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Williams v. Mayor of Baltimore:
A Police Officer May Lose Immunity From Civil Liability Where a Special Relationship Exists

By Nichole Galvin

The Court of Appeals of Maryland held that where a police officer's affirmative actions and specific promises of protection establish a special relationship, his immunity from civil liability might not survive. *Williams v. Mayor of Baltimore*, 359 Md. 101, 753 A.2d 41 (2000). In so holding, the court limited a police officer's immunity from civil liability for negligent discretionary acts and provided a way for victims of police negligence to recover for their injuries.

On June 19, 1995, Baltimore City Police Officer Edward Colbert ("Colbert") responded to a domestic violence call from Mary Williams ("Williams"), who had arrived home to find that her daughter, Valerie Williams ("Valerie"), had been beaten by her boyfriend, George Watkins ("Watkins"). While Colbert was taking statements, Watkins called and threatened to return to the house. Colbert told Valerie he was going to his car to call for someone to bring a camera.

Williams' and Colbert's stories differed from this point. Williams alleged that she went out to the car and Colbert instructed her to stay in the house while he waited for an officer to bring a camera to document her injuries. Colbert

claimed that he received Williams' consent to leave to retrieve a camera to document her bruises. Williams alleged that she went inside the house and left the door unlocked because she believed Colbert was outside. Shortly thereafter, Williams was going to talk to Colbert, but upon reaching the front door, Colbert was not outside. Instead, she found Watkins rushing to the house, and before she could shut the door, Watkins forced himself inside. Upon entering, Watkins shot Williams in the head and leg, killed Valerie and then shot himself.

Williams filed a complaint in the Circuit Court for Baltimore City against the State of Maryland, the Mayor and City Council of Baltimore City, and Colbert. The circuit court dismissed the claims against the city and state and granted Colbert's motion for summary judgment, which the court of special appeals affirmed. The Court of Appeals of Maryland granted certiorari to decide whether Colbert was divested of discretion and ordered to protect Valerie and Williams, whether Colbert was protected by statutory immunity or common law immunity, and whether Colbert's actions established a special relationship. *Williams*, 359 Md. at 108, 753 A.2d at 45.

First, the court held that Article

27, section 798 (B)(2) of the Maryland Code ("section 798") and Baltimore City Police Department General Order 10-93 ("BCPD 10-93") did not divest Colbert of discretion and mandated that he protect the Williamses because neither was applicable to the facts of the case. *Id.* at 129, 753 A.2d at 56. The court determined that the legislative purpose of section 798 was to authorize the police under the umbrella of statutory immunity to protect domestic violence victims where the violence occurs in the officer's presence and where the officer escorts a victim, who has fled the family home, back to the home to recover personal items. *Id.* at 125, 753 A.2d at 54. Neither circumstance existed in this case. *Id.* Moreover, the court held that BCPD 10-93 creates a duty to protect domestic violence victims at the time the violence is occurring, and not for an indefinite period of time. *Id.* at 129, 753 A.2d at 56. Accordingly, Colbert was not mandated by section 798 or BCPD 10-93 to protect Valerie and Williams and was therefore not divested of discretion. *Id.*

Second, the court held that Colbert was protected by statutory immunity generally and by common law immunity to the extent that his

acts were discretionary. *Id.* at 131, 753 A.2d at 57. Statutory immunity in the context of public official immunity is codified in sections 5-511(b) and 5-610(b) of the Courts and Judicial Proceedings Article of the Maryland Code. *Id.* (citing Md. Code Ann., Cts. & Jud. Proc. §§ 5-511(b), 5-610 (1974, 1998 Repl. Vol.)). Section 5-511(b) provides statutory immunity from civil liability for police officers acting within the scope of their employment in a discretionary manner without malice. *Id.* Section 5-610(b) provides immunity for a police officer who responds to requests for assistance under the authority of Article 27, section 798. *Id.* at 131, 753 A.2d at 57. The court opined that although section 798 was inapplicable to the present case, it shed light on the legislative intent to ensure that officers were in no way “stripped of their accustomed immunity” when acting within statutory authority. *Id.* at 134, 753 A.2d at 58. The legislature sought to alleviate the fear of police officers that if they found themselves acting beyond the scope of normal police authority, that such non-traditional activity might divest them of immunity. *Id.* at 132, 753 A.2d at 58. The court held that Colbert was generally protected by statutory immunity.

Common law immunity confers a duty on the police to provide protection to the general public, not to specific individuals. *Id.* at 138, 753 A.2d at 61. This public duty doctrine requires that the government representative be a public official, that the tortious conduct occurred while making a discretionary decision in the

course of performing official duties, and that the conduct is without malice. *Id.* at 141, 753 A.2d at 62. The law in Maryland is well settled, police officers performing their duties are public officials and as such, fall within the purview of qualified immunity as to their discretionary acts. *Id.* (citing *Clea v. Mayor of Baltimore*, 312 Md. 662, 672, 541 A.2d 1303, 1308 (1988)).

Common law immunity encompasses the concept of a discretionary function or act. *Williams*, 359 Md. at 140, 753 A.2d at 62. A discretionary function is “the freedom to act according to one’s judgment in the absence of a hard and fast rule.” *Id.* at 139, 753 A.2d at 62. Colbert ordinarily had the discretion to leave and pick up the camera, however, if he told the Williamses that he would remain, then he had a duty to tell them he was leaving. *Id.* Accordingly, the court held that Colbert was acting within the scope of his employment, without malice and to the extent that his actions were discretionary, he qualified for immunity from civil liability. *Id.* at 141, 753 A.2d at 62.

The third and determinative issue addressed by the court was whether Colbert’s affirmative actions and specific promises of protection to Valerie and Mary Williams created a special relationship. *Id.* at 144, 753 A.2d at 64. In *Ashburn v. Anne Arundel County*, 306 Md. 617, 510 A.2d 1078 (1986), the court of appeals held that a special relationship existed if a police officer affirmatively acted to protect specific victims, which resulted in the victim’s

reliance upon this protection to their detriment. *Id.* at 150, 753 A.2d at 68.

In *Ashburn*, a police officer stopped an intoxicated driver and rather than arresting him, ordered him to stop driving and park his car for the night. *Id.* After the officer left, the driver continued driving and hit a pedestrian, John Ashburn. *Id.* The *Ashburn* court held that a special relationship did not exist because the officer had not acted specifically to Ashburn’s benefit. *Id.*

In the present case, the court affirmed *Ashburn* and held that to survive summary judgment, a victim must prove that an officer affirmatively acted to specifically protect her and that she relied on that protection to her detriment. *Id.* at 151, 753 A.2d at 68. The court found that the facts alleged by Williams, if true, were sufficient to establish a special relationship. *Id.* If a special relationship existed, Colbert had a duty to remain at the home or to inform Williams he was going to leave. *Id.*

The impact of the *Williams* decision is two-fold. First, police officers may hesitate to offer protection to domestic violence victims unless the violence occurred in their presence or they are escorting the victim to the home to recover personal belongings. In other situations, officers will not want to risk the potential liability from a victim interpreting their actions as affirmative actions evoking reliance by the victim. Second, the claims of victims who are able to allege facts establishing a

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special relationship will be given their day in court rather than barred from recovery by common law immunity.

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