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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Bernadine V. Odom

v.

Jimmy Helms et al.

Appeal from Butler Circuit Court  
(CV-16-900030)

PARKER, Chief Justice.

Bernadine V. Odom appeals a summary judgment entered by the Butler Circuit Court in favor of several supervisory officers in the Alabama Law Enforcement Agency, Department of Public Safety, Highway Patrol Division, in a lawsuit based on

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the misconduct of a state trooper. Because Odom has not overcome the officers' State-agent immunity, we affirm.

### I. Facts

On the evening of December 6, 2015, Odom was involved in an automobile accident on I-65 in Butler County. State Trooper Samuel Houston McHenry II responded to the scene. Odom's vehicle was inoperable, so after McHenry investigated the accident, he gave her a ride, ostensibly to a safe location. At 12:12 a.m., he radioed his post dispatcher that he was en route with Odom to an exit about 10 miles from the accident scene. He did not mention his vehicle's mileage as of the time he left the accident scene. Instead of taking Odom directly to the exit, McHenry took her to a wooded area and sexually assaulted her. At 12:21 a.m., he radioed that he was dropping Odom off at the exit, and at 12:25 he radioed that he had completed the drop-off. Within two days, McHenry's employment was terminated based on his misconduct.

McHenry was charged with first-degree rape, and he pleaded guilty to sexual misconduct. Odom then filed this civil lawsuit in the Butler Circuit Court against McHenry; Spencer Collier, the secretary of the Alabama Law Enforcement

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Agency; and Sgt. Jimmy Helms, the post commander of the post to which McHenry was assigned. Odom later added as defendants Cpl. Glenn Furukawa, McHenry's immediate supervisor; Cpl. Jason Burch, another supervisor; Cpl. James Woodard, another supervisor; Sgt. Brian Simerly, the acting post commander at the time of the incident (Helms was on medical leave); Lt. Dale Cobb, the assistant troop commander of McHenry's troop; and Capt. Charles DeVinner, the troop commander (all defendants other than McHenry and Collier are hereinafter referred to collectively as "supervisory defendants"). Odom's suit eventually included claims against the supervisory defendants for failure to properly train and supervise McHenry and for violating various law-enforcement policies and procedures. In support of these claims, Odom relied on a provision in the Highway Patrol Division Procedure Manual ("Highway Patrol Manual"), known as the "relay" procedure, that requires a trooper who transports a motorist to notify the post of the trooper's starting and ending mileage. Odom also relied on various provisions in the Highway Patrol Manual regarding the supervisory defendants' duties relating to McHenry.

The supervisory defendants moved for a summary judgment, arguing that they were protected from liability by State-agent immunity. The trial court granted the motion and, with Odom's claims against McHenry still pending,<sup>1</sup> certified the partial summary judgment as final under Rule 54(b), Ala. R. Civ. P. Odom appeals.

## II. Standard of review

"This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12."

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

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<sup>1</sup>A summary judgment had previously been entered in favor of Collier.

### III. Analysis

In the supervisory defendants' summary-judgment motions, they argued that they were entitled to State-agent immunity because they were engaged in a function that involved exercising judgment -- supervising McHenry. On appeal, Odom contends that the supervisory defendants were not entitled to a summary judgment on the basis of State-agent immunity because she provided evidence that they acted willfully or beyond the scope of their authority.

To be entitled to State-agent immunity, a defendant must first make a prima facie showing that, at the time of the conduct giving rise to the claim, he was an agent of the State. Cf. Ex parte Cranman, 792 So. 2d 392, 405 (Ala. 2000);<sup>2</sup> Ex parte Reynolds, 946 So. 2d 450, 452 (Ala. 2006). It is undisputed that the supervisory defendants met this requirement. Second, the defendant must make a prima facie showing that the claim is based on one or more of certain categories of conduct by the agent, which include "[e]xercising his or her judgment in the administration of a

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<sup>2</sup>Ex parte Cranman was a plurality opinion. A majority adopted the Cranman restatement in Ex parte Butts, 775 So. 2d 173, 177-78 (Ala. 2000).

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department or agency of government, including ... supervising personnel." Cranman, supra; Reynolds, supra. There is no dispute that the supervision of McHenry was the basis of Odom's claims. However, in an attempt to evade the clear import of this subcategory of covered conduct involving "supervising personnel," Odom argues that the supervisory defendants did not come within its scope because they violated "non-discretionary" policies and procedures. Yet that is not properly an argument that the supervisory defendants were not engaged in covered conduct; rather, it is an argument that the supervisory defendants' covered conduct came within an exception to State-agent immunity regarding conduct beyond the agent's authority, an issue we address next.

If the defendant carries his burden of showing agency and covered conduct, then the plaintiff must show either (1) that non-immunity is required by the federal Constitution or laws; the Alabama Constitution; or Alabama laws, rules, or regulations enacted or promulgated to regulate a governmental agency; or (2) that the agent "act[ed] willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." Cranman, supra;

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see Reynolds, supra. Here, Odom contends that the supervisory defendants acted willfully and beyond the scope of their authority. The only specific act or omission to which Odom points is the supervisory defendants' "failure[] to supervise McHenry ... after he violated the [r]elay procedure" that required him to notify the trooper post of his starting mileage when he began to transport Odom from the accident scene.

To meet the willfulness exception, a plaintiff must show more than that the defendant was negligent. See City of Birmingham v. Sutherland, 834 So. 2d 755, 762 (Ala. 2002); Giambrone v. Douglas, 874 So. 2d 1046, 1057 (Ala. 2003). Rather, in this context, "willfully" means that the defendant was consciously aware that his act or omission would likely cause harm to someone. Cf. Ex parte Dixon Mills Volunteer Fire Dep't, Inc., 181 So. 3d 325, 333 (Ala. 2015) ("'"Implicit in ... willful ... misconduct is an acting, with knowledge of danger, or with consciousness, that the doing or not doing of some act will likely result in injury.'" (quoting Phillips ex rel. Phillips v. United Servs. Auto. Ass'n, 988 So. 2d 464, 467 (Ala. 2008), quoting other cases));

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Hooper v. Columbus Reg'l Healthcare Sys., Inc., 956 So. 2d 1135, 1140 (Ala. 2006) ("To constitute "willful or intentional injury," there must be knowledge of danger accompanied with a design or purpose to inflict injury ...." (quoting English v. Jacobs, 263 Ala. 376, 379, 82 So. 2d 542, 545 (1955))). Thus, Odom was required to provide evidence that, when McHenry violated the relay procedure by failing to call in his starting mileage, the supervisory defendants were consciously aware that their omission to contact him immediately or to take other action would likely result in harm to someone. However, Odom presented no evidence that the supervisory defendants were consciously aware of McHenry's relay-procedure violation, let alone that their omission would harm anyone. Sgt. Helms was on medical leave at the time, and there was no evidence that any of the other supervisory defendants was informed that McHenry had failed to follow the relay procedure in time to prevent his assault on Odom. Thus, Odom did not make a prima facie showing of willfulness.

As for the beyond-the-scope-of-authority exception, Odom argues that the supervisory defendants failed to follow Highway Patrol Division policies and procedures when they



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failed to respond immediately to McHenry's violation of the relay procedure. "A State agent acts beyond authority ... when he or she 'fail[s] to discharge duties [in accordance with] detailed rules or regulations, such as those stated on a checklist.'" Giambrone, 874 So. 2d at 1052 (quoting Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000)). Odom relies on the following provisions in the Highway Patrol Manual. As to Cpls. Furukawa, Burch, and Woodard:

"A. General

- "1. Corporals are 'first line' supervisors in the Highway Patrol Division. Corporals are responsible directly to the Post Commander.
- "2. Corporals shall provide leadership and counsel for subordinates and by their own bearing and conduct, they will set an example for these subordinates.

". . . .

"B. Responsibilities

- "1. Corporals must remain alert to any unusual incidents which occur within the Post and keep the Post Commander informed of such incidents. Any action taken by the Corporal relating to such an incident will also be reported to the Post Commander.
- "2. Corporals must remain aware of the morale, general health, and well-being of subordinates.

"3. The Corporal should always issue clear, concise instructions to subordinates. Corporals will strive to promote good public relations, keep an active interest in all activities within the Post, and project a professional law enforcement image.

"4. In addition to supervision of subordinates, Corporals on occasion will provide training for personnel in the Post. Corporals will maintain adequate observation of personnel so a fair evaluation of job performance may be conducted.

". . . .

"6. Corporals will conduct Performance Appraisals, Mid-appraisals, Preliminary Probationary Reports, and Final Probationary Reports on Troopers.

". . . .

"10. Corporals receive and investigate complaints against subordinate personnel and recommend disciplinary action as required by such. Corporals will perform disciplinary counseling actions/sessions such as warning/counseling forms, etc. for inclusion in personnel grade files.

"11. Corporals will function as Acting-Post Commander in the absence of the Post Commander."

As to Sgts. Helms and Simerly:

"A. General

"1. The primary function of the Post Commander is to provide leadership and direction

while maximizing efforts toward the prevention of traffic accidents and protection of life and property.

"2. The Post Commander is the Assistant Troop Commander's advisor on operations, planning, decisions, and the execution of plans.

"3. The Post Commander is directly responsible to the Assistant Troop Commander. He will advise and report to the Assistant Troop Commander on all matters. From his observation, he will continually apprise the Assistant Troop Commander on the status of plans, programs, and operations within the Post. ...

"....

"5. The Post Commander has a broad range of responsibilities .... He is a supervisory officer, correcting any discrepancy of the Corporal, Trooper or other subordinate personnel.

"B. Responsibilities

"1. The Post Commanders are directly responsible to the Assistant Troop Commander. Sergeants must remain alert to any unusual incidents which occur within the Post and keep the Assistant Troop Commander informed of such incidents. ...

"....

"4. The Post Commander is responsible for monitoring the Police Communications Officers (PCO's), ... Corporals, and any other subordinate personnel assigned to the Post -- giving guidance and direction.

"....

"6. The Post Commander completes all performance appraisals on the employees under his immediate supervision and as otherwise directed.

"7. The Post Commander monitors and reviews the Field Training Officer (FTO) Program Coordinator for his assigned post."

As to Lt. Cobb:

"A. General

"1. The primary function of an Assistant Troop Commander is to provide leadership and direction while maximizing efforts toward the prevention of traffic accidents and protection of life and property. It is the responsibility of Assistant Troop Commanders to effectively use all available resources to accomplish any missions which may be assigned.

"....

"4. The Assistant Troop Commander is responsible to the Troop Commander. He will advise and report to the Troop Commander on all matters. From his observation, he will continually apprise the Troop Commander on the status of plans, programs, and operations within the Troop. He performs those tasks and functions assigned to him by the Troop Commander.

"....

"6. The Assistant Troop Commander is a supervisory officer, correcting any

discrepancy of the Sergeant, Corporal, or Trooper through the chain of command unless the situation warrants immediate action. The Assistant Troop Commander will receive assistance from Post Commanders and Trooper Corporals as needed.

". . . .

"9. The Assistant Troop Commander is responsible for maintaining a high standard of discipline among personnel and ensuring the overall morale, efficiency, and operations of the Troop.

". . . .

"B. Responsibilities

"1. Reporting

"a. The Assistant Troop Commander shall keep the Troop Commander informed of any unusual incidents or serious conditions that he becomes aware of. The Assistant Troop Commander must monitor all activities within the Troop including assigned troopers, other law enforcement agencies, and activities of the general public.

"b. The Assistant Troop Commander is responsible for disseminating information from the Troop Commander and keeping Troop personnel informed of changes in policy, rules, regulations, and any other information that may impact their duties and responsibilities. When personnel are made aware of such changes, the Assistant Troop Commander is

responsible for their implementation and compliance.

". . . .

"K. Training

"The Assistant Troop Commander will remain aware of the training requirements and needs for personnel within the Troop and coordinate this with the Division Training Officer. Records will be maintained regarding training and recommendations will be included on each employee's Performance Planning Form."

As to Capt. DeVinner:

"C. Responsibilities

- "1. A Troop Commander alone is responsible for all the Troop does and fails to do. He cannot delegate this responsibility.
- "2. The Troop Commander is responsible for the ... discipline of assigned personnel.
- "3. The Troop Commander should be familiar with Rules of the State Personnel Board, the State Merit System rules and procedure, and department policies and procedures so that he may be able to explain them to his subordinates."

Having reviewed these provisions in light of our precedent regarding State agents' supervision of others, we conclude that these provisions are not the kind of detailed, checklist-like rules that remove a State agent's judgment and bring his conduct within the beyond-the-scope-of-authority

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exception. For example, in Giambrone, a high-school wrestling coach engaged a much smaller student in a "challenge match," rendering the student a quadriplegic. The student's mother sued the coach, the athletic director, and the principal. As to the athletic director and the principal, the mother relied on guidelines that required that coaches be "'carefully selected'" and "'well-trained'" and that they "'show a mastery of the principles that [they are] going to teach'" and "'have a genuine and up-to-date knowledge of that which [they] propose[] to teach.'" 974 So. 2d at 1056. The guidelines also provided that principals "'shall be ultimately responsible in all matters'" relating to sports. We held that these guidelines "were not sufficiently detailed to impose specific duties"; they were "not the type of detailed rules and regulations that could remove the exercise of [the athletic director's and principal's] judgment." Id. at 1056.

Similarly, in Ex parte Spivey, 846 So. 2d 322 (Ala. 2002), a student's hand was severely injured while he was operating woodworking equipment. The student's parents sued the woodworking teacher and the school director. As to the teacher, the parents relied on his job description, which

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required him "to teach students vocational skills, to 'insure safety' by instructing students in safety practices and to '[r]eport hazards which you cannot correct to the vocational director.'" Id. at 332-33. As to the director, the parents relied on a job-description requirement that he "'[i]mplement safety instruction and practices as an integral part of all vocational programs.'" Id. at 327. As to both defendants, the parents relied on a statement in the faculty handbook that "'[s]afety should complement the instructional program.'" Id. at 333. This Court held that none of these provisions were the type of detailed rules that would remove a State agent's judgment.

Likewise, in Gowens v. Tys. S. ex rel. Davis, 948 So. 2d 513 (Ala. 2006), a child was unable to escape from a house fire because her maternal grandmother had gone to work and locked her in the house. The child suffered third-degree burns and amputation of her fingers. The child's paternal grandmother sued a Department of Human Resources investigator and his supervisor, alleging that the supervisor failed to properly act on the investigator's reports of suspected child neglect. The paternal grandmother relied on portions of a



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manual that required the supervisor "to 'assess,' 'determine,' 'examine,' 'concur,' and 'devise' and 'develop' plans." We held that, "[b]y definition, as well as in operation, the[se] are not 'checklist' activities." Id. at 532.

The Court of Civil Appeals has held similarly. In Bayles v. Marriott, 816 So. 2d 38 (Ala. Civ. App. 2001), a teacher was injured in a "sinking chair" prank by other teachers, and she sued the principal, among others. A school policy provided:

"[T]he principal shall be immediately responsible for the condition of the school plant and shall provide direct supervision to the custodial maintenance personnel assigned to his [her] building. The principal will ... [i]nspect the school plant periodically for conditions that might endanger the health and safety of students and or employees. Fire, accident and health hazards should be remedied or reported immediately.... [Principals should] [i]nitiate through the Maintenance supervisor, when necessary, prompt correction of safety related deficiencies in the school plant or grounds.'"

Id. at 40-41. The Court of Civil Appeals held that this "broadly phrased" policy, "drafted in general terms," was not a "detailed safety rule or checklist." Id. at 41, 42.

Like the requirements and guidelines in those cases, the rules relied on by Odom are not the kind of detailed,

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checklist-like rules that define the scope of a State agent's authority. The Highway Patrol Manual leaves to the various ranks of supervising officers wide discretion in carrying out the Manual's general mandates to supervise, train, resolve problems, report incidents, and generally provide leadership for those under their command. These broadly worded generalities are simply not sufficient to remove the discretion that is the hallmark of State-agent immunity. To invoke the beyond-the-scope-of-authority exception, a rule "must be so specific that it removes the [S]tate agent's discretion and puts him on notice that certain, specific acts are unacceptable." King v. Archer (No. 2:17-CV-174-KOB, Sept. 6, 2018) (N.D. Ala. 2018) (not reported in F. Supp. 3d).

In support of her argument, Odom relies on a case involving similar allegations of a trooper's sexual misconduct, Ex parte Bitel, 45 So. 3d 1252 (Ala. 2010), in which this Court declined to hold that Department of Public Safety supervisors were entitled to State-agent immunity. In that case, however, we reviewed the immunity issue following the denial of the supervisors' motion to dismiss. Id. at 1254. And in the realm of State-agent immunity, this

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procedural distinction makes all the difference. We explained in Bitel: "[B]ecause [at the motion-to-dismiss stage] this Court is required to view the allegations in the complaint most strongly in [the plaintiff's] favor, we cannot rule out at this stage whether the supervisors may have acted beyond their authority in failing to discharge duties pursuant to detailed rules or regulations." Id. at 1258 (emphasis added). Indeed, this Court has recognized

"that a motion to dismiss is typically not the appropriate vehicle by which to assert ... State-agent immunity and that normally the determination as to the existence of such a defense should be reserved until the summary-judgment stage, following appropriate discovery. "[I]t is the rare case involving the defense of [State-agent] immunity that would be properly disposed of by a dismissal pursuant to Rule 12(b)(6), [Ala. R. Civ. P.]""

Ex parte Alabama Dep't of Mental Health & Retardation, 837 So. 2d 808, 813-14 (Ala. 2002) (quoting Butts, 775 So. 2d at 177, quoting in turn Patton v. Black, 646 So. 2d 8, 10 (Ala. 1994)).<sup>3</sup>

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<sup>3</sup>Procedurally, this rarity is unsurprising given the interaction between the factual "lens" applied at the motion-to-dismiss stage and the Cranman/Reynolds burden-shifting structure explained above. Under that structure, only after a State-agent defendant has shown agency and covered conduct is the plaintiff required to show a Cranman exception. Thus, in pleading a claim against a State agent, a plaintiff's initial burden is merely to state a cause of action against

In contrast, here the supervisory defendants moved for a

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the defendant. The plaintiff need not anticipate a State-agent-immunity defense by pleading with particularity a Cranman exception. Therefore, unless the inapplicability of all the Cranman exceptions is clear from the face of the complaint, a motion to dismiss based on State-agent immunity must be denied. See Butts, 775 So. 2d at 178 ("At first blush, it appears that some claims ... are due to be dismissed, pursuant to the Cranman test. However, if any [defendant] failed to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist, or acted willfully, maliciously, fraudulently, in bad faith, beyond his authority, or under a mistaken interpretation of the law, then it is possible that that [defendant] would not be entitled to State-agent immunity. ... [At the motion-to-dismiss stage], '[i]t is not for this court to determine, based on the complaint, whether the plaintiff will ultimately prevail, but only if he may possibly prevail.' [Patton,] 646 So. 2d at 10. It is conceivable that the [plaintiffs] could prove facts that would show that one or more of the [defendants] failed to discharge duties pursuant to a checklist or acted willfully, maliciously, fraudulently, in bad faith, beyond his authority, or under a mistaken interpretation of the law. If so, the [plaintiffs] 'may possibly prevail' on their claims. Therefore, the trial court properly denied the [defendants'] motion to dismiss ...."). Compare Department of Mental Health, 837 So. 2d at 813-14 (based on Butts rationale, denying mandamus relief regarding trial court's denial of motion to dismiss based on State-agent immunity), Ex parte Dangerfield, 49 So. 3d 675, 682-83 (Ala. 2010) (same), and Johnson v. Reddoch, 198 So. 3d 497, 506-08 (Ala. 2015) (plurality) (same), with Ex parte Gilland, 274 So. 3d 976, 983-86 (Ala. 2018) (granting mandamus relief regarding trial court's denial of motion to dismiss based on State-agent immunity because inapplicability of Cranman exceptions was clear from face of complaint), and Ex parte Wilcox Cty. Bd. of Educ., 279 So. 3d 1135, 1145-46 & n.3 (Ala. 2018) (same). But see Ex parte Wilcox Cty. Bd. of Educ., 285 So. 3d 765, 778-79 (Ala. 2019) (granting mandamus relief regarding trial court's denial of motion to dismiss based on State-agent immunity because complaint failed to allege a Cranman exception).

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summary judgment, and they showed agency and covered conduct. In this posture, the burden was on Odom to provide evidence that the supervisory defendants' conduct came within a Cranman exception. This burden is inherently heavier than the burden required to survive a motion to dismiss and, as we have explained above, was not carried. Therefore, Odom has not demonstrated that the trial court erred in entering a summary judgment for the supervisory defendants on the basis of State-agent immunity.<sup>4</sup>

#### IV. Conclusion

Odom fails to demonstrate that the supervisory defendants were not entitled to State-agent immunity. Accordingly, we affirm the summary judgment in their favor.

AFFIRMED.

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

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<sup>4</sup>Although Odom also argues that the summary judgment was not supported by the doctrine of the law of the case (based on the earlier partial summary judgment in favor of Collier) and that the supervisory defendants owed Odom a duty based on the "special relationship" doctrine, we need not address those issues. Because the summary judgment was supported by State-agent immunity, whether it was also supported by law of the case is unnecessary to decide, and the issue of duty was unnecessary for the trial court to reach.