

Rel: May 26, 2023

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

SC-2022-0525

Ex parte Lester Lee Thomas

PETITION FOR WRIT OF MANDAMUS

(In re: Jennifer Dell Peach

v.

Lester Lee Thomas et al.)

(Mobile Circuit Court: CV-18-901977)

On Application for Rehearing

SC-2022-0525

PER CURIAM.

APPLICATION GRANTED; OPINION OF MARCH 3, 2023,
WITHDRAWN; PETITION DENIED. NO OPINION.

Wise, Bryan, Stewart, Mitchell, and Cook, JJ., concur.

Shaw, J., concurs in part and dissents in part, with opinion.

Parker, C.J., and Sellers and Mendheim, JJ., dissent, without
opinions.

SHAW, Justice (concurring in part and dissenting in part).

Lester Lee Thomas, a defendant below, has petitioned this Court for a writ of mandamus directing the Mobile Circuit Court to vacate its order denying his motion for a summary judgment in this tort action commenced by Jennifer Dell Peach and to enter a summary judgment in his favor based on State-agent immunity.

This Court initially issued a plurality opinion denying the petition, to which I concurred in the result. Thomas then filed an application for rehearing. Today, this Court grants the application, withdraws the prior opinion, and denies the petition without opinion. I respectfully dissent to granting the application for rehearing. Nevertheless, I concur that the petition is due to be denied at this point, but, as discussed below, I am not convinced that Thomas is not entitled to State-agent immunity.

On August 13, 2016, Thomas, a State trooper with the Alabama Law Enforcement Agency, initiated a traffic stop of a speeding driver ("the first speeder") traveling north on Interstate 65 ("I-65") in Mobile County. As he was doing so, Thomas noticed, in his rearview mirror, another speeding driver ("the second speeder") traveling behind him. The first speeder pulled his vehicle off the highway on the right shoulder and

came to a stop. This stretch of I-65 has two northbound travel lanes ("the left inside lane" and "the right outside lane"). Thomas stopped his vehicle in the right outside lane next to the first speeder's parked vehicle. It is alleged that, after exiting his vehicle, Thomas walked into the left inside lane, faced the second speeder's oncoming vehicle, and gestured for the second speeder to stop and pull over.

The second speeder came to a sudden halt in the left inside lane; thus, both northbound lanes were blocked. Motorists traveling behind the second speeder attempted to stop to avoid colliding with the vehicles in front of them. Peach was a passenger in one of those vehicles, which crashed. Peach suffered serious injuries.

Peach sued Thomas, alleging that Thomas had negligently or wantonly caused the collision that led to her injuries. Thomas filed a motion for a summary judgment asserting, among other things, that he was entitled to State-agent immunity. The trial court denied the summary-judgment motion, and Thomas now petitions this Court for a writ of mandamus directing the trial court to vacate that decision and to enter a summary judgment in his favor.

Stated very generally, this Court's formulation of State-agent immunity provides, among other things, that law-enforcement officers like Thomas are entitled to immunity from tort claims when those claims are based upon those law-enforcement officers' "'exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, ... 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.'" Hollis v. City of Brighton, 950 So. 2d 300, 309 (Ala. 2006) (quoting and modifying restatement of State-agent immunity set forth in Ex parte Cranman, 792 So. 2d 392, 405 (Ala. 2000) (plurality opinion)) (emphasis omitted).¹ Clearly, Thomas, in attempting to effectuate a stop of one who was speeding, was exercising judgment in the enforcement of the laws.

A State agent is not immune "when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." Cranman, 792 So. 2d at 405; see also § 36-1-12(d)(2), Ala. Code 1975. The allegation that Thomas was

¹The restatement of State-agent immunity in Cranman, a plurality decision, was adopted by a majority of this Court in Ex parte Butts, 775 So. 2d 173 (Ala. 2000), and was later codified at § 36-1-12, Ala. Code 1975.

acting negligently or wantonly does not demonstrate that he acted beyond his authority: "[N]egligent or wanton conduct will not support the conclusion that a police officer has acted beyond his or her authority when he or she is exercising discretion in the discharge of his or her law-enforcement duties." Ex parte City of Montgomery, 272 So. 3d 155, 168 (Ala. 2018).

However, it is argued in this case that a violation of the law shows an act "beyond [one's] authority." Cranman, supra; § 36-1-12(d)(2). Peach argues that Thomas violated Alabama's Rules of the Road, see § 32-5A-1 et seq., Ala. Code 1975 -- namely, certain Code sections regulating the conduct of pedestrians. Peach specifically contends that Thomas violated § 32-5A-215(d), Ala. Code 1975, which provides: "Except as otherwise provided in [the Alabama Rules of the Road Act], any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway." Whether Thomas violated that Code section, in my view, hinges on whether Thomas was a "pedestrian" and whether he was required to "yield the right-of-way" to a driver he was stopping for a traffic-law violation.

Former § 32-1-1.1(41), Ala. Code 1975, the applicable Code section that existed in 2016 (the Code section has since been amended), provided:

"The following words and phrases when used in this title shall, for the purpose of this title, have meanings respectively ascribed to them in this section, except when the context otherwise requires:

"....

"(41) Pedestrian. Any person afoot."

(Emphasis added.)² See also Pruitt v. Oliver, 331 So. 3d 99, 111 (Ala. 2021) ("The definition of 'pedestrian' in the applicable Alabama Code section is '[a]ny person afoot.'").

Thomas was "afoot"; he was standing upon the road as opposed to occupying a vehicle. I am not convinced, however, that the "context" of this case requires the legal conclusion that he was a pedestrian.³

Under § 15-5-30, Ala. Code 1975, "any highway patrolman or state trooper may stop any person abroad in a public place whom he reasonably

²Section 32-1-1.1 has been amended several times since 2016. "Pedestrian" is now defined in § 32-1-1(43) as "[a]ny individual afoot."

³Thomas stated in his deposition, when questioned, that he was a pedestrian, but it does not appear that he was conceding the legal point in relation to § 32-1-1.1.

suspects is committing, has committed or is about to commit a ... public offense." This includes stopping a traveling vehicle. Manning v. State, 612 So. 2d 1262, 1264 (Ala. Crim. App. 1992); see also White v. State, 479 So. 2d 1368, 1375 (Ala. Crim. App. 1985) (holding that "a public roadway is a public place within the meaning of § 15-5-30"). Section 32-5A-4, Ala. Code 1975, provides that drivers must obey orders from law-enforcement officers directing or controlling traffic. Drivers may even violate certain Rules of the Road at the direction of law-enforcement officers. § 32-5A-137, Ala. Code 1975. Thomas had the lawful authority to stop the second speeding vehicle; the driver of that vehicle had a duty to comply. In allegedly stepping into the road to effectuate that stop, Thomas was exercising judgment in the enforcement of the criminal laws regarding speeding.

Further, Thomas was not one simply "afoot" while traveling on, near, or across a road. He was not using the road on foot as opposed to using the road while driving a vehicle. He was not merely present upon the road. The context of § 32-5A-215 involves the regulation of vehicles and those on foot in the normal course of traffic interaction. I find it difficult to conclude that this context includes regulating the manner that

law-enforcement officers, on foot, enforce traffic laws or otherwise stop persons committing public offenses, the authority for which is specifically provided by law. The legislature, in specifying that the meaning of the term "pedestrian" may change depending on the context, clearly indicated that its definition of the term is not always applicable; the definition provided by § 32-1-1.1 does not always control.

Further, § 32-5A-215(d) provides that pedestrians "shall yield the right-of-way to all vehicles upon the roadway." "Right-of-way" was defined in former § 32-1-1.1(54), the applicable Code section that existed in 2016, as follows:

"The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other."⁴

The context of this section is governing the safe movement of vehicles verses pedestrians. Again, Thomas was performing a lawful stop of a speeder, which he had the power to do; he "may stop any person abroad in a public [road] whom he reasonably suspects is committing ...

⁴Section 32-1-1.1 has been amended several times since 2016. Although the definition of "right-of-way" has not changed, that definition is now located in § 32-1-1.1(56).

[a] public offense," § 15-15-30, and the Rules of the Road require drivers to obey his directions. § 32-5A-4. When an officer, on foot, attempts to exercise a lawful stop of a vehicle, it cannot be said that the offending driver nevertheless has the "right-of-way" to proceed in preference to the officer. Drivers who are, as in this case, speeding, or who are, in other situations, driving while intoxicated or fleeing arrest, do not have the right-of-way to proceed in the face of an officer on foot attempting to perform a lawful stop. The context of Thomas's actions shows that the meaning of the terms "pedestrian" and "right-of-way" as defined in § 32-1-1.1 do not apply in this case. Thomas was not violating the Rules of the Road.

The above analysis is not advanced in the petition, and so it cannot form a basis to issue the writ. Ex parte Wilcox Cnty. Bd. of Educ., [Ms. 1200775, June 10, 2022] ___ So. 3d ___, ___ n.9 (Ala. 2022) (refusing to consider an issue not raised in a petition for a writ of mandamus). Although Thomas's motion for a summary judgment and various follow-up filings questioned whether he should be considered a pedestrian, the issue whether the statutory definition of "pedestrian" applied to Thomas in this "context" was not submitted to the trial court. State v. Reynolds,

887 So. 2d 848, 851-52 (Ala. 2004) (holding that this Court will not issue a writ of mandamus based upon a ground that was not asserted to the trial court). I therefore concur to deny the petition. Generally, the denial of a petition for a writ of mandamus is not a binding decision on the merits and does not have res judicata effect; thus, this issue may await further determination in the trial court or on appeal. Ex parte Shelton, 814 So. 2d 251 (Ala. 2001).