I.D. The video of the interactions that occurred between Officer Lucas and I.D. show that from his first interaction with I.D., when she approached Officer Lucas in the police vehicle, to when she performed sexual acts, Officer Lucas did not engage in any police activities. His deposition testimony supports the same conclusion.

Lastly, the tenth *Sawyer* factor focuses on whether the act committed was seriously criminal. Here, the undisputed facts establish that Officer Lucas committed the criminal act of solicitation for which he was charged and prosecuted.

In sum, when applying the undisputed facts to the ten *Sawyer* factors, the only conclusion from the facts and the rational inference from the facts is that Officer Lucas' conduct with I.D. was not within the scope of his employment. As such, the circuit court was correct in granting summary judgment.

We disagree with I.D.'s contention that it was erroneous for the circuit court to grant summary judgment because the issue of whether Officer Lucas was acting within the scope of employment should have been reserved for the trier of fact. I.D. contends that a determination of whether an act was committed within the scope of employment is a fact intensive inquiry and, as such, it is ordinarily reserved for the jury. It is true that when there are genuine issues of material factual disputes as to whether an employee acted within the scope of employment, the question is one of fact and it is for the trier of fact, the jury, to resolve. *See Clark v. Prince George's County*, 211 Md. App. 548, 570 (2013). As Appellees correctly point out, however, when there is no conflict in the evidence and only one inference can be drawn from the material facts, the issue of scope of employment is a question of law for a court. *Id.* at 571; *Barclay v. Briscoe*, 427 Md. 270, 283 (2012). In opposing summary judgment, I.D. was required to produce admissible evidence to establish that there was a genuine dispute of material fact for a trier of fact to resolve. I.D.'s reliance on certain excerpts from the video recording simply do not generate a genuine issue that Officer Lucas acted within the scope of employment. We explain further.

I.D. mostly relies on the video I.D. took of the interactions she had with Officer Lucas. Specifically, I.D. points out that a few times in the video she is overheard making references to whether she would be arrested or that the officer better not arrest her. According to I.D., because Officer Lucas did not respond each time, a rational inference is created that Officer Lucas invoked his police authority (i.e., the power to arrest) causing I.D. to reasonably believe that she was either under arrest or under the threat of arrest if she did not perform sexual acts on the officer.

It is true that I.D. made statements about arrest in the video, but at no time does she state that she was under arrest or that she believed she was under arrest. Further, exactly why she made those statements is completely unknown. I.D. did not provide deposition testimony nor did she complete an affidavit setting forth her account of her interactions with Officer Lucas to generate a dispute regarding Officer Lucas' testimony. Instead, she simply points to the statements in the video as sufficient to generate a material fact in dispute that Officer Lucas was engaged in a police activity. It does not. Without further context to these statements, I.D. simply relies on conjecture and speculation, which is insufficient to oppose summary judgment. *Carter*, 153 Md. App. at 225. In addition, I.D. cannot point to any conduct or words stated by Officer Lucas on the video that would generate a genuine dispute that he had seized, arrested or detained I.D by invoking his authority as a police officer. The Supreme Court of Maryland has set forth the prerequisites for a custodial arrest in Maryland:

> It is generally recognized that an arrest is the taking, seizing, detaining of the person of another (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into custody and

> that subjects him to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested. It is said that four elements must ordinarily coalesce to constitute a legal arrest: (1) an intent to arrest; (2) under a real or pretended authority; (3) accompanied by a seizure or detention of the person; and (4) which is understood by the person arrested.

Belote v. State, 411 Md. 104, 114 (2009) (quoting *Bouldin v. State*, 276 Md. 511, 515-16 (1976)).

None of the elements of arrest are present here for which a trier of fact could conclude that Officer Lucas arrested I.D. or threatened to arrest her. First, Officer Lucas' deposition testimony confirms that he did not intend to arrest I.D. Second, he also confirmed in his deposition testimony that he was not working undercover, with any joint investigation with the Metropolitan Police Department, or at the behest of the PGPD. Third, there was also no evidence that Officer Lucas seized or detained I.D. The video does not show any words or conduct by Officer Lucas that would lead a rational fact finder to conclude that I.D. was detained. Lastly, I.D. pointed out during the motions hearing that it could be inferred that the officer arrested I.D. because the officer likely observed her engaging in solicitation; however, as noted by the circuit court, the record is silent as to any observations Officer Lucas made of I.D. prior to when she first walked up to his car. I.D. also points out that the officer was in his police vehicle with the police scanner on and that she was locked in the back seat; however, what impression, if any, this had on I.D. is silent in the record. [7]

[7] We also point out that both prongs under *Sawyer*, including the ten factors, support an objective analysis. *See Sawyer*, 322 Md. at 255-56. As such, I.D.'s subjective beliefs (continued)

While it is true that the video would be admissible evidence at a trial, when a party opposes summary judgment, the party is required to "identify with particularity each material fact" that is in dispute and "identify and attach the relevant portion of the specific documents, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. Md. Rule 2-501(b). The facts pointed out by I.D., standing alone or collectively, do not generate a material dispute that Officer Lucas had engaged in the police activity of arrest when he solicited and had sexual interactions with I.D.

It remains undisputed, based on the deposition testimony of Officer Lucas, that throughout his interaction with I.D., he was off-duty, in a jurisdiction outside of Prince George's County, was not working any joint investigation with Metropolitan Police Department, and sought out I.D.'s services for purely personal reasons. The video in its entirety does not show any police action taken by Officer Lucas. As *Sawyer* instructs, "where an employee's actions are personal, or where they represent a departure from the purpose of furthering the employer's business, or where the employee is acting to protect his own interest, even if during normal duty hours and at an authorized locality, the employee's actions are outside the scope of his employment." 322 Md. at 256-57.

Therefore, we find that the circuit court was correct in granting summary judgment as there were no genuine disputes of material facts for a jury to consider as to whether Officer Lucas engaged in conduct within the scope of his employment with PGPD.

are of no significance in determining whether Officer Lucas' conduct falls within the scope of his employment with PGPD.

B. The circuit court was correct in dismissing all counts against Appellees.

I.D. contends that it was erroneous for the circuit court to dismiss all claims against Appellees without first making an independent analysis of each claim based on other misconduct engaged by Officer Lucas. According to I.D., she pled eleven separate counts in her complaint, but only Count 1 – Violation of Maryland Declaration of Rights, Article 26 – concerns the sexual conduct that occurred between Officer Lucas and I.D. The remaining counts, according to I.D., either arise solely or in part from the officer's use of excessive force and false imprisonment, or are based on Appellee Prince George's County's own tortious conduct.

Before the circuit court, I.D.'s only argument that Officer Lucas acted within the scope of employment was because he "likely observed [I.D.] soliciting people as a sex worker," and then invoked the authority of his office to make an arrest, ordered I.D. into his vehicle, kept her locked in the vehicle when he went to get money to pay her, and allowed the threat of possible arrest to cause I.D. to believe that she had to perform sexual acts on the officer. Therefore, the only argument advanced by I.D. that Officer Lucas acted within the scope of employment was on a theory that he arrested or threatened to arrest her. I.D. did not raise any other argument as to why Appellees are liable under any other theory. In fact, after the circuit court issued its ruling, the only additional point raised by I.D. was for an order to "be crafted in this case that would permit for an appeal of this issue now."

"Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). I.D. did not advance any other argument before the circuit court that the claims

against Appellees stand irrespective of the circuit court's conclusion that Officer Lucas had engaged in sexual acts with a sex worker, and that there were "no genuine disputes of material facts and no reasonable jury could conclude that the acts by the officer in this case were within the scope of employment." Therefore, I.D. has failed to preserve for appellate review whether the claims against Appellees survive summary judgment, irrespective of the circuit court's determination. Notwithstanding our conclusion that this issue has not been preserved, we find that even if preserved, none of I.D.'s claims against Appellees survive summary judgment.

All of I.D.'s claims against Appellees are premised on Officer Lucas' employment as a police officer with PGPD and conduct alleged to have occurred in the performance of his duties as a police officer. We briefly summarize each claim and allegation supporting each claim:

> Count 1 – Violation of Maryland Declaration of Rights, Article 26, Against all Defendants (alleging excessive use of force and unreasonable seizure);
>
> Count 2 – Violation of Maryland Declaration of Rights, Article 24, Against all Defendants; (alleging excessive force and deprivation of liberty);
>
> Count 3 – False Imprisonment, Against all Defendants (based on Officer Lucas' conduct);
>
> Count 4 – Civil Conspiracy, Against the Individual Defendants (alleging all defendants agreed to the conduct undertaken by Officer Lucas, including the use of excessive force);
>
> Count 5 – Intentional Infliction of Emotional Distress, Against the Individual Defendants (alleging all defendants intentionally or recklessly engaged in conduct that violated I.D.'s constitutional rights);

> Count 6 – Negligent Hiring, Against Prince George's County (alleging that Prince George's County breached duty owed to I.D. by hiring police officers who violated citizens' civil rights);
>
> Count 7 – Negligent Training and Supervision, Against Prince George's County (alleging that Prince George's County failed to properly train the individual defendants and police officers related to citizens' civil rights, including the right to be free from excessive force);
>
> Count 8 – Negligent Retention, Against Prince George's County (alleging that Prince George's County knew or should have known the propensity of the individual defendants to commit tortious acts and/or violate citizens' civil rights);
>
> Count 9 – *Longtin* Pattern or Practice of Improper Conduct,[8] Against Prince George's County (alleging that Prince George's County failed to establish effective procedures, guidelines, and practices towards the treatment of transgendered people by police officers);[9]
>
> Count 10 – Gross Negligence, Against the Individual Defendants (alleging that the individual defendants acted with wanton and reckless disregard of I.D.'s civil rights); and
>
> Count 11 – General Negligence, Against all Defendants (alleging that all defendants owed I.D. a duty of care and that duty was breached by the defendants' misconduct).

All of these claims are premised on the allegation that Officer Lucas engaged in conduct within the scope of his employment as a police officer and, specific to the claims against Appellees, that they conspired with him to violate the rights of individuals and failed to appropriately address Officer Lucas' conduct to avoid violating the rights of

[8] This cause of action is based on a claim that a local government engaged in a pattern or practice of unconstitutional conduct. *See Prince George's County v. Longtin*, 419 Md. 450 (2011). The record is silent as to any pattern or practice by the Appellees to support this claim.

[9] In her complaint and in her brief, I.D. identifies as a transgender woman. Although this is mentioned in the pleading and brief, the record is silent as to how this fact related to Officer Lucas' interaction with I.D. or the Appellees practices and procedures regarding transgender individuals.

individuals. The record below did not include any argument by I.D. that the Appellees engaged in any other conduct, separate and apart from the allegations made against Officer Lucas, to conclude that a genuine dispute of material fact exists regarding the claims against the Appellees. It follows, that if Officer Lucas' conduct with I.D. falls outside the scope of employment, then as a matter of law, the rest of the claims cannot withstand summary judgment. *See Wolfe v. Anne Arundel County*, 135 Md. App. 1 (2000) (finding that the county insurer was not liable for an officer's rape of a motorist because the officer's conduct was not within the scope of employment); *see also* LGTCA, Md. Code Ann., Cts. & Jud. Proc. § 5-503(b)(1). Here, as discussed *supra*, the evidence solely supports a conclusion that Officer Lucas was engaged in a personal pursuit when he solicited I.D. and engaged in sexual acts with her.

I.D. argues that "if an officer abuses his police authority and engages in a policing activity with an improper motive or by improper means, no matter what the motive may be or the means used, that conduct is within the scope of employment." This argument, however, is premised on police action having been undertaken by the officer. If facts exist to show that an officer was engaged in police activity, even though the officer had improper motives and engaged in improper means, then as previously held in several cases, scope of employment is established. *See Houghton v. Forrest*, 412 Md. 578 (2010) (finding an officer who wrongfully initiated an arrest of a defendant under the mistaken belief that she had been observed in an illegal drug transaction acted within the scope of employment since the arrest was incidental to the officer's general authority as a police officer and therefore the police agency was liable under the LGTCA); *Prince George's County v.*

Morales, 230 Md. App. 699 (2016) (finding that there was sufficient evidence for jury to find that an off-duty officer who was hired by a college fraternity to provide security at a party acted within the scope of employment when the officer used, among other things, police resources, tactics, and personnel for crowd control); and *Potts*, 468 Md. 265 (finding that in two Baltimore City Gun Trace Task Force cases, on-duty officers who unlawfully stopped and arrested individuals, and planted guns on the individuals among other misconduct, acted within the scope of employment because the officers' actions were partially motivated to serve the police department and applying the *Sawyer* factors their conduct was incidental to the performance of their duties as officers).

Here, unlike in *Houghton*, *Morales*, and *Potts*, and as discussed *supra*, there is no evidence that Officer Lucas was engaged in any police activity when he solicited I.D. and engaged in sexual acts with her.

Lastly, I.D. contends that, under an apparent agency theory, the claims against Appellees survive summary judgment because Officer Lucas as a police officer was an apparent agent of Appellees. I.D. does not advance any additional argument other than what she previously argued – that Officer Lucas was entrusted with the authority to arrest I.D. for the act of solicitation. In the present case, the record is silent as to any conduct by Appellees that would lead a fact finder to conclude that Officer Lucas' solicitation and sexual conduct with I.D. were authorized by Appellees.

Apparent agency is an equitable doctrine that is premised on holding a principle liable for the acts of others "because the principle, by words or conduct, has represented that an agency relationship existed between the apparent principal and its apparent agent."

Bradford v. Jai Medical Systems Managed Care organizations, Inc., 439 Md. 2, 16 (2014). The fact that Officer Lucas was a police officer and was in his police vehicle when he interacted with I.D, does not lead to a rational conclusion that Officer Lucas acted under the apparent authority of the PGPD to solicit and engage in sexual acts with I.D. "[A]pparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him." *Parker v. Junior Press Printing Service, Inc.*, 266 Md. 721, 727-28 (1972).

The facts and rational inferences from the facts establish that Officer Lucas engaged the services of a sex worker for his own personal interests. The video of the interactions between Officer Lucas and I.D. do not support I.D.'s claim that it was her position that the officer was an apparent agent of the PGPD when he solicited her to perform sexual acts. In reviewing the video and the deposition testimony of Officer Lucas, no reasonable fact finder would conclude that when Officer Lucas engaged in sexual acts with I.D. he did so under the apparent authority of Appellees.

In accordance with *Sawyer*, Officer Lucas' conduct falls outside the scope of his employment with PGPD because his conduct was "unprovoked, highly unusual, and quite outrageous." *Sawyer*, 322 Md. at 257. Similarly, such privately motivated conduct would not support a conclusion that Officer Lucas acted as an apparent agent of Appellees.

Therefore, since all of I.D.'s claims against Appellees are premised on Officer Lucas having engaged in police activity, and his conduct falls outside of the scope of his

employment with PGPD, none of the claims withstand summary judgment. Accordingly, the circuit court was correct in granting summary judgment on all claims.

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY THE COSTS.