

REL: June 5, 2020

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1190062

Clint Walters

v.

**Jessica De'Andrea
and Progressive Casualty Insurance Company**

**Appeal from Montgomery Circuit Court
(CV-17-900388)**

MENDHEIM, Justice.

Clint Walters appeals from a summary judgment entered by the Montgomery Circuit Court in favor of Montgomery Police Department ("MPD") patrol officer Jessica De'Andrea and

1190062

Progressive Casualty Insurance Company ("Progressive"). We reverse and remand.

I. Facts

The basic facts of this case are not disputed. On March 14, 2015, Walters was driving his motorcycle on the Eastern Boulevard in Montgomery when he came to a complete stop at a red light. De'Andrea was traveling on the Eastern Boulevard in her MPD police vehicle when she came to a stop directly behind Walters's motorcycle at the intersection of the Eastern Boulevard and Monticello Drive. De'Andrea testified in her deposition that she had completed her patrol shift and that she was on her way to the MPD South Central Headquarters on the Eastern Boulevard to

"[t]urn in paperwork for the day.

"Q. All right. So sign out basically?

"A. Yes.

"Q. Okay. When you say 'turn in paperwork,' what does that entail?

"A. If I had any tickets, any kind of reports, my daily activity sheet -- everything I did that day."

De'Andrea's MPD supervisor at that time, Lt. Alphonso Gumbs, submitted an affidavit in which he explained:

1190062

"The policy implemented at the time required patrol officers to meet and turn in their daily activity logs at the end of their shift.

"2. As part of their daily duties, [p]atrol [o]fficers would turn in their daily activity sheets, and any paperwork completed on shift which wasn't filed electronically.

"3. The officers would report to their precinct at the end of their shift to turn the paperwork in."

Both Walters and De'Andrea sat at the red light, waiting for it to turn green. In her deposition, De'Andrea described what happened next:

"I noticed that the light turned green. The cars ... I know the ones that were going straight on the opposite lane, they were moving. The vehicles in front of Mr. Walters [were] moving. I'm not sure if his brake light was intact. I assumed that he was moving. I proceeded to go, and I hit him from behind.

"Q. Okay. Did you see him as you drove into him?

"A. Yes.

"Q. Okay. And -- but your testimony is that you assumed he was going, is that right?

"A. Like, no brake light was on from what I recall.

"Q. Okay.

"A. So I'm assuming that the car -- his motorcycle is moving. So I started moving.

"Q. And then you just hit him?

1190062

"A. I mean, he was in front of me.

"Q. All right. You weren't distracted? You weren't looking in any other direction --

"A. No.

"Q. -- or anything?

"A. I was looking straight ahead."

De'Andrea openly admits that she was at fault for the accident, stating in her appellate brief: "While she was certainly at fault when she bumped the rear of [Walters's] motorcycle, her actions were negligent at best." De'Andrea's brief, p. 13.

Walters alleges that he suffered multiple injuries as a result of the accident, and on March 13, 2017, Walters filed an action in the Montgomery Circuit Court against De'Andrea, Progressive, and State Farm Mutual Automobile Insurance Company ("State Farm"). Walters asserted claims of negligence and wantonness against De'Andrea in her individual capacity; he asserted claims for uninsured-motorist benefits against Progressive and State Farm.

On April 12, 2018, State Farm filed a summary-judgment motion in which it contended that Walters did not have any insurance policies with State Farm in force at the time of the

1190062

accident. Following a hearing, the circuit court subsequently denied that motion.

On August 16, 2019, De'Andrea filed a summary-judgment motion in which she asserted that she was entitled to State-agent immunity from Walter's suit under Ex parte Cranman, 792 So. 2d 392 (Ala. 2000), and § 6-5-338, Ala. Code 1975. On August 22, 2019, Progressive and State Farm filed summary-judgment motions in which they contended that, if the claims against De'Andrea were entitled to be dismissed based on the doctrine of State-agent immunity, then Walters was not entitled to uninsured-motorist coverage because Walters would not be "legally entitled to recover damages" from De'Andrea. See § 32-7-23(a), Ala. Code 1975. On September 5, 2019, Walters filed a response in opposition to the summary-judgment motions in which he contended that De'Andrea was not entitled to State-Agent immunity because, he said, her actions did not fall within any function that would entitle her to such immunity. Walters did not dispute that if De'Andrea was entitled to State-agent immunity, then Progressive and State Farm would likewise be entitled to a summary judgment.

1190062

On September 10, 2019, the circuit court held a hearing on the summary-judgment motions. On September 12, 2019, the circuit court entered summary judgments in favor of De'Andrea, Progressive, and State Farm. The summary-judgment order did not detail the circuit court's reasons for its decision. On September 19, 2019, Walters filed a postjudgment motion requesting that the circuit court alter, amend, or vacate its summary-judgment order. The postjudgment motion was denied on September 25, 2019.

Walters appeals the judgment of the circuit court with respect to De'Andrea and Progressive. Walters has not included State Farm as a party to this appeal.¹

II. Standard of Review

Our review of a summary judgment is well settled:

"If there is a genuine issue as to any material fact on the question whether the movant is entitled to immunity, then the moving party is not entitled to a summary judgment. Rule 56, Ala. R. Civ. P. In determining whether there is a [genuine issue of]

¹Although Walters argues in his appellate brief that "State Farm and Progressive's Motions for Summary Judgment are due to be denied," Walters's brief, p. 22, his notice of appeal does not list State Farm as an appellee. Accordingly, State Farm is not a party to the appeal. See Rule 3(c), Ala. R. App. P. (stating that "[t]he notice of appeal shall specify all parties taking the appeal and each adverse party against whom the appeal is taken").

material fact on the question whether the movant is entitled to immunity, courts, both trial and appellate, must view the record in the light most favorable to the nonmoving party, accord the nonmoving party all reasonable favorable inferences from the evidence, and resolve all reasonable doubts against the moving party, considering only the evidence before the trial court at the time it denied the motion for a summary judgment. Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000)."

Ex parte Wood, 852 So. 2d 705, 708 (Ala. 2002).

III. Analysis

Walters contends that the circuit court erred in entering a summary judgment in De'Andrea's favor on the basis of immunity because, he says, she was not performing a function that would entitle her to State-agent immunity at the time of the accident. In Ex parte Cranman, 792 So. 2d 392 (Ala. 2000), this Court restated the rule for determining when a State agent sued in his or her individual capacity is entitled to State-agent immunity.² In her summary-judgment motion, De'Andrea argued that she was entitled to State-agent immunity under categories (3) and (4) of the restatement of State-agent immunity as set out in Cranman, and as modified in Hollis v.

²Although Cranman was a plurality decision, the restatement of law as it pertains to State-agent immunity set forth in Cranman was subsequently adopted by this Court in Ex parte Butts, 775 So. 2d 173 (Ala. 2000).

1190062

City of Brighton, 950 So. 2d 300 (Ala. 2006) (incorporating the peace-officer-immunity standard in § 6-5-338(a), Ala. Code 1975, into category (4) of the State-agent-immunity analysis in Cranman). See, e.g., Howard v. City of Atmore, 887 So. 2d 201, 203 (Ala. 2003) (explaining that, "[b]y enacting [§ 6-5-338, Ala. Code 1975], the Legislature intended to afford municipal law-enforcement officials the immunity enjoyed by their state counterparts. Sheth v. Webster, 145 F.3d 1231, 1237 (11th Cir.1998). Indeed, '[t]his statute, by its terms, extends state-agent immunity to peace officers performing discretionary functions within the line and scope of their law-enforcement duties.' Moore v. Crocker, 852 So. 2d 89, 90 (Ala. 2002) (emphasis added).").

"'This Court has established a "burden-shifting" process when a party raises the defense of State-agent immunity.' Ex parte Estate of Reynolds, 946 So. 2d 450, 452 (Ala. 2006). A State agent asserting State-agent immunity 'bears the burden of demonstrating that the plaintiff's claims arise from a function that would entitle the State agent to immunity.' 946 So. 2d at 452. Should the State agent make such a showing, the burden then shifts to the plaintiff to show that one of the two categories of exceptions to State-agent immunity recognized in Cranman is applicable."

Ex parte Kennedy, 992 So. 2d 1276, 1282-83 (Ala. 2008).

Walters in essence contends that De'Andrea never shifted the

1190062

burden such that he was required to show that one of the exceptions to State-agent immunity applies. In pertinent part, the Court in Cranman stated:

"A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's

". . . .

"(3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner; or

"(4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law enforcement officers' arresting or attempting to arrest persons[, or serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a), Ala. Code 1975]."

Cranman, 792 So. 2d at 405; bracketed modification added by Hollis, 950 So. 2d at 309).

De'Andrea contends that she "was clearly within prong (3) of Cranman" because "[o]ne of the daily duties of the patrol officers was to report to their precinct at the end of their shift to turn in daily activity logs." De'Andrea's brief, pp. 9-10. De'Andrea also argues that her actions fit "under category (4) of the Cranman test" because "she was still

1190062

working in her capacity as a patrol officer. The nature of her duties as a patrol officer requires her to exercise her judgment in the enforcement of the criminal laws of the State of Alabama." Id. at pp. 10, 13. In support of this latter contention, De'Andrea quotes from "The Standard Operating Procedure for the Montgomery Police Department Patrol Division":

"1. Standard Patrol Duties

"A. Purpose and Scope

"1. The purpose of this procedure is to establish the baseline responsibilities of patrol officers assigned to the Patrol Division.

"2. Patrol is the primary activity of any law enforcement agency that includes much more than driving through neighborhoods looking for signs of criminal activities.

"B. Function

"-Patrol Officers shall provide, but are not limited to, activities relating to:

"1. Preventive patrol directed at prevention of criminal acts, vehicle related violations and accident[s], the maintenance of public order, and discovery of hazardous situations.

"2. Crime prevention activities to include proactive, aggressive patrolling, visual inspection of open businesses, and rigorous patrols of residential areas.

"3. Calls for service, other routine and emergency in nature [sic].

4. Investigation of both criminal and noncriminal activity.

"5. The arrest of criminal offender[s].

"6. Community relations activities such as citizen assists and individual contacts of a positive nature.

"7. The sharing of information between divisions within the Department.

"8. The application of community policing philosophy to establish a partnership with citizens to improve the quality of life and provide a sense of safety and security to the community members.

"9. Traffic directions and control.

"C. Preventive or Aggressive Patrolling

"-Preventive and or aggressive patrolling is designed to prevent crimes before they occur through a number of strategies.

1190062

"1. Expending extra patrol time at known 'hot spots' or locations where crime patterns are occurring.

"2. Looking for known suspects responsible for crime patterns.

"3. Interacting with community members.

"4. Watching for suspicious activities."

However, as Walters observes, despite offering this laundry list of patrol-officer duties, De'Andrea does not point to a single patrol duty she was actually performing at the time the accident occurred. In fact, De'Andrea admitted in her own testimony that she had completed her patrol shift and that she was simply returning to her precinct to turn in paperwork, not performing any patrol duties. Moreover, with respect to any duty De'Andrea may have had to turn in her paperwork, the policy described by her commanding officer did not "prescribe[] the manner for performing [that] dut[y]" other than that it had to be done at the end of a shift. Cranman, 792 So. 2d at 405. The policy in question had nothing to do with how De'Andrea drove her police vehicle on public roadways. De'Andrea admitted that as far as that duty

1190062

was concerned -- the duty to drive her vehicle in a safe manner -- she mistakenly "assumed that [Walters] was moving. I proceeded to go, and I hit him from behind." Indeed, Walters argues that, at the time the accident occurred, De'Andrea was performing what "can only be characterized as a routine action requiring the exercise of due care," which is not clothed with the protection of State-agent immunity. Walters's brief, p. 10. In support of this proposition, Walters relies upon Ex parte Venter, 251 So. 3d 778 (Ala. 2017).

Venter concerned a suit precipitated by a collision between a vehicle driven by Aubrey Vick and a fire truck driven by fireman Terence Venter. Vick was killed in the accident. Venter testified by affidavit that at the time of the accident he and two fellow firemen "'had been patrolling areas around the City of Selma, learning streets and areas, inspecting streets and layout of the City of Selma,'" and that they were in the process of "'returning to Selma Fire Station # 4 after riding around assigned territory within the City of Selma.'" 251 So. 3d at 780. The collision occurred at a stop-light intersection, and there was a factual dispute as to

1190062

whether the light was green when Venter drove the fire truck into the intersection. Venter moved for a summary judgment, contending that he was "entitled to State-agent immunity under category (1) of the Cranman restatement^[3] because ..., at the time of the accident, Venter was formulating plans and policies on behalf of the fire department by 'patrolling' fire-rescue routes." Id. at 782. This Court rejected Venter's argument, explaining:

"It is undisputed that, at the time of the accident, Venter was not responding to an emergency call. Rather, according to Venter's affidavit, he was 'patrolling,' a term he describes as 'exploring and identifying fire rescue routes' and/or 'looking for people in need of help or waiting for an emergency call.' Venter and the City have not provided this Court with any caselaw from this State or any other jurisdiction in which immunity has been extended to a fireman who was engaged in routine patrolling when an alleged tort occurred. And, assuming, without deciding, that the act of 'patrolling' could somehow be equated with formulating policy or procedure, Venter, by his own admission, was not engaged in the act of patrolling when the accident occurred. Rather, Venter stated in his affidavit that, at the time of the accident, he was 'returning' to the fire department 'after riding around assigned territory within the City of Selma.' Furthermore, in the narrative summary of undisputed facts in the summary-judgment motion,

³Cranman category (1) provides that a State-agent is immune if the conduct underlying the claim is based upon the agent's "(1) formulating plans, policies, or designs." Cranman, 792 So. 2d at 405.

Venter and the City add that, in the process of returning to the fire department, Venter had stopped at a grocery store. Venter's action in returning to the fire department after an afternoon of patrolling, in conjunction with stopping at the grocery store, cannot be equated with performing a function that would entitle him to State-agent immunity; rather, such action can be characterized only as a routine action requiring the exercise of due care. See, e.g., Ex parte Coleman, 145 So. 3d 751, 758 (Ala. 2013) ('It is undisputed that Coleman is a peace officer entitled to the immunity established in § 6-5-338(a)[, Ala. Code 1975,] and that at the time of the accident he was performing a function -- responding to an emergency call -- that entitles Coleman to immunity.' (emphasis added)); DeStafney v. University of Alabama, 413 So. 2d 391 (Ala. 1981) (rejecting immunity claim of individual defendant, an aide at the University's day-care center who allegedly allowed the plaintiff's child to fall off playground equipment, on basis that defendant was engaged in a function that clearly required the exercise of due care rather than difficult decision-making); cf. Gill v. Sewell, 356 So. 2d 1196 (Ala. 1978) (holding the director of a work-release center sued for releasing a convicted felon who then shot the plaintiff was performing discretionary duties). Accordingly, because Venter has failed to demonstrate that, at the time of the accident, he was performing a function that would entitle him to State-agent immunity, he and the City are not entitled to the relief requested."

Ex parte Venter, 251 So. 3d at 782-83 (footnote omitted and some emphasis added).

Walters contends, correctly in our view, that this case presents a very similar situation to the one presented in

1190062

Venter because De'Andrea, by her own admission, was not responding to an emergency call or engaged in the act of patrolling when the accident occurred. Rather, she was simply returning to her precinct at the end of her shift to turn in paperwork. As the Venter Court observed: "[S]uch action can be characterized only as a routine action requiring the exercise of due care."⁴ Ex parte Venter, 251 So. 3d at 783.

Walters observes that the Alabama Code prescribes that "[n]o person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety." § 32-5A-132, Ala. Code 1975. More generally, the Alabama Code also states that "the driver of an authorized emergency vehicle" has a "duty to drive with due regard for the safety of all persons using the highway." § 32-5A-58.2(c)(2), Ala. Code 1975. This Court has noted that "a government employee sued for a tortious act committed in the line and scope of his employment may, in an appropriate case (i.e., where the employee has breached a duty he owes individually to a third party), be sued individually." Wright v. Cleburne Cty. Hosp. Bd., Inc., 255 So. 3d 186, 191 (Ala.

⁴De'Andrea does not provide any discussion of Venter, let alone request that we overrule it.

1190062

2017). The Wright Court provided as an example that "a driver on an errand for his employer owes an individual duty of care to third-party motorists whom he encounters on public roadways." Id. The Cranman Court itself observed:

"As an example, there should be some recognizable difference in legal consequence between, on the one hand, a prison warden's decision not to fire or not to sanction the entity contracting with the State Department of Corrections to provide medical services and, on the other hand, a decision by the driver of a pickup truck on how to drive through or around potholes while transporting prisoners. Each situation involves judgment or discretion. Under our recent cases, the warden is immune [citing Ex parte Davis, 721 So. 2d 685 (Ala. 1998),] and the truck driver is not [citing Town of Loxley v. Coleman, 720 So. 2d 907 (Ala. 1998)]."

Ex parte Cranman, 792 So. 2d at 404 (emphasis added). The duty at issue here -- "the conduct made the basis of the claim against [De'Andrea]" -- was nothing more or less than the duty of due care that every driver on the roadway owes to other motorists. Cranman, 792 So. 2d at 405. Under Venter and other authorities, such an action is not clothed with State-agent immunity.

IV. Conclusion

Based on the foregoing, we conclude that De'Andrea failed to demonstrate that Walters's claims arise from a function that would entitle her to State-agent immunity. Therefore, the summary judgment in De'Andrea's favor is due to be reversed. Because Progressive's summary-judgment motion was predicated solely on the ground that Walters would not be "legally entitled to recover" uninsured-motorist benefits if De'Andrea was entitled to State-agent immunity, the summary judgment in its favor also must be reversed. The cause is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Parker, C.J., and Wise, Sellers, Stewart, and Mitchell, JJ., concur.

Bryan, J., concurs in the result.

Bolin and Shaw, JJ., dissent.

1190062

SHAW, Justice (dissenting).

At the time of the accident in this case, the defendant, Jessica De'Andrea, was operating a Montgomery Police Department vehicle in her capacity as a Montgomery police officer and as a patrol officer. One duty on patrol included returning to the precinct to turn in completed paperwork.

Under Ex parte Cranman, 792 So. 2d 392, 405 (Ala. 2000):

"A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's ...

"....

"(3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner."

The Montgomery Police Department has a standard operating procedure for patrols. I see nothing showing that, while driving to her precinct, which is part of the patrol duty, Officer De'Andrea was no longer operating under or bound by the prescriptions of her duties. Therefore, I respectfully dissent.

Bolin, J., concurs.