

Circuit Court for Baltimore City  
Case No. 24-C-16-002086

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1412

September Term, 2017

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ANTOINE LEWIS, et al.

v.

BRANDON JENNINGS, et al.

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Berger,  
Friedman,  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Harrell, J.

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Filed: December 3, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

## **PROCEDURAL BACKGROUND**

This tragic case (of Shakespearian dimension) springs from the murder of Kendra Diggs (“Diggs”) by James Smith, Sr. (“Smith”), her fiancée. Diggs’ estate, the couples’ minor son (J.S.), and Diggs’ adult son (Brandon Jennings) brought a civil suit in the Circuit Court for Baltimore City against, among others, two Baltimore City police officers, seeking, in relevant part, to hold them liable as negligent for their roles leading to the murder committed by Smith, who subsequently killed himself while in prison.

A jury returned a \$425,000 verdict against each officer in favor of Jennings and J.S., for a total of \$850,000. The jury determined that the officers were negligent in failing to prevent Diggs’ death because a special relationship to protect her arose between the officers and Diggs before Smith shot her.

The defendant officers filed a motion for judgment notwithstanding the verdict based on (1) insufficient evidence of negligence, (2) statutory immunity, and (3) common law public official immunity. The officers filed additionally a motion for remittur based on application of the Local Government Tort Claims Act. The trial court denied the motions without a hearing. The officers appealed timely.

## **FACTUAL BACKGROUND**

Uniformed Baltimore City police officers, Antoine Lewis (“Lewis”) and Andrew Groman (“Groman”) (collectively “Officers”)<sup>1</sup> responded to a 9-1-1 call, characterized as

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<sup>1</sup> Lewis was the Officer-in-Charge. Groman graduated from the police academy only the previous month.

involving common assault, placed by Diggs, on 7 May 2013. Diggs, her fiancé Smith, and J.S. were in their residence at the time.

When the Officers arrived at the home, the front door was locked. The Officers heard yelling between a man and a woman emanating from inside, but were unable to comprehend clearly what was being said. After identifying verbally themselves as police officers and knocking futilely on the door, the Officers decided to kick in the door. Groman kicked it in successfully.

Diggs rushed to the open doorway. She had visible injuries to her face, including a “fat lip.” While standing in the doorway, she informed Groman that Smith was also a “cop” and had a gun.<sup>2</sup> Diggs was unsure where Smith’s gun was located in the house, but informed Groman that he may be carrying the gun. Groman shared this information with Lewis.

Groman, attempting to calm down Diggs and gather more information about the situation, walked with her from the front porch (which was covered by an awning) down the sidewalk in front of the house. They stopped at a point in the open about twenty-four feet from the house, and stood talking, approximately an arms-length apart.<sup>3</sup> At this point, a neighbor from across the street, Shanae Anthony (“Anthony”), noticed the commotion at

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<sup>2</sup> Groman did not observe Smith at any point during his time on the scene until after Diggs was killed.

<sup>3</sup> It is not apparent, on this record, that Groman directed verbally Diggs to follow him from the porch. It is unknown as well why Groman and Diggs stopped where they did on the sidewalk. Groman testified: “I was following Ms. Diggs and I believe she just stopped walking and we just started talking there. . . . [W]e just started talking where she had stopped walking. I didn’t tell her to stop there or anything like that.”

the Diggs-Smith residence and stepped outside of her home. Anthony stood across the street from where Diggs and Groman had stopped.<sup>4</sup> Diggs asked Anthony to call Brandon Jennings, an adult son. Anthony did not have the phone number, so Diggs began to provide it. As Diggs was uttering the last four digits, a shot rang out from an as-then unknown shooter from an unknown location. Anthony ran towards her house, seeking cover. As Anthony was running, she claimed to hear a second shot. Anthony did not leave her home again until after Smith was arrested.

For his part, Lewis remained at the front door after Groman and Diggs left the house. He saw Smith run upstairs, but chose not to follow him, as he was trained not to do in similar situations.<sup>5</sup> Rather, Lewis stood “[k]ind of inside the house by the doorway” and attempted to persuade Smith to return downstairs, even though he did not know where exactly Smith was upstairs.

At some point after Groman and Diggs left the porch for the sidewalk,<sup>6</sup> while Lewis continued to attempt to coax Smith from the upstairs, a gunshot rang out. Groman, unaware

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<sup>4</sup> Anthony testified, consistent with the Officers’ recollections, that Diggs was crying hysterically and had visible injuries to her face and head. She testified additionally that, while Groman was on the street talking with Diggs, she believed Lewis was at the front door of the Diggs-Smith home with his gun drawn.

<sup>5</sup> A Baltimore City police officer is trained not to follow armed suspects into areas that the officer is not familiar with because it creates a dangerous situation in which the officer is vulnerable to attack in a so-called “fatal funnel.”

<sup>6</sup> There was conflicting testimony regarding the duration of time that elapsed between when Groman and Diggs reached their terminus on the sidewalk to the time of the first gunshot. Groman testified that “[i]t couldn’t have been more than a minute or so” and Anthony testified “it was about a good five minutes. . . .”

whether Smith might possibly be creating a barricade situation,<sup>7</sup> could not identify the source of the gunshot. Immediately after the shot was fired, Groman observed Diggs' head twist to his right and her body drop backwards. He took cover against the stoop of an adjacent house, which he thought to be a position of some safety. Lewis left the house and instructed Groman to form a perimeter. As this was occurring, Groman heard more gunshots from the still undetermined shooter firing from an unknown location.

Additional police officers responded and set up a perimeter around the area adjacent to the Diggs-Smith house. Negotiations with Smith continued. He surrendered ultimately to the police.

As it turns out, the shots were aimed at Diggs, fired by Smith from an upstairs window of their home. Diggs died as a result of a gunshot wound to the head. Smith, while awaiting his criminal trial, took his own life by hanging himself in his jail cell.

### QUESTIONS PRESENTED

Appellant Officers present the following questions for our consideration:

- I. Did the trial court err when it denied the Officers' motion for judgment notwithstanding the verdict?
  - a. Was the evidence insufficient to establish that the Officers were negligent?
  - b. Assuming, *arguendo*, that the Officers acted negligently, are the Officers nonetheless immune from suit?
- II. Did the trial court fail to properly apply the damages cap under the Local Government Tort Claims Act, and, thus, err in denying the Officers' motion for remittur?

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<sup>7</sup> Baltimore City police officers are trained also to respond to barricade situations by retreating and establishing a perimeter around the area. Groman, as noted above, was not aware that Smith had gone upstairs.

We shall hold that the evidence was insufficient to establish that the Officers created a special relationship with Diggs before she was shot. Thus, the trial court erred when it denied the Officers’ motion for judgment notwithstanding the verdict. Because of this holding, Questions I (b) and II, regarding immunity and the damages cap under the Local Government Tort Claims Act, are moot and we need not answer them.

### STANDARD OF REVIEW

Denial of a motion for judgment notwithstanding the verdict is reviewed under the same standard as denial of a motion for judgment. *Prince George's Cty. v. Morales*, 230 Md. App. 699, 712, 149 A.3d 741, 748 (2016). We review a denial of a motion for judgment without deference to the action of the trial court, considering the evidence and reasonable inferences drawn from the evidence in the light most favorable to the non-moving party. *Torbit v. Balt. City Police Dep't*, 231 Md. App. 573, 587, 153 A.3d 847, 855 (2017). We “may reverse the denial of . . . a JNOV only if the evidence . . . does not rise above speculation, hypothesis, and conjecture.” *Morales*, 230 Md. App. at 712, 149 A.3d at 748 (internal quotations omitted).

#### I.

As a foundational matter, to succeed on a claim of negligence, a plaintiff must adduce evidence of the following: (1) the defendant was under a duty to protect the plaintiff from injury; (2) the defendant breached that duty; (3) the plaintiff suffered actual injury or

loss; and (4) the loss or injury proximately resulted from the defendant's breach of that duty. *Warr v. JMGM Grp., LLC*, 433 Md. 170, 181, 70 A.3d 347, 353 (2013).

The Officers contend that the evidence presented at trial was insufficient to establish their culpable negligence. Specifically, the Officers argue that there was insufficient evidence presented at trial to prove: (1) they owed Diggs a duty; (2) there was a breach of duty; and (3) their acts or omissions caused proximately Diggs' death.

In tort law, a duty is “an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another.” *Pendleton v. State*, 398 Md. 447, 461, 921 A.2d 196, 204 (2007). Such a duty exists when “one party is entitled to the protection of, or is under an obligation to, the other party.” *Id.*, A.2d 205. Establishing a legal duty is requisite to a negligence claim because negligence cannot exist when no duty is owed. *Jones v. State*, 425 Md. 1, 19, 38 A.3d 333, 343 (2012).

With respect to the conduct of defendant police officers in a suit claiming they acted negligently in carrying out law enforcement responsibilities, Maryland courts apply what is known as the public duty doctrine. The public duty doctrine states that, absent a special relationship, “liability for failure to protect an individual citizen against injury caused by another citizen does not lie against police officers.” *Ashburn v. Anne Arundel Cty.*, 306 Md. 617, 628, 510 A.2d 1078, 1083 (1986). On this topic, the Court of Appeals notes:

Generally, under the public duty doctrine, when a statute or common law imposes upon a public entity a duty to the public at large, and not a duty to a particular class of individuals, the duty is not one enforceable in tort. As we explained in *Ashburn*, the duty owed by the police by virtue of their positions as officers is a duty to protect the public. Pursuant to the doctrine, therefore, police officers ordinarily may not be held liable for failure to protect specific

persons because they owe no duty, as the first element of a negligence action requires, to those individuals.

*Muthukumarana v. Montgomery Cty.*, 370 Md. 447, 486, 805 A.2d 372, 395 (2002) (internal citations and quotations omitted). In essence, the public duty doctrine is a high hurdle to overcome in establishing the first element of a negligence claim against a defendant police officer.

To overcome the public duty doctrine, a plaintiff must prove a special relationship existed between him/her and the law enforcement officer. A special relationship may be established by showing that “the [law enforcement] officer affirmatively acted to protect the specific victim . . . thereby inducing the victim’s specific reliance upon the [law enforcement] protection.” *Cooper v. Rodriguez*, 443 Md. 680, 717, 118 A.3d 829, 851 (2015); accord *Howard v. Crumlin*, No. 1025, (Md. Ct. Spec. App. filed Nov. 28, 2018).<sup>8</sup>

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<sup>8</sup> In the present case, the jury was instructed, based on *Cooper*, that:

A special relationship is generally found to exist in cases in which an individual is exposed to a special danger and the authorities have undertaken the responsibility to provide adequate protection for her.

The individual claiming a relationship, a special relationship, must demonstrate that the police were aware of the individual’s particular situation or unique status, had knowledge of the potential for the particular harm which the individual suffered, and voluntarily assumed in light of that knowledge to protect the individual from the precise harm which was occasioned.

Any person who alleges to have been a victim of abuse and believes there is a danger of serious and immediate personal harm may request the help of a local law enforcement unit. A local law enforcement officer who responds to the request for help shall protect the person from harm when responding to the request. A law enforcement officer who responds to a request described in the above section has immunity from liability as described in the below section.



We are aware of only one reported case where it has been found that a police officer *may* have adduced sufficient evidence to generate a triable claim of a special relationship with a victim. In *Williams v. Mayor & Balt.*, 359 Md. 101, 753 A.2d 41 (2000), the Court of Appeals analyzed whether a triable question of whether a special relationship existed between a police officer and a domestic violence victim. In that case, a police officer responded to a call of domestic abuse and encountered a visibly-injured victim and her mother. *Id.* at 109, A.2d 45. While the officer was taking statements, the alleged abuser telephoned twice threats to return to the home. *Id.* The officer, according to the victim’s mother, told the victim to remain in the house and went outside to his car. *Id.* at 110, A.2d 46. As the officer was in his car, the victim’s mother approached the car and asked if she could pick up her grand-son, to which the officer acceded. *Id.* At some point after the victim’s mother returned with her grand-son, the officer departed the scene without informing the victim or her mother. *Id.* The abuser returned subsequent to the officer’s departure and shot both the victim and her mother. *Id.* The victim died. Her mother survived.

The Court of Appeals concluded, based on the evidence advanced by the plaintiffs, that the officer’s interactions with the victim and her mother “*may* have created a special relationship further creating a duty to either remain or to inform [the victim and her mother]

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A law enforcement officer who responds to a request for assistance by an individual who alleges to have been a victim of spousal assault shall be immune from civil liability and complaint with the request that the law enforcement officer acts in good faith and in a reasonable manner.

that he was leaving.”<sup>9</sup> *Id.* at 150-51, A.2d 68 (emphasis added). Because there was a genuine dispute of material fact, it was error for the circuit to have granted summary judgment. *Id.*

On the other hand, other reported Maryland case law contains apt examples of instances where a plaintiff did not establish a special relationship with a police officer or emergency worker. *See Ashburn v. Anne Arundel Cty.*, 306 Md. 617, 635, 510 A.2d 1078, 1087 (1986) (holding that no special relationship existed between a car-accident victim and a police officer who, after detecting the tortfeasor’s inebriated state, failed to detain him and prevent him from driving); *see also McNack v. State*, 398 Md. 378, 400, 920 A.2d 1097, 1109 (2007) (concluding that no special relationship existed between victims and police despite repeated 9-1-1 calls, police promising to put the victims on a “Special Attention List,” and police increasing patrols by the victims’ house); *see also Holson v. State*, 99 Md. App. 411, 428, 637 A.2d 871, 872 (1994) (stating that a police officer has no special relationship that creates any duty requiring the officer to protect the person from the consequences of his or her own acts); *Muthukumarana v. Montgomery Cty.*, 370 Md. 447, 494, 805 A.2d 372, 400 (2002) (analyzing the special relationship doctrine in foreign jurisdictions and holding that the plaintiff did not establish a special relationship with a 9-1-1 operator because neither prong of the special-relationship test was satisfied).

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<sup>9</sup> The Court did not find definitively that the evidence established a special relationship between the officer and victim. Rather, the Court found that the officer’s account was different substantially than the surviving mother’s allegations, so the case was remanded for further proceedings, i.e., a trial. *Williams*, 359 Md. at 150-51, 753 A.2d at 68.

## II.

Based on the evidence, and reasonable inferences drawn from the evidence considered in a light favorable to the non-moving party (appellees here), we are persuaded that the record does not rise above speculation or conjecture whether the Officers took affirmative acts such as to create a special relationship with Diggs. As discussed earlier, Maryland adheres to the public duty doctrine. Police officers generally, including the Officers here, owe a duty to the public-at-large, as opposed to a specific person or class of persons. The public duty doctrine, however, may be overcome by showing both an affirmative action from the police officer to protect a specific victim and the victim's specific reliance upon the officer's affirmative action. The Officers' actions, based on the record, did not constitute, as a matter of law, an affirmative action to protect Diggs, thus precluding an inferred reliance by Diggs on the Officers' actions.

It cannot be that a special relationship arose when the Officers responded to the call for common assault placed by Diggs; otherwise, a special relationship would be created every time a police officer responds to a call, rendering nugatory virtually the public duty doctrine. We are left with only two other potential bases on this record: (1) when Groman kicked the door in and (2) what occurred in the time period between when Diggs stepped outside and interacted with Groman until when the fatal shot was fired.

Neither of these predicates are based on evidence which rises "above speculation, hypothesis, and conjecture." *Morales*, 230 Md. App. at 712, 149 A.3d at 748 (internal quotations omitted). There is no evidence regarding whether Diggs left the "cover" (awning) of the front porch at the behest of Groman. Groman was not asked definitively

whether he acted affirmatively to lead Diggs from the porch (an arguably safer location) to where she was shot.

Groman was asked, on cross-examination, if he “decided to walk Ms. Diggs down the [porch] stairs[,]” to which he replied: “[y]es, I believed it would be best to move her away from the doorway.” Questioning then switched topics to where physically Groman and Diggs were standing in relation to the porch. Although Lewis indicated that he instructed Groman to “separate” Diggs and “take her down the steps to investigate further[,]” there is no indication that Diggs heard this instruction, let alone relied on it as promise to keep her safe. No inquiry was made whether Groman communicated to Diggs affirmatively that he was leading her off the porch to a place of safety. These voids render evidence supporting the first prong necessary to create a special relationship, an affirmative action to protect a specific victim, to mere speculation.

Groman testified additionally regarding the moment he and Diggs stopped walking. He stated: “I was following Ms. Diggs and I believe she just stopped walking and we just started talking there.” Regarding the location where they stopped, Groman testified: “I didn’t like put – purposely place her there. We just stopped walking and started talking.” There is no evidence that Groman expressed, in any capacity, that Diggs should stop and stand in a certain location. Rather, such evidence as existed suggested only a reasonable inference that Diggs was in the lead and did not rely on Groman for locational guidance for her protection after the door was breached.

Such evidence as existed (and possible reasonable inferences to be drawn therefrom) that the Officers took affirmative acts (which a reasonable factfinder could recognize) to

create a special relationship, in our judgment, does not rise above speculation, hypothesis, and conjecture, as discussed in *Morales*. Due to the unfortunate circumstances of this case, the Officers and Anthony were the only witnesses that were able to testify about the interaction between the Officers and Diggs. This testimony, whether directly or by inference, was not sufficient to generate a triable question of the existence of a special relationship between the Officers and Diggs. As such, the Officers were shielded by the public duty doctrine and the circuit court's denial of the Officers' motion for judgment notwithstanding the verdict was error.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY REVERSED.  
COSTS TO BE PAID BY APPELLEES.**