Rel: January 22, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1170224

Anthony Nix and the City of Haleyville

v.

John William Myers

Appeal from Marion Circuit Court
(CV-15-900152)

STEWART, Justice.

Anthony Nix, a police officer for the City of Haleyville ("the City"), and the City appeal from a judgment entered by the Marion Circuit Court ("the trial court") on a jury verdict in favor of John William Myers. For the

reasons set forth below, we reverse the judgment and remand the cause for a new trial.

Facts and Procedural History

Myers commenced an action in the trial court, asserting claims of negligence, wantonness, and negligence per se against Officer Nix and, based on the doctrine of respondeat superior, the City. Myers also asserted that the City had negligently and/or wantonly hired, trained, and supervised Officer Nix.

After completing discovery, Officer Nix and the City moved for a summary judgment, and Myers filed a response in opposition to their motion. The trial court entered a partial summary judgment that, in pertinent part, determined the following:

> "4. The Court finds that this lawsuit was properly brought against Officer Nix .... [Nix and the City's] Motion for [a] Summary Judgment is denied on that ground.
>
> "5. [Myers] has failed to present sufficient evidence of negligent hiring, training and supervision to support his claim. [Nix and the City's] motion is GRANTED as to that count.
>
> "....

> "9. Evidence has been submitted that demonstrates Officer Nix drove his police vehicle over a double yellow traffic line in violation of the Code of Alabama § 32-5A-7 and § 32-5A-86(a) (1975).
>
> "10. Further, the parties have submitted opposing and contradicting evidence as to whether Officer Nix's conduct violated the City of Haleyville's police policies and procedures.
>
> "11. Lastly, the submitted evidence presents a material and unanswered question of fact as to whether Officer Nix was responding to an emergency and operating an authorized emergency vehicle as defined by Ala. Code § 32-5A-7 (1975) at the time of the incident made the basis of this suit.
>
> "12. As such, there are multiple genuine issues of material fact as to whether Officer Nix was performing a function that would entitle him to immunity and/or performing a discretionary function at the time [Myers's] claims arose.
>
> "13. [Officer Nix and the City's] Motion for [a] Summary Judgment on the basis of state agent and peace officer immunity is therefore DENIED. Because Officer Nix is not entitled to [a] summary judgment on these grounds, neither is the City of Haleyville."

(Capitalization in original.) The trial court held a jury trial in August 2017.

The following facts are pertinent to the resolution of the issues in this appeal. On May 18, 2015, the Haleyville police department received a report of a disturbance or a fight within the town limits of Bear Creek

involving an intoxicated person who may have had a gun. Sergeant Michael Glasheen, Officer Nix's supervisor, asked Officer Nix to "go and assist the Bear Creek officer, or at least be in the vicinity in case he called for help," because Bear Creek's police force was a "single-man operation." Officer Nix responded to the call, which he considered to be an emergency. While he was traveling northbound on Highway 13 with his emergency lights activated, Officer Nix passed Phyllis Chrader's automobile while in a no-passing zone. Officer Nix testified that, when he made the pass, he was traveling either 45 or 50 miles per hour and that he had believed that he could pass Chrader's vehicle safely without endangering any person or property.

Janice Palmer was driving her white sport-utility vehicle southbound on Highway 13 when she observed Officer Nix's vehicle traveling in the northbound lane. According to Palmer, Officer Nix passed Chrader's vehicle and, when his vehicle was "[m]aybe as much as 75 yards" away from hers in the southbound lane, she "started trying to get off the road, braking to get off the road" because she was afraid their vehicles would collide. Palmer testified that she was not sure of the

distance between her vehicle and Officer Nix's vehicle when Officer Nix returned to the northbound lane but that they "didn't have much space once he got back in his lane." She testified, however, that, when Officer Nix's vehicle passed by her, "if [she] wasn't stopped, [she] was nearly stopped." She also testified that Officer Nix's vehicle "would have had to have been" back in the northbound lane when he passed her because they did not collide.

Myers was traveling on a 2001 Yamaha "cruiser" motorcycle behind Palmer's vehicle. Myers testified that Palmer

> "slammed on [her] brakes, and my first reaction was to get on my brakes. So I got on my brakes. My right -- my rear brake locked up, and so I tried to feather it out to keep from going into a wreck, sliding out, whatever term you want to use. The next thing I can remember at that point is the [emergency medical technicians] or someone telling me not to move."

Myers acknowledged that he had applied the brakes hard enough to go into a skid and that he had lost control of the motorcycle.

During the trial, Myers's counsel questioned numerous witnesses, including Haleyville Police Chief Kyle Reogas, Sgt. Glasheen, and Officer

Nix about § 32-5A-7, Ala. Code 1975, and § 32-5A-86, Ala. Code 1975,[1] which are part of the Alabama Rules of the Road Act, § 32-5A-1 et seq., Ala. Code 1975, and sought to admit copies of those statutes into evidence. The attorney for Officer Nix and the City objected to their admission, stating: "That's the law. That's the duty of the Court, not to submit law as evidence that's taken back to the jury room. The law comes from the bench." Section 32-5A-86 provides:

> "(a) The Department of Transportation and local authorities are hereby authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.
>
> "(b) Where signs or markings are in place to define a no-passing zone as set forth in subsection (a) no driver shall at any time drive on the left side of the roadway within such

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[1]Officer Nix did not object when Sgt. Glasheen was questioned about those statutes, but he had already objected to the admission of the statutes as evidence for the jury's consideration. Those objections were overruled. When Officer Nix was questioned about the statutes, his counsel objected, and the trial court again overruled the objection on the basis that the statutes were relevant to Myers's claim of negligence per se.

> no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.
>
> "(c) This section does not apply under the conditions described in Section 32-5A-80(a)(2), [Ala. Code 1975,] nor to the driver of a vehicle turning left into or from an alley, private road, or driveway."

It is undisputed that Officer Nix passed Chrader's vehicle in a no-passing zone. Officer Nix and the City asserted that § 32-5A-7 permitted Officer Nix to violate traffic rules, including § 32-5A-86, at the time of Myers's accident because, they asserted, Officer Nix was driving an authorized emergency vehicle while responding to an emergency call. Section 32-5A-7, entitled "Authorized emergency vehicles," provides:

> "(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.
>
> "(b) The driver of an authorized emergency vehicle may:
>
> "(1) Park or stand, irrespective of the provisions of [the Alabama Rues of the Road Act];
>
> "(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

> "(3) Exceed the maximum speed limits so long as he does not endanger life or property;
>
> "(4) Disregard regulations governing direction of movement or turning in specified directions.
>
> "(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of an audible signal meeting the requirements of Section 32-5-213[, Ala. Code 1975,] and visual requirements of any laws of this state requiring visual signals on emergency vehicles.
>
> "(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

The trial court admitted copies of the statutes as evidence and permitted Myers to question witnesses about their interpretation of those statutes. See note 1 and accompanying text, supra.

When charging the jury, the trial court stated:

> "You heard the term 'Rules of the Road.' Now, Rules of the Road is a law passed by the legislature that governs how people drive their motor vehicles. These laws are codified -- which means they're stuck in a book -- in [Chapter] 32-5A of the Code. This is [Chapter] 32-5A (indicating). These are the Rules of the Road. Many of you had to learn some, if not most of these in driver's education. There are general rules of the road that apply to all drivers, and I'm going to give you some

> of those rules that may apply in this case, and I also will discuss with you at this time specifically the Section 32-5A-7, which is the Authorized Emergency Vehicle section. I think this was Plaintiff's Exhibit 1 or maybe 2. It was 1, I believe. You'll have a copy of this section in the jury room, but I will charge you now as to the applicable provisions in this Code section. It reads as follows: 'The driver of an authorized emergency vehicle --' and I will instruct you that a police car is an authorized emergency vehicle '-- when responding to an emergency call, may exercise the privileges set forth in this section, but subject to the conditions herein stated,' and there are two provisions in that statute. You're going to have the whole statute. There's two that apply in this case: (3) 'Exceed the maximum speed limit so long as he does not endanger life or property'; (4) 'Disregard regulations governing direction of movement or turning in specified directions.' ... 'The foregoing provision shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provision protect the driver from the consequences of his reckless disregard for the safety of others.'"

(Emphasis added.)

Officer Nix and the City orally moved for a judgment as a matter of law at the close of Myers's case and again at the close of all the evidence. Officer Nix and the City also filed written motions memorializing the motions made orally during the trial. The trial court entered an order denying Officer Nix and the City's motion for a judgment as a matter of law. The jury rendered a verdict in favor of Myers in the amount of

$1,000,000, and the trial court entered a judgment in accordance with that verdict.

Officer Nix and the City filed a joint motion seeking to vacate the judgment or, in the alternative, a new trial. The trial court entered an order denying Officer Nix and the City's postjudgment motion, stating, among other things:

> "It was within this Court's discretion to admit Ala. Code § 32-5A-7 and § 32-5A-86 into evidence because [Myers] claimed negligence per se against the Defendants (rendering the statutes highly relevant), the statutes would serve to help the jury factually define the scope of Officer Nix's authority, there was no binding authority provided which prohibited the statutes' admission, and any error in their admission was cured by this Court's jury instruction to focus solely on the facts and apply the law as given by the Court in the jury charges."

Officer Nix and the City timely appealed.

Discussion

Officer Nix and the City raise numerous arguments on appeal. In particular, they argue that the trial court should have entered a judgment as a matter of law on their defenses of immunity, on the issue of contributory negligence, and on the issue of proximate causation. They

further assert that the judgment against Officer Nix is subject to a statutory cap. We pretermit discussion of those issues, however, because we hold that the following argument is dispositive and requires a new trial.[2]

Officer Nix and the City argue that the trial court's admission of copies of § 32-5A-7 and § 32-5A-86 into evidence, and the trial court's permitting the jury to have copies of those statutes in the jury room, is reversible error. It is well settled that "[t]he interpretation of a statute presents a question of law." Ex parte Quick, 23 So. 3d 67, 70 (Ala. 2009)(citing Scott Bridge Co. v. Wright, 883 So. 2d 1221, 1223 (Ala. 2003)). The question whether Officer Nix's crossing of the double-yellow lines in the no-passing zone, which is prohibited by § 32-5A-86, was permitted by § 32-5A-7(b)(4), which allows the driver of an authorized emergency vehicle, when responding to an emergency call, to "[d]isregard regulations governing direction of movement or turning in specified directions," was

[2]The fact that we pretermit discussion of the other issues raised by Officer Nix and the City in this appeal should not be construed as indicating our approval of the trial court's rulings relating to those other issues.

a legal question for the trial court to resolve. See Ex parte Coleman, 145 So. 3d 751, 759 (Ala. 2013)(holding that "whether a single 'yelp' of a siren constitutes 'making use of an audible signal' under § 32-5A-7 is a question of statutory interpretation, which presents only a question of law"). Because that question was a question of law, the jury should not have been permitted to consider whether Officer Nix violated § 32-5A-86 or whether Officer Nix's actions were authorized by § 32-5A-7, and the jury should not have had a copy of those statutes as evidence. See, e.g., Doctors Hosp. of Mobile, Inc. v. Kirksey, 290 Ala. 220, 223, 275 So. 2d 651, 653 (1973) ("The charge submitted a question of law to the jury and the giving of the charge is reversible error.").

Furthermore, Rule 51, Ala. R. Civ. P., provides, among other things, that "[n]either the pleadings nor 'given' written instructions shall go into the jury room." In Dunn v. Syring, 425 So. 2d 1081, 1081 (Ala. 1983), this Court held that a trial court's "sending into the jury room a written instruction, which represented only a portion of the trial court's entire charge, violated" Rule 51 and that such a violation was reversible error. Myers argues that the trial court's instructions to the jury included "a

description of the Rules of the Road generally, as well as a short narrative on the Authorized Emergency Vehicle section, followed by [the judge's] reading aloud only sections 32-5A-7[(b)] (3-4) and [(d)] " and that the trial court's charge did not go to the jury room -- only copies of the unedited statutes that had been admitted into evidence went to the jury room. However, the trial court specifically stated that the jury would "have a copy of [§ 32-5A-7] in the jury room, but I will charge you now as to the applicable provisions in this Code section." A portion of the trial court's instructions were submitted in written form, via the copy of § 32-5A-7, to the jury. The Committee Comments on 1973 Adoption of Rule 51 provide further insight as to the impropriety of such action:

> "This rule does not preserve the former requirement that instructions be taken by the jurors to the jury room. If the written charges requested by the parties deal only with certain portions of the law, as indeed they would, they should not be submitted to the jury when the court's oral charge cannot likewise be submitted to the jury. If the court's oral charge is to be given as much weight and consideration by the jury as the written charges, only a part of the overall charge should not go to the jury. The rule also bars pleadings from the jury room."

We also find persuasive the observation by the Third District Court of Appeal of Florida in Turco v. Leon, 559 So. 2d 1199, 1200–01 (Fla. Dist. Ct. App. 1990), that "providing a written copy of some charges, but not others, may lead the jury to place 'undue emphasis upon that information which is presented to them by way of partial written instructions.' Morgan v. State, 377 So. 2d 212, 213 (Fla. 3d DCA 1979)." It was reversible error for the trial court to provide to the jury a copy of the statutes upon which the jury had been charged. Accordingly, Officer Nix and the City are entitled to a reversal of the judgment and a new trial.

Conclusion

The judgment is reversed and the cause is remanded for a new trial.

REVERSED AND REMANDED.

Parker, C.J., and Bolin, Wise, and Sellers, JJ., concur.

Shaw, Bryan, Mendheim, and Mitchell, JJ., dissent.

SHAW, Justice (dissenting).

I do not believe that, under the facts of this case and the arguments presented on appeal, the two issues identified by the main opinion support holding that the trial court committed reversible error. Therefore, I respectfully dissent.

The jury in this case was instructed on portions of Ala. Code 1975, § 32-5A-7. Under that Code section, the driver of an authorized emergency vehicle responding to an emergency call has the privilege, under certain conditions, to not comply with certain traffic rules. Under subsection (b)(3), such drivers may exceed the maximum speed limit (as long as they do not endanger life or property), and, under subsection (b)(4), they may "[d]isregard regulations governing direction of movement," that is, at least in reference to what occurred in this case, pass another vehicle in a no-passing zone. Subsection (d) of § 32-5A-7, however, contains a proviso limiting those privileges; specifically, subsection (d) provides that the subsections granting those privileges "shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons ... [or] protect

the driver from the consequences of his reckless disregard for the safety of others."[3]

Whether the driver of an authorized emergency vehicle was responding to an emergency call and acting with due regard for the safety of others is a question of fact. Specifically, the trier of fact, here the jury, must assess the facts and circumstances, such as, among other things, the condition of the road, the driver's line of sight, the location of other vehicles, and the reasonableness of the speed at which the driver was traveling, and decide whether the driver's conduct met the criteria for the privileges provided in § 32-5A-7(b) or exceeded their limitations. This is illustrated in our caselaw. In Blackwood v. City of Hanceville, 936 So. 2d 495 (Ala. 2006), an officer, Connor, was involved in a collision and claimed the privilege provided by § 32–5A–7(b)(3). There was a factual dispute as to the speed at which the officer was traveling, but it was undisputed that

[3]Although subsections (b)(3), (b)(4), and (d) were quoted by the trial court in its instructions to the jury, the jury was not instructed to determine whether Officer Nix acted with "reckless disregard for the safety of others" under subsection (d) or to decide whether he was endangering life or property under subsection (b)(3).

that speed exceeded the speed limit. This Court held that the determination necessary to decide whether the privilege under subsection (b)(3) applied, and whether it was limited by subsection (d), were for the jury:

> "It will be for the jury to decide Conner's actual rate of speed on the occasion in question and, under appropriate instructions from the trial court, to decide whether, acting within his discretion to exercise his best judgment, Conner should have known that the speed at which he was driving, under all the attendant circumstances, endangered life or property and constituted a reckless disregard for the safety of others, or whether he was acting with due regard for the safety of others. If the speed as determined by the jury is found by it to have been such as would necessarily endanger life or property and be a violation of Conner's duty to drive with due regard for the safety of others, Conner will not be entitled to the protection of ... § 32–5A–7(b)(3). If the jury determines that Conner, traveling at the speed it determines he was traveling, was acting with due regard for the safety of others, he will be entitled to the protection of that ... privilege."

Blackwood, 936 So. 2d at 507.

The trial court in the instant case similarly instructed the jury on the facts to be determined and the result required under § 32–5A–7:

> "So there are two factual issues you must resolve respecting this Rule of the Road: First, was Officer Nix responding to an emergency call. If not, none of these

> privileges apply. If so, the second factual issue you must resolve is did he operate his police car with due regard for the safety of the plaintiff, Mr. Myers. If you determine that Officer Nix did not operate his police vehicle with due regard for the safety of Mr. Myers ..., you must find that Officer Nix and the City of Haleyville were negligent. ... However, if you first find that Officer Nix was responding to an emergency call, and you further find that he did operate his police car with due regard for the safety of Mr. Myers ..., you must find for Officer Nix and the City of Haleyville and against Mr. Myers."

There were no objections to this instruction at trial.

The decision in Ex parte Coleman, 145 So. 3d 751 (Ala. 2013), is inapposite. That case involved a different limitation on the applicability of the privileges found in § 32–5A–7; specifically, § 32-5A-7(c) requires that the privileges apply only when the authorized emergency vehicle is "making use of an audible signal." The issue in Coleman was whether a continuous audible signal was required, or whether simply "yelping" the siren of the vehicle was sufficient, for the privileges to apply. 145 So. 3d at 754. That decision required the interpretation of the meaning of "audible signal" and the legislature's "intent" in using that term, 145 So. 3d at 758, which are questions of law. See Scott Bridge Co. v. Wright, 883

So. 2d 1221, 1223 (Ala. 2003) (holding that the interpretation of a statute presents a question of law).

Given the above, I disagree with the conclusion of the main opinion that the determination of whether the privileges under § 32–5A–7(b)(3) and (4) applied in this case or were limited by § 32–5A–7(d) are questions of law.

The main opinion also holds that is was reversible error for the trial court to provide the jury in the jury room with written copies of § 32-5A-7 and Ala. Code 1975, § 32-5A-86, which were admitted as evidentiary exhibits at trial, because they constituted written portions of the trial court's oral jury charge. Specifically, it appears that the defendants' proposed jury charge no. 25, which quotes portions of § 32-5A-7, was recited (with slight modification) to the jury as part of the oral jury charge.[4]

[4]It does not appear that the trial court quoted § 32-5A-86 when it charged the jury, although one portion of the jury instructions appears to quote from Ala. Code 1975, § 32-5A-84.

First, it does not appear that this specific issue was raised to the trial court or was otherwise preserved for review. The defendants objected to the admission into evidence of the copies of § 32-5A-7 and § 32-5A-86 because, they alleged, it was error to "submit law as evidence that's taken back to the jury room." The defendants continued to assert that specific objection -- that copies of the Code sections were inadmissible as evidence -- during and after trial, but I see no objection in the record identifying the separate legal issue upon which the main opinion bases its decision: the documents could not be submitted to the jury in the jury room because they constituted written jury charges.[5] An issue raised for the first time on appeal generally cannot form a basis to reverse a trial

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[5]The defendants' postjudgment motion to vacate the judgment or, in the alternative, for a new trial argued that "the law is not evidence," that "the introduction of the state statutes into evidence is contrary to the judicial process and trial procedure," and that, "[b]y submitting the statutes into evidence, [the trial court] mingled the responsibilities between the ruler of law, the judge, and the finders of fact, the jury." The defendants' reply to the plaintiff's response in opposition to that motion asserted similar arguments. Neither mentioned the jury charges or alleged that it was error for the jury to have written copies of charges. Further, the trial transcript shows no objections to the jury charges when they were discussed during the trial.

court's judgment. Daniel v. Moye, 224 So. 3d 115, 139 n.11 (Ala. 2016) ("This Court will not consider arguments raised for the first time on appeal.")[6]

The main opinion cites as authority Rule 51, Ala. R. Civ. P. That rule, which, as best I can discern, was never cited to the trial court, among other things, sets out the procedure for parties to request jury instructions and for the trial court to accept or deny them. Specifically, the parties file written jury-charge requests and the trial court marks the requests "given" or "refused." The rule states: "Neither the pleadings nor 'given' written instructions shall go into the jury room." Thus, the rule forbids the trial court from allowing in the jury room any of the parties' written jury-charge requests that it has decided to give the jury.

The defendants' proposed jury charge no. 25 quotes portions of § 32-5A-7. The copy of that proposed charge included in the record is marked neither "given" nor "refused," but it seems clear that the trial court read

[6]The defendants maintain on appeal that the admission of the exhibits into evidence was reversible error for reasons other than that they caused the jury to determine questions of law; those issues are pretermitted by the main opinion, and so I express no opinion on them.

this charge to the jury. It is not alleged, however, that the written request was delivered to the jury. Instead, a copy of the complete Code section that was separately admitted into evidence was apparently delivered to the jury room. Thus, an evidentiary exhibit that the "given" charge quoted from went into the jury room, but the actual "given" jury charge itself did not. The plain language of Rule 51 was not violated.

In Dunn v. Syring, 425 So. 2d 1081 (Ala. 1983), the trial court, in response to a question by the jury, sent into the jury room a written copy of a pattern jury instruction that had been read to the jury in the oral jury charge. Counsel lodged a specific objection to providing a copy of the written jury charge on the ground that it tended to single out and give too much weight to one portion of the jury instructions. Dunn, 425 So. 2d at 1081. This Court held that the trial court had violated Rule 51 and cited the Committee Comments on the 1973 Adoption of the rule, which states in part:

> "This rule does not preserve the former requirement that instructions be taken by the jurors to the jury room. If the written charges requested by the parties deal only with certain portions of the law, as indeed they would, they should not be

> submitted to the jury when the court's oral charge cannot likewise be submitted to the jury. If the court's oral charge is to be given as much weight and consideration by the jury as the written charges, only a part of the overall charge should not go to the jury. The rule also bars pleadings from the jury room."

(Emphasis added.) The Court held that "the written answer to the jury's question [wa]s reversible error, per se." 425 So. 2d at 1082. Dunn is limited to the facts and circumstances in that case: there was a specific objection to providing to the jury in the jury room a written portion of the actual oral jury charges because undue weight could be given to that single charge.

In the instant case, the actual oral jury charge was not provided in writing to the jury in the jury room; instead, the oral jury charge quoted a portion of an evidentiary exhibit that was provided to the jury. Those actions are not equivalent under Rule 51 or Dunn. There was no objection that the exhibit containing a copy of § 32-5A-7 constituted a written jury charge and no argument in either the trial court or on appeal that the jury would give undue weight or consideration to this "charge" over the remainder of the oral charge. I thus see no error under Rule 51 or Dunn.

However, despite the limitations of the language in Rule 51 and the holding in Dunn, a documentary exhibit that is quoted in a jury charge could, under certain circumstances, be equated to a written copy of a portion of the oral jury charge. On the one hand, having access to the exhibit in the jury room might aid the jury or even be necessary, but, on the other hand, having access to the exhibit in the jury room could present the danger of the jury's giving the exhibit, and any portion of the jury charge mirroring it, undue weight and consideration. In this "gray area," the trial court should be provided the discretion to resolve such issues. See Gold Kist, Inc. v. Tedder, 580 So. 2d 1321, 1322 (Ala. 1991) ("It is also within the trial court's discretion to decide whether to allow evidence to go to the jury room, where it might be given undue emphasis and inordinate weight."), and National States Ins. Co. v. Jones, 393 So. 2d 1361, 1367 (Ala. 1980) ("[I]t is largely within the sound discretion of the trial judge to decide which of the articles introduced into evidence may be taken into the jury room.").[7]

[7]It does not strike me as unusual that a jury charge might need to quote portions of a documentary exhibit that has been submitted into

For the reasons discussed above, I respectfully dissent. The defendants raise numerous other potential errors on appeal, including issues that would negate the necessity for a new trial, but because they are pretermitted by the main opinion, I see no need to address them.

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evidence. For example, in a breach-of-contract case, the contract itself might be admitted into evidence, and a jury charge might need to quote from the actual contract to properly instruct the jury as to which portion of the contract it must determine was breached.

MITCHELL, Justice (dissenting).

The majority opinion reverses the judgment entered against the City of Haleyville ("the City") and Haleyville police officer Anthony Nix and remands the case for a new trial because, it concludes, the trial court erred by permitting a statute to be offered into evidence and by allowing that statute to travel back with the jurors to the jury room while they deliberated. In my view, however, Officer Nix is entitled to peace-officer immunity under § 6-5-338(a), Ala. Code 1975, and, by extension, the City is immune under § 6-5-338(b), Ala. Code 1975. See Howard v. City of Atmore, 887 So. 2d 201, 211 (Ala. 2003) ("It is well established that, if a municipal peace officer is immune pursuant to § 6-5-338(a), then, pursuant to § 6-5-338(b), the city by which he is employed is also immune."). I would therefore reverse the trial court's judgment, but, instead of remanding the case for a new trial, I would direct the trial court to enter a judgment in favor of Officer Nix and the City on the basis of § 6-5-338.

I recognize that this Court typically reviews immunity defenses asserted by law-enforcement officers under the immunity standard

developed in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000), which generally applies to all State agents sued in their individual capacities.[8] See Hollis v. City of Brighton, 885 So. 2d 135, 143 (Ala. 2004) (explaining that "[w]hether a qualified peace officer is due § 6–5–338(a) immunity is now judged by the restatement of State-agent immunity articulated by [Cranman]"). While Officer Nix and the City argue that they are entitled to immunity under both Cranman and § 6-5-338, the language of § 6-5-338(a) and (b) is unambiguous, and, according to their terms, Officer Nix and the City are clearly entitled to immunity. I therefore consider their immunity argument only as it relates to § 6-5-338, and I express no opinion about whether Officer Nix -- and by extension the City -- would also be entitled to State-agent immunity under the more complicated Cranman analysis, which would require us to consider the applicability of exceptions to immunity not found in the text of § 6-5-338. See also Howard, 887 So.

[8]Although Cranman was a plurality opinion, the restatement of State-agent immunity articulated in Cranman was adopted by a majority of the Court in Ex parte Butts, 775 So. 2d 173 (Ala. 2000), and Ex parte Rizk, 791 So. 2d 911 (Ala. 2000).

2d at 206 (emphasizing that the Cranman standard "is a restatement of the law of immunity, not a statute").

Section 6-5-338(a) provides that a qualified peace officer, which Officer Nix undisputedly is, "shall at all times be deemed to be [an] officer[] of this state, and as such shall have immunity from tort liability arising out of his or her conduct in performance of any discretionary function within the line and scope of his or her law enforcement duties." Officer Nix and the City argue that he was clearly performing discretionary functions within the line and scope of his law-enforcement duties when he elected to treat the call for assistance from the Town of Bear Creek ("Bear Creek") as an emergency and to pass another vehicle in a no-passing zone in order to respond to that call more quickly. I agree.

It is undisputed that, in the period before the accident giving rise to this case, Officer Nix received information indicating (1) that a solitary officer from the nearby Bear Creek Police Department was responding to a fight involving an intoxicated individual who possibly had a weapon and (2) that the Bear Creek officer was not responding to calls on his police

radio. Officer Nix determined, based on that information, to treat the situation as an emergency and -- as permitted by both Alabama law and police-department policy -- to not comply with generally applicable traffic laws as he rushed to Bear Creek to assist the officer there. Both the decision to treat the situation as an emergency and the decision to disregard traffic laws were quintessential exercises of discretion that were delegated to Officer Nix. And because no one disputes that he was acting within the line and scope of his law-enforcement duties when he made those decisions, he is entitled to the protection of § 6-5-338(a).

As explained in a special concurrence in Thetford v. City of Clanton, 605 So. 2d 835, 843 (Ala. 1992) (Almon, J., concurring specially), immunity for peace officers is essential because officers must be able "to make decisions based on the requirements of the circumstances rather than on their potential for personal liability." See also White v. Birchfield, 582 So. 2d 1085, 1087 (Ala. 1991) (explaining that law-enforcement officers cannot be required "to ponder and ruminate over decisions that should be made in a split second"). Subjecting an officer's decisions to a negligence

standard would unduly insert into the officer's decision-making process the concern that he or she might later be subjected to liability for those decisions. This consideration would naturally cause an officer to pause. But, through § 6-5-338(a), the Legislature has deemed it preferable to give immunity to officers -- even when they arguably make the wrong decision -- than to have officers delay when confronting life-threatening circumstances. Our job is to enforce that immunity where it applies. It clearly applies here.

Officer Nix has established that the decisions he made leading up to the accident involving John William Myers were appropriate exercises of his discretion and within the line and scope of his law-enforcement duties. Therefore, I would reverse the trial court's judgment but direct the trial court to enter a judgment in favor of Officer Nix and the City on the basis of § 6-5-338 rather than directing it to conduct a new trial.