

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A20-0705**

Zane Vanschaick,  
Respondent,

vs.

Jacob Letourneau, et al.,  
Appellants.

**Filed February 8, 2021  
Reversed and remanded  
Bjorkman, Judge**

Wabasha County District Court  
File No. 79-CV-19-599

Jeremy L. Lampman, Patterson Dahlberg, Rochester, Minnesota (for respondent)

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Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Larkin,  
Judge.

**NONPRECEDENTIAL OPINION**

**BJORKMAN**, Judge

Appellants, a state trooper and the Minnesota State Patrol, challenge the denial of summary judgment, arguing that they are entitled to official immunity and vicarious official immunity in this personal-injury action arising out of a motor-vehicle accident.

Because the trooper's conduct involved the performance of discretionary duties and was not malicious, we reverse and remand for entry of judgment in favor of appellants.

### **FACTS**

The morning of August 8, 2016, Trooper Jacob Letourneau was on patrol on Highway 247. At approximately 7:20 a.m., he observed a vehicle driving toward him that appeared to be speeding. His squad car's radar confirmed the vehicle was traveling at 84 miles per hour in the 55-mile-per-hour zone. Concerned that the vehicle presented a "significant hazard to others," he decided to turn around and initiate a traffic stop. And he reasoned he would have to do so quickly or else "travel at close to 100 mph for a significant distance to catch up with the speeding driver."

Trooper Letourneau saw a driveway to his right and decided to pull into the mouth of it to perform a U-turn. He braked to slow down, pulled into the driveway, and turned on his emergency lights. Trooper Letourneau glanced in his side-view mirror and saw a vehicle approaching from behind. He perceived that the vehicle was slowing down and believed the driver, respondent Zane Vanschaick, was ceding the right of way, so he pulled out from the driveway to complete the U-turn. Vanschaick was unable to stop and crashed into the side of the squad car.

Vanschaick sued Trooper Letourneau and the state patrol, alleging the trooper was negligent in attempting the U-turn in front of him. Trooper Letourneau and the state patrol moved for summary judgment on the grounds of official immunity and vicarious official immunity. The district court denied the motion, reasoning that the undisputed facts demonstrate that Trooper Letourneau was subject to a state patrol policy requiring him to

comply with traffic laws, the policy created a ministerial duty, and he violated that duty by violating two traffic statutes—Minn. Stat. § 169.19, subd. 2 (2018), governing U-turns, and Minn. Stat. § 169.13, subd. 2 (2018), prohibiting careless driving. Trooper Letourneau and the state patrol appeal.

## DECISION

An order denying summary judgment generally is not appealable, but an exception to this rule permits review when the denial is based on rejection of an immunity defense. *Hoff v. Surman*, 883 N.W.2d 631, 633 (Minn. App. 2016). Our role is to determine whether any genuine issues of material fact exist and “whether the district court erred in applying the law.” *Mumm v. Mornson*, 708 N.W.2d 475, 481 (Minn. 2006). We view the evidence in the light most favorable to the nonmoving party. *Id.* “The application of immunity is a legal question that we review de novo.” *Briggs v. Rasicot*, 867 N.W.2d 217, 220 (Minn. App. 2015), *review denied* (Minn. Sept. 15, 2015).

### **I. Trooper Letourneau is entitled to official immunity.**

Common-law official immunity precludes a suit for damages against a public official arising from duties that require the exercise of discretion, unless the official acted maliciously. *Id.* That protection “enables public employees to perform their duties effectively, without fear of personal liability that might inhibit the exercise of their independent judgment.” *Mumm*, 708 N.W.2d at 490. The party asserting immunity bears the burden of proof. *Shariss v. City of Bloomington*, 852 N.W.2d 278, 281 (Minn. App. 2014). In determining whether official immunity applies, we consider: “(1) the conduct at issue; (2) whether the conduct is discretionary or ministerial and, if ministerial, whether

any ministerial duties were violated; and (3) if discretionary, whether the conduct was willful or malicious.” *Vasallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014). We address each factor in turn.

#### **A. The Conduct at Issue**

Our first task is to “identify the *precise* governmental conduct at issue.” *Raymond ex rel. Kelley v. Pine Cty. Sheriff’s Office*, 915 N.W.2d 518, 525 (Minn. App. 2018) (quotation omitted), *review denied* (Minn. July 17, 2018). Precision is essential because “the doctrine of official immunity is a complex and difficult area of law that must be applied to ever-changing fact patterns and governmental policies.” *Mumm*, 708 N.W.2d at 492. Even if an official’s decision to undertake a task is discretionary, ministerial duties may govern how the official completes the task. *Thompson v. City of Minneapolis*, 707 N.W.2d 669, 674 (Minn. 2006). The nature of a plaintiff’s claim informs our assessment of what specific conduct is at issue. *Raymond*, 915 N.W.2d at 525.

Vanschaick’s complaint and his argument opposing the application of immunity demonstrate that the conduct at issue is not Trooper Letourneau’s decision to stop a speeding vehicle but his actions in doing so—attempting a sudden U-turn in front of Vanschaick’s vehicle in order to stop the speeding driver.

#### **B. Discretionary or Ministerial**

When determining whether the conduct at issue involves discretionary or ministerial duties, we look to “the nature of the act.” *Shariss*, 852 N.W.2d at 281 (quotation omitted). A discretionary act is one that “requires” the exercise of judgment. *Briggs*, 867 N.W.2d at 221 (quotation omitted). It “involves individual professional judgment that necessarily

reflects the professional goal and factors of a situation.” *Vasallo*, 842 N.W.2d at 462 (quotation omitted). By contrast, a ministerial duty is “absolute, certain, and imperative, and involve[s] merely execution of a specific duty arising from fixed and designated facts.” *Briggs*, 867 N.W.2d at 221 (quotation omitted). It is “simple and definite, leaving nothing to the discretion of the official.” *Id.* (quotation omitted).

The work of a law-enforcement officer requires considerable discretion. *Elwood v. Rice County*, 423 N.W.2d 671, 678 (Minn. 1988). This is particularly true in “emergency conditions,” where “little time for reflection” and “incomplete and confusing information” require “the exercise of significant, independent judgment and discretion.” *Pletan v. Gaines*, 494 N.W.2d 38, 41 (Minn. 1992). And it is the reason official immunity “is regularly applied to the judgment required of police officers in discharging their duties.” *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 220 (Minn. 1998). But our supreme court has expressly declined to hold that all police conduct, or even all police conduct in emergency situations, is discretionary. *Mumm*, 708 N.W.2d at 492. “[G]overnmental entities have the authority to eliminate by policy the discretion of their employees in emergency situations.” *Vasallo*, 842 N.W.2d at 462-63. A policy or statute that “sets a sufficiently narrow standard of conduct” that a law-enforcement officer is “bound to follow,” creates a ministerial duty. *Id.* at 463.

This case involves both a policy and statutes. State patrol policy provides that troopers “shall obey all traffic laws and shall not assume any special privileges, except while responding to an emergency call or involved in a pursuit situation.” Similarly, Minn. Stat. § 169.03, subd. 5 (2018), states: “No driver of any authorized emergency vehicle shall

assume any special privilege under [traffic laws] except when such vehicle is operated in response to any emergency call or in the immediate pursuit of an actual or suspected violator of the law.” Both plainly establish a standard of conduct applicable to Trooper Letourneau—he must comply with traffic statutes.

Trooper Letourneau and the state patrol argue that (1) this standard of conduct did not apply at the time of the accident because the trooper was pursuing a speeding motorist, and (2) even if he was not exempt from this standard, the relevant traffic statutes are not sufficiently narrow to create ministerial duties. Because their second argument is dispositive, we begin our analysis there.

Assuming, without deciding, that Trooper Letourneau was required to comply with traffic laws, we consider the specific statutes at issue. We first note that some traffic statutes impose a specific obligation—stop at a red light, Minn. Stat. § 169.06, subd. 5(a)(3)(i) (2018); do not exceed the speed limit, Minn. Stat. § 169.14, subd. 2(a) (2018); drive in the indicated direction on a one-way street, Minn. Stat. § 169.18, subd. 6(a) (2018). Other traffic statutes are less definite, including the two Vanskaick contends Trooper Letourneau violated. The first traffic statute provides that a driver must not “turn the vehicle to proceed in the opposite direction unless the movement can be made safely and without interfering with other traffic.” Minn. Stat. § 169.19, subd. 2. The second traffic statute prohibits driving “carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to endanger any property or any person.” Minn. Stat. § 169.13, subd. 2.

Compliance with such less-definite statutes requires a driver to exercise judgment, as the supreme court recognized in *Vasallo*. There, the court considered the duties of an officer responding to an emergency call to “slow down as necessary for safety” when approaching a red or stop signal, then to “proceed cautiously.” 842 N.W.2d at 463 (quoting Minn. Stat. § 169.03, subd. 2 (2012)). It explained that the first duty “is conditioned on the driver’s . . . determination of the level of speed appropriate for safety under the circumstances,” which “is a textbook example of the exercise of discretion.” *Id.* And the duty to “proceed cautiously” calls for the exercise of “due care,” which “also calls for the exercise of independent judgment.” *Id.* The supreme court contrasted these duties with the statutory requirement that emergency vehicles activate their sirens and light, which “is absolute, certain, and imperative, and therefore ministerial.” *Id.*; see also *Briggs*, 867 N.W.2d at 221 (holding that city ordinance requiring persons to lock unattended running vehicles imposed a ministerial duty).

The traffic statutes at issue here are nearly identical in imposing the discretionary duties of safety and due care at issue in *Vasallo*.<sup>1</sup> Accordingly, the district court erred by concluding that Trooper Letourneau’s conduct violated ministerial duties.

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<sup>1</sup> Vanschaick also points to Trooper Letourneau’s duty under state patrol policy to “demonstrate exemplary driving behavior,” to drive “with due regard for the safety of persons using the highways,” and similar driving duties. Because all involve discretionary considerations of safety or care, none imposes a ministerial duty. Similarly, Vanschaick emphasizes that the state patrol reprimanded Trooper Letourneau for careless driving. But the reprimand indicates, at most, that he violated a discretionary duty to drive safely and with due care—conduct for which he is entitled to official immunity unless he acted with malice.

Vanschaick argues that even if the traffic statutes Trooper Letourneau allegedly violated do not create ministerial duties, his conduct did not involve a significant enough exercise of discretion to warrant application of official immunity. He points to our statement in *Shariss* that official immunity protects “the exercise of *significant, independent judgment and discretion.*” 852 N.W.2d at 282 (quoting *Pletan*, 494 N.W.2d at 41)). We are not persuaded. *Shariss* involved a snowplow driver who, while waiting in line to perform his plowing duties, backed up his snowplow to let a school bus pass, striking another vehicle. *Id.* at 280. In concluding that the driver’s simple act of backing up his snowplow was ministerial, we emphasized that the driver “was not actively engaged in snow-removal operations” that implicate the exercise of discretion. *Id.* at 283. *Shariss* did not create a threshold degree of discretion required for official immunity to apply, nor have we discovered any case that does. To the contrary, official immunity “can apply to *any* act that involves an exercise of independent judgment.” *Vasallo*, 842 N.W.2d at 462 (emphasis added).

As noted above, discretion is central to the work of law enforcement. *Elwood*, 423 N.W.2d at 678. An officer assessing how best to stop a driver suspected of violating the law must consider myriad factors “with little time for reflection and often on the basis of incomplete and confusing information.” *Pletan*, 494 N.W.2d at 41. As the supreme court observed, “[i]t is difficult to think of a situation where the exercise of significant, independent judgment and discretion would be more required.” *Id.*

The undisputed evidence indicates that Trooper Letourneau exercised such judgment and discretion at the time of the accident. He observed a speeding driver whom

he believed posed a significant public-safety hazard. He determined that the safest way to stop the driver was to perform a U-turn as quickly as possible. He activated his emergency lights and scanned his surroundings. And he assessed that he would be able to complete the maneuver before Vanschaick reached his location. He was wrong. But his complex decision-making involved not only the exercise of judgment attendant to any driving conduct, but also the weighing of competing public-safety considerations in an environment that allowed no more than seconds for reflection. As such, Trooper Letourneau's conduct arose from the performance of discretionary duties; official immunity applies unless he acted maliciously.<sup>2</sup> See *Vasallo*, 842 N.W.2d at 465.

### **C. Malice**

Malice is “the intentional doing of a wrongful act without legal justification or excuse, or, otherwise stated, the willful violation of a known right.” *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991). It is not enough that an official committed an intentional act later determined to be wrong. *Id.* Rather, “[t]he exception to immunity for malicious acts allows liability only when an official intentionally commits an act that he or she then has reason to believe is prohibited.” *Vasallo*, 842 N.W.2d at 465 (quotation omitted).

In light of its decision that Trooper Letourneau was subject to ministerial duties, the district court did not address the issue of malice. Nonetheless, Trooper Letourneau and the state patrol urge us to conclude as a matter of law that the trooper's conduct was not

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<sup>2</sup> Because we conclude that the relevant traffic statutes create discretionary, not ministerial, duties, we decline to address Trooper Letourneau's alternative argument that he was not required to comply with any traffic laws because he was responding to an emergency call or pursuing a violator of the law.

malicious. We generally will not address issues that the district court did not decide, but we recognize an exception to that rule “when the issue is plainly decisive of the entire controversy on its merits, is raised prominently in the briefing, does not prejudice either party, or involves a question of law not dependent on new or controverted facts.” *Miller v. Soo Line R.R. Co.*, 925 N.W.2d 642, 653 (Minn. App. 2019) (quotation omitted). Such is the case here. A decision that the trooper’s conduct was not malicious would be plainly decisive of this case. The parties thoroughly briefed the issue, both in the district court and in this appeal. And although the issue whether an official’s conduct was malicious is often a fact question, *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 664 n.5 (Minn. 1999), we can decide the issue as a matter of law if there is no evidence that would support a finding of malice, *see Vassallo*, 842 N.W.2d at 465.

Vanschaick argues that a jury could reasonably find Trooper Letourneau acted with malice because (1) the trooper was involved in a similar collision in 2014; (2) several aspects of the trooper’s driving conduct at the time of his collision with Vanschaick indicate carelessness, such as his failure to signal his U-turn; and (3) the trooper acknowledged that his driving conduct violated state patrol policy. We disagree. Even viewing these undisputed facts in the light most favorable to Vanschaick, the nonmoving party, *Mumm*, 708 N.W.2d at 481, we are not persuaded that any of them supports a finding of malice.

First, the prior collision did not put Trooper Letourneau on notice that a U-turn was prohibited; it reinforced that a U-turn can be dangerous. He was not reprimanded for the collision or instructed not to make U-turns in the future. To the contrary, he and his

colleagues undisputedly employ the maneuver regularly, generally without incident. Second, the fact that Trooper Letourneau may have been negligent in multiple respects—not only affording himself insufficient time to make the U-turn safely but also forgetting to signal his turn—does not indicate malice. *See Vassallo*, 842 N.W.2d at 465 (“Malice is not negligence.”). And third, the trooper’s acknowledgment of wrongdoing after the fact is insufficient as a matter of law to show he knew at the time that his conduct was prohibited. *See Rico*, 472 N.W.2d at 107. As such, he is entitled to official immunity for his discretionary conduct, and the district court erred by denying him summary judgment.

## **II. The state patrol is entitled to vicarious official immunity.**

When a public official is immune from suit, the official’s government employer will generally “enjoy vicarious official immunity from a suit arising from the employee’s conduct.” *Raymond*, 915 N.W.2d at 527. Not doing so could cause public officials to second-guess themselves out of concern that their government employer could sustain liability from their actions, undermining the purpose of official immunity. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 508 (Minn. 2006).

The state patrol urges us to hold it vicariously immune from suit for Trooper Letourneau’s performance of discretionary duties. Vanschaick advances no reason not to do so, and our review of the record reveals none. Accordingly, we conclude the state patrol is entitled to vicarious official immunity.

**Reversed and remanded.**