No. 1-17-0363
IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

STEVEN TAYLOR, administrator for the estate of VANESSA TAYLOR, deceased, Plaintiff-Appellant,	))))	Appeal from the Circuit Court of Cook County
v.	))	No. 16 L 6354
CITY OF CHICAGO, et al., Defendants-Appellees.	)))	The Honorable John H. Ehrlich, Judge Presiding

BRIEF OF *AMICI CURIAE* LAF, THE CHICAGO METROPOLITAN BATTERED WOMEN'S NETWORK, THE CHICAGO COUNCIL OF LAWYERS, THE DOMESTIC VIOLENCE LEGAL CLINIC, THE YWCA EVANSTON/NORTH SHORE, SARAH'S INN, JOAN S. COLEN, THE LEGAL AID SOCIETY OF METROPOLITAN FAMILY SERVICES, THE SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, COMMUNITY ACTIVISM LAW ALLIANCE, AND *CIVITAS* CHILDLAW CENTER OF LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW IN SUPPORT OF PLAINTIFF-APPELLANT

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POINTS AND AUTHORITIES

PAGE

STATEMENTS OF INTEREST OF THE *AMICI CURIAE*

Amicus curiae LAF is a not-for-profit corporation that provides high quality civil legal services to Cook County residents living in poverty, serving about 35,000 people each year. LAF has been committed to domestic violence advocacy for survivors since the 1970's, long before the enactment of the Illinois Domestic Violence Act ("IDVA"). In addition to providing community education and advice, LAF represents survivors of domestic violence in divorce, parentage, custody, immigration, housing, and public benefits cases. LAF advocates strengthening protections available to survivors of domestic violence, and understands the vital role that law enforcement plays on the front lines of ensuring victim safety. Having represented thousands of individual survivors of domestic violence in legal disputes with abusers, LAF has developed unique insight into the particular dynamics that underlie violent familial and intimate relationships. LAF has also developed profound appreciation for the importance of effective police enforcement, and understands the need for clear rules to guide police in their interactions with victims and offenders.

This case requires this Court to interpret the scope of the IDVA provision governing mandatory police response to domestic violence. LAF has a strong interest in ensuring that this Court decides this important case against the most informed background possible. LAF is well-equipped to assist the Court in understanding the legislature's purpose in enacting mandatory police response provisions in the IDVA, because LAF understands the nature of the

problem such provisions address. Domestic violence affects victims' interaction with law enforcement in unexpected ways, a phenomenon the legislature intended to address in the IDVA, and one that LAF can help this court to understand.

Amicus curiae The Chicago Metropolitan Battered Women's Network is a collaborative membership organization dedicated to improving the lives of those impacted by domestic violence through education, public policy and advocacy, and the connection of community members to direct service providers. The Network is the leading systemic advocacy voice, in addition to being the forum for information exchange, within the Cook County domestic violence services community. The Network examines legal and social implications of policy impacting domestic violence, both locally and nationally. The Network is uniquely positioned to stay abreast of, and respond to, survivor needs and trends affecting domestic violence service delivery and also helps shape public policy. The Network represents and unites the domestic violence services community when its advocacy voice needs to be heard, and educates the public about the dynamics of domestic violence. The Network has a strong interest in providing people experiencing domestic violence with all of the tools available to make informed decisions to maintain their safety.

Amicus curiae Chicago Council of Lawyers is the only public interest bar association in Cook County and is dedicated to improving the quality of justice in the legal system by advocating for fair and efficient administration of justice. The Chicago Council of Lawyers is a leader in the movement to reform the

Chicago Police Department to better serve the needs of the community, including victims of domestic violence. The Chicago Council of Lawyers works as a collaboration partner with the Chicago Appleseed Fund for Justice to improve the process for unrepresented litigants in the domestic relations and domestic violence divisions of the Cook County courts.

Amicus curiae The Domestic Violence Legal Clinic (DVLC) is dedicated to keeping families safe by using the legal system to combat domestic violence. DVLC originated in 1982 as a program of the Lawyers' Committee for Civil Rights Under Law. DVLC assists survivors by representing them in Orders of Protection under the IDVA in a same-day clinic setting. DVLC also provides comprehensive family law services, immigration assistance, and client support services to survivors of domestic violence. All of DVLC's clients are domestic violence survivors. DVLC has a special interest in matters that could impact the safety of our clients or their children, and in ensuring the protections created through the IDVA are available in practice.

Amicus curiae The Legal Aid Society of Metropolitan Family Services (LAS) has been providing free legal services to low-income residents in the metropolitan Chicago area for 129 years. LAS is a part of Metropolitan Family Services (MFS), a non-profit social service organization. Together, we are able to provide wraparound services, including social services, counseling, financial assistance, legal advice and representation, through seven major community centers located in Chicago and the surrounding suburbs. LAS was one of the first legal service programs to provide representation in the area of family law, and

currently has eight attorneys who exclusively provide direct legal representation to low-income domestic violence victims in family law and order of protection cases. As an agency that represents victims of domestic violence, LAS has a special interest in matters that could impact the ability of victims to be aware of their rights and access the remedies available to them under the law.

Amicus curiae the Community Activism Law Alliance (CALA) is a nonprofit organization that provides a wide range of free legal assistance to low-income, underserved populations in Illinois. CALA uses its model, community activism lawyering, based upon partnerships with community activist organizations, to create community-located, community-operated, and community-directed law programs. CALA currently offers over a dozen such programs. Through these programs, CALA serves a substantial number of victims of domestic violence. Attorneys at CALA represent domestic violence victims in employment, family, housing, criminal, and immigration cases. Additionally, CALA supports the work of several community partner organizations that provide support services for, offer education and training to, and advocate on behalf of domestic violence victims.

CALA is familiar with the pleadings and briefs filed by the parties in this case, as well as the IDVA. As a legal services provider to victims of domestic violence and community organizations that support them, CALA has experience and knowledge of the problems the IDVA seeks to address. It is well-suited to provide information about the importance of appropriate police response to protect victims of domestic violence and their families. CALA has a strong

interest in presenting to the Court the great need among the clients and communities it serves for the proper implementation of the IDVA provisions at issue in this case.

Amicus curiae Civitas Childlaw Center is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship, and service. Through its ChildLaw Clinic, the ChildLaw Center routinely provides representation to child clients in child custody, child protection, and other types of cases involving children. A significant number of the Clinic's cases involve allegations of family violence and domestic violence orders of protection. Through its ChildLaw Policy Clinic, the Center advocates for laws and practices that benefit vulnerable populations. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court involved youth. The Center is committed to the idea that the public entities serving as-risk children and families should always seek to minimize harm to children and their caregivers, promoting their safety and best interests.

Amicus curiae YWCA Evanston/North Shore is a nonprofit social justice organization dedicated to promoting racial and gender equity. Focusing on promoting women and girls' health and safety, economic advancement, and promoting civil rights and racial justice, we are the only provider of comprehensive domestic violence services serving northeast Cook County.

Because of our 30 plus years providing domestic violence services and training local police departments on appropriate responses to domestic violence, we have a strong interest in this matter. It is critical that responding officers be trained to appropriately assess the unique hallmarks of the complexity of domestic violence and react proactively to promote victim safety.

Amicus curiae the Sargent Shriver National Center on Poverty Law ("Shriver Center") is a national non-profit legal and policy advocacy organization based in Chicago. The Shriver Center provides national leadership to promote justice and improve the lives and opportunities of people with low income. The Shriver Center's housing unity operates the Safe Homes Initiative, which provides legal representation and public advocacy to advance and protect the housing rights of survivors of violence. The Shriver Center drafted sections of the 2013 Reauthorization of the Violence Against Women Act (VAWA) and authored the Illinois Safe Homes Act, which allows survivors to leave unsafe housing. The Shriver Center's Women's Law and Policy Project also provides a broad array of legal and policy support to survivors of violence in all other aspects of their lives, including employment, education, public benefits, and access to the courts.

Amicus curiae Joan S. Colen is an attorney who has been practicing law in Cook County, Illinois for over 30 years, and has been a solo practitioner representing clients in family law matters for the past 13 years. Throughout her career, Ms. Colen has actively been engaged in advocating on behalf of domestic violence survivors, on an individual as well as a systemic, policy basis, as counsel of record and as pro bono adviser to not-for-profit organizations serving clients.

Ms. Colen participated for several years in the early 1990's on the Illinois State Bar Association Domestic Violence Task Force, which substantially revised the IDVA to strengthen the remedies available to family members suffering domestic violence. She currently represents clients seeking orders of protection from their abusers, and consults regularly with domestic violence advocates who assist self-represented people seeing orders of protection at the Second Municipal District courthouse. She co-chairs the Chicago Council of Lawyers' Committee on Children and Family Law.

As a result of her past and present advocacy on behalf of domestic violence survivors, Ms. Colen has a compelling interest in ensuring that the IDVA is interpreted by the courts in such a way as to foster the greatest possible protection for victims of family abuse, as intended by the General Assembly. Ms. Colen is uniquely situated to assist the Court in appreciating the impact of its decisions on the people the Act is intended to protect.

Amicus curiae Sarah's Inn is a nonprofit domestic violence agency working to improve the lives of those impacted by domestic violence and break the cycle of violence for future generations. Since 1981, Sarah's Inn has approached domestic violence as a societal issue that demands a holistic response. We are committed to programming that responds appropriately to the needs of those families already impacted by violence, as well as working proactively to prevent violence for future generations. Our Intervention services include emergency support (24-hour crisis line, emergency transportation and housing assistance); individual and group counseling and advocacy; life skills

(financial literacy, parenting skills, etc.); legal advocacy; and children/teen, individual, and group counseling. Our goal through all services is to assist victims of domestic violence to find safety, utilize their legal rights through protections under the law, effectively process the trauma of their experience, and establish a violence free and sustainable life for themselves and their children.

Sarah's Inn views domestic violence as a problem that will not be remedied merely through intervention efforts, but as an issue requiring a coordinated community response. Our Training and Education Program maximizes reach by creating a network of skilled bystanders to appropriately intervene as first responders and community advocates. Sarah's Inn is a certified training site through the Illinois Certified Domestic Violence Professionals, professional first-responders, such as law enforcement, social service providers, healthcare professionals and hospitals, faith-based and community-based organizations to build a safety net in the community and to promote non-violence. Additionally, our *Together Strong* Prevention Project provides school-based educational programming for youth in order to prevent future relationship violence by educating and engaging youth so that they will pursue non-violence and cultivate healthy relationships throughout their lives. All of our prevention programming aligns with Illinois Social and Emotional Learning (SEL) standards, and promotes anti-bullying and healthy relationship development.

Sarah's Inn is deeply interested in ensuring that the provisions in the IDVA designed to protect victims of domestic violence and provide them with information and safe access to the full panoply of their legal rights and social and

community services are maintained and enforced to the maximum extent possible.

STATEMENT OF FACTS

Amici adopt the Plaintiff-Appellant's Statement of Facts.

ARGUMENT

After far too many lives were needlessly lost, the Illinois Domestic Violence Act expressly recognized domestic violence as a serious crime with potentially fatal consequences, and sought to address what had been a "widespread failure to appropriately protect and assist victims." 750 ILCS 60/102(3). The IDVA addressed this failure in part by requiring police officers to take an active role in protecting and empowering victims with resources, information, and other avenues to safety, whenever an officer "has reason to believe that a person has been abused." *Id.* at 60/304(a)(4-7). But to the extent the protective provisions of the IDVA are not adequately enforced, the consequences of the failure to protect and assist victims will persist.

The IDVA recognizes that domestic violence extends beyond the direct victim—it is not, as was previously thought, a private matter to be resolved between individuals. *See id.* at 60/102(1). In keeping with this view, the IDVA deliberately avoids placing the burden of enforcing its provisions solely on victims of violence. *See id.* at 60/102(5); 60/304(a). Instead, it charges the broader community with a shared responsibility in protecting and assisting victims. *See id.* at 60/102(1). The IDVA's mandatory police response provisions are part of that shared responsibility.

In this case, the trial court erred in narrowly construing the provision for mandatory police assistance, essentially requiring that to have effect, the victim or someone on her[1] behalf must expressly identify the situation as involving "domestic violence." If affirmed, the trial court's interpretation would defeat the purpose of the mandatory police response provision. In reaching its conclusion, the trial court erroneously characterized Mr. Taylor's 911 call as having "concerned" just the abuser, and as having been motivated solely by the abuser's "bizarre and dangerous acts." (C.127.) The trial court distinguished that call from one based on "domestic violence," which, the trial court acknowledged, would trigger the mandatory police response provision. (C.127.) This reasoning fails in several ways.

First, the purpose of the mandatory police response provision is thwarted if the victim is required, when calling 911 or on the scene of the crime, to frame the problem in a particular way—as one based on "domestic violence." Given the nature of domestic violence, it may be difficult or impossible for the victim to describe what has happened in that way, particularly in the presence of the abuser, and to press police for protection. The IDVA sought to address this reality, in part, by removing police discretion and requiring police to take certain steps when encountering domestic violence.

Second, even if the 911 call was based on the abuser's "bizarre and

[1] *Amici* acknowledge that both women and men are victims of domestic violence, but for the purposes of this brief use the pronouns "she" and "her" out of recognition that the majority of victims are female.

dangerous" acts, apparently a psychiatric crisis, that did not erase the danger to Ms. Taylor—the situation was still also "concerned" domestic violence. As Mr. Taylor alleges, the violence to Ms. Taylor and the danger she faced would have been apparent and, in fact, was apparent, to the officers on the scene. (C.5-8.) The police were required to respond appropriately to all aspects of the situation.

Third, the trial court's characterization of Mr. Taylor's 911 call as being about the abuser was inaccurate—it inexplicably discounted the well-pleaded fact that Mr. Taylor, the victim's son, had called on his *mother's* behalf (not the abuser's), out of concern for *her* safety. (C.6.) And even if the initial call had contained no indication that domestic violence was a concern, the trial court erred in ignoring facts about what happened on the scene. The trial court discounted the fact that the victim was visibly injured from a prior incident of violence. (C.6.) More fundamentally, the trial court inexplicably discounted indications that the abuser's "bizarre and dangerous acts" also constituted obvious and imminent threats to the victim—regardless of what Mr. Taylor said, specifically, in his 911 call. For example, the abuser appeared to be preparing to blow up the victim's apartment, and had proceeded far enough with this plan that the police evacuated the entire building. (C.6.) This behavior presented an obvious threat to Ms. Taylor, which constituted domestic violence. But the trial court erroneously imposed a requirement on Mr. Taylor to articulate that obvious point in his 911 call, and state that the threat constituted "domestic violence." This crabbed and narrow view of the IDVA's mandatory police response provision thwarts the explicit legislative intent to protect victims from dangerous partners

by requiring police to take certain steps whenever they have reason to believe a person has been abused.

Finally, even if the complaint did not contain sufficient facts to establish that responding police had ample reason to know that Ms. Taylor had been abused (it did), the trial court erred in dismissing the complaint with prejudice—denying Mr. Taylor the right to develop the evidence of precisely what happened, and to present the case to a trier of fact for decision.

This Court should reverse the judgment of the trial court because it defeats the purpose of the mandatory police response provisions of the IDVA, and inappropriately shifts responsibility for ensuring that police comply with them back onto the victims. This Court should unambiguously state that as a matter of law and policy, police are responding to domestic violence and enforcing the IDVA whenever a reasonable person would consider family and household members to be endangered by an abuser's behavior, as was the case described in Mr. Taylor's complaint in this case.

I. The trial court erred in effectively placing the burden on a victim of domestic violence in obvious danger to invoke the protection of Section 60/304(a) of the IDVA, which the legislature intended to place mandatory duties upon law enforcement independent of the victim's action or inaction.

In this case, the trial court erred in narrowly construing the provision for mandatory police assistance applicable "[w]henever a law enforcement officer has reason to believe that a person has been abused," in a manner that effectively required the victim, or someone on her behalf, to state expressly that she was a victim of domestic violence. *Id.* at 60/304(a). The plain language of Section

304(a) makes clear that these mandatory duties exist independent of the victim expressly identifying the problem as "domestic violence." *Amici* will not repeat Mr. Taylor's arguments with respect to the plain language of the provision or the cases interpreting it. Instead, *amici* will focus on illuminating the historical and sociological context in which the legislature passed this protective law.

A. The Illinois General Assembly expressly intended the domestic battery statute to be construed broadly.

Section 102 of the IDVA provides that it must be "liberally construed and applied to promote its underlying purposes." 750 ILCS 60/102. The specific underlying purposes include: (1) "[r]ecogniz[ing] domestic violence as a serious crime against the individual and society . . . which promotes a pattern of escalating violence"; (2) "[r]ecogniz[ing] that the legal system has ineffectively dealt with family violence in the past, allowing abusers to escape effective prosecution or financial liability, and has not adequately acknowledged the criminal nature of domestic violence"; (3) recognizing that "although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims"; (4) "[s]upport[ing] the efforts of victims of domestic violence to avoid further abuse by promptly entering and diligently enforcing court orders which prohibit abuse and, when necessary, reduce the abuser's access to the victim"; and (5) "[e]xpand[ing] the civil and criminal remedies for victims of domestic violence; including, when necessary, the remedies which effect physical separation of the parties to prevent further abuse." *Id.* at 60/102(1-6).

The trial court's restrictive view of the scope of Section 60/304(a) runs directly afoul of this express instruction to construe the statute liberally. This

Court should reject that approach and ensure that the intent of the legislature to expand the remedies available to victims of abuse is respected. *See Sanchez v. Torres*, 2016 IL App (1st) 151189, ¶ 14 (IDVA "seeks to provide victims of domestic violence with the highest level of protection possible").

B. The General Assembly deliberately chose to make mandatory police response provisions *not* dependent on the victim invoking them. This reflects a broader recognition of the nature of domestic violence as a crime.

The General Assembly enacting the IDVA expressly recognized that law enforcement officers too often failed to respond effectively to domestic violence incidents. 750 ILCS 60/102(3). The addition of the mandatory police response was designed to correct that situation. *See Sneed v. Howell*, 306 Ill. App. 3d 1149, 1158 (5th Dist. 1999) ("[T]he legislative intent behind the [IDVA] was to encourage *active intervention* on the part of law enforcement officials . . . [given] the failure of law enforcement agencies to respond to the problem." (emphasis added)). This amendment was part of "a recognition that the victims of domestic violence were people who fell between the cracks." House Debate, HB 2409, at 86 (May 23, 1986). The legislature intended to impose affirmative duties in those situations in which "the courts and where the system has not provided the full measure of protection for victims of abuse, of domestic violence." *Id.* The trial court's decision retreats from the goal of providing comprehensive protection for victims of abuse, and fails to understand and incorporate the reality of domestic violence and the experience of survivors.

1. At the time the legislature passed the IDVA, domestic violence advocates increasingly recognized that police response should not depend on the victim's stated wishes, her "cooperation," or her apparent lack thereof.

The history of advocacy on behalf of victims, and the development of expert understanding of victim survival strategies, provides important context for the legislature's enactment of the mandatory police response provision in the IDVA. In the late 1970s, shortly before the IDVA's initial passage, the plight of domestic violence victims became the subject of national attention. The U.S. Commission on Civil Rights ("Commission") had been studying the justice system's response to "battered women," as the problem was then called, in the mid 1970's, publishing reports in 1978 and 1982. *See* U.S. Commission on Civil Rights, *Battered Women: Issues of Public Policy* (1978) ("1978 Report"); U.S. Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (1982) ("1982 Report"). The Commission introduced its 1978 Report with the recognition that "[m]any battered women report that, when they turn to the authorities for help, frequently it is to no avail." 1978 Report, ii. Police officers at the time routinely displayed an unwillingness to recognize domestic violence as a crime, and failed to protect its victims accordingly. *Id.* at ii-iii.

As the Commission recognized, in the years leading up to the IDVA, it was law enforcement policy not to "interfere" in domestic violence situations, and not to arrest abusers, based upon the mistaken belief that the issue constituted a private matter, rather than a crime, and the parties would resolve their conflicts on their own. 1982 Report at 12, 14, 21. The Commission identified this attitude

in the criminal justice system as a vestige of the common law view of women as the property of their husbands. *Id*. at 12.

According to the 1982 Report, police officers also failed to recognize that victims of domestic abuse often do not behave in the same way as victims of assault by strangers. *Id*. at 14-16. Testimony by police officers before the Commission revealed that they did not make arrests in domestic abuse cases because they assumed that the victims would change their minds or reconcile with the abuser. *Id*. Police officers complained that they typically found domestic violence victims to be uncooperative or unwilling to complain or press charges. *Id*. at 15. Police officers also testified that victims of domestic assault "are often highly upset and unsure of what they want the responding officers to do," unlike "other crimes where the officer can expect willing cooperation and support from the victim." *Id*. at 13. Despite such apparently ambivalent behavior, the Commission reported, "experts advise that arrest of the assailant may be in the victim's best interest." *Id*. at 16 (quoting training materials on domestic violence from International Association of Chiefs of Police, stating that "[a]n assault cannot be ignored by the police regardless of the victim's attitude or motive for not cooperating").

Ultimately, the Commission called for law enforcement to abandon these misperceptions of domestic violence and policies of noninterference. 1982 Report at 91-92; *see* Recommendation 3.4. Law enforcement could not expect victims of domestic violence to behave the same as victims of other crimes. The Commission concluded that police officers play a critical role in protecting

domestic violence victims from their abusers, and that a victim's life can depend on police decisions and policies. *Id*. at 91.

During this same period, the late 1970's and early 1980's, Illinois experienced "a societally significant increase in injuries and deaths that stemmed from domestic disputes." *Fenton v. City of Chicago*, 2013 IL App (1st) 111596, ¶ 16, *citing* 750 ILCS 60/102. In response, the Illinois legislature passed the IDVA, for the purpose of providing "victims of domestic violence with the highest level of protection possible." *Sanchez*, 2016 IL App (1st) 151189, ¶ 14. The IDVA calls for law enforcement "to provide immediate, effective assistance and protection for victims of domestic violence," and expressly recognizes that the legal system had previously failed to deal effectively with domestic violence. 750 ILCS 60/102(2), (5).

2. It is generally well recognized that domestic violence victims may be unable to self-identify and assert their need for safety, giving rise to the need for mandatory police procedures that do not depend on the victim's statements or actions.

Victims of domestic abuse are known to exhibit counterintuitive behavior in their interactions with police officers. For example, victims may deny the abuser's responsibility for their injuries, *State v. Townsend*, 186 N.J. 473 (2006) (shortly before dying from injuries inflicted by her husband, and witnessed by her children, domestic violence victim falsely stated she had been struck by a car); delay reporting an incident of abuse, *State v. Borelli*, 629 A.2d 1105, 1113 (Conn. 1993) (victim went to police station in the evening to report abuse that occurred the previous evening); minimize their injuries, *State v. Searles*, 680 A.2d 612, 615

(N.H. 1996) (victim told police at the scene that her abuser choked her, and displayed red marks on her neck, but testified at trial that she was hurt "a little bit"); and recant their initial charges, *Borelli*, 629 A.2d at 1114 (victim signed police statement describing horrific abuse, then recanted at trial and said the events had never happened). Victims of domestic abuse often seek to appease the abuser in volatile situations, and may engage in other behaviors that seem to defy logic from an outsider's perspective. *See State v. Frost*, 577 A.2d 1282 (N.J. Super. 1990) (where victim stayed in the company of her abusive husband for hours after the assault, expert testimony was admissible to bolster the credibility of her statements made later in the day to the police).

These counterintuitive behaviors, and others like them, are so inconsistent with how victims of non-domestic assaults generally behave, that at trial prosecutors and defense attorneys alike rely on expert testimony to explain them to juries. *See, e.g.*, *Borrelli*, 227 Conn. at 1113 (expert testified that domestic violence victims' behaviors may "only make sense when you understand them from the standpoint of survival and safety"); *see also United States v. Johnson*, 860 F. 3d 1133 (8th Cir. 2017) (expert testimony admissible and helpful to jury where it explained how individuals generally react to domestic abuse, including not reporting the abuse and not attempting to escape from the abuser); *Townsend*, 897 A.2d at 327 (noting, "we have no doubt that the ramifications of a battering relationship are beyond the ken of the average juror"); *Searles*, 680 A.2d at 615 (expert testimony permitted when a victim tries to hid or minimize the effect of abuse, which may be incomprehensible to average people). In short,

courts have repeatedly found that juries need to have experts explain the traits commonly exhibited by victims of abuse, because otherwise the victim's conduct falls beyond normal expectations of how crime victims behave.

Because a domestic abuser often lives with the victim or has access to the victim's home, enmeshes himself in the victim's life, prevents the victim from developing outside friendships and independent resources, and otherwise asserts power and control over the victim's actions, domestic violence poses an array of dangers that can make it difficult for victims to report the violence, access help, and assert their right to safety. In this context, what may appear as pathological denial, self-effacement or even "masochistic" behavior, may actually stem from long-adapted strategic behavior that a victim uses to maximize short-term safety. Appeasing an abuser in a moment of extreme violence can be a victim's only hope of survival.

To help others understand, in 2015, the National Football League's advertising firm created a public service announcement for No More, an anti-domestic violence organization. In that public service announcement, a domestic violence victim pretended to call to order a pizza when she was unable to express her need for police assistance, due to the abuser's continuing presence in the home. *See* Lindsay Deutsch, *USA Today*, https://www.usatoday.com/story/news/nation-now/2015/02/01/domestic-violence-psa-911-dispatcher/22720683/ (Feb. 1, 2015). The ad was based upon a real 911 call. *Id*. This ad, and the call it was based on, powerfully illustrates, as well as any study, the need for police and other emergency responders to

understand the reality of domestic violence and the unique danger posed when the perpetrator is a family member or intimate partner living in the victim's home.

The IDVA's mandatory police response provision implicitly recognizes that law enforcement personnel cannot insist on hearing certain magic words before the duty to protect is invoked. It recognizes that a police officer may not simply rely on a victim's denial of abuse, minimizing of abuse, or apparent loyalty to the abuser, actions that often reflect the victim's imperative of appeasing, or not provoking, the abuser in the midst of crisis. In this case, where the victim was in clear danger, the trial court overrode and effectively negated the protection the mandatory police response provision was meant to provide, and thwarted its purpose, based on a) the victim's silence when asked if she felt safe, when it should have been patently obvious that she was not safe as long as the abuser was in her home; and b) her willingness to follow her abuser to the hospital at his request. (C.127.) The trial court implicitly required the victim affirmatively to state the obvious—that she was in imminent danger at the hands of an intimate partner—in contravention of the language and purpose of Section 60/304(a). This Court should reverse.

II. The IDVA's mandatory police response provisions focus on safety, not necessarily arrest, and are not inconsistent with appropriately responding to a perpetrator experiencing a mental health crisis.

The trial court characterized the 911 call in this case as having "concerned" the abuser, rather than Ms. Taylor, and reasoned from that characterization that responding officers therefore had no duty to her. (C.127.) Regardless of the

accuracy of this characterization, the trial court apparently recognized that the abuser was suffering a mental health crisis and that the police also recognized that fact. Implicitly, the trial court approved of the police response—subduing the abuser and bringing him to the hospital, rather than arresting him and requiring employees of the Cook County Department of Corrections to attempt to address his acute psychiatric illness. (*See* C. 127.) But appropriate police restraint during a mental health crisis need not be mutually exclusive of an appropriate response to a co-occurring domestic violence crisis, as the trial court may have incorrectly assumed.

The IDVA's mandatory police response provision does not focus solely, or even primarily, on arresting a perpetrator of domestic violence. 750 ILCS 60/304(a)(1-7). Instead, that provision requires a range of responses designed to empower the victim with information and support and to provide her with an avenue to safety. In this case, regardless of the psychiatric reasons for the abuser's aggressive and violent behavior, Ms. Taylor had the right to the mandatory protections of the IDVA: information and materials on domestic violence resources, including a referral to an accessible service agency; assistance accessing a shelter or other place of safety; advice about getting medical attention and preserving evidence, such as photographing her injury; and assistance obtaining an order of protection. *See id.* The police were required to provide her with those options and information, as they knew, or at least should have assumed, the abuser would eventually be returning to the home. Access to such

support, resources and information might have avoided the tragic loss of Ms. Taylor's life.

III. The trial court erred in dismissing the complaint with prejudice, foreclosing Mr. Taylor from developing evidence to support his claim.

As set out above, the trial court misinterpreted the IDVA to require the victim or someone on her behalf to invoke the mandatory police response provisions of the IDVA expressly, and to permit its mandatory protections essentially to be waived if the victim fails to do so. The trial court also erred as a matter of civil procedure, dismissing this case without allowing Mr. Taylor to develop the evidence, through discovery, of what the responding police officers were told, saw, believed, or knew, when responding to this incident. The trial court acknowledged that "a court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party" and that "[a]ll well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true." (C.124.) A complaint may only be dismissed where the plaintiff "can prove no set of facts that would support a cause of action." *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. In this case, the trial court failed to construe Mr. Taylor's allegations as true and to draw all reasonable inferences therefrom, wrongly determining that Mr. Taylor could not prevail under any set of facts. Thus, not only did the trial court apply the wrong legal standard, as set out above, it inappropriately decided the facts without affording the opportunity to engage in the discovery process.

Whether a reasonable officer would have identified Ms. Taylor as a protected person under the IDVA during the emergency call constitutes a complex question for the trier of fact to determine. "The specific factual circumstances of each case will determine whether a plaintiff is owed a duty by law enforcement officials, the standard of care by which the officers' conduct is to be measured, and whether and to what extent immunities are available." *Calloway v. Kinkelaar*, 168 Ill. 2d 312, 330 (1995); *see also Aikens v. Morris*, 145 Ill. 2d 273, 286 (1991) ("The determination of whether an officer is executing or enforcing a law is a factual one which must be made in light of the circumstances in each case."). Whether Mr. Taylor's call and the officers' response to it triggered the IDVA is such a determination. Mr. Taylor was not required to prove his case at the pleading stage. *See Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). He need only have alleged enough facts that would preclude dismissal and entitle him to discovery if proven true. *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 367–68 (2003). Mr. Taylor met that burden.

As explained above, even without the benefit of discovery, the facts pleaded in Mr. Taylor's complaint supported the conclusion that the abuser presented an obvious and imminent threat to the victim, which should have triggered the mandatory police response provisions. (*See* Argument I, *supra*; C.5-C.7.) But not only did the trial court erroneously consider these facts inadequate to constitute a domestic violence call rather than "something other than domestic violence," requiring some explicit expression that domestic violence had occurred, but the trial court also made an additional error in summarily

concluding, as a matter of fact, that no such express reference had been made, either during the 911 call or at the scene. (C.127.)

Certainly, the facts Mr. Taylor pleaded, even without the benefit of discovery, do not foreclose a finding that the officers had ample reason to believe Ms. Taylor had been abused—nor a finding that their response was indifferent to Ms. Taylor's safety and constituted "willful and wanton" conduct. *See* 750 ILCS 60/305. Among other things, the abuser had taken steps to blow up the victim's apartment, he was burning grease for no reason, Ms. Taylor had a black eye, and the abuser was in possession of and was wielding a sword and a knife. (C.5-C.7.) Moreover, the complaint states that at least one officer believed it was possible that the abuser was a threat to Ms. Taylor, asking her, "Do you feel safe?" (C.6.) These facts suffice to justify discovery. Mr. Taylor is not asking this Court to impose a generalized duty, as the trial court put it, "to address past unlawful conduct or to foretell of potential future unlawful conduct." (C.128.) To the contrary, the abuser's current unlawful conduct, evident on the scene, plainly triggered the protections of the IDVA. Mr. Taylor should be permitted to use the tools of discovery to obtain necessary evidence and to present that evidence to a trier of fact to show the police had ample reason to believe Ms. Taylor had been abused, and that their failure to act despite knowing of Ms. Taylor's abuse and the danger she was in showed indifference to her safety. The trial court, in short, erroneously failed to view the facts in the light most favorable to Mr. Taylor, and its decision should be reversed.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the trial court and remand this case for further proceedings.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 25 pages.

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 17, 2017, the foregoing Brief of *Amici Curiae*, attached to *Amici*'s Motion for Leave to File *Amicus* Brief, was filed with the Clerk of the Appellate Court of Illinois, First District, using the court's electronic filing system, and a copy of the motion was also served via email upon the following parties once accepted for filing.

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