

SUPREME COURT OF ALABAMA ORAL ARGUMENT
PREVIEW: *PEACH V. THOMAS*

ABIGAIL WHITE*

INTRODUCTION**

Under Alabama law, a law enforcement officer may be held liable in his individual capacity for the torts he commits “while acting within the scope of [his] official duties.”¹ However, this liability may be limited by the doctrine of State-agent immunity.²

A law enforcement officer is entitled to State-agent immunity, relevant to this case, when an officer exercises judgment in the enforcement of criminal laws or performs a “discretionary function within the . . . scope of his or her law enforcement duties.”³ A plaintiff may overcome this immunity, nonetheless, by proving that: (1) the law enforcement officer violated a statute that governed the officer’s conduct and the statute is “so specific that it removes the [S]tate agent’s discretion and puts him on notice that certain, specific acts are unacceptable,”⁴ or (2) the law enforcement officer “act[ed] willfully, maliciously,

*Managing Editor, *Cumberland Law Review*, Candidate for *Juris Doctor*, May 2023, Cumberland School of Law; B.A. English, August 2019, The University of Alabama.

**This article mirrors the summary provided by the Alabama Supreme Court and is solely for the purpose of providing spectators with a neutral and objective summary of the general facts, issues, and arguments presented. It is not intended to be a reflection of all possible issues or arguments the court may consider when adjudicating this case.

¹ See *Ex parte Pinkard*, ___ So. 3d ___, No. 1200658, 2022 WL 1721483, *7 (Ala. May 27, 2022).

² See *Ex parte Cranman*, 792 So. 2d 392, 405 (Ala. 2000).

³ See ALA. CODE § 36-1-12(c)(4) (1975) (codifying State-agent immunity under *Ex parte Cranman*); ALA. CODE § 6-5-338(a). Under Alabama Code § 36-1-12(c)(4): “[a]n officer . . . is immune from civil liability in his or her personal capacity when the conduct made the basis of the claim is based upon the agent’s . . . [e]xercising [of] judgment in the enforcement of the criminal laws of the state.” Moreover, under Alabama Code § 6-5-338(a): a “peace officer” performing his lawful duties “shall at all times be deemed to be officers 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.” But because the Supreme Court of Alabama holds that “conduct involving the ‘exercise of judgment in the enforcement of criminal laws’ . . . is also a ‘discretionary function’ under [Alabama Code] § 6-5-338(a),” the analysis under Alabama Code § 6-5-338(a) is the same as the analysis used under the doctrine of State-agent immunity and Alabama Code § 36-1-12(c)(4). *Ex parte City of Tuskegee*, 932 So. 2d 895, 905 (Ala. 2005); *Griffin v. Wright*, ___ So. 3d ___, No. 1200759, 2022 Ala. LEXIS 56, at *10 (June 24, 2022).

⁴ *Odom v. Helms*, 314 So. 3d 220, 229 (Ala. 2020) (alteration in original) (quoting *King v. Archer*, No. 2:17-CV-174-KOB, 2018 WL 4257934, at *11 (N.D. Ala. Sept. 6, 2018)).

fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.”⁵

As such, State-agent immunity is a “burden-shifting” analysis.⁶ So, in terms of this case, once a law enforcement officer demonstrates that the plaintiff’s claims arise from his exercise of judgment or discretion while performing a law enforcement duty, the burden shifts to the plaintiff to overcome immunity by showing that the law enforcement officer violated a statute that governed his specific conduct, acted beyond his authority, or acted under a mistaken interpretation of the law.⁷

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On August 13, 2016, State Trooper Lester Lee Thomas was running radar to patrol traffic on I-65 north in Mobile County, Alabama.⁸ The portion of I-65 north relevant to this case has a speed limit of seventy-miles-per-hour and consists of two lanes.⁹ Finding that a motorist was speeding, Thomas activated his lights, but not his siren, and pulled onto the roadway.¹⁰ During the pursuit of the motorist, Thomas noticed a second motorist traveling behind the first at the same speed.¹¹ The first motorist pulled over on the right shoulder.¹² When the first motorist came to a stop, Thomas parked his SUV police vehicle in the right lane next to the first motorist’s parked car, leaving only the left lane available for traffic.¹³ Thomas then exited his parked vehicle, stepped into the left lane of traffic, and indicated the second speeding motorist to pull over.¹⁴ The second motorist saw Thomas and stopped in the left lane beside Thomas’s vehicle, blocking the remaining lane of traffic in

⁵ ALA. CODE § 36-1-12(d)(2).

⁶ *Burton v. Hawkins*, __ So. 3d __, No. 1200825, 2022 WL 759579, at *5 (Ala. Mar. 11, 2022).

⁷ *See id.*

⁸ Petition for Writ of Mandamus at 3, *Peach v. Thomas*, No. SC-2022-0525 (Ala. May 10, 2022); Answer to Petition for Writ of Mandamus at 1, *Peach v. Thomas*, No. SC-2022-0525 (Ala. July 21, 2022).

⁹ *See Answer to Petition for Writ of Mandamus, supra* note 8, at 1; Petition for Writ of Mandamus, *supra* note 8 at 4.

¹⁰ *See Answer to Petition for Writ of Mandamus, supra* note 8, at 1; Petition for Writ of Mandamus, *supra* note 8, at 3.

¹¹ *See Answer to Petition for Writ of Mandamus, supra* note 8, at 1–2; Petition for Writ of Mandamus, *supra* note 8, at 4.

¹² Petition for Writ of Mandamus, *supra* note 8, at 4; Answer to Petition for Writ of Mandamus, *supra* note 8, at 2.

¹³ Petition for Writ of Mandamus, *supra* note 8, at 4; Answer to Petition for Writ of Mandamus, *supra* note 8, at 2.

¹⁴ *See Petition for Writ of Mandamus, supra* note 8, at 4; Answer to Petition for Writ of Mandamus, *supra* note 8, at 2.

doing so.¹⁵ There were five vehicles behind the second motorist when he stopped beside Thomas's vehicle, including a vehicle driven by Ashley Peach, Plaintiff Jennifer Peach's daughter.¹⁶ Ashley Peach could not stop, and Plaintiff Jennifer Peach was in the front seat of her daughter's car when it crashed into the car in front of it.¹⁷ Thereafter, Peach sued Thomas in his individual capacity for negligence and wantonness, claiming Thomas's decision to step into the left lane to stop the second motorist caused the damages she incurred from the car accident.¹⁸

On July 30, 2021, Thomas filed a motion for summary judgment, arguing he was entitled to State-agent immunity.¹⁹ On April 1, 2022, the Circuit Court of Mobile County, Alabama denied Thomas's motion.²⁰ Thomas then petitioned the Supreme Court of Alabama for a writ of mandamus.²¹ The court granted oral argument, and the question before the Supreme Court of Alabama is whether the circuit court correctly denied summary judgment on the grounds that Thomas was not entitled to State-agent immunity as a matter of law.²² To answer this question, the court will first need to determine whether Thomas was performing a discretionary function when he stepped into the left lane to stop the second motorist.²³ If the court finds that Thomas was performing a discretionary function, then the court must also decide whether Peach sufficiently proved that (1) Thomas's particular actions violated a statute that governed his conduct and put him on notice that the conduct was unacceptable or (2) Thomas's conduct was beyond the scope of his authority or under a mistaken interpretation of the law.²⁴

¹⁵ See Petition for Writ of Mandamus, *supra* note 8, at 4; Answer to Petition for Writ of Mandamus, *supra* note 8, at 2.

¹⁶ Petition for Writ of Mandamus, *supra* note 8, at 6; Answer to Petition for Writ of Mandamus, *supra* note 8, at 2–3.

¹⁷ See Answer to Petition for Writ of Mandamus, *supra* note 8, at 4–5; Petition for Writ of Mandamus, *supra* note 8, at 25.

¹⁸ See Petition for Writ of Mandamus, *supra* note 8, at 2; Answer to Petition for Writ of Mandamus, *supra* note 8, at i.

¹⁹ Petition for Writ of Mandamus, *supra* note 8, at 2; see Answer to Petition for Writ of Mandamus, *supra* note 8, at 1.

²⁰ See Petition for Writ of Mandamus, *supra* note 8, at 3; Answer to Petition for Writ of Mandamus, *supra* note 8, at 1.

²¹ Petition for Writ of Mandamus, *supra* note 8. Although denial of a motion for summary judgment is ordinarily not reviewable by petition for [a] writ of mandamus, there is an exception when “the denial of a motion [is] grounded on a claim of immunity.” *Ex parte Turner*, 840 So. 2d 132, 135 (Ala. 2002) (emphasis omitted).

²² See Petition for Writ of Mandamus, *supra* note 8, at 7; Answer to Petition for Writ of Mandamus, *supra* note 8, at 1.

²³ See *Odom v. Helms*, 314 So. 3d 220, 224 (Ala. 2020).

²⁴ See *id.*

APPELLANT'S ARGUMENT

Thomas first avers that the circuit court “misapplied” the State-immunity standard when it denied his motion for summary judgment because he “was clearly entitled to relief under [S]tate-agent immunity.”²⁵ Thomas claims that he was clearly entitled to State-agent immunity because it is undisputed that he was (1) a peace officer, (2) engaging in law enforcement duties, and (3) exercising judgment or discretion at the time of the car accident.²⁶ Thomas does not point to any law to support these claims. Instead, he relies on Peach’s pleadings and his own testimony.²⁷ Specifically, Thomas claims that it is undisputed that he was exercising a judgment or discretion because “Peach’s complaint references Trooper Thomas’s exercising judgment or discretion” and “Thomas testified that he was exercising discretion.”²⁸ So, according to Thomas, he satisfied his burden to demonstrate that he was exercising judgment or discretion, and therefore, “[t]he only salient question is whether Peach demonstrated by substantial evidence that Trooper Thomas was not entitled to State-agent immunity.”²⁹

Thomas then argues that “Peach did not demonstrate that Trooper Thomas acted beyond his authority or [u]nder a [m]istaken [i]nterpretation of the [l]aw;” thus, her burden was not satisfied, and he was entitled to State-agent immunity as a matter of law.³⁰ First, Thomas argues that to prove he was acting beyond his authority, Peach must demonstrate “a rule or regulation ‘so specific that it removes the [S]tate agent’s discretion and puts him on notice that certain, specific acts are unacceptable[]’ [or] that Trooper Thomas ‘failed to discharge duties pursuant to detailed rules or regulations, such as those on a checklist.’”³¹ According to Thomas, Peach fails to satisfy her burden because she “did not demonstrate by substantial evidence” any law, rule, or regulation that Thomas violated by, or that prohibited him from, stopping the second motorist or blocking both lanes of traffic.³² Moreover, Thomas contends that Peach’s claim that he violated laws governing pedestrians is insufficient because Peach failed to show that laws

²⁵ Petition for Writ of Mandamus, *supra* note 8, at 13; *see also* Petitioner’s Reply to Respondent’s Answer at 6, Peach v. Thomas, No. SC-2022-0525 (Ala. Aug. 3, 2022).

²⁶ Petition for Writ of Mandamus, *supra* note 8, at 13–14.

²⁷ *See id.* at 14.

²⁸ *Id.* (citations omitted).

²⁹ *Id.* at 15.

³⁰ *Id.* at 14–15; *see also* Petitioner’s Reply to Respondent’s Answer, *supra* note 25, at 9–11.

³¹ Petition for Writ of Mandamus, *supra* note 8, at 15 (first quoting *Odom v. Helms*, 314 So. 3d 220, 229 (Ala. 2020); and then quoting *Giambrone v. Douglas*, 874 So. 2d 1046, 1053 (Ala. 2003)).

³² *Id.* at 15–16.

governing pedestrians also govern law enforcement officers acting within their legal authority and with probable cause.³³ Thus, Thomas contends he was entitled to summary judgment because he sufficiently demonstrated that he was performing a law enforcement duty protected by State-agent immunity and Peach cannot show that any exception to that immunity applies.³⁴

Furthermore, Thomas goes on to argue that “Peach improperly attempted to require Trooper Thomas to recite a statute, rule, or regulation that authorized him to perform a double stop of two speeding motorists.”³⁵ In opposition to summary judgment, Peach claimed that Thomas was under an affirmative duty to offer “some statute, rule, or regulation that permitted him to perform the simultaneous stop of two speeding motorists” or “gave him discretion to do what he did.”³⁶ According to Thomas, Peach’s argument fails because Peach, as the party who bears the burden to show that an officer was acting outside the scope of his authority, is “required to demonstrate by substantial evidence that Trooper Thomas’s actions place him outside of state-agent and law enforcement immunity by showing that one of the . . . exceptions applies.”³⁷ So, Thomas claims Peach’s contention fails because it is Peach, not Thomas, who bears the burden to offer a law, rule, or regulation that governed the scope of his conduct under the burden-shifting analysis of State-agent immunity.³⁸

In the same vein, Thomas then argues that “Peach improperly attempted to collaterally attack Trooper Thomas’s Peace Officer actions by relying on [Alabama] Code §§ 32-5A-212 and 32-5A-215.”³⁹ Specifically, Thomas claims that Peach’s argument that Alabama Code §§ 32-5A-212 and 32-5A-215 (“Pedestrian Statutes”) removed Thomas’s “ability to exercise discretion and that he acted beyond the scope of his authority” are inappropriate collateral attacks because these statutes do not satisfy “the *Odom* requirement to delineate which specific acts are

³³ *Id.* at 15–16.

³⁴ *See id.* at 14–16.

³⁵ *Id.* at 16; *see also* Petitioner’s Reply to Respondent’s Answer, *supra* note 25, at 6–7.

³⁶ Petition for Writ of Mandamus, *supra* note 8, at 17.

³⁷ *Id.* at 18 (citing *Odom v. Helms*, 314 So. 3d 220, 224 (Ala. 2020) (“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.’” (citing *Ex parte Cranman*, 792 So. 2d 392, 405 (Ala. 2000))).

³⁸ *See id.*

³⁹ *Id.* at 19; *see also* Petitioner’s Reply to Respondent’s Answer, *supra* note 25, at 8–9.

unacceptable.”⁴⁰ Indeed, Thomas contends these “[P]edestrian [S]tatutes are a collateral attack on Trooper Thomas’s authority to regulate traffic under [Alabama] Code § 32-5A-4, his status as a Peace Officer under [Alabama] Code § 6-5-338, and his ability to exercise discretion enforcing the laws of the state under” the doctrine of State-agent immunity because the statutes deal with pedestrian conduct, not law enforcement conduct, and in turn, are not so specific that Thomas was on notice that his specific conduct was unacceptable.⁴¹

For these reasons, Thomas argues that the circuit court incorrectly denied his motion for summary judgment because he was entitled to State-agent immunity.⁴²

APPELLEE’S ARGUMENT

By contrast, Peach argues that the circuit court’s denial of Thomas’s motion for summary judgment was appropriate because: (1) Thomas failed to satisfy his burden to demonstrate that he was entitled to State-agent immunity; (2) even if Thomas did satisfy his burden, Peach showed that an exception to immunity applies; (3) Alabama Code §§ 32-5A-212 and 32-5A-215 does not allow Thomas discretion; and (4) Alabama Code §§ 32-5A-7 and 32-5A-4 does not give Thomas discretion.⁴³

First, Peach avers that “Thomas did not get past his initial burden because he has not ‘demonstrate[d] that [Peach’s] claims arise from a function that would entitle [him] to immunity’ because he has not established his conduct falls under [a] . . . categor[y] of discretionary conduct.”⁴⁴ Specifically, Peach claims that Thomas’s argument fails because Thomas did not establish that (1) he was exercising judgment in the enforcement of criminal laws, or (2) he was serving as a peace officer under circumstances entitling him to immunity under an Alabama Statute.⁴⁵ According to Peach, an officer is entitled to immunity when

⁴⁰ Petition for Writ of Mandamus, *supra* note 8, at 19–20 (citing *Odom*, 314 So. 3d at 229 (Ala. 2020) (explaining that a plaintiff may overcome State-agent immunity by demonstrating a rule or regulation “so specific that it removes the [S]tate agent’s discretion and puts him on notice that certain, specific acts are unacceptable”)).

⁴¹ *See id.* at 20.

⁴² *See id.* at 13–20. Thomas also argues that “[t]he Circuit Court exceeded its discretion by [(1)] not addressing the defense of [S]tate-agent immunity when it had a clear duty to do so,” and “[2)] not addressing Trooper Thomas’s negligence and wantonness defenses.” *Id.* at 20–26. However, these arguments are not addressed in this preview because they are immaterial to the central issue of the appeal.

⁴³ *See Answer to Petition for Writ of Mandamus, supra* note 8, at 10–27.

⁴⁴ *Id.* at 12 (alterations in original) (citing ALA. CODE § 36-1-12(c) (1975)).

⁴⁵ *Id.* at 13–14. In Peach’s brief, she also contends that Thomas is not entitled to immunity because he did not establish that he meets the requirements of Alabama Code § 36-1-12(c)(3). *Id.* at 12–13. However, this argument is immaterial to the issue on appeal

he is performing “a discretionary function [that] requires an exercise in judgment and choice,” or he “is required to decide and act without fixed or readily ascertainable standards.”⁴⁶ However, an officer is not entitled to immunity when he is performing a “ministerial act [that] envisions direct adherence to a governing rule or standard with a compulsory result . . . performed in a prescribed manner without the exercise of judgment or discretion.”⁴⁷ As such, Peach argues that Thomas cannot establish that he was exercising judgment in the enforcement of criminal laws because he violated the Pedestrian Statutes “that prohibited his conduct, removed any discretionary ‘judgment and choice,’ and instead commanded a ‘compulsory result.’”⁴⁸ According to Peach, Thomas admits “(1) he became a pedestrian when he exited his vehicle, (2) these statutes prohibited pedestrians from obstructing the right-of-way on an interstate unless another statute granted an express authority, and (3) he knows of no such statute.”⁴⁹ Thus, Peach argues that Thomas is not entitled to State-agent immunity because he cannot overcome his initial burden to establish that his conduct of stepping into the left lane was a discretionary function.⁵⁰

Nonetheless, Peach goes on to argue that “[e]ven if Thomas had satisfied his initial burden, Peach established two exceptions to immunity.”⁵¹ First, Peach avers that she established the “first exception” to State-agent immunity and claims that the “first exception” defeats immunity if the laws “of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require” the officer to act in a certain way and the officer failed to do so.⁵² So, because Peach contends the Pedestrian Statutes prohibit pedestrians, including law enforcement officers, from stepping into the right-of-way on an interstate, Peach argues she sufficiently overcame State-agent immunity with the “first exception.”⁵³

Peach also avers that she established the “second exception, which applies ‘when the State agent acts . . . beyond his or her authority, or

because: (1) Thomas argues that he is immune under subsection four, not subsection three, and (2) under Alabama Code § 36-1-12(c), an officer is entitled to immunity if he falls into one of the five listed categories. See ALA. CODE § 36-1-12(c).

⁴⁶ Answer to Petition for Writ of Mandamus, *supra* note 8, at 13–14 (emphasis omitted) (internal quotation marks omitted) (quoting *Ex parte* Ala. Dep’t of Forensic Scis., 709 So. 2d 455, 458 (Ala. 1997)).

⁴⁷ *Id.* at 14 (internal quotation marks omitted) (quoting *Ex parte* Ala. Dep’t of Forensic Scis., 709 So. 2d at 458).

⁴⁸ *Id.*; see ALA. CODE §§ 32-5A-212(a), 32-5A-215(b), (d).

⁴⁹ Answer to Petition for Writ of Mandamus, *supra* note 8, at 15.

⁵⁰ See *id.* at 14–16.

⁵¹ *Id.* at 16 (emphasis omitted).

⁵² *Id.* at 16–17.

⁵³ See *id.* at 16–17.

under a mistaken interpretation of the law.”⁵⁴ Specifically, Peach contends that, since she established Thomas violated the Pedestrian Statutes, she sufficiently proved that Thomas was acting outside the scope of his authority and under a mistaken interpretation of the Pedestrian Statutes because the Supreme Court of Alabama “recognize[s] that an officer’s ‘violation . . . of Alabama’s Rules of the Road [under] § 32-5A-1 et seq.’ could fall ‘within the [beyond authority] exception’ . . . and ‘deprive[] the officers of immunity.’”⁵⁵ Accordingly, Peach argues that Thomas is not entitled to State-agent immunity because Peach demonstrated that his conduct was beyond the authority afforded to law enforcement officers in the Pedestrian Statutes.⁵⁶

Peach goes on to oppose Thomas’s argument that the Pedestrian Statutes do not take away his discretion because they are not “so specific that it removes [a state agent’s] discretion and puts him . . . on notice that certain, specific acts are unacceptable.”⁵⁷ Indeed, according to Peach, the Pedestrian Statutes are sufficiently specific to Thomas on notice that stepping into the left lane of traffic was unacceptable because “they command[] that pedestrians (1) ‘shall yield the right-of-way to all vehicles upon the roadway[]’ [and] (2) ‘shall walk only on a shoulder’ of a highway.”⁵⁸ So, because Peach claims that Thomas was a pedestrian and the Pedestrian Statutes prohibit specific conduct, Peach avers Thomas’s violation of the Pedestrian Statutes was enough to remove discretion from Thomas.⁵⁹ In the same vein, Peach avers that Thomas is also wrong in his belief that Alabama Code §§ 32-5A-7 and 32-5A-4 exempt him from the Pedestrian Statutes because § 32-5A-7 only applies to drivers of police vehicles and how an officer drives or parks those vehicles, and § 32-5A-4 only applies to “members of the public who interact with . . . officers.”⁶⁰ In short, Peach argues that Thomas cannot show he was exercising discretion because (1) the Pedestrian Statutes remove his ability to exercise discretion and (2) Thomas cannot show that law enforcement officers are exempt from the Pedestrian Statutes under the authority granted to them in Alabama Code §§ 32-5A-7 and 32-5A-4.⁶¹

⁵⁴ *Id.* at 17 (first quoting *Berry v. City of Montgomery*, 99 So. 3d 282, 292–94 (Ala. 2012); and then citing ALA. CODE § 36-1-12(d)).

⁵⁵ Answer to Petition for Writ of Mandamus, *supra* note 8, at 17 (first alteration added) (quoting *Ex parte Warrior*, ___ So. 3d ___, No. 1200759, 2022 WL 2286244, *7 n.7 (Ala. June 24, 2022)).

⁵⁶ *See id.* at 17–18.

⁵⁷ *Id.* at 18 (quoting *Odom v. Helms*, 314 So. 3d 220, 229 (Ala. 2020)).

⁵⁸ *Id.* at 19.

⁵⁹ *See id.*

⁶⁰ *Id.* at 23, 25–26 (emphasis omitted).

⁶¹ *See* Answer to Petition for Writ of Mandamus, *supra* note 8, at 18–26.

As a result, Peach’s final argument calls on the Supreme Court of Alabama to follow the will of the Alabama Legislature.⁶² Namely, Peach contends that, because “the Legislature has only given officers the privilege to disregard Rules of the Road while parking, standing, or driving a vehicle under § 32-5A-7 when certain conditions are met” and “[t]here is no comparable statute granting privileges to officers to violate Rules of the Road when they act as pedestrians,” then the Supreme Court of Alabama should not find that Thomas was exempt from the Pedestrian Statutes absent clear legislative intent that the Pedestrian Statutes did not apply to law enforcement officers.⁶³

For these reasons, Peach avers that Thomas cannot show that he is entitled to immunity for exercising a discretionary function, and even if he can, immunity is defeated because Peach sufficiently established two exceptions to immunity.⁶⁴

CONCLUSION

At first glance, it appears that this case turns on one central issue: Do the Pedestrian Statutes apply to law enforcement officers, and if so, do the statutes govern the conduct of law enforcement officers performing traffic stops of motorists? However, because oral arguments are active discussions, the Supreme Court of Alabama’s questions can, and most likely will, cover an array of issues that cannot be anticipated in advance.

⁶² *Id.* at 27.

⁶³ *Id.* at 27–29.

⁶⁴ *See id.* at 12–14, 16–27.