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## Recent Developments: Baltimore City Police Department v. Potts

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## RECENT DEVELOPMENT

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### ***BALTIMORE CITY POLICE DEPARTMENT V. POTTS: UNDER THE LOCAL GOVERNMENT TORT CLAIMS ACT, BALTIMORE CITY IS LIABLE FOR THE JUDGMENT AGAINST ITS OFFICERS THAT RESULTED FROM THEIR TORTIOUS ACTS COMMITTED WITHIN THE SCOPE OF EMPLOYMENT.***

**By: Renee Boyd**

The Court of Appeals of Maryland held that the actions of the police officers involved in this case were in furtherance of the Baltimore City (“City”) Police Department’s (“Department”) business under the Local Government Tort Claims Act (LGTCA). *Baltimore City Police Dep’t v. Potts*, 468 Md. 265, 320, 227 A.3d 186, 219 (2020). The court also held that the actions of the officers were incidental to conduct authorized by the Department, and thus were in scope of employment under LGTCA. *Id.* Therefore, the City and the Department are liable for the judgment against the officers. *Id.* at 320, 227 A.3d at 219.

There are two cases which question whether the actions of the police officers were within the scope of their employment. In the first case, Ivan Potts was stopped without probable cause on September 2, 2015 by three police officers who were members of the Department’s Gun Trace Task Force (GTTF). When he did not consent to a search of his person, the officers slammed Potts to the ground, kicked him, beat him, and handcuffed him. The officers produced a handgun never seen by Potts and tried to put it in Potts’ hands so his fingerprints would be on the gun. Potts was so badly injured that the booking unit refused to process him until he was taken to a hospital to be treated. Potts was convicted for possession of a firearm and sentenced to eight years in prison. By the time his conviction was vacated, he was in custody for a total of nineteen months. Potts subsequently filed suit against the officers, the Department, the Mayor, and the City Council of Baltimore.

On August 18, 2016, in the second Baltimore City case, three police officers, also members of the GTTF, stopped William James’ car without probable cause. Although the officers lacked any reasonable suspicion that James had committed, or was committing a crime, they informed James they would let him go only if he produced the name of a person who possessed guns or drugs. When James informed the officers, he didn’t know of any such person, they advised James that he would be imprisoned for possession of a gun. The officers then produced a weapon saying it belonged to James and arrested him. James spent more than seven months in custody awaiting trial. He sued the officers, the Department, and the City.

In both cases, the arresting officers and the plaintiffs agreed to a settlement of \$32,000. Potts and James’ estate filed supplemental complaints

in their cases, seeking payment of the settlement from the City.

While motions for summary judgment were pending in Potts in federal court, the parties filed a joint motion to the Court of Appeals of Maryland to certify a question of law. In *James*, the circuit court held that the officers had acted within the scope of employment and that the City was required to compensate the estate. While the case was pending in the Court of Special Appeals, the City petitioned for a *writ of certiorari*. The question in the writ of certiorari and the certified question of the law were identical: whether the judgments sought to be enforced by the plaintiffs were based on “tortious acts or omissions [that were] committed by the [officers] within the scope of [their] employment with the [City].”

The court first examined the conduct under the LGTCA. The LGTCA states that a government is liable for judgments against its employees for damages that result from tortious acts or omissions committed by the employees within the scope of their employment with the local government. *Potts*, 468 Md. at 282-83, 227 A.3d at 196-97 (citing *Md. Code Ann., Cts. & Jud. Proc.* §§ 5-301 to 5-304 (West 2013)). The LGTCA, however, does not define scope of employment. *Potts*, 468 Md. at 271, 227 A.3d at 190. Instead, the court looks to Maryland case law to define the term. *Id.* In *Sawyer v. Humphries*, the court used a two-prong test to determine if the employee acted within the scope of employment. *Id.* at 271, 227 A.3d at 190 (citing *Sawyer v. Humphries*, 322 Md. 247, 255, 587 A.2d 467, 470 (1991)). The first prong is whether the employee’s actions “were in furtherance of the employer’s business” and the second prong is whether the employer “authorized” the employee’s actions. *Id.* The Court of Appeals of Maryland examined these two issues. *Id.*

Based on the first prong of the test, the Court of Appeals of Maryland held that, in both cases, the actions of the officers were in furtherance of the Department’s business because there was no evidence or indication that the officers acted to protect their own interests. *Potts*, 468 Md. at 306, 227 A.3d at 211. The Court also held that the actions of the officers were at least partially motivated by a purpose to serve the Department. *Id.*

Police activities include stopping, searching and arresting individuals. Therefore, officers who engage in these activities are acting within the scope of employment. *Potts*, 468 Md. at 306, 227 A.3d at 211. Here, the court acknowledged the misconduct of the officers was egregious but held that even though the conduct was wrongful, the officers’ actions were still in the scope of employment. *Id.* at 305, 227 A.3d at 210. Making arrests, even when officers engage in egregious conduct, is still acting within the scope of employment. *Potts*, 468 Md. at 306, 227 A.3d at 211 (citing *Cox v. Prince George’s Cty.*, 296 Md. 162, 171, 164, 460 A.2d 1038,1043 (1983)).

The court also held that an arrest is still in the scope of employment even if the arrest is not supported by probable cause. *Potts*, 468 Md. at 307, 227 A.3d 211 (citing *Houghton v. Forrest*, 412 Md. 578, 583-84, 989 A.2d 223, 226-27(2010)). Using excessive force during the arrest does not render the

arrest outside the scope of employment. *Id.* at 308, 227 A.3d at 212 (citing *Prince George's Cty. v. Morales*, 230 Md. App. 699, 702-03, 149 A.3d 741,742-43 (2016)). Lastly, the court held that fabricating and planting evidence on a suspect does not render the officer's actions outside the scope of employment. *Potts*, 468 Md. at 308, 227 A.3d at 212 (citing *Titan Indem. Co. v. Newton*, 39 F. Supp.2d 1336, 1342 (N.D. Ala. 1999)).

After assessing the second prong of the test, the court concluded that the officers' misconduct was authorized by the Department because it was "incident[al] to the performance of duties" that the Department entrusted to its employees. *Potts*, 468 Md. at 312, 227 A.3d at 214 (quoting *Sawyer*, 322 Md. at 253, 587 A.2d at 469-70). The court based the conclusion on its analysis of the ten factors set forth in *Sawyer* for determining whether an employee's actions are incidental to those that the employer authorized. *Potts*, 468 Md. at 312, 227 A.3d at 214. Here, the actions were of the type that the officers were hired to routinely perform, the conduct occurred while they were on-duty in the jurisdiction they were authorized to serve, and the misconduct appeared to further the Department's routine business of making arrests. *Id.* at 313, 227 A.3d at 215.

The Court of Appeals of Maryland held that while the officers did engage in unlawful actions, their conduct resulted in arrests that were deemed to be lawful. *Potts*, 468 Md. at 315, 227 A.3d at 216. Some of the officers' actions consisted of misconduct, but others were actions that the officers were entrusted to perform. *Id.* The end result was that the officers' actions constituted lawful police activity. *Id.* The court held that the officers' actions were within the scope of employment under LGTCA because their actions were in furtherance of Department business and were incidental to authorized conduct. *Id.*

The Court of Appeals of Maryland ultimately held that the actions of the police officers involved in this case were in furtherance of the Baltimore City Police Department's business under the Local Government Tort Claims Act. The City argued that the conduct of the officers was so corrupt and egregious that it should not be held liable to pay the victims. But if these rogue officers are convicted and are serving time, the victims may never receive the money from the settlements they are due. With no income during incarceration, it is unlikely that the officers will ever pay.

The misconduct in the GTTF was undoubtedly egregious and unprecedented. The cases brought forth by Potts and James set precedent, refusing to provide the City with blanket immunity that would have been binding on future cases. There was a unanimous ruling that the City should have known of the misconduct and must now cover Potts' and James' judgments. So, while the court made it clear it was not making a blanket ruling for all future GTTF lawsuits, the ruling clearly demonstrated that the ultimate responsibility for the officers' misconduct rests with the governmental entities that employed and supervised them. The ruling will pave the way for future lawsuits, and while each future case will need to

stand on its own merits, victims of the GTTF's misconduct now have precedent to hold the City liable for the officers' actions.