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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2025-0482

**Ex parte Alonzo Cornelius Coleman IV and The City of
Birmingham**

PETITION FOR WRIT OF MANDAMUS

**(In re: Angel Morales Cuin, as personal representative of the
Estate of Ricardo Morales Cuin, deceased**

v.

The City of Birmingham and Alonzo Cornelius Coleman IV)

(Jefferson Circuit Court: CV-22-901939)

BRYAN, Justice.¹

Alonzo Cornelius Coleman IV, a police officer employed by the Birmingham Police Department ("the police department"), and the City of Birmingham ("the city") petition this Court for a writ of mandamus directing the Jefferson Circuit Court to enter a summary judgment in their favor on the ground that they are entitled to immunity. We grant the petition and issue the writ.

Factual Background and Procedural History

Officer Coleman was on patrol on the night of January 15, 2022, when the police car that he was driving struck Ricardo Morales Cuin ("Ricardo") as he was walking on Tarrant-Huffman Road in Birmingham. Ricardo died as a result of the collision. The accident occurred slightly after 11:00 p.m. during a rainfall. At the time of the accident, Officer Coleman was listening to a podcast playing on his personal cell phone; the cell phone was resting on his bag on the passenger seat. In his deposition, Officer Coleman testified that he had recently begun his patrol and that he had started playing the podcast when he had been at

¹This case was previously assigned to another justice on this Court before it was reassigned to Justice Bryan on June 15, 2026.

the police station earlier. He testified that he did not see Ricardo before the collision. The speed limit on Tarrant-Huffman Road at the location of the accident was 35 miles per hour; as we will discuss below, there is conflicting evidence regarding whether Officer Coleman was speeding at the time. Ricardo was wearing dark clothing, and the coroner's report indicates that he was intoxicated.

Ricardo's brother, Angel Morales Cuin ("Angel"), as the personal representative of Ricardo's estate, sued Officer Coleman and the city, alleging a claim of wrongful death against each defendant. Angel sued Officer Coleman in both his official and individual capacities. The wrongful-death claim against Officer Coleman was based on theories of negligence and wantonness, and the wrongful-death claim against the city was based on the theory of vicarious liability. Officer Coleman and the city each moved for a summary judgment, asserting various grounds. In relevant part, Officer Coleman and the city asserted that the official-capacity claim against Officer Coleman is barred by State immunity and that the individual-capacity claim against him is barred by State-agent immunity. The city further asserted that it is not vicariously liable for Ricardo's death because, the city said, Officer Coleman is immune. The

circuit court entered a partial summary judgment in favor of Officer Coleman on the wrongful-death claim filed against him in his official capacity, concluding that that claim is barred by State immunity. The circuit court denied the summary-judgment motion as to the wrongful-death claim filed against Officer Coleman in his individual capacity and as to the wrongful-death claim against the city. In relevant part, the circuit court concluded that Officer Coleman is not entitled to State-agent immunity regarding the individual-capacity claim. Officer Coleman and the city then filed a mandamus petition with this Court, arguing that Officer Coleman is entitled to State-agent immunity and that the circuit court erred by not entering a summary judgment on all claims.

Standard of Review

The general rule is that the denial of a summary-judgment motion is not reviewable. However, an exception to that general rule exists here: the denial of a summary-judgment motion grounded on a claim of immunity is reviewable by a mandamus petition. Ex parte Turner, 840 So. 2d 132, 135 (Ala. 2002).

"A writ of mandamus is an extraordinary remedy, and it will be 'issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so;

3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.' Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993)."

Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998).

"In reviewing a trial court's ruling on a motion for a summary judgment, we apply the same standard the trial court applied initially in granting or denying the motion. Ex parte Alfa Mut. Gen. Ins. Co., 742 So. 2d 182, 184 (Ala. 1999).

"The principles of law applicable to a motion for summary judgment are well settled. To grant such a motion, the trial court must determine that the evidence does not create a genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Rule 56(c)(3), Ala. R. Civ. P. When the movant makes a prima facie showing that those two conditions are satisfied, the burden shifts to the nonmovant to present "substantial evidence" creating a genuine issue of material fact.'

"742 So. 2d at 184. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)."

Swan v. City of Hueytown, 920 So. 2d 1075, 1077-78 (Ala. 2005). "'Our review [of the circuit court's ruling on a summary-judgment motion] is further subject to the caveat that this Court must review the record in a light most favorable to the nonmovant and must resolve all reasonable doubts against the movant.'" Harper v. Coats, 988 So. 2d 501, 503 (Ala.

2008) (quoting Hobson v. American Cast Iron Pipe Co., 690 So. 2d 341, 344 (Ala. 1997)).

Discussion

I.

Officer Coleman and the city argue that Officer Coleman is entitled to State-agent immunity as defined by Ex parte Cranman, 792 So. 2d 392 (Ala. 2000), and § 6-5-338(a), Ala. Code 1975.²

"[P]eace officers are afforded immunity by Ala. Code 1975, § 6-5-338(a), and the test for State-agent immunity set forth in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000), as modified in Hollis v. City of Brighton, 950 So. 2d 300 (Ala. 2006) (incorporating the peace-officer-immunity standard provided in § 6-5-338(a) into the State-agent-immunity analysis found in Cranman). See Ex parte Kennedy, 992 So. 2d 1276 (Ala. 2008), and City of Birmingham v. Brown, 969 So. 2d 910, 916 (Ala. 2007) ('Immunity applies to employees of municipalities in the same manner that immunity applies to employees of the State.' (citing Cranman, *supra*))."

²Cranman was a plurality decision, but a majority of this Court later adopted the Cranman standard in Ex parte Butts, 775 So. 2d 173 (Ala. 2000). In 2025, the Legislature repealed § 6-5-338 and replaced it with § 6-5-338.1 et seq., Ala. Code 1975. The new law applies "to any cause of action that accrued on or after October 1, 2025." § 6-5-338.4(a), Ala. Code 1975. Because this action accrued before that date, the new law does not apply here.

Suttles v. Roy, 75 So. 3d 90, 94 (Ala. 2010). In relevant part, Cranman, as modified by this Court in Hollis v. City of Brighton, 950 So. 2d 300 (Ala. 2006), provides:

"[A] State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's

"....

"(4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers' arresting or attempting to arrest persons[, or serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a), Ala. Code 1975]."

792 So. 2d at 405 (the bracketed language is the modification added by Hollis, see 950 So. 2d at 309).

However, there are two exceptions to State-agent immunity. Even if a State agent's conduct falls within a Cranman category of immunity (such as the fourth category quoted above), a State agent will not be entitled to immunity

"(1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or

"(2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law."

Cranman, 792 So. 2d at 405 (emphasis added).

A defendant asserting State-agent immunity has the initial burden of establishing that his or her relevant conduct falls under one of the enumerated categories of State-agent immunity established by Cranman. Ex parte Kennedy, 992 So. 2d 1276, 1282 (Ala. 2008). If the defendant establishes that the relevant conduct falls under a Cranman category, the burden then shifts to the plaintiff to show that one of the exceptions under Cranman applies. Id. In this case, the parties dispute whether Officer Coleman's conduct is covered by a Cranman category and, if a Cranman category applies, whether Angel established an exception. Angel asserts that, if Officer Coleman's conduct falls under a Cranman category, one of the exceptions would apply, i.e., that he was acting beyond his authority at the time of the accident. Although it is unclear, the circuit court appears to have implicitly concluded that a Cranman category applies, because the court explicitly concluded that there is substantial evidence indicating that an exception to immunity applies, i.e., that Officer Coleman exceeded his authority by "fail[ing] to

follow mandatory rules and procedures by using his personal phone to play and listen to a YouTube video" when the accident occurred. That is, the circuit court evidently determined that Officer Coleman had met his burden and, thus, that the burden had shifted to Angel to show that an exception applies.

II.

Officer Coleman and the city argue that Officer Coleman's conduct at the time of the accident was covered under the fourth Cranman category, quoted above. Insofar as the circuit court may have implicitly determined that Officer Coleman's conduct was covered under the fourth Cranman category, the circuit court was correct. As noted, under the fourth Cranman category, a State agent is immune from liability in his or her individual capacity when the conduct underlying the claim is based on the State agent's "exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers' arresting or attempting to arrest persons[, or serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a), Ala. Code 1975]." 792 So. 2d at 405 (the bracketed language is the modification added by Hollis, see 950 So. 2d at

309). Thus, this Court has incorporated the peace-officer-immunity standard provided in § 6-5-338(a) into the State-agent-immunity analysis found in the fourth Cranman category. Section 6-5-338(a) provides, in part: "Every peace officer ... 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." Here, the parties dispute whether the claim against Officer Coleman arises out of "conduct in performance of a discretionary function."

The question of what constitutes a discretionary function in this context must be evaluated in light of the specific and unique job responsibilities of law-enforcement officers. Officer Coleman and the city argue that the relevant function here is the "act of patrolling" and that the exercise of discretion is inherent in that act. Conversely, Angel argues that a "routine patrol" is not a discretionary function under the fourth Cranman category; he seems to contend that the relevant function here is simply driving a car under routine, nonemergency conditions, a common activity that ordinary people do daily. Angel's answer at 10. We

find Officer Coleman and the city's argument on this issue to be persuasive.

Officer Coleman and the city argue:

"The Rules and Regulations of the Birmingham Police Department required Officer Coleman to 'constantly patrol' the East Precinct, 'familiarize himself with the everyday routine of people' in the East Precinct, to monitor his beat 'for conditions requiring police attention,' to '[g]ive attention to crime hazards,' and to 'render all necessary police service in his assigned area' -- all of which require some degree of judgment and discretion. ...

"... The Department's Rules and Regulations allow Officer Coleman to use his discretion in furtherance of the end goal to 'achieve voluntary compliance with traffic laws and regulations.' "

Officer Coleman and the city's petition at 23-24. We agree with Officer Coleman and the city's argument insofar as they argue that "[t]he act of patrolling naturally involves the exercise of an officer's judgment and discretion" and requires "more than the everyday conduct of driving a motor vehicle." Officer Coleman and the city's petition at 24. Certainly, officers patrolling are doing more than just driving; they are persistently exercising judgment and discretion in a manner that non-law-enforcement drivers do not. The relevant standard here is broad: "Every peace officer ... 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." § 6-5-338(a). In light of this broad language, we conclude that the act of patrolling, which Officer Coleman was doing when the accident occurred, is a discretionary function and is thus covered under the fourth Cranman category, which incorporates § 6-5-338(a). This conclusion is consistent with "our recognition that police officers have to be accorded a high degree of discretion in the performance of their duties." Blackwood v. City of Hanceville, 936 So. 2d 495, 507 (Ala. 2006).

Angel cites Walters v. De'Andrea, 312 So. 3d 430 (Ala. 2020), and Ex parte Venter, 251 So. 3d 778 (Ala. 2017), in support of his argument that Officer Coleman's conduct is not covered under the fourth Cranman category. However, those cases are distinguishable from the current case. In Walters, like this case, a police officer was involved in an automobile accident. In concluding that the police officer's conduct was not covered under the fourth Cranman category, this Court placed significance on the fact that the officer was not patrolling. Unlike in this case, the police officer in Walters "admitted in her own testimony that she had completed her patrol shift and that she was simply returning to

her precinct to turn in paperwork, not performing any patrol duties." 312 So. 3d at 435. This Court concluded that the officer was not entitled to immunity under the fourth Cranman category:

"[The plaintiff] contends, correctly in our view, that this case presents a very similar situation to the one presented in [Ex parte Venter], 251 So. 3d 778 (Ala. 2017),] because [the police officer], by her own admission, was not responding to an emergency call or engaged in the act of patrolling when the accident occurred. Rather, she was simply returning to her precinct at the end of her shift to turn in paperwork. As the Venter Court observed: '[S]uch action can be characterized only as a routine action requiring the exercise of due care.' Ex parte Venter, 251 So. 3d at 783."

Walters, 312 So. 3d at 436.

The case cited by the Court in Walters, Venter, concerned a traffic accident involving a firefighter; the relevant Cranman immunity category in that case was the first Cranman category, which concerns "formulating plans, policies, or designs." Cranman, 792 So. 2d at 405. Regarding whether a firefighter's "patrolling" could be covered by the first Cranman category, the Court stated:

"[A]ssuming, without deciding, that the act of 'patrolling' could somehow be equated with formulating policy or procedure, [the firefighter], by his own admission, was not engaged in the act of patrolling when the accident occurred. Rather, [the firefighter] stated in his affidavit that, at the time of the accident, he was 'returning' to the fire department

'after riding around assigned territory within the City of Selma.' "

Venter, 251 So. 3d at 782-83.

In denying State-agent immunity to the defendants in Walters and Venter, this Court placed significance on the fact that the officer in Walters and the firefighter in Venter were no longer on patrol when the accident occurred. Here, Officer Coleman was on patrol when the accident occurred, and, thus, this case presents a distinct issue. Because we conclude that discretion is inherent in the act of patrolling, Officer Coleman's conduct is covered under the fourth Cranman category. Walters and Venter are materially distinguishable and are not controlling here.

Angel also cites Town of Loxley v. Coleman, 720 So. 2d 907 (Ala. 1998), but Loxley is not controlling either. In Loxley, a town employee was driving a truck transporting prisoners when a prisoner fell out of the back of the truck; the driver was maneuvering around potholes at the time. The Court in Loxley stated: "'[D]iscretionary functions are characterized by planning and decision-making, while ministerial functions are characterized by operational tasks.' ... Where the exercise of the defendant's function requires due care, rather than difficult

decision-making, the function is merely ministerial." 720 So. 2d at 909 (quoting Ex parte Alabama Dep't of Forensic Scis., 709 So. 2d 455, 458 (Ala. 1997)). In denying the employee immunity, this Court stated that "trying to avoid potholes while driving a motor vehicle is a ministerial, not a discretionary, function." 720 So. 2d at 909. However, the analysis in Loxley must be read in the context of that case. Loxley did not concern a police officer on patrol and whether that conduct was covered under the broad immunity provided to peace officers. Further, Loxley was a pre-Cranman decision that was controlled by this Court's previous "discretionary/ministerial" distinction. As former Justice Murdock has noted, Cranman shifted the focus of our inquiry somewhat: "In 2000, this Court [in Cranman] attempted to articulate five defined categories within which allegedly wrongful conduct must fit to qualify for State-agent immunity, abandoning the general 'discretionary public function' standard against which State-employee conduct had been measured up until that time." Ex parte Terry, 239 So. 3d 1125, 1137 (Ala. 2017) (Murdock, J., concurring in the result).

Under the framework established by Cranman, a court simply examines the relevant conduct to determine whether it falls under a

category of immunity. Sometimes that conduct may involve high-level and "difficult decisionmaking," such as "formulating plans, policies, or designs" under the first Cranman category. However, at other times immunity is provided for conduct that may actually appear to be ministerial, such as the third Cranman category, which provides immunity for "discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner." 792 So. 2d at 405. Here, the issue is merely whether Officer Coleman's conduct is covered by the fourth Cranman category, as modified to incorporate § 6-5-338(a). That is, the issue is whether Officer Coleman's "conduct [was] in performance of any discretionary function within the line and scope of his ... law enforcement duties." § 6-5-338(a). As discussed above, we conclude that the act of patrolling inherently involves discretion and is covered under the broad protection provided by the fourth Cranman category. Unlike Officer Coleman, the town employee in Loxley was not a police officer patrolling, an act that involves unique, job-specific judgment and discretion in which ordinary drivers are not engaged.

Angel also relies on Horton v. Briley, 792 So. 2d 432 (Ala. Civ. App. 2001), but Horton is distinguishable also. In Horton, the plaintiff sued a school-bus driver who was involved in an automobile accident. The Court of Civil Appeals succinctly determined that the school-bus driver's duties were not covered by any of the categories of immunity described in Cranman. Like Loxley, Horton did not concern a police officer on patrol and, thus, is different from the current case.

III.

A.

Thus, Officer Coleman and the city met their burden of establishing that Officer Coleman's conduct is covered by a Cranman category of immunity, in this case the fourth category. The burden then shifted to Angel to show that an exception to State-agent immunity applies. Kennedy, 992 So. 2d at 1282. Angel argues, as he did before the circuit court, that he presented substantial evidence indicating that the second exception under Cranman applies, specifically that part of the exception denying immunity to a State agent who acts beyond his or her authority. Angel argues that he demonstrated that Officer Coleman acted beyond his authority because, Angel says, he presented substantial evidence

indicating (1) that Officer Coleman violated the police department's rules and regulations regarding the personal use of cell phones when the accident occurred and (2) that Officer Coleman was speeding when the accident occurred. We will address these two arguments in turn.

B.

Angel argues that he presented substantial evidence demonstrating that Officer Coleman exceeded his authority by violating the police department's rules and regulations regarding the personal use of cell phones when the accident occurred. "One of the ways in which a plaintiff can show that a State agent acted beyond his or her authority is by proffering evidence that the State agent failed "to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist."" Kennedy, 992 So. 2d at 1282-83 (quoting Giambrone v. Douglas, 874 So. 2d 1046, 1052 (Ala. 2003), quoting in turn Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000)). The facts regarding this issue appear to be undisputed; thus, the issue is whether those undisputed facts demonstrate that Officer Coleman actually violated the rules and regulations. The circuit court agreed with Angel's argument below, concluding that he had demonstrated that Officer Coleman had acted

beyond his authority by "fail[ing] to follow mandatory rules and procedures by using his personal phone to play and listen to a YouTube video" when the accident occurred. Therefore, the circuit court concluded that the second Cranman exception to immunity applies and, thus, that Officer Coleman is not entitled to State-agent immunity. See Cranman, 792 So. 2d at 405 (stating that a defendant is not immune if he or she acts "willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law").

In his deposition, Officer Coleman testified that, while on patrol on the night of the accident, he was listening to a YouTube podcast on his cell phone. When the podcast was playing on the cell phone, the cell phone was resting on Officer Coleman's bag on the passenger seat. Officer Coleman testified that he had started playing the podcast earlier when he was still at the police station. Regarding personal cell-phone use, the police department's rules and regulations prohibit an officer from "read[ing] emails, surf[ing] the internet, play[ing] games, [using an] I-pod, post[ing] and/or read[ing] social media sites while operating a city owned vehicle." The rules and regulations also allow an officer to use a personal cell phone if done "in a reasonable, safe, and sensible manner."

We conclude that Officer Coleman did not violate the police department's rules and regulations by listening to the podcast while on patrol and, thus, did not exceed his authority. The rules and regulations provide a detailed checklist of prohibited actions regarding personal cell-phone use, but those rules and regulations do not prohibit the precise conduct here. Further, simply listening to a podcast on a phone is a passive activity that is distinct from the more active conduct prohibited. Listening to the podcast in this manner is tantamount to simply listening to a car radio, which is not prohibited. Angel failed to meet his burden of showing that Officer Coleman exceeded his authority by listening to the podcast on his cell phone.

C.

1.

Before the circuit court, Angel also asserted that Officer Coleman had acted beyond his authority because, Angel said, Officer Coleman was speeding when the accident occurred. The circuit court rejected this argument by concluding that there is no substantial evidence indicating that Officer Coleman was speeding. Angel presents to this Court the same argument on this issue that he made to the circuit court. Although

the circuit court rejected Angel's argument, we may consider it as a possible ground for denying the mandamus petition. Subject to exceptions that are inapplicable here, when considering whether to affirm a judgment or to deny mandamus relief, we may affirm or deny mandamus relief on any "valid legal ground presented by the record, regardless of whether that ground was considered, or even if it was rejected, by the trial court." Liberty Nat'l Life Ins. Co. v. University of Alabama Health Servs. Found., P.C., 881 So. 2d 1013, 1020 (Ala. 2003).³ See, e.g., Ex parte Moulton, 116 So. 3d 1119, 1133-34 (Ala. 2013)

³Liberty National states the exceptions to this general rule:

"This rule fails in application only where due-process constraints require some notice at the trial level, which was omitted, of the basis that would otherwise support an affirmance, such as when a totally omitted affirmative defense might, if available for consideration, suffice to affirm a judgment, Ameriquist Mortgage Co. v. Bentley, 851 So. 2d 458 (Ala. 2002), or where a summary-judgment movant has not asserted before the trial court a failure of the nonmovant's evidence on an element of a claim or defense and therefore has not shifted the burden of producing substantial evidence in support of that element, Rector v. Better Houses, Inc., 820 So. 2d 75, 80 (Ala. 2001) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), and Kennedy v. Western Sizzlin Corp., 857 So. 2d 71 (Ala. 2003))."

881 So. 2d at 1020.

(applying the principle stated in Liberty National in the context of a mandamus petition). Thus, we will consider Angel's argument on this issue as a possible ground for denying the petition and allowing the circuit court's denial of the summary-judgment motions to stand.

Citing conflicting evidence regarding whether Officer Coleman was speeding, Angel argues that Officer Coleman is not entitled to a summary judgment on State-agent immunity grounds because, he says, there is a genuine issue of material fact regarding whether Officer Coleman exceeded his authority by speeding when the accident occurred. Angel's argument presents two considerations: (1) whether there is substantial evidence indicating that Officer Coleman could in fact have been speeding when the accident occurred and (2) if such substantial evidence exists, is the question whether he was speeding a material issue that must be decided by a jury?

2.

We first address whether there is substantial evidence indicating that Officer Coleman could have been speeding at that time of the accident. Angel argues that he presented substantial evidence indicating that Officer Coleman was exceeding the 35-miles-per-hour speed limit

when the accident occurred. Specifically, Angel cites the deposition testimony of Officer Omar El-Husari, an officer with the police department who investigated the crash. Officer El-Husari testified that Officer Coleman told him that he was traveling "about 45 -- or 40 to 45 [miles per hour], not faster." Angel also relies on the body-camera footage of an "Officer Tolliver," a police-department officer who responded to the accident. When Officer Tolliver asked Officer Coleman how fast he was driving, Officer Coleman at first said that he did not know, but he then stated that he thought he "was doing maybe 40 [miles per hour]." On the other hand, Officer Coleman and the city note that Angel's accident-reconstruction expert, Kelly Kennett, testified that, in reconstructing the accident, he "[did not] have any evidence that [Officer Coleman] was speeding" and that "the evidence does not support [a finding of] excessive speed." However, later in his deposition, Kennett testified that the calculations that he used in reconstructing the accident revealed "an average indicated speed of thirty-five and then a range from thirty to forty-one," indicating the possibility that Officer Coleman could have been speeding. In his deposition, Officer Coleman at first testified that he did not know how fast he was going as he approached the scene of the

accident. When asked in a follow-up question if he could "bookend" how fast he was going, Officer Coleman testified that he was traveling "somewhere around 35 [miles per hour]."

Conflicting evidence exists regarding whether Officer Coleman was speeding when the accident occurred. Officer El-Husari's testimony and Officer Coleman's statement recorded on the body-camera footage constitute substantial evidence indicating that Officer Coleman could have been speeding. Further, Kennett's testimony providing a range of speeds at which Officer Coleman may have been traveling indicates that he could have been speeding. This evidence is "of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer" that Officer Coleman was speeding when the accident occurred; thus, this evidence constitutes substantial evidence that would support a finding of speeding. West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). Accordingly, the circuit court incorrectly concluded that there is no substantial evidence that would support a finding of speeding.

3.

We next address whether the existence of substantial evidence indicating that Officer Coleman may have been speeding when the accident occurred creates a material factual issue that must be resolved by the trier of fact. Put another way, even if a jury were to find that Officer Coleman was speeding, we must consider whether that finding would deprive Officer Coleman of State-agent immunity. Angel argues that, if a jury were to find that Officer Coleman was speeding, he exceeded his authority by speeding and, thus, would not be entitled to State-agent immunity. As noted, even if a State agent's conduct falls within a Cranman immunity category, an exception to State-agent immunity exists for conduct committed beyond a State agent's authority. Cranman, 792 So. 2d at 405. In evaluating whether a State agent acted beyond his or her authority, "there must be a fact-intensive inquiry into whether a relevant guideline leaves room for the exercise of any discretion or professional judgment by the [State agent] in relation to the particular circumstances with which the [State agent] may be presented." Ex parte Ingram, 229 So. 3d 220, 229 (Ala. 2017) (plurality opinion). Under the particular facts here, we conclude that, even if a jury

were to find that Officer Coleman was speeding, the acting-beyond-authority exception would not apply. We have already concluded that the act of patrolling cloaked Officer Coleman in State-agent immunity. At most, Officer Coleman was driving slightly above the speed limit late at night while on patrol; we decline to conclude that a finding of speeding under the specific circumstances here would strip him of State-agent immunity.

Tellingly, Angel's own accident-reconstruction expert, Kennett, testified that the accident most likely occurred because Officer Coleman was distracted, not because of the speed he was driving. As noted, Kennett testified that the "evidence does not support [a finding of] excessive speed on the part of Officer Coleman." When Kennett was asked whether he "believe[s] this accident occurred because [Officer Coleman] was distracted while driving," Kennett agreed and explained that his conclusion was based on the time and distance that Officer Coleman had to react given the speed he was traveling. Kennett stated that, given "all of the evidence and even [Officer] Coleman's own testimony ... that he [did not] see [Ricardo] until the impact [had] occurred ... plus the modest or, you know, appropriate speed for the road,

that's kind of how you get to the only leftover possibility, [which] is some form of distraction." He testified that "the most likely probability is one of distraction." Even if a jury were to decide that Officer Coleman was driving slightly above the speed limit, that would not be a material issue sufficient to deprive Officer Coleman of immunity given the circumstances here, including testimony from Angel's own expert about the relevance of Officer Coleman's speed in this case.

Our conclusion is further supported by this Court's decision in Ex parte City of Montgomery, 272 So. 3d 155 (Ala. 2018). In Montgomery, a police officer was involved in an automobile accident while responding to an emergency dispatch. After activating her emergency lights and sirens, the officer attempted to cross a large intersection against a red light. Before she entered the intersection, the vehicles traveling in the two lanes closest to the officer stopped to allow her to cross. Although the officer's view of the third lane was blocked by the vehicles stopped in the first two lanes, she proceeded through the intersection, and she collided with a vehicle traveling in the third lane.

After concluding that the police officer had satisfied the requirements of § 32-5A-7, Ala. Code 1975, concerning the use of an

emergency vehicle, the Court in Montgomery addressed the plaintiff's argument that an exception to State-agent immunity applied because, the plaintiff said, the officer had exceeded her authority.⁴ Specifically, the plaintiff argued that the officer had exceeded her authority by violating her "police training." 272 So. 3d at 168. The Court noted that the officer had "admitted that she had violated her police training by entering the third lane of the intersection without knowing that the traffic in that lane had stopped." 272 So. 3d at 167. The Court also observed that the officer had admitted that the City of Montgomery had concluded that she was "at fault" for the collision. Regardless of those admissions, this Court concluded that the officer

"was engaged in a discretionary act (proceeding through an intersection while responding to an emergency dispatch) that is regularly performed by police officers who are carrying out their law-enforcement duties. Even assuming [the officer] violated her police training while exercising her discretion, she did not act beyond her authority in attempting to slowly proceed through an intersection, with the emergency lights and siren activated on her patrol car, in response to an emergency dispatch."

⁴Section 32-5A-7(a) provides that "[t]he driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges" established in that section "subject to the conditions" stated in that section.

272 So. 3d at 167-68.

In Montgomery, the conduct that was allegedly done beyond the officer's authority directly resulted in the accident. Although the officer admitted that she had been found at fault for the collision and that she had violated her police training in taking the action that caused the accident, she did not exceed her authority under the second Cranman exception. In this case, Angel argues that, if a jury were to find that Officer Coleman was speeding, he exceeded his authority and, thus, does not have State-agent immunity. However, Angel's own expert testified that the accident most likely occurred because Officer Coleman was distracted, not due to the speed he was driving. That is, the conduct at issue here is much more tangential to the accident than the conduct in Montgomery was to the accident in that case. Given that the officer in Montgomery was entitled to State-agent immunity, Officer Coleman should be as well. Under the specific facts of this case, even if Officer Coleman was slightly speeding while on patrol late at night, that would not deprive him of State-agent immunity.

Conclusion

We conclude that the act of police patrolling is a discretionary function and is thus covered under the fourth Cranman category of State-agent immunity, which incorporates § 6-5-338(a). Because Officer Coleman was patrolling at the time of the accident underlying this action, his conduct is covered under the fourth Cranman category. The circuit court erred by concluding that Officer Coleman acted beyond his authority and thus that the second exception to immunity under Cranman applies. Regarding that exception, the circuit court erred by concluding that Officer Coleman violated the police department's rules and regulations; Officer Coleman was not acting beyond his authority in the personal use of his cell phone on the night of the accident. Substantial evidence exists that would support a finding by a jury that Coleman was speeding when the accident occurred; however, even if he was speeding, the beyond-authority exception would not apply under the specific facts of this case. Officer Coleman is entitled to a summary judgment on the ground of State-agent immunity. Because Officer Coleman is immune, the city is also immune and entitled to a summary judgment in its favor as well. See City of Bayou La Batre v. Robinson,

785 So. 2d 1128, 1131 (Ala. 2000) ("[U]nder principles of vicarious liability, where a municipal employee enjoys immunity, the municipality likewise is immune as to claims based on the employee's conduct."); Hollis, 950 So. 2d at 306 ("[I]f Officer Davis is immune, then so is the City, which employed him.").

PETITION GRANTED; WRIT ISSUED.

McCool, J., concurs.

Cook, J., concurs in part and concurs in the result, with opinion, which Wise and Parker, JJ., join.

Shaw and Sellers, JJ., concur in the result.

Mendheim, J., dissents, with opinion, which Stewart, C.J., joins.

COOK, Justice (concurring in part and concurring in the result).

I concur with the main opinion's analysis and conclusion in Part II of the "Discussion" section that Officer Coleman and the city met their burden of establishing that Officer Coleman's conduct is covered by the fourth category of immunity provided in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000), as modified by this Court in Hollis v. City of Brighton, 950 So. 2d 300 (Ala. 2006). As explained in the main opinion, because Officer Coleman and the city met their burden, the burden then shifted to Angel to show that an exception to State-agent immunity applies.

I. Whether Angel Met His Burden of Showing that An Exception to Immunity Applied

Angel argues that he presented substantial evidence indicating that the second exception under Cranman -- denying immunity to a State agent who acts beyond his or her authority -- applies here. I concur with the main opinion's analysis and conclusion in Part III.B. that Angel failed to meet his burden of showing that Officer Coleman exceeded his authority by listening to the podcast on his cell phone. However, I disagree with the main opinion's reasoning underlying its conclusion in Part III.C. that there is a genuine issue of fact as to whether Officer Coleman was speeding when the accident occurred. As I explain below,

because Angel's own expert agrees that Officer Coleman was not speeding, the main opinion need not go any further. Moreover, I fear that the additional analysis in the main opinion on this issue may cause confusion, and it is for this reason that I concur in the result.

A. Angel's Expert Agrees There Was No Evidence of Speeding

As noted in the main opinion, Angel's own expert provided no evidence that Officer Coleman was speeding at all, much less whether his speed was the cause of the accident. Specifically, Angel's expert, Kelly Kennett, testified that the "evidence does not support [a finding of] excessive speed on the part of Officer Coleman." (Emphasis added.) He further testified that, in reconstructing the accident, he "[did not] have any evidence that [Officer Coleman] was speeding." (Emphasis added.)

In their petition for a writ mandamus, Officer Coleman and the city specifically argue that this testimony by Kennett "forecloses" any argument by Angel that any alleged speeding by Officer Coleman provides an exception to immunity in this case. See Petition at 26 ("The testimony of the estate's own accident reconstructionist forecloses such an argument. (Att. C-7 at 33:21 to 34:4).").

Moreover, in its summary-judgment order, the trial court agreed

with Officer Coleman and the city when it expressly stated that it found Angel's argument regarding speeding unpersuasive in light of Kennett's testimony. Specifically, the trial court wrote:

"Given the testimony from [Angel's] own accident reconstructionist, this Court finds [Angel's] allegation that Officer Coleman was speeding, as wholly unpersuasive. [Officer Coleman and the city] have therefore made a prima facie showing that Officer Coleman was not speeding, and [Angel] has not offered substantial evidence that Officer Coleman was speeding."

(Emphasis added.)

Despite this specific argument by Officer Coleman and the city regarding Kennett's concession and despite the trial court's conclusion on this same issue, Angel provides no response to Kennett's admissions in his answer to the petition for a writ of mandamus.

Given the admissions by Angel's expert and the trial court's own determination that Angel's position was "unpersuasive" in light of that testimony, I do not agree with the main opinion that there is "substantial evidence that would support a finding of speeding" and that the trial court, therefore, "incorrectly concluded that there is no substantial evidence that would support a finding of speeding." ____ So. 3d at ____.

B. There is No Need To Compare This Case to Ex parte City of Montgomery, 272 So. 3d 155 (Ala. 2018), and the

Comparison May Cause Confusion

After reaching this conclusion, the main opinion then goes a step further to address "whether the existence of substantial evidence indicating that Officer Coleman may have been speeding when the accident occurred creates a material factual issue that must be resolved by the trier of fact." ____ So. 3d at _____. The main opinion says: "[E]ven if a jury were to find that Officer Coleman was speeding, we must consider whether that finding would deprive Officer Coleman of State-agent immunity." ____ So. 3d at _____.

The main opinion ultimately rules for Officer Coleman on this issue. It states: "Under the particular facts here, we conclude that, even if a jury were to find that Officer Coleman was speeding, the acting-beyond-authority exception would not apply." ____ So. 3d at _____. It further states that, "[a]t most, Officer Coleman was driving slightly above the speed limit late at night while on patrol; we decline to conclude that a finding of speeding under the specific circumstances here would strip him of State-agent immunity." ____ So. 3d at _____ (emphasis added).

The main opinion appears to bolster this conclusion about driving "slightly above the speed limit" by comparing this case to our Court's

prior decision in Ex parte City of Montgomery, *supra*, stating:

"In Montgomery, the conduct that was allegedly done beyond the officer's authority directly resulted in the accident. Although the officer admitted that she had been found at fault for the collision and that she had violated her police training in taking the action that caused the accident, she did not exceed her authority under the second Cranman exception. In this case, Angel argues that, if a jury were to find that Officer Coleman was speeding, he exceeded his authority and, thus, does not have State-agent immunity. However, Angel's own expert testified that the accident most likely occurred because Officer Coleman was distracted, not due to the speed he was driving. That is, the conduct at issue here is much more tangential to the accident than the conduct in Montgomery was to the accident in that case. Given that the officer in Montgomery was entitled to State-agent immunity, Officer Coleman should be as well. Under the specific facts of this case, even if Officer Coleman was slightly speeding while on patrol late at night, that would not deprive him of State-agent immunity.

____ So. 3d at ____ (emphasis added).

The purpose for which the main opinion is comparing this case to our decision in Montgomery is unclear to me. If, on the one hand, the main opinion is relying on Montgomery to say that "slightly" violating the speed limit should not fit within existing exceptions to State-agent immunity, I believe this conclusion is likely mistaken, is not supported by Montgomery, and, in any event, is not necessary to grant Officer Coleman and the city mandamus relief here.

In Montgomery, our Court, in examining whether the "beyond the authority" exception to State-agent immunity applied, noted that the officer in that case had admitted in her deposition that (1) the city had concluded that she was "at fault" for the collision underlying the plaintiff's lawsuit, (2) that she had violated her police training by entering the third lane of the intersection without knowing that the traffic in that lane had stopped, and (3) that five seconds was not a reasonable amount of time in which to clear the intersection. Nevertheless, because the officer was engaged in a discretionary act -- proceeding through an intersection while responding to an emergency dispatch -- that is regularly performed by police officers who are carrying out their law-enforcement duties, our Court held that she was still entitled to State-agent immunity. 272 So. 3d at 167-68. Specifically, we held that, "[e]ven assuming [the officer] violated her police training while exercising her discretion, she did not act beyond her authority in attempting to slowly proceed through an intersection, with the emergency lights and siren activated on her patrol car, in response to an emergency dispatch." Id. at 168.

It is my understanding that our holding as to State-agent immunity

in Montgomery rested on the conclusion that the officer was exercising her discretion when she slowly entered the third lane of the intersection at issue with her emergency lights and siren activated on her patrol car in response to an emergency dispatch.

Here, however, we must look to a more concrete set of rules -- the Rules of the Road -- which, among other things, govern speeding. Such rules leave little room for discretion on the part of a police officer, and, therefore, a violation of such rules is more likely to trigger the application of an exception to State-agent immunity.⁵ In my view, because of this difference, drawing such parallels between Montgomery and this case runs the risk of creating confusion.

On the other hand, if the main opinion is merely relying on Montgomery to hold that there must be evidence of causation between the violation of a law -- here, speeding -- and the accident to overcome

⁵To avoid any confusion, I note that law-enforcement officers have express permission in some circumstances to violate speed limits. See, e.g., § 32-5A-7, Ala. Code 1975. There is no argument in this case that Officer Coleman had such authority to exceed the speed limit in this situation.

immunity, then I agree with that conclusion.⁶ A violation of the law (or a department policy) that is not causally related to the accident cannot be used as a basis for an exception to State-agent immunity. Without reaching the ultimate issue, I observe that, based upon Kennett's testimony, there is reason to believe that summary judgment would be due on this basis also.

II. Conclusion

In sum, I concur with the main opinion's conclusions (1) that Officer Coleman and the city met their burden of establishing that Officer Coleman's conduct is covered by the fourth category of State-agent immunity and (2) that Angel failed to meet his burden of showing that the second exception to State-agent immunity applied in this case. In my view, we need go no further to grant mandamus relief to Officer Coleman and the city in this case.

However, the main opinion does go a step further in Part III.C. to

⁶For instance, I note that the main opinion includes a sentence that could be read as discussing causation. It states: "That is, the conduct at issue here is much more tangential to the accident than the conduct in Montgomery was to the accident in that case." ____ So. 3d at ____ (emphasis added). While this is certainly correct, I am not sure that Montgomery is a causation decision.

address whether the existence of substantial evidence indicating that Officer Coleman may have been speeding when the accident occurred creates a material factual issue that must be resolved by the trier of fact and, for reasons that are unclear to me, uses our Court's prior decision in Montgomery as a basis for doing so. Because I do not believe that this was necessary, I must concur in the result.

Wise and Parker, JJ., concur.

MENDHEIM, Justice (dissenting).

Based on Officer Alonzo Cornelius Coleman IV's body-cam footage immediately following the incident involving Ricardo Morales Cuin, and on the other materials before us, a question of fact exists regarding whether a driver satisfying the normal standard of care would have hit, rather than avoided hitting, Cuin, who was apparently walking across the road from an adjacent lane. Officer Coleman and the City of Birmingham argue in their petition that that question of fact, and other questions of fact, need not be answered at trial because Officer Coleman "was unquestionably on patrol at the time of the accident and was within his assigned beat when Mr. Cuin walked into his lane of travel while intoxicated and clad in dark clothing from head to toe." Petition at 7. According to Officer Coleman and the City, he was "on patrol," "not speeding, ... not physically using either of his mobile phones, and ha[ving] his eyes on the road" while listening to a podcast and driving in the rain at night.⁷ Id. Thus, they contend, immunity allowed him to

⁷Officer Coleman also stated in his deposition that he had a bag of chips on his book bag or in the cup holder and that he was eating the chips. Officer Coleman asserted that it was "raining heavily," and his answers to interrogatories described it as a "torrential downpour," though his body-cam footage immediately following the incident does not

potentially negligently cause the death of Cuin, without liability in his individual capacity.⁸ I disagree. And the fact that being on patrol -- a duty in the line and scope of Officer Coleman's employment that includes several functions that may involve the exercise of discretion -- might include Officer Coleman's "'familiariz[ing] himself with the everyday routine of people' in the East Precinct, in inspecting his beat 'for conditions requiring police attention,' in '[g]iv[ing] attention to crime hazards,' and in 'render[ing] all necessary police service in his assigned

indicate a visually obstructive rain and the windshield-wiper speed on his vehicle was intermittent. Officer Coleman also asserted that the scene was "'pretty dark' ... other than a flashing yellow traffic signal at the intersection"; the body-cam footage reflects that there also were streetlights nearby, though not illuminating the actual scene of the incident. Officer Coleman asserted "that his eyes were on the road when the [incident] occurred," and he described Cuin as walking into his lane "from left to right," stating that he was "not visible until" the patrol car struck him. But how would Officer Coleman know Cuin was walking, not running or stumbling, into his lane if Cuin was not visible until he was struck while Officer Coleman's eyes were on the road? And Officer Coleman testified in his deposition that he first saw Cuin "when [Officer Coleman] got out of the vehicle" and that he knew he hit something but did not see Cuin at all before he realized he had hit something, at which point Cuin's body came onto the hood and rolled off to the side.

⁸As the main opinion notes, there is an issue of fact regarding whether Officer Coleman was speeding, and that issue takes on additional import given that it was raining, it was night, Officer Coleman had trouble seeing a figure such as Cuin who might step into the roadway, and he had chosen to listen to a podcast.

area,'" id. at 20, is of no help to Officer Coleman because he does not assert that he was engaged in any of those functions while on patrol duty. Officer Coleman was simply listening to a podcast, eating chips, while driving at night in his assigned area with his eyes on the road. By his own admission, Officer Coleman was looking straight ahead while driving and had been doing so for 5 to 10 seconds before the incident. He did not present evidence indicating that he was, for example, "giving attention to crime hazards" while driving, which may involve the exercise of discretion to elevate a function associated with patrol duty over the duty to drive in a manner applicable to all drivers. And while Officer Coleman undoubtedly had discretion in driving as all drivers do, the question is whether simply having discretion in driving authorizes a violation of the standard of care applicable to drivers, regardless of circumstance. The answer is no. See Ex parte Cranman, 792 So. 2d 392, 404 (Ala. 2000).

Based on the rationale of Ex parte Cranman, 792 So. 2d at 404-405, as modified by Hollis v. City of Brighton, 950 So. 2d 300, 309 (Ala. 2006), I do not agree that, because he was driving on patrol, Officer Coleman was any more empowered to violate the standard of care applicable to all

drivers than he might have been if he had been conducting an investigation or returning to the precinct to clock out. See Walters v. De'Andrea, 312 So. 3d 430, 435-37 (Ala. 2020). Officer Coleman has not established that he was confronted with the necessity of making a decision between fulfilling a function of his patrol duty -- such as "[g]iv[ing] attention to crime hazards'" by further observing suspicious activity on a street corner he was about to pass -- or abiding by the standard of care applicable to all drivers. If he was, he may be entitled to immunity for engaging in conduct that might otherwise constitute negligent conduct; an officer has the discretion to prioritize certain duties over his or her driving duties in appropriate circumstances. But, as this Court has determined, immunity is not a blanket authorization for negligent driving when the need for making such a discretionary decision is not involved.

In Walters, Officer Jessica De'Andrea attempted to qualify for immunity using the third category described in Cranman, "'discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that

manner.'" 312 So. 3d at 434 (quoting Cranman, 792 So. 2d at 405). De'Andrea argued that "'[o]ne of the daily duties of the patrol officers was to report to their precinct at the end of their shift to turn in daily activity logs.'" Id. (quoting De'Andrea's brief). The Court rejected that argument because the policy at issue did not "'prescribe[] the manner for performing [that] dut[y]' other than that it had to be done at the end of a shift. Cranman, 792 So. 2d at 405. The policy in question had nothing to do with how De'Andrea drove her police vehicle on public roadways." 312 So. 3d at 435.

De'Andrea likewise made an argument using the fourth Cranman category, "'exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, ... [... serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a), Ala. Code 1975].'" 312 So. 3d at 434 (quoting Cranman, 792 So. 2d at 405, as modified by Hollis, 950 So. 2d at 309). De'Andrea quoted to the Court a lengthy list of "patrol duties" from "The Standard Operating Procedure for the Montgomery Police Department Patrol Division." See Walters, 312 So. 3d at 434-35. But the Court dispatched that argument with the observation that De'Andrea had been unable to "point to a single

patrol duty she was actually performing at the time the accident occurred. In fact, De'Andrea admitted in her own testimony that she ... was ... not performing any patrol duties." Id. at 435.

The main opinion attempts to distinguish Walters, essentially indicating that the Walters Court implicitly was stating that if De'Andrea had not been ending her shift, but had been "on patrol," and had caused the accident, she would have been immune under the fourth Cranman category. But the Walters opinion neither said nor implied any such thing. In fact, the opinion repeatedly emphasized that the duty at issue was "how De'Andrea drove her police vehicle on public roadways." Id. at 435. Near the conclusion of the opinion, the Court said it this way:

"The duty at issue here -- 'the conduct made the basis of the claim against [De'Andrea]' -- was nothing more or less than the duty of due care that every driver on the roadway owes to other motorists. Cranman, 792 So. 2d at 405. Under [Ex parte] Venter[, 251 So. 3d 778 (Ala. 2017),] and other authorities, such an action is not clothed with State-agent immunity."

Walters, 312 So. 3d at 437 (emphasis added).⁹

⁹I question whether a police department or a municipality may, absent authorization by the legislature, institute a policy that a police officer may deviate from the normally applicable standard of care for drivers regardless of whether the circumstances under which the officer must make a decision present a duty-related reason that might justify such deviation. The main opinion would apparently conclude that if the

This Court has already decided in Walters that a municipal police officer must act in accord with the standard of care applicable to all drivers absent a duty-related function that requires him or her to exercise discretion to deviate from that standard of care in order to fulfill such function. The legislature has even acknowledged such limits when addressing another area involving the fulfillment of a law-enforcement officer's duty, see Ala. Code 1975, § 32-5A-7 (providing conditional privileges for "[t]he driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm," § 32-5A-7(a)). And the rationale of the main opinion presents an odd contrast to that section.

Section 32-5A-7 mandates the use of audio and visual signals that would warn the public that the officer is responding to an emergency call or in pursuit of a suspected violator and may violate certain otherwise applicable laws related to the standard of care for driving. See § 32-5A-

Montgomery Police Department had said a patrol officer is "on patrol" until he or she clocks out, it would have made a difference in Walters. But that is inconsistent with the rationale in that case, which the main opinion is essentially overruling under the guise of distinguishing.

7(c). Under the rationale of the main opinion, however, the public must be on alert at all times that any officer on patrol may negligently violate such laws at any time, without providing any notice and without any apparent need to do so. And, more importantly, even the high-stress circumstances described in § 32-5A-7 have limits. When an officer responding to an emergency call or in pursuit of a suspected violator of the law is using required audible and visual signals, the officer

"(b) ... may

"...

"(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

"(3) Exceed the maximum speed limits so long as he does not endanger life or property[.]

"....

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

Thus, the legislature provided no carte blanche for negligent driving, even under the circumstances described in § 32-5A-7. Yet, under the rationale of the main opinion, by simply being on patrol Officer Coleman

was relieved of the requirement to drive with due regard for the safety of all persons, a privilege he would not have had had he been pursuing a suspected violator when he hit Cuin. And, as the materials before us reflect, even the patrol techniques of the Birmingham Police Department require that an officer in a marked vehicle and on traffic patrol must "operate [his or her] patrol vehicle[] in accordance with existing laws and in such a manner as to demonstrate exemplary driving behavior. Extreme emergency conditions will be the only exceptions to this practice."

I respectfully dissent.

Stewart, C.J., concurs.