

The Supreme Court of the State of Louisiana

**NORMAN MCQUIRTER, BRANNON MASTOS,
AND JEROME TUBBS**

No.2020-C-01192

VS.

**STATE OF LOUISIANA THROUGH THE
LOUISIANA DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONS ELAYN HUNT
CORRECTIONAL CENTER, MASTER
SERGEANT JIMMIE HOLLOWAY,
LOUISIANA STATE PENITENTIARY, AND
OFFICE OF RISK MANAGEMENT**

IN RE: Louisiana Department of Public Safety & Corrections - Applicant
Defendant; Master Sergeant Jimmie Holloway - Applicant Defendant; Louisiana
State Penitentiary, and Office of Risk Management - Applicant Defendant; Applying
For Writ Of Certiorari, Parish of Iberville, 18th Judicial District Court Number(s)
76,582, 1st Circuit Court of Appeal, Number(s) 2019 CA 1566 & 2019 CW 0273;

January 12, 2021

Writ application granted. See per curiam.

WJC

JLW

JDH

SJC

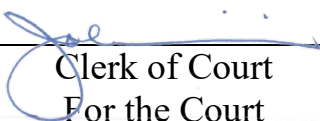
JBM

Hughes, J., would grant in part and assigns reasons.

Genovese, J., dissents.

Griffin, J., dissents.

Supreme Court of Louisiana
January 12, 2021



Clerk of Court
For the Court

01/12/21

SUPREME COURT OF LOUISIANA

NO. 2020-C-01192

NORMAN MCQUIRTER, ET AL.

VERSUS

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS,
ET AL.**

**APPLYING FOR SUPERVISORY WRIT TO
THE FIRST CIRCUIT COURT OF APPEAL**

PER CURIAM

WRIT GRANTED. In August 2016, the Governor declared a state of emergency because Louisiana was impacted by flooding. In an effort to combat flooding, Master Sergeant Jimmie Holloway, an employee of Elayn Hunt Correctional Center, was directed to supervise a group of inmates engaged in sandbagging efforts. The inmates loaded sandbags into a state-owned pick-up truck driven by Holloway, and Holloway transported them to various spots for the inmates to stack the sandbags. Holloway was transporting Norman McQuirter, Brannon Mastos, and Jerome Tubbs with a load of sandbags in dark, rainy conditions, when he hit a water-filled hole in the roadway. The vehicle tilted onto its side and took on water, allegedly causing injury to inmates McQuirter, Mastos, and Tubbs.

Plaintiffs sued Holloway and the Louisiana Department of Public Safety and Corrections (DPSC). Holloway and the DPSC claimed immunity pursuant to La. R.S. 29:735(A)(1) and moved for summary judgment. Pursuant to this statute, the State, its agencies, and political subdivisions are granted immunity for injury or death resulting from emergency preparedness activities. Representatives and

employees of the State, its agencies, or political subdivisions are also immune except if they engage in willful misconduct.

We find Holloway and the DPSC immune from liability pursuant to this statute. At the time of the accident, Louisiana was under a declared state of emergency and the DPSC was engaged in emergency preparedness activities. Additionally, Holloway did not engage in willful misconduct. Plaintiffs allege willful misconduct by Holloway overloading the truck with sandbags, struggling to maintain control of the vehicle, looking at his phone while driving, and wearing sunglasses.

“The terms ‘willful’, ‘wanton’, and ‘reckless’ have been applied to that degree of fault which lies between intent to do wrong, and the mere reasonable risk of harm involved in ordinary negligence. These terms apply to conduct which is still merely negligent, rather than actually intended to do harm, but which is so far from a proper state of mind that it is treated in many respects as if harm was intended.” *Koonce v. St. Paul Fire & Marine Ins. Co.*, 2015-31 (La. App. 3 Cir. 8/5/15), 172 So. 3d 1101, 1106; citing *Cates v. Beauregard Electric Cooperative, Inc.*, 316 So. 2d 907, 916 (La. App. 3 Cir. 1975), *aff’d*, 328 So. 2d 367 (La. 1976). Only the most egregious conduct by agents, employees, or representatives of public agencies that exhibits an active desire to cause harm, or a callous indifference to the risk of potential harm from flagrantly bad conduct, will rise to the level of willful misconduct. *Haab v. East Bank Consol. Special Service Fire Protection Dist. of Jefferson Parish*, 13-954 (La. App. 5 Cir. 5/28/14), 139 So. 3d 1174, 1182.

Plaintiffs’ allegations that Holloway wore sunglasses, overloaded the sandbags, struggled to maintain control of the vehicle, and looked at his phone while driving constitute ordinary negligence, but do not, as a matter of law, rise to willful misconduct. The trial court properly granted the DPSC’s motion for summary

judgment, but erred in denying summary judgment as to Holloway. The court of appeal erred in denying summary judgment as to both defendants. For these reasons, we reverse the court of appeal's judgment and remand to the trial court for rulings consistent with this opinion.