Circuit Court for Prince George's County
Case No. CAL 16-04149

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2589

September Term, 2017

VANESSA W. VIVERETTE, et al.

v.

PRINCE GEORGE'S COUNTY, MARYLAND, et al.

Meredith,*
Wright,
Graeff,

JJ.

Opinion by Meredith, J.

Filed: March 8, 2021

*Meredith, Timothy E., J., now retired, participated in the hearing of this case while an active member of this Court, and after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

*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.

After being pulled over for driving after dark without his vehicle's lights on, Larry Donnell Hinson fled the scene of the traffic stop at a high rate of speed, and he was being pursued by three Prince George's County Police officers when his vehicle crashed into a vehicle being operated by Charles L. Viverette, who sustained fatal injuries. Mr. Viverette's widow, Vanessa White Viverette, appellant, as surviving spouse and personal representative of her deceased husband's estate, brought a survival action and wrongful death action (to the use of herself and Mr. Viverette's adult children) against Prince George's County and Corporal Keith Martinez, appellees, and others who are no longer parties to this case.

A jury found that Corporal Martinez "was negligent in instituting a police pursuit" of Larry Hinson, and that the negligence was a proximate cause of the injuries sustained by Mr. Viverette. The jury awarded compensatory damages of $26,668 to the estate, and $450,560 on the wrongful death claim.

After judgment was entered, Corporal Martinez filed a motion for judgment notwithstanding the verdict, pursuant to Maryland Rule 2-532, in which he argued that § 19-103 of Maryland Code (1977, Repl. Vol. 2012), Transportation Article ("TA")—which addresses immunity for operators of emergency vehicles—"mandates that the judgment entered against Cpl. Keith Martinez be vacated and judgment entered in his favor." At the conclusion of a hearing on the motion, the Circuit Court for Prince George's County granted Corporal Martinez's motion, finding: (1) that he was entitled to common law public official immunity (even though that issue was not raised in the

motion); and (2) that he was entitled to immunity pursuant to TA § 19-103 as the operator of an emergency vehicle. [1]

[1] TA § 19-103 provides the following statutory immunity to an "operator of an emergency vehicle" for negligence committed "while operating the emergency vehicle":

> (a) *Definitions.* -- (1) In this section the following words have the meanings indicated.
>
> (2) "Emergency service" means:
>
> (i) Responding to an emergency call;
>
> (ii) Pursuing a violator or a suspected violator of the law; or
>
> (iii) Responding to, but not while returning from, a fire alarm.
>
> (3) "Emergency vehicle" has the same meaning as in § 11-118 of this article.
>
> (b) *Liability of operator.* -- An operator of an emergency vehicle, who is authorized to operate the emergency vehicle by its owner or lessee while operating the emergency vehicle in the performance of emergency service as defined in subsection (a) of this section shall have the immunity from liability described under § 5-639(b) of the Courts and Judicial Proceedings Article.
>
> (c) *Liability of owner or lessee.* -- (1) An owner or lessee of an emergency vehicle, including a political subdivision, is liable to the extent provided in § 5-639(c) of the Courts and Judicial Proceedings Article for any damages caused by a negligent act or omission of an authorized operator while operating the emergency vehicle in the performance of emergency service as defined in subsection (a) of this section.
>
> (2) An owner or lessee of an emergency vehicle, including a political subdivision, shall have the immunity from liability described under § 5-639(c) of the Courts and Judicial Proceedings Article.
>
> (d) *Liability for self-insured jurisdiction.* -- A self-insured jurisdiction shall have the immunity from liability under this section as described under § 5-639(d) of the Courts and Judicial Proceedings Article.

The cross-referenced statute—Maryland Code, Courts and Judicial Proceedings Article ("CJP"), § 5-639—provides:

continued…

continued…

(a) *Definitions.* -- (1) In this section the following words have the meanings indicated.

(2) "Emergency service" has the meaning stated in § 19-103 of the Transportation Article.

(3) "Emergency vehicle" has the meaning stated in § 11-118 of the Transportation Article.

(b) *Liability of operator*. -- (1) An operator of an emergency vehicle, who is authorized to operate the emergency vehicle by its owner or lessee, is immune from suit in the operator's individual capacity for damages resulting from a negligent act or omission while operating the emergency vehicle in the performance of emergency service.

(2) This subsection does not provide immunity from suit to an operator for a malicious act or omission or for gross negligence of the operator.

(c) *Liability of owner or lessee.* -- (1) An owner or lessee of an emergency vehicle, including a political subdivision, is liable to the extent provided in subsection (d) of this section for any damages caused by a negligent act or omission of an authorized operator while operating the emergency vehicle in the performance of emergency service.

(2) This subsection does not subject an owner or lessee to liability for the operator's malicious act or omission or for the operator's gross negligence.

(3) A political subdivision may not raise the defense of governmental immunity in an action against it under this section.

(d) *Limitation on liability.* -- Liability under this section for self-insured jurisdictions is limited to the amount of the minimum benefits that a vehicle liability insurance policy must provide under § 17-103 of the Transportation Article, except that an owner or lessee may be liable in an amount up to the maximum limit of any basic vehicle liability insurance policy it has in effect exclusive of excess liability coverage.

(e) *Effect of judgment*. -- A judgment under this section against the owner or lessee of an emergency vehicle constitutes a complete bar to any action or judgment deriving from the same occurrence against the operator of the emergency vehicle.

This appeal followed.

QUESTIONS PRESENTED

Ms. Viverette presents the following questions for our review:

1. Did the Circuit Court err in granting Martinez's Motion for Judgment Notwithstanding the Verdict on the basis of public official immunity when such issues had been waived?

2. Can and did Martinez waive the right to assert the public official immunity defense in a Motion for Judgment Notwithstanding the Verdict?

3. Did the Circuit Court err in granting Martinez's Motion for Judgment Notwithstanding the Verdict on the basis of statutory immunity as enumerated in TA § 19-103 when he so clearly was not entitled to the immunity, and when the jury had correctly rejected the idea that he was an "operator" of an emergency vehicle at the time of his negligent conduct?

Because neither the motion for judgment at the close of evidence nor the motion for judgment notwithstanding the verdict asserted that common law public official immunity was applicable, the trial court erred in relying upon that concept as a reason for granting the motion for judgment notwithstanding the verdict. With respect to the protection offered by TA § 19-103 to an "operator of an emergency vehicle . . . while operating the emergency vehicle," we conclude that the trial court erred in substituting its view of the evidence for the jury's verdict relative to whether Corporal Martinez was "operating" his vehicle at the time that he instituted the high speed chase of Larry Hinson's vehicle. We shall therefore reverse the judgment of the circuit court and remand the case for reinstatement of the judgment entered on the jury's verdict.

STANDARD OF REVIEW

The Court of Appeals described the standard of review of the grant of a judgment notwithstanding the verdict as follows in *Sage Title Group, LLC v. Roman*, 455 Md. 188, 201 (2017):

> Upon review of a trial court's grant or denial of a motion for JNOV, made pursuant to Maryland Rule 2-532, we review whether the trial court's decision was legally correct. *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 349, 71 A.3d 30, 58 (2013). We must "resolve all conflicts in the evidence in favor of the [non-moving party] and must assume the truth of all evidence as may naturally and legitimately be deduced therefrom which tend to support the plaintiff's right to recover." *Id.* (quoting *Smith v. Bernfeld*, 226 Md. 400, 406, 174 A.2d 53, 55 (1961)). "If the non-moving party offers competent evidence that rises above speculation, hypothesis, and conjecture, the judgment notwithstanding the verdict should be denied." *Cooper v. Rodriguez*, 443 Md. 680, 707, 118 A.3d 829 (2015) (quoting *Barnes v. Greater Balt. Med. Ctr., Inc.*, 210 Md. App. 457, 480, 63 A.3d 620, 633–34 (2013)).

FACTS AND PROCEDURAL HISTORY

Considered in a light most favorable to the appellant (the non-moving party with respect to the motion for JNOV), we glean the following facts from the record.

On March 19, 2015, at approximately 8:40 p.m., Corporal Martinez conducted a traffic stop of a KIA Sorrento SUV for driving without headlights on Branch Avenue near the Iverson Mall in Prince George's County. After the KIA Sorrento and Corporal Martinez had pulled to the side of the road, Corporal Martinez observed that the driver of the SUV—who was eventually identified as Larry Hinson—had not put the vehicle's transmission "in park." Corporal Martinez requested a backup officer. Corporal Shawn Brome arrived promptly, and parked his police car in front of the SUV. Corporal

Martinez approached the driver's window and told the driver to put the vehicle in park, while Corporal Brome approached the passenger side of the vehicle. Hinson never did put the vehicle in park. Corporal Martinez told him he had been driving without lights, and requested his license and registration.

At that point, Larry Hinson drove away from the traffic stop and accelerated at a high rate of speed. As Hinson's SUV entered the travel lanes of Branch Avenue, the SUV made contact with Corporal Martinez, spinning him into the lane of travel. As this was happening, Corporal Stephen Downey arrived at the scene of the traffic stop and saw Hinson drive away. Corporal Downey saw that the SUV had made contact with Corporal Martinez, and Corporal Downey slowed to check whether Corporal Martinez had been injured. But Corporal Martinez gave a thumbs-up gesture to Corporal Downey, and yelled "go, go, go, go!" Corporal Downey took that as a go-sign to chase Hinson's vehicle, and he sped off in pursuit, followed by Corporal Brome. Corporal Martinez reentered his own patrol car and also pursued Hinson. Within a minute, Larry Hinson lost control of the SUV, went airborne, and crashed into Mr. Viverette's car, causing fatal injuries to Mr. Viverette.

Ms. Viverette brought a wrongful death action and a survival action in the Circuit Court for Prince George's County against Prince George's County, Corporal Martinez, and others.

At trial, Ms. Viverette offered evidence that the high speed chase of Larry Hinson was prohibited by general orders of the Prince George's County Police department. On

direct examination, Corporal Downey read the following portions of the Prince George's County Police Manual's Policies Regarding Pursuits, from Sections 1 and 11:

> "When officers operate vehicles in pursuit, the primary concern shall be the preservation of life. Officers must not disregard safety with a single-minded goal of apprehension. Officers must maintain a balance between the need to apprehend the violator and the risk of potential dangers [to] themselves and citizens. **The identification and the apprehension of the violator are secondary concerns during a vehicle pursuit.**"
>
> "Officers are granted special privileges under State law while operating emergency vehicles with their emergency equipment activated. They are not relieved of the responsibility of driving with due regard for the safety of all persons and are not protected from the consequences of failing to exercise reasonable care under these circumstances."
>
> "The driver of an emergency vehicle with emergency lights and siren activated may proceed through a red or stop signal, a stop sign or a yield sign but only after slowing down or stopping to make sure the intersection may be safely entered."
>
> "Nothing in this directive shall be construed to release the operator of a departmental vehicle from civil or criminal liability for failure to use reasonable care in the operation of an emergency vehicle."
>
> "Pursuits within and outside the county. **Officers may engage in vehicle pursuits in the county and neighboring jurisdictions outside of the county if there is reason to believe that the fleeing suspect is committing, has committed or attempted to commit any of the following: A homicide, a contact shooting, an armed robbery, [or] armed carjacking.**"
>
> "**Vehicle pursuits shall be conducted in strict compliance with** Maryland statutes and **departmental directives**. **A vehicle pursuit may only be continued** or [sic] outside of the county **once permission has been granted by the shift commander or, when applicable, the effected [sic] lieutenant commanding the pursuing officers**."
>
> "A commander's approval to pursue shall be transmitted on the appropriate talk group. A commander's approval shall be documented in the narrative section of the pursuit critique."

* * *

> "The officer or shift commander shall immediately terminate the vehicle pursuit when further pursuit will be futile or there is an equipment failure involving an emergency signal device, a radio, the brakes, the steering, other essential mechanical equipment or damage to a departmental vehicle which creates a driving hazard, or when the pursuit causes a clear and reasonable danger to the officer, flee[ing] motorist or other person that the danger is greater than the value of apprehending the suspect, or a clear danger exists . . . ."

(Emphasis added.)

It was undisputed that Corporal Martinez stopped Larry Hinson for driving without headlights, not one of the four enumerated crimes that support pursuit of a vehicle pursuant to the general orders. Indeed, the parties entered into the following stipulation that was read to the jury as part of the court's instructions after the close of evidence, conceding that the pursuit of Hinson "was a violation of acceptable police procedure":

> **The following are accepted facts in this case**. That at the time of the traffic stop and subsequent pursuit by the Defendants, Prince George's County police officers, Larry Hinson, was not suspected of committing a homicide, contact shooting, an armed robbery, or an armed carjacking[;] that **the pursuit of Larry Hinson by Prince George's County police officers was a violation of acceptable police procedure,** all as expressly provided for in the Prince George's County Police Department General Order Manual, Chapter 42, Pursuits; that Charles Viverette, his wife and estate incurred medical bills and funeral expenses [and] incurred in [sic] the loss of Charles D. Viverette would have earned had he survived as a result of this incident.
>
> The documentation of all of such claims, expenses and losses have been provided to Defendants which have been undisputed and should be accepted as fact; that Charles D. Viverette sustained pre-impact fright and suffered severe conscious pain, suffering and severe mental anguish

> between the time of the collision and the time of his death as a result of this incident, as witnessed and reported in written statements by the Prince George's County Police officers.

(Emphasis added.)

At trial, Corporal Martinez testified that, when Corporal Downey arrived, Corporal Martinez gave him a thumbs-up signal and yelled "go a few times." Corporal Martinez was asked on cross-examination: "What did you say [to Corporal Downey]?" He replied: "I think I said go, go, go, go."

Corporal Downey also testified about Corporal Martinez's thumbs-up gesture: "At the time . . . I got a thumbs up move on like hand signal." Ms. Viverette's counsel cross-examined Corporal Downey as follows:

> [PLAINTIFF'S COUNSEL]: . . . [D]id you indicate to me [during your deposition] that [Corporal Martinez] was telling you to just go?
>
> [CORPORAL DOWNEY]: Yes, ma'am.
>
> [PLAINTIFF'S COUNSEL]: And you said he was . . . giving me the go sign. Is that correct, sir?
>
> [CORPORAL DOWNEY]: That's what I said in my deposition. Yes.
>
> [PLAINTIFF'S COUNSEL]: And that is what you meant back then, right? You haven't changed your testimony, have you?
>
> [CORPORAL DOWNEY]: No, ma'am.

At the close of the plaintiff's case, the defense moved for judgment as a matter of law, and argued that TA § 19-103 "renders operators of an emergency vehicle immune from suit for any damage as a result from a negligent act or omission while operating an emergency vehicle." Defense counsel argued that *Boyer v. State*, 323 Md. 558, 575

(1991), stands for the proposition that "the operation of an emergency vehicle . . . encompasses the officer's decision to initiate that pursuit." Counsel for Ms. Viverette focused on the general orders that limit the circumstances in which a high speed chase may be pursued, and noted that there was a stipulation that none of those conditions had been met. The court denied the motion, and the trial continued with the presentation of the defendants' case.

At the conclusion of all evidence, the defendants renewed their motion for judgment, and again focused upon TA § 19-103. (Common law public official immunity was not mentioned.) Counsel for Ms. Viverette again asserted that no vehicle pursuit of Mr. Hinson should have occurred. Referring to the general orders, counsel asserted: "This is a written policy that says do not chase for exactly the reasons that occurred here." "That is what the negligence is here, is the instruction or the ordering of Officer Downey to pursue [Hinson's vehicle] in this matter." The motion for judgment was again denied.

During closing arguments, counsel for Ms. Viverette told the jury that one of the issues on the verdict sheet referred to the claim of negligence against Corporal Martinez that was based upon him instituting the chase:

> **You heard that Corporal Martinez said go, go, go, go** and that [Corporal Downey] said I was taking that as **a go sign**. **So, we sued Officer Martinez for negligence in instructing that**. Not gross negligence, **just negligence in instructing that chase**. (inaudible) and we would contend that you **find him negligent in instructing the chase**[,] and both of them grossly negligent for initiating and continuing the chase well after it was dangerous.

(Emphasis added.)

The case was submitted to the jury on issues. Although the jury found that neither Corporal Martinez nor Corporal Downey was "grossly negligent in pursuing Larry Hinson," the jury found that Corporal Martinez "was negligent in instituting a police pursuit" of Hinson, and that negligence "was a proximate cause of the injuries sustained by Charles Viverette."[2]

After judgment was entered on the jury's verdict, Corporal Martinez filed a motion for judgment notwithstanding the verdict. He argued that the circuit court must find that Corporal Martinez was entitled to "statutory immunity pursu[ant] to § 19-103(b) of the Transportation Article . . . as a matter of law and the jury verdict entered against him must be vacated and judgment entered in his favor." But the motion for judgment notwithstanding the verdict did not assert common law public official immunity as a reason to enter judgment for the defendant notwithstanding the verdict.

The circuit court held a hearing on Corporal Martinez's motion, and at the conclusion of arguments, the court made the following ruling:

> THE COURT: . . . First, the Court notes, as a matter of law, police officers are public officials. Under common law police officers are immune from liability for discretionary acts performed within the course and scope of

[2] Footnote 4 in appellant's brief states: "Defense Counsel requested that the court enter judgment against Prince George's County rather than against Martinez as an individual. The trial court granted this request." There is no indication that appellant objected. And CJP § 5-639(c)(1) provides that, even when a negligent operator is immune from personal liability for negligence in operating an emergency vehicle: "An owner or lessee of an emergency vehicle, including a political subdivision, is liable to the extent provided in subsection (d) of this section for any damages caused by a negligent act or omission of an authorized operator while operating the emergency vehicle in the performance of emergency service."

> their employment without malice or gross negligence. This immunity applies almost exclusively to claims of negligence.
>
> It does not apply to claims of intentional torts or gross negligence, neither which are applicable here. The Defendant's decision to institute a police pursuit is a discretionary act, and thus, is subject to the common law principle of immunity as it relates to public officials.
>
> Alternatively, under Maryland law the operator of an emergency vehicle who is authorized to operate the emergency vehicle by its owner or lessee is immune from suit in the operator's individual capacity for damages resulting from a negligent act or omission while operating the emergency vehicle in the performance of emergency service.
>
> * * *
>
> Here the evidence is the officers were in county police vehicles in pursuit of a suspected violator of a law in an emergency vehicle. Therefore, under Section 5-639 of the Maryland Code Courts and Judicial Proceedings, police officers are not liable for the plaintiff's claims of negligence.
>
> So, the question before the Court here today is whether the Defendants are immune from liability for the Plaintiff's claims of negligence, and I have addressed it both ways. First, as to common law and then as to the Maryland law, and the answer is that they are immune.
>
> . . . The judgment is hereby vacated, and judgment is granted in favor of Keith Martinez. That is as to the verdict sheet as to counts [sic] five and six.

Counsel for Ms. Viverette attempted to alert the trial court to the fact that common law public official immunity had not been argued in the motion for judgment notwithstanding the verdict or during the motion for judgment at the close of evidence, and said: "I meant at the close of all the evidence, before we submitted it to the jury, I believe [counsel for the defendants] would have needed to raise the issue of discretionary immunity for a public official at that time, and I don't believe she did." But the court was

under the impression that the issue had been timely raised and argued in the motions for judgment and motion for judgment notwithstanding the verdict, and the court declined to revisit the ruling.

This appeal followed.

DISCUSSION

I. Common Law Public Official Immunity

The first two questions presented by Ms. Viverette raise essentially the same issue: whether Corporal Martinez preserved any argument that he was entitled to common law public official immunity.

Maryland Rule 2-532(a) provides that a motion for judgment notwithstanding the verdict may not be made on grounds that were not argued in support of a motion for judgment at the close of all evidence. Rule 2-532(a) states: "When Permitted. In a jury trial, a party may move for judgment notwithstanding the verdict **only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion**." (Emphasis added.)

We detect no argument made on behalf of Corporal Martinez—either in his motion for judgment at the close of all the evidence or in his motion for judgment notwithstanding the verdict—in which he asserted that he was protected from liability by common law public official immunity. And his counsel conceded at oral argument in this Court that she did not argue common law public official immunity in the circuit court or brief it in connection with the motion for judgment notwithstanding the verdict.

We conclude that the trial court erred in relying upon common law public official immunity as one of the court's two alternative reasons for granting the motion for judgment notwithstanding the verdict. As we held in *Leake v. Johnson*, 204 Md. App. 387 (2012), "failure to make an argument in a motion for judgment at the close of the evidence results in the loss of the right to file a motion for JNOV." *Id*. at 404 (citing *General Motors Corp. v. Seay*, 388 Md. 341, 361 (2005)).

In *Leake*, Mr. Johnson was arrested for public urination. *Id.* at 390. He was loaded into a police transport van driven by Officer Leake. Officer Leake did not use a seat belt to secure Mr. Johnson, who was in hand cuffs. *Id.* at 391. Officer Leake then gave Mr. Johnson a "rough ride" to the police station, which caused him to fall and break his neck. Mr. Johnson died from his injuries. *Id.* at 392-95.

At trial of the case pursued by Mr. Johnson's survivors, the defendants' motion for judgment did not include an argument that judgment should be granted based upon public official immunity. Our opinion observed:

> After [the plaintiffs] rested their case, the officers argued that judgment should be entered in their favor. Officer Leake argued that she was entitled to judgment on the battery count and the gross negligence count because there was no showing of malice and "not putting a seatbelt on does not rise to the level of gross negligence."
>
> * * *
>
> At the close of all of the evidence, counsel for appellants renewed their motions for judgment. **Significant to this appeal, they did not argue that they were entitled to judgment on the ground of public official immunity**. The court denied the motions and submitted the case to the jury."

Id. at 399 (emphasis added).

The jury awarded monetary damages to the estate of Mr. Johnson and to his sons. *Id.* Subsequently, the officers "filed motions for judgment notwithstanding the verdict, or in the alternative, motions to revise and reduce the judgment. They argued, *inter alia*, that they were protected from liability by common law public official immunity." *Id.* at 400. The circuit court denied the officers' motion for JNOV. *Id.* at 402.

On appeal to this Court, the officers argued that the circuit court "erred in failing to grant their motion for JNOV on the ground that they were immune from liability" under the public official immunity doctrine. *Id.* at 402-03. Citing the Court of Appeals's decision in *General Motors Corp. v. Seay*, 388 Md. 341 (2005), we held that "the right to file a motion for JNOV is relinquished if the party failed to raise, in a motion for judgment at the close of all the evidence, the ground asserted in the motion for JNOV." *Leake*, 204 Md. App. at 405. Consequently, we held that, because the officers did not assert public official immunity in their motion for judgment at the close of the evidence, "they relinquished the right to argue public official immunity in their motion for JNOV." *Id.* at 406. And we concluded, therefore, that the circuit court properly denied the claim of public official immunity asserted for the first time in the motion for JNOV. *Id*. at 407. *Accord Sage Title Group, LLC v. Roman*, 455 Md. at 215 ("[W]hen a party has previously moved for judgment at the close of all of the evidence, and subsequently moves for JNOV, the party's motion for JNOV is limited only to the grounds advanced in support of its earlier motion for judgment. Md. Rule 2-532(a).").

Here, the circuit court erred in relying upon an argument that had not been raised by the defendants as a reason for granting a motion for JNOV and setting aside the jury's verdict.

II. Statutory Immunity

Pursuant to TA § 19-103(b): "An operator of an emergency vehicle, who is authorized to operate the emergency vehicle by its owner or lessee **while operating the emergency vehicle** in the performance of emergency service . . . shall have the immunity from liability." (Emphasis added.) Counsel for Ms. Viverette argued to the jury in this case that the conduct of Corporal Martinez in instituting a police pursuit of Mr. Hinson in a high speed chase—when it was not expressly authorized by the general orders and there was traffic on Branch Avenue—constituted an act of negligence, and the conduct of operating the police vehicles in the high speed chase constituted gross negligence on the part of both Corporal Martinez and Corporal Downey. The verdict sheet included a question directed to gross negligence for each of those officers, and the jury found that neither was "grossly negligent in pursuing Larry Hinson."

But the jury answered "YES" to the question that asked: "Do you find that Defendant Keith Martinez was negligent in instituting a police pursuit on March 19, 2015?" Counsel for Ms. Viverette had told the jury during closing argument that it should answer this question "yes" if it found that he was "negligent in instructing the chase." And counsel made this argument knowing that the jury had been instructed that TA § 19-103 provides immunity from personal liability to the operator of an emergency vehicle

for negligence committed *while operating* the emergency vehicle. Considering the evidence in the light most favorable to Ms. Viverette, it appears that the jury agreed with this argument in which counsel for Ms. Viverette asserted that Corporal Martinez was acting contrary to the general orders on vehicle pursuits when he gave Corporal Downey a go sign and shouted "go, go, go, go," thereby instituting pursuit of Mr. Hinson's fleeing vehicle by Corporal Downey.

Ms. Viverette argued in opposition to the motion for judgment notwithstanding the verdict that the evidence clearly showed that Corporal Martinez was *outside* his emergency vehicle, standing on the side of Branch Avenue, when he instructed Corporal Downey to chase the fleeing vehicle. Because Corporal Martinez was not even in an emergency vehicle at the point in time when he gave that instruction, Ms. Viverette contends that the immunity that TA § 19-103 provides to an "operator of an emergency vehicle" for negligence committed "**while operating** an emergency vehicle" does not apply.

As expressly argued to the jury, the issue presented by question number 5 on the verdict sheet was not whether Corporal Martinez drove in a negligent manner when he joined in the high speed chase himself. The question was whether Corporal Martinez was negligent in instructing Corporal Downey to chase the driver of an SUV whose only known offense was driving without headlights and fleeing the traffic stop. In light of the stipulation that "the pursuit of Larry Hinson by Prince George's County police officers was a violation of acceptable police procedure," it appears to us that it was within the

province of the jury to determine that, under the circumstances, Corporal Martinez's instruction to violate the Prince George's County Police Department General Order Manual with respect to pursuing Hinson's vehicle was an act of negligence that was committed while Corporal Martinez was standing on the side of the road, outside his patrol car. Because that appears to be what the jury found to be the facts, we agree with Ms. Viverette that TA § 19-103 does not apply.

Appellees assert that the circuit court correctly granted the motion for judgment notwithstanding the verdict based upon the decision in *Boyer v. State*, 323 Md. 558 (1989), a case in which the Court of Appeals discussed the immunity provided to the operator of an emergency vehicle pursuant to TA § 19-103. Appellees point to language in *Boyer* indicating that the phrase "operation of a motor vehicle" is "broad, and in fact is much broader than the term 'drive.'" 323 Md. at 574 (quoting *Thomas v. State*, 277 Md. 314, 317-19 (1976)). Appellees also quote from the following passage in *Boyer*, 323 Md. at 575:

> Negligent operation of a car is not limited to the negligent manipulation of the gas pedal, steering wheel, or brake pedal, such as involved in speeding, failure to pay attention to what may be in front of the vehicle, failure to apply the brakes, etc. A decision to operate or continue operating the car, when a reasonable person would not do so, clearly can be "negligent operation." For example, if one decides to operate or to continue operating a motor vehicle when he is dizzy or otherwise ill, he may be guilty of negligent operation. *Cf. Stumpf v. State Farm Mutual Automobile Ins. Co*., 252 Md. 696, 702, 251 A.2d 362, 365 (1969) (person subject to epileptic seizures chose to drive car). A decision to operate a car or to continue operating a car knowing that the brakes are faulty may obviously constitute the "negligent operation" of the vehicle.

But it was clear that the trooper in *Boyer* was in fact *inside* his emergency vehicle *operating that vehicle* when he made the decision to begin pursuing the suspect at a high rate of speed. Neither *Boyer* nor any other Maryland case that has been brought to our attention held that a police officer who is *outside* his vehicle when he gives an instruction *to others* to pursue a high speed chase in violation of the police department's general orders has immunity under TA § 19-103 for giving such an instruction.

As noted above, the standard of review applicable to a motion for JNOV obligates the court to consider all evidence in the light most favorable to the non-moving party, here, Ms. Viverette. *Sage Title Group*, 455 Md. at 201. As we stated in *Marrick Homes LLC v. Rutkowski*, 232 Md. App. 689 (2017):

> "We review the grant of a motion for judgment under the same standard as we review grants of motions for judgment notwithstanding the verdict." *Tate v. Bd. of Educ. of Prince George's County*, 155 Md. App. 536, 544, 843 A.2d 890 (2004) (citing *Johnson & Higgins of Pa., Inc. v. Hale Shipping Corp.*, 121 Md. App. 426, 450, 710 A.2d 318 (1998)). The Court assumes the truth of all credible evidence on the issue and any inferences therefrom in the light most favorable to appellants, the nonmoving parties. *Id*. (citation omitted). "Consequently, if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration." *Id*. at 545, 843 A.2d 890 (citing *Washington Metro. Area Transit Auth. v. Reading*, 109 Md. App. 89, 99, 674 A.2d 44 (1996)).

232 Md. App. at 697-98.

We are persuaded that the evidence in this case presented a factual issue for the jury to decide relative to whether Corporal Martinez committed an act of negligence "*while operating* an emergency vehicle," and, based upon the jury's answers to questions 5 and 6 on the verdict sheet, it was error for the trial court to grant the motion for JNOV.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED FOR RE-ENTRY OF JUDGMENT IN FAVOR OF APPELLANT AGAINST PRINCE GEORGE'S COUNTY.
COSTS TO BE PAID BY APPELLEES.