No.: _____

In the ALABAMA SUPREME COURT

RONNIE TAYLOR

vs.

ALLSTATE PROPERTY & CASUALTY INSURANCE COMPANY C/O CT CORP., et al.

On a Petition for A Writ of Mandamus to

JUDGE TALMAGE LEE CARTER of the Marion County Circuit Court
in case number:
CV-2018-900089.00

PETITION FOR A WRIT OF MANDAMUS

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Dated: June 17, 2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Constitutional Provisions

STATEMENT OF THE FACTS

On or about December 12, 2016, Ronnie Taylor (the plaintiff) was indicted by a Marion County Grand Jury on two counts: (1) arson second degree for intentionally damaging a building, secured by a mortgage, by starting or maintaining a fire; and (2) tampering with physical evidence for refusing the services of the fire department and adding a barrel of fuel items onto a burning structure, masking the fire's cause.[1] On August 3, 2017, the case was dismissed with prejudice.[2] On August 20, 2018, Taylor filed the current lawsuit which named State Deputy Fire Marshal Greg Pinkard as a defendant.[3] All claims concerning Pinkard stem directly from an official investigation by the State Fire Marshal's Office into a suspicious fire.

On July 31, 2016, a secondary home owned by Taylor burned down at 254 Cherry Circle, Haleyville, AL. According to Taylor's own statements, the house was still "smoldering" when he arrived.[4] There were still "embers and stuff burning."[5] Taylor called the Haleyville Fire

1. Attachment ("Att.") B, Exhibit ("Ex.") A.
2. Att. B, Ex. B.
3. Att. A.
4. Att. Y, Ex. C at 68, Ex. E at 6, Ex. F at 44.
5. Att. Z, Ex. J at 31.

Department. But he only asked them to do a report (necessary to collect insurance), rather than to dispatch a truck to extinguish what remained of the fire. Taylor was told that they could not do a report without being dispatched and to call Marion County because the property was within their jurisdiction.[6] Taylor never called a fire department to the house, but he obtained an incident report from the Marion County Sheriff's Office dated August 1, 2016.[7]

Taylor had been a paid on-call firefighter for the Haleyville Fire Department for more than ten years and was an auxiliary firefighter from 2015 until October 14, 2016.[8] Having responded to at least a hundred fires, Taylor knew that maintaining a fire was a crime and should have known that evidence of a fire's origin can continue to burn even without visible flames.[9] Yet, he did not dispatch a fire department.

Bank documents show Taylor was behind on mortgage payments for both his primary and secondary homes. Leading up to July 31, 2016, he was frequently making payments after their due date.[10] He admitted

6. Att. Y, Ex. F at 56; Att. Z, Ex. G—Plaintiff's Ex. 12.
7. Att. Y, Ex. B.
8. Att. Y, Ex. C at 28, Ex. D.
9. Att. Y, Ex. C at 36–39, Ex. J at 2.
10. Att. Y, Ex. O at 215–28.

that he was "always behind on payments."[11] He also failed to purchase property insurance, so the mortgage holder bought force-placed insurance coverage for both homes.[12]

A 1996 Lincoln car, parked next to the house, was also destroyed in the fire. It did not have a tag listed after 2012, and insurance was purchased for the car less than six months before the fire.[13]

Due to "an internal mistake," the mortgage holder Traders & Farmers Bank did not report the fire to insurance companies until a month later.[14] An insurance adjuster believed the fire might be suspicious and reported it to the Fire Marshal's Office. Pinkard began investigating the case on September 16, 2016, and assembled an investigative file.[15] He discussed the case with the Marion County District Attorney, who then took it to a grand jury. In December 2016, Taylor was indicted, and in August 2017, the case was dismissed.[16]

In August 2018, Taylor filed this suit. In the original and amended Complaints, Taylor alleged against Pinkard: (1) malicious prosecution;

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11. Att. Y, Ex. E at 13.
12. Att. Y, Ex. L at 30, Ex. M at 72–73, Ex. N, Ex. O at 232.
13. Att. Y, Ex. I at 28–29, Ex. J at 3, Ex. P—Plaintiff's Ex. 5.
14. Att. AA at 6. Taylor did not sue the bank for their error.
15. Att. Y, Ex. K, Ex. O, Ex. P at 62.
16. Att. Y, Ex. P at 75–80; Att. B, Ex. A–B.

(2) abuse of process; (3) defamation; (4) negligence; (5) wantonness; (6) outrage; and (7) conspiracy to commit (1)–(3).[17] Essentially, Taylor asserted that Pinkard conspired with insurance companies to deny recovery on the insurance policies by lying to the grand jury and ignoring evidence showing that Taylor did not commit arson.

Pinkard filed motions to dismiss Taylor's Complaints, asserting that all claims against him were barred by sovereign and State-agent immunities. Judge Talmadge Lee Carter denied Pinkard's motions to dismiss on February 13, 2019.[18]

On March 20, 2019, Pinkard filed a Petition for a Writ of Mandamus with this Court, arguing that sovereign and State-agent immunities barred Taylor's claims. Though three Justices dissented, this Court denied the Petition on May 15, 2019.[19] Discovery proceeded.

Taylor eventually settled with all defendants except Pinkard for a total of $230,991.91,[20] far exceeding the $40,859.15 that the house and car insurance policies were worth.[21]

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17. Atts. A, D.
18. Atts. B, E, G, H.
19. Att. K, L.
20. Att. T. Taylor's counsel argue that details of the agreements should remain confidential, but the total amount was willingly divulged.

On April 21, 2021, Pinkard filed a Motion for Summary Judgment, and Taylor filed his Opposition brief on May 5.[22] The trial court held a hearing on May 7, and the Motion for Summary Judgment was denied on May 8.[23] Pinkard filed a Motion to Stay, which was granted "pending the outcome of the writ of mandamus."[24]

STATEMENT OF THE ISSUE

Based on the nature of the action and the relief sought, do Taylor's claims constitute an action against the State for sovereign immunity purposes? Do the claims arise from a function entitling Pinkard to State-agent immunity? Did Taylor present substantial evidence that Pinkard's conduct when investigating the fire was so egregious that it amounted to willful, bad faith, fraudulent or malicious conduct, which is required to overcome a defense of sovereign immunity or State-agent immunity at the summary-judgment stage? Regardless of Pinkard's subjective intent, does arguable probable cause defeat a claim that his actions fell within one of the immunity exceptions?

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21. Att. Y, Ex. O at 154, 232; Att. Z, Ex. J at ALLSTATE0079.
22. Atts. Y, Z, AA.
23. Att. BB.
24. Atts. CC–DD.

STANDARD OF REVIEW

"While the general rule is that the denial of a motion for summary judgment is not reviewable, the exception is that the denial of a motion for summary judgment grounded on a claim of immunity is reviewable by petition for writ of mandamus."[25]

STATEMENT WHY THE WRIT SHOULD ISSUE

On May 8, 2021, Judge Carter of the Marion County Circuit Court denied Pinkard's motion for summary judgment, which had: (1) argued that the trial court lacked jurisdiction to hear the case because, as a State official, all claims alleged against Pinkard are barred by sovereign immunity (also known as State immunity) under Article I, § 14 of the Alabama Constitution of 1901; and (2) asserted the non-jurisdictional affirmative defense of State-agent immunity.[26]

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25. Ex parte City of Montgomery, 272 So. 3d 155, 159 (Ala. 2018) (cleaned up).
26. Below, Pinkard also asserted qualified immunity and peace officer immunity. However, "whether a qualified peace officer is due § 6-5-338(a) immunity is now judged by the restatement of State-agent immunity articulated by Ex parte Cranman, 792 So. 2d 392 (Ala. 2000)." Kendrick v. City of Midfield, 203 So. 3d 1200, 1204 (Ala. 2016) (cleaned up). Likewise, state "[q]ualified immunity is the term used to describe State-agent immunity prior to this Court's decision in [Cranman]." Walden v. Alabama State Bar Ass'n, No. 1180203, 2020 WL 1482375, at *2 (Ala. Mar. 27, 2020). Meanwhile,

Taylor attempts to frame all of his claims as individual-capacity claims, but based on the nature of the action and the source of the damages, they are actually official-capacity claims. Thus, Pinkard is entitled to § 14 sovereign immunity and a dismissal of all claims. To the extent any claims can be characterized as individual-capacity claims, dismissal is still required because Pinkard was performing a function that entitled him to State-agent immunity.

Taylor describes Pinkard's actions as willful, malicious, fraudulent or carried out in bad faith to fit into exceptions to State-agent immunity under Cranman and § 14 sovereign immunity. But while Taylor was required to merely put forth factual allegations that plausibly supported such a conclusion at the motion-to-dismiss stage, he needed to produce substantial evidence supporting those claims at the summary-judgment stage.[27] Taylor failed to meet his burden.

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the test for "federal qualified immunity" applies only to violations "of the U.S. Constitution [or] of federal law." Ex parte Wilcox Cty. Bd. of Educ., 285 So. 3d 765, 782 (Ala. 2019). Taylor alleged only state-law claims. Because those immunities have been subsumed by State-agent immunity or involve inapplicable federal law, Pinkard confines his discussion on this point to the Cranman standard.

27. See Montgomery, 272 So. 3d at 167 (plaintiff was required to "demonstrate by substantial evidence that [defendant]'s actions fell within one of the exceptions to State-agent immunity" to survive

The trial court implicitly found that Pinkard had demonstrated his entitlement to sovereign immunity and State-agent immunity. It would be difficult to argue otherwise, since the conduct at issue all took place during the course of an official investigation of a suspicious fire by a State Deputy Fire Marshal, involving the exercise of judgment and discretion within the line and scope of Pinkard's law-enforcement duties. Indeed, Pinkard had no duty or authority in his individual capacity to conduct official investigations pursuant to statutes involving the Fire Marshal's Office. While the trial court correctly found by implication that Pinkard had carried his initial burden, it erred by holding "that the Plaintiff has offered sufficient evidence of malice, fraudulent conduct and bad faith to defeat the Motion for Summary judgment on [the] issue" of immunity.[28]

Moreover, regardless of Pinkard's subjective intent, Taylor cannot show that he acted willfully, maliciously, fraudulently, or in bad faith as long as Pinkard had "arguable probable cause" that Taylor illegally

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summary judgment); Ex parte Haralson, 871 So. 2d 802, 807 (Ala. 2003) (for a suit involving actions taken by a State officer in performance of his official duties, a plaintiff must "present substantial evidence" showing that an exception to § 14 immunity applies to survive summary judgment).

28. Att. BB.

maintained a fire on his premises, an objective standard.[29] Based on the evidence submitted to the trial court at the summary judgment stage, reasonable law enforcement officers in the same circumstances could have believed that probable cause existed to support second degree arson and tampering with physical evidence.

The State has an acute interest in this case. Denial of immunity could have profound ramifications for law enforcement investigations across Alabama. If officers must worry about personal civil liability for every arrest that does not lead to a charge and every indictment that fails to produce a conviction, it could have a severe chilling effect, hamper the fearless investigation of crimes, and diminish the ability of law enforcement agencies to attract and retain talented employees.

Normally, the determination of the existence of State-agent and sovereign immunities "should be reserved until the summary-judgment stage, following appropriate discovery," even though occasionally, cases involving those immunities are "properly disposed of by a dismissal pursuant to Rule 12(b)(6)."[30] Yet, even at the motion-to-dismiss stage, several members of this Court felt the argument for immunity was

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29. Ex parte Harris, 216 So. 3d 1201, 1214 (Ala. 2016).
30. Ex parte Gilland, 274 So. 3d 976, 985 (Ala. 2018) (cleaned up).

strong enough to dissent from denial of Pinkard's first petition for a writ of mandamus.[31] Now, following discovery and the denial of a motion for summary judgment, the case for dismissal is even stronger.

A petition for a writ of mandamus is the appropriate vehicle to seek review of a denial of a motion for summary judgment on grounds of immunity for a law enforcement officer. This is precisely the type of scenario in which this Court has previously granted mandamus petitions many times.[32] Pinkard urges this Court to do so again here.

ARGUMENTS IN SUPPORT OF GRANTING THE PETITION

I. Any claims asserted against Greg Pinkard in his official capacity are barred by Article I, § 14 of the Alabama Constitution of 1901.

The claims asserted against Pinkard relate to his role as a State Deputy Fire Marshal. The claims are based exclusively on the fact that,

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31. Att. L.

32. See, e.g., Montgomery, 272 So. 3d at 157; Ex parte McClintock, 255 So. 3d 180, 185–86 (Ala. 2017); Ex parte City of Selma, 249 So. 3d 494, 499 (Ala. 2017); Harris, 216 So. 3d 1201, 1206 (Ala. 2016); Ex parte Thomas, 110 So. 3d 363, 369 (Ala. 2012); Ex parte Murphy, 72 So. 3d 1202, 1208 (Ala. 2011); Ex parte Jefferson Cty. Dep't of Human Res., 63 So. 3d 621, 625 (Ala. 2010); Ex parte Dixon, 55 So. 3d 1171, 1179 (Ala. 2010); Ex parte Kennedy, 992 So. 2d 1276, 1286 (Ala. 2008); Ex parte Estate of Reynolds, 946 So. 2d 450, 458 (Ala. 2006); Ex parte Nall, 879 So. 2d 541, 546 (Ala. 2003); Ex parte Turner, 840 So. 2d 132, 135 (Ala. 2002).

as a Deputy Fire Marshal, he had an official duty to investigate an arson claim against Taylor, resulting in a grand jury indictment. Thus, the claims are all barred by State or sovereign immunity under Article I, § 14 of the Alabama Constitution of 1901. Taylor frames his claims as individual-capacity claims, but based on the nature of the action and the source of the damages, they are actually official-capacity claims.

Under § 14, "not only do the State and its agencies have absolute immunity from suit in any court, but State officers and employees, in their official capacities and individually, also are immune from suit when the action against them is, in effect, one against the State."[33] In Barnhart, this Court laid out a two-factor test for determining whether purported individual-capacity claims are, in substance, official-capacity claims: (1) "whether the duties that the officers allegedly breached existed solely because of their official positions"; and (2) "whether the source of any damages awarded would be the State treasury."[34] The first factor is dispositive and sufficient to dispose of Taylor's claims. But both factors weigh in favor of applying State immunity.

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33. Barnhart v. Ingalls, 275 So. 3d 1112, 1122 (Ala. 2018).
34. Meadows v. Shaver, No. 1180134, 2020 WL 6815066, at *3 (Ala. Nov. 20, 2020).

First, the nature of the action establishes Pinkard's entitlement to State immunity. Pinkard's ostensibly improper conduct all took place during a lawful investigation into a suspicious fire. In essence, Taylor argues that Pinkard violated the law merely by failing to "conduct his investigation of the [arson] in the manner [Taylor] ha[s] advocated."[35] But a dispute over the proper procedure for an arson investigation does not remove it from the line and scope of Pinkard's law-enforcement duties. The conduct at issue still stemmed from the investigation. Pinkard had statutory authority to investigate possible arson, gather evidence, take testimony, arrest offenders, obtain information from insurance companies, and help district attorneys bring charges.[36] In other words, Pinkard "had no duties in [his] individual capacit[y] to give effect to the [fire investigation laws]; rather, any duties [he] had in that regard existed solely because of [his] official position[] in which [he] acted for the State. Accordingly, the individual-capacities claims are, in effect, claims against the State."[37]

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35. Key v. City of Cullman, 826 So. 2d 151, 158 (Ala. Civ. App. 2001).
36. See, e.g., Ala. Code § 36-19-2(6), §§ 36-19-16–36-19-19, § 36-19-24, §§ 36-19-41–36-19-42.
37. Meadows, 2020 WL 6815066, at *3 (quoting Barnhart, 275 So. 3d 1126).

Second, the source of damages is the State treasury. The Fire Marshal's Office is a division of the Alabama Department of Insurance and is supported by the State treasury. More broadly, the State has a critical interest in defending this case, since it essentially lays out a blueprint for avoiding immunity. An adverse ruling could lead to many more suits against State officials with judgments affecting the financial status of the State treasury. If immunity does not apply for a Fire Marshal's Office investigation, it could have drastic ramifications for all law enforcement investigations across the State. If officers must worry about personal civil liability for every arrest that does not lead to a charge and every indictment that fails to produce a conviction, it could have a profound chilling effect. Immunity is necessary to give "officials breathing room to make reasonable but mistaken judgments,"[38] permitting "officials to carry out discretionary duties without the chilling fear of personal liability or harrassive litigation."[39] It is also important to "ensure that talented candidates [are] not deterred by the threat of damages suits from entering public service."[40] Because of the

38. Messerschmidt v. Millender, 565 U.S. 535, 546 (2012) (cleaned up).
39. McCullough v. Antolini, 559 F.3d 1201, 1205 (11th Cir. 2009).
40. Wyatt v. Cole, 504 U.S. 158, 167 (1992).

potential far-reaching negative effects from a denial of immunity, the State of Alabama is vigorously defending this suit. The source of damages awarded for this and other similar suits in the future would be the State treasury.

Taylor contended that State immunity cannot apply because a Deputy Fire Marshal is not a constitutional officer as detailed in Article V, § 112 of the Alabama Constitution of 1901. He is wrong. This Court has never said that § 112 constitutes an exclusive list of those entitled to State immunity. Rather, suits against officers in § 112 "inherently constitute actions against the State,"[41] while suits against all other "State officers and employees" are barred by State immunity only when "the action against them is, in effect, one against the State."[42] This Court "considers the nature of the suit or the relief demanded, not the character of the office of the person against whom the suit is brought."[43]

Indeed, in one of this Court's most recent cases discussing the Barnhart test, this Court held that circuit clerks are entitled to State immunity for official-capacity claims despite their failure to appear in

41. Poiroux v. Rich, 150 So. 3d 1027, 1038 (Ala. 2014).
42. Barnhart, 275 So. 3d at 1122.
43. Poiroux, 150 So. 3d at 1038 (cleaned up).

the § 112 list. When deciding that they were "officers of the State," this Court noted that "their salaries are primarily paid by the State" and that State statutes establish "the scope of their duties" and "the extent of their authority."[44] Likewise, the statutes concerning the Fire Marshal's Office suggest that Deputy State Fire Marshals should be considered officers of the State for official-capacity claims.[45]

As discussed above, the nature of the action and the source of damages indicate that Taylor's purported individual-capacity claims are, in effect, claims against the State. Because they are actually official-capacity claims, sovereign immunity should bar them.

II. Any claims asserted against Pinkard that are not barred by sovereign immunity are barred by State-agent immunity.

"[W]hether a qualified peace officer is due § 6-5-338(a) immunity is now judged by the restatement of State-agent immunity articulated by [Cranman]."[46] Deputy Fire Marshals have "full, general powers of peace officers."[47] Whether Pinkard is entitled to State-agent immunity as a peace officer is determined by whether he was performing a

44. Meadows, 2020 WL 6815066, at *2.
45. See Ala. Code § 27-2-10, § 36-19-1 et seq.
46. Kendrick, 203 So. 3d at 1204 (cleaned up).
47. Ala. Code § 36-19-1.

function that would entitle him to immunity under Cranman. To show that Pinkard performed such a function and was entitled to State-agent immunity and dismissal at the summary-judgment stage, he had to establish that he was: (1) a "peace officer"; (2) "performing law-enforcement duties"; and (3) "exercising judgment and discretion."[48] This was obvious from the evidence presented to the trial court at summary judgment. All of Taylor's claims and all of Pinkard's allegedly improper conduct arose during and because of an official investigation into a suspicious fire on behalf of the Fire Marshal's Office.

Consequently, it is unsurprising that the trial court implicitly found that the burden shifted to Taylor to demonstrate by substantial evidence that Pinkard's actions fell within an exception to immunity. However, Pinkard maintains that the trial court erred by holding that Taylor had "presented substantial evidence" in support of his claims and "offered sufficient evidence of malice, fraudulent conduct and bad faith to defeat the Motion for Summary judgment on [the] issue" of immunity.[49] Taylor failed to meet his burden.

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48. Montgomery, 272 So. 3d at 161 (quoting Ex parte City of Homewood, 231 So. 3d 1082, 1087 (Ala. 2017)).
49. Att. BB.

III. Taylor did not produce substantial evidence that Pinkard's actions fell within one of the exceptions to sovereign or State-agent immunity.

At the summary-judgment stage, Pinkard made a prima facie showing of his entitlement to sovereign immunity and State-agent immunity. Thus, the burden shifted to Taylor to present substantial evidence that his claims fell within an exception to those immunities.

The evidence that Taylor offered to support his claims at the summary-judgment stage boils down to three general categories: (1) Pinkard's alleged failure to follow the so-called "rules" promulgated by the National Fire Protection Association ("NFPA"); (2) his interview techniques; and (3) the information he communicated to the Marion County District Attorney's Office. Discussion of how this evidence relates to immunity comprised less than three pages of Taylor's Opposition brief.[50] It does not portray substantial evidence.

The exceptions to the bars of sovereign and State-agent immunity that Taylor asserts are comparable. The "sixth 'exception' to the bar of State immunity under § 14" permits "actions for damages brought against State officials in their individual capacity where it is alleged

50. Att. AA at 24–26.

that they had acted fraudulently, in bad faith, beyond their authority, or in a mistaken interpretation of law, subject to the limitation that the action not be, in effect, one against the State."[51] Similarly, under the Cranman test for State-agent immunity, officers are not immune if they act "willfully, maliciously, fraudulently, in bad faith, beyond [their] authority, or under a mistaken interpretation of the law."[52]

A. Taylor produced no evidence that Pinkard acted beyond his authority.

Taylor argues that Pinkard did not adhere to the NFPA guidelines and thus "acted beyond his[] authority" by failing "to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist."[53] Taylor misunderstands the NFPA guidelines.

Pinkard avers that he followed the NFPA guide, but a failure to do so cannot prove he acted beyond his authority. The NFPA guide gives helpful guidance, not a strict set of binding rules. It provides "a respected investigative method" but is not "a method an investigator must attempt to deploy in every case."[54] As Pinkard and Fire Marshal

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51. Ex parte Moulton, 116 So. 3d 1119, 1141 (Ala. 2013).
52. Montgomery, 272 So. 3d at 160–61 (cleaned up).
53. Kennedy, 992 So. 2d at 1282–83 (cleaned up).
54. Russell v. Whirlpool Corp., 702 F.3d 450, 455 (8th Cir. 2012).

Scott Pilgreen repeatedly pointed out in their depositions, it "expressly provides that it contains only nonmandatory provisions; it merely sets guidelines and recommendations for fire investigations, not requirements."[55] It is thus akin to the ABA guidelines for capital defense attorneys—useful as aspirational guides but not "inexorable commands with which all capital defense counsel must fully comply."[56]

Taylor provided no evidence at summary judgment to suggest that failure to follow the NFPA guide could prove Pinkard acted beyond his authority. On the contrary, the case Taylor cited suggests the opposite. In Kennedy, each provision in a Department of Public Safety training manual was held to be "either aspirational in nature or leaves the actor with discretion as to whether the guidance should be followed in a given situation"; thus, the manual did not constitute a set of "detailed rules and regulations."[57] The NFPA guide is comparable.

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55. People v. Jackson, No. 272776, 2008 WL 2037805, at *1 (Mich. Ct. App. May 13, 2008); see Att. Y, Ex. P at 28–32, 56, Ex. R at 22–23, 59.
56. Bobby v. Van Hook, 558 U.S. 4, 8 (2009) (cleaned up).
57. 992 So. 2d at 1286; see also, e.g., Ex parte Brown, 182 So. 3d 495, 506 (Ala. 2015) (a "police department's pursuit policy provides guidelines" for pursuit, but because "a significant degree of discretion is left to the officer in the exercise of those duties," they do not constitute "detailed rules and regulations").

It is worth noting, the trial court did not find that Taylor met the "beyond his authority" exceptions. Rather, it found only that he "offered sufficient evidence of malice, fraudulent conduct and bad faith."[58]

B. Taylor did not produce substantial evidence of willful, malicious, fraudulent or bad faith conduct.

Taylor argued, and the trial court agreed, that he had presented substantial evidence of malicious, fraudulent, and bad faith conduct. Since all of the conduct at issue stems from the official investigation into a suspicious fire, Taylor must clear the substantial evidence hurdle for any of his claims—including malicious prosecution, defamation, outrage, and conspiracy—to move past the summary-judgment stage. Taylor failed to meet that burden.

Initially, throughout Taylor's Opposition brief, he consistently minimized and understated the requirement for a finding of willful, malicious, fraudulent or bad faith conduct sufficient to overcome sovereign or State-agent immunity. For instance, he cited Delchamps, Inc. v. Bryant to argue that there "need be no personal ill will" and that "mere wantonness or carelessness" or "a reckless act" could prove the

58. Att. BB.

malicious conduct sufficient for malicious prosecution.[59] Here, Taylor conflates the standards for different types of cases and fails to realize that malice means different things in different contexts.

The element of malice for the purposes of malicious prosecution is not the same as malice sufficient to overcome sovereign and State-agent immunities. Indeed, Delchamps did not involve a State officer or any claim of immunity, and this Court later rejected its characterization of malice in relation to a claim of immunity:

> [M]alice in law, or legal malice, for purposes of a malicious-prosecution claim, is not sufficient to defeat a state agent's defense of discretionary-function immunity. This Court has required the plaintiff to prove that the defendant's conduct was so egregious as to amount to willful or malicious conduct or conduct engaged in in bad faith, by, for example, showing that the defendant had a personal ill will against the plaintiff and that he maliciously or in bad faith arrested him solely for purposes of harassment... [F]or a plaintiff's claim of malicious prosecution against a state agent to be submitted to the jury, where the state agent has moved for a judgment as a matter of law based on the defense of discretionary-function immunity, the plaintiff must have presented substantial evidence of malice in fact, or actual malice.[60]

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59. 738 So. 2d 824, 833 (Ala. 1999) (cleaned up).

60. Ex parte Tuscaloosa Cty., 796 So. 2d 1100, 1107 (Ala. 2000) (cleaned up). Likewise, regarding defamation, Taylor was required to present substantial evidence to meet the exceptions as discussed by this Court in cases involving State officers and immunities. To the extent that "malice" is defined differently in cases examining defamation in other contexts, those cases are inapplicable. Compare

This Court also described a very high bar in its most recent discussion of the conduct necessary to fit those exceptions, holding that "poor judgment or wanton misconduct, an aggravated form of negligence, does not rise to the level of willfulness and maliciousness necessary to put the State agent beyond the immunity recognized in Cranman."[61] Contrary to Taylor's suggestion, wanton, negligent, careless or reckless behavior by Pinkard during the investigation is not sufficient to overcome immunity. Rather, Taylor must show that Pinkard "intended to cause injury."[62] Taylor failed to provide that evidence.

The only evidence that Taylor proffers to meet these immunity exceptions are Pinkard's interview techniques and the information he communicated to the Marion County District Attorney's Office. Neither of these categories provide substantial evidence of improper conduct.

Regarding Pinkard's interview techniques, they were entirely appropriate, as both Pinkard and Fire Marshal Pilgreen opined during

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Wiggins v. Mallard, 905 So. 2d 776, 784 (Ala. 2004), with Slack v. Stream, 988 So. 2d 516, 527–31 (Ala. 2008), and Birmingham Broad. (WVTM-TV) LLC v. Hill, 303 So. 3d 1148, 1159 (Ala. 2020). Taylor still has his initial burden of defeating immunity before he can try to prove the merits of his substantive claims before a jury.

61. Montgomery, 272 So. 3d at 168 (cleaned up).
62. Ex parte Price, 256 So. 3d 1184, 1191 (Ala. 2018).

their depositions.[63] While it would have been inappropriate for Pinkard to attempt to induce a confession through a threat of physical force or a promise of leniency, the recordings clearly show that did not occur. Alabama appellate courts have repeatedly affirmed that investigators are permitted to use "subtle forms of psychological manipulation" in an effort to obtain inculpatory information.[64] "Trickery or deception" is a common investigative technique and does not generally "make a statement involuntary" or inadmissible.[65] "Misleading a suspect about the existence or strength of evidence against him does not by itself make a statement involuntary."[66]

Engaging in legally permissible interview techniques cannot raise a genuine dispute over whether Pinkard acted maliciously. Holding otherwise would produce an absurd result. Every police arrest and interrogation across the state for every crime that does not produce a conviction would result in potential personal liability for every law enforcement officer over their interview techniques. This would create a

63. Att. Y, Ex. P at 137–40, 144–46; Att. Z, Ex. A at 82–84.
64. Jackson v. State, 836 So. 2d 915, 933 (Ala. Crim. App. 1999) (cleaned up).
65. Walker v. State, 194 So. 3d 253, 273 (Ala. Crim. App. 2015).
66. United States v. Farley, 607 F.3d 1294, 1328 (11th Cir. 2010).

massive chilling effect for every criminal investigation. Pinkard's interview techniques do not constitute evidence of improper conduct.

Regarding Pinkard's statements to the Marion County District Attorney's Office, Taylor argued that "Pinkard knew that what he was saying was untrue" when he told the DA and grand jury that Taylor "had destroyed evidence and added a barrel of fuel items to the burning structure" despite opposing testimony by Taylor and his wife.[67] On the contrary, Taylor provided no evidence suggesting that Pinkard knew what he was saying to be untrue. Rather, Pinkard has stood behind his investigation and statements throughout this process.[68]

Pinkard has consistently represented that the evidence suggests that a burn barrel with fuel items was added to the structure at some point between the start of the fire and when the insurance adjustor viewed the property a month later, noting as significant the freshly burned items in the barrel.[69] He described this evidence to the DA and grand jury, resulting in an indictment.[70]

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67. Att. AA at 26.
68. Att. Y, Ex. P at 162, 199.
69. Att. Y, Ex. F at 34, Ex. J at 3, Ex. O at 141, Ex. P at 99–100.
70. Att. Y, Ex. A at 102.

Pinkard did not ignore evidence. Taylor and his wife obviously stated that they had nothing to do with the house burning or tampering with evidence, but an investigator need not accept "the self-serving assertions of those who may have committed criminal acts."[71] And the subsequently produced pictures that purport to show the location of the burn barrel just after the fire were not given to Pinkard at the time of the investigation and were not disclosed until well into the civil case.[72]

To support the immunity exceptions, Taylor offers only Pinkard's interview techniques and what he told the DA. That does not constitute substantial evidence. Taylor would "have this [C]ourt 'infer' malice on the part of [Pinkard] because he did not conduct his investigation" as Taylor would have preferred.[73] But that is not the standard. At most, Taylor has offered evidence of mistake. Yet, even wanton misconduct cannot overcome immunity. Taylor provided no evidence, much less substantial evidence, that Pinkard bore him personal ill will or intended to harass or injure him. Indeed, as both Pinkard and Taylor acknowledged in their depositions, they had never met prior to the

71. United States v. R. Enterprises, Inc., 498 U.S. 292, 303 (1991).
72. Att. Z, Ex. B at 223–24, 268–72.
73. Key, 826 So. 2d at 158.

commencement of this investigation.[74] Rather, the evidence all suggests that Pinkard brought the case file to the DA from a genuine belief that the evidence supported an indictment. Taylor has not overcome the exceptions to sovereign and State-agent immunity.

IV. Regardless of Pinkard's subjective intent, arguable probable defeats a claim that he acted willfully, maliciously, fraudulently, or in bad faith.

"[R]easonable officers in the same circumstances and possessing the same knowledge as [Pinkard] could have believed that probable cause existed" to support charges against Taylor for second degree arson and tampering with evidence.[75] Because "arguable probable cause" supported the charges, Taylor cannot show that Pinkard acted "willfully, maliciously, fraudulently, or in bad faith."[76]

As described above, the evidence before the trial court at the summary-judgment stage showed that Taylor arrived at his house when it was still burning, even though flames may not have been visible. Based on his training as a firefighter, Taylor should have known to dispatch the fire department, but he did not. At some point between the

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74. Att. Y, Ex. A at 159, Ex. J at 4; Att. Z, Ex. B at 157, 208.
75. Harris, 216 So. 3d at 1213 (cleaned up).
76. Id. at 1214 (cleaned up).

fire and the arrival of the insurance adjuster, he placed a barrel on the structure, and it contained freshly burned items. Taylor was behind on his mortgage payments and had force-placed property insurance. He had obtained insurance on the car that burned less than six months before the fire. Taylor "had the means, the motive, and the opportunity" to let his property burn.[77]

"The level of evidence needed for a finding of probable cause is low."[78] Here, reasonable officers in the same circumstances could have believed that probable cause existed to support charges against Taylor for second degree arson and tampering with evidence. Therefore, regardless of Pinkard's subjective intent, sovereign and State-agent immunities should bar all of Taylor's claims.

CONCLUSION

The trial court erroneously denied Pinkard's motion for summary judgment on sovereign and State-agent immunity grounds. Pinkard's mandamus petition is thus due to be GRANTED.

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77. Flowers v. State, 799 So. 2d 966, 983 (Ala. Crim. App. 1999).
78. State v. Johnson, 682 So. 2d 385, 387 (Ala. 1996).

Respectfully submitted on this 17th day of June 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Alabama Rule of Appellate Procedure 32(d), I hereby certify that I have complied with the font and word limitations outlined in Alabama Rules of Appellate Procedure 32(a)(7) and 32(b)(3). The font of this Petition is Century Schoolbook 14. The word count (excluding items listed in Alabama Rule of Appellate Procedure 32(c)) is 5825.

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APPENDIX

Index

Attachment #	Docket/Tab # and Title
Attachment A	2 – Complaint
Attachment B	33-34 – Pinkard's Motion to Dismiss
Attachment C	50 – Taylor's Opposition to Greg Pinkard's Motion to Dismiss
Attachment D	57 – Amended Complaint
Attachment E	92 – Motion to Dismiss Taylor's Amended Complaint
Attachment F	101 – Taylor's Opposition to Greg Pinkard's Motion to Dismiss Taylor's Amended Complaint
Attachment G	104 – Pinkard's Amended Motion to Dismiss Taylor's Amended Complaint
Attachment H	106 – Order denying Pinkard's Amended Motion to Dismiss Taylor's Amended Complaint
Attachment I	113 – Greg Pinkard's Motion to Stay Further Proceedings Pending the Filing of a Mandamus Petition
Attachment J	117 – Order granting Motion to Stay
Attachment K	Filed Writ of Mandamus
Attachment L	Order denying Writ of Mandamus
Attachment M	170 – Gregory Pinkard's Answer to the Plaintiff's Amended Complaint

Attachment N	198 – Confidentiality Agreement and Protective Order
Attachment O	358 – Joint Stipulation of Pro Tanto Dismissal
Attachment P	361 – Pro Tanto Order of Dismissal
Attachment Q	379 – Pro Tanto Stipulation of Dismissal
Attachment R	391 – Order of Pro Tanto Dismissal
Attachment S	400 – Motion for the Plaintiff or Mediator to Produce a Copy of Settlement Agreements
Attachment T	Email re: settlement documents
Attachment U	435 – (Amended) Answer of Defendant Gregory Pinkard to Plaintiff's Amended Complaint
Attachment V	444 – Motion to Stay Proceedings or, in the Alternative Motion for the Court to Enter a Protective Order for the Release of the Pro Tanto Settlement Agreement
Attachment W	448 – Protective Order
Attachment X	450 – Order – plaintiff shall provide copy of settlement agreement to counsel for defendant
Attachment Y	476-542 – Greg Pinkard's Motion for Summary Judgment and Exhibits
Attachment Z	547 – 562 – Taylor's Evidentiary Materials in Support of Opposition to Motion for Summary Judgment
Attachment AA	563 – Opposition to Pinkard's Motion for Summary Judgment

Attachment BB	572 – Order denying Pinkard's Motion for Summary Judgment
Attachment CC	575 – Notice of Intent to File Writ of Mandamus and Motion to Stay Proceedings Pending Appeal
Attachment DD	577 – Order granting Motion to Stay Proceedings Pending Appeal