Circuit Court for Prince George's County
Case No. C-16-CV-24-005678

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0664

September Term, 2025

CORY NELSON

v.

KHARI GROOMS

Wells, C.J.,
Kehoe, S.,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: June 15, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises from the dismissal by the Circuit Court for Prince George's County of the complaint by Cory Nelson ("Appellant") for negligence against Officer Khari Grooms ("Appellee"). The Circuit Court for Prince George's County dismissed Appellant's complaint, holding that the claim was barred under the public official immunity doctrine. Appellant timely noted an appeal.

Appellant presents one question for our review:

> Whether the Circuit Court erred in granting Appellee's Motion to Dismiss by finding that Appellee was acting in a discretionary capacity entitling Appellee to immunity pursuant to Maryland Code, Courts and Judicial Proceedings Article, Section 5-507(a)(1).

For the reasons outlined below, we reverse and determine the court erred in concluding that Appellee was afforded protection under the public official immunity doctrine.

BACKGROUND

Appellant was a member of the Prince George's County police department. On December 4, 2021, Appellant was searching for a suspect near the Eastover Shopping Center. Appellee, an officer with the Forest Heights police department, was assisting with his canine partner (hereinafter "canine" or "K9"). Following an unsuccessful search of the immediate area, Appellee relocated to a different area, returned to his police cruiser, and mistakenly pulled the handle of the rear door—where the canine was positioned—rather than the front driver door, resulting in the canine running towards Appellant and biting him. In a written statement, Appellee explained:

> I went to get in my cruiser to drive over to the area. I went to open my door, [and] without paying attention[,] I pulled on my rear door where [my] K9 was. My K9 jumped out of patrol vehicle and ran past [Appellant]. I called

> my K9 back to me at which time [Appellant] swung his hand drawing my K9[’s] attention.

Thereafter, Appellant filed a negligence complaint on November 26, 2024 in the Circuit Court for Prince George’s County against Appellee for injuries sustained from the dog bite, alleging Appellee failed to “open the correct door of his motor vehicle” and “secure his canine partner[.]”Appellee moved to dismiss the complaint, arguing his actions were discretionary in nature and protected under the doctrine of public official immunity. In contrast, Appellant argued that the act was not discretionary since courts review “the specific act itself, not just whether the act was done within some broader public official action[.]”

On May 2, 2025, the court held a hearing. In granting Appellee’s motion, the court explained:

> **THE COURT:** Okay. The Court has read both of the pleadings that were presented, as well as heard the arguments today. And the Court will make the following findings.
>
> This is a motion to dismiss for failure to state a claim upon which relief can be granted under Maryland Rule 2-322. The Court has to assume the truth of all well pled facts in the complaint and any reasonable inferences in favor of the Plaintiff. And the Court can only dismiss if those facts have proven or failed to afford relief to the Plaintiff.
>
> In this case, the Defendant, in this case, has argued that police officers are considered public officials and are immune from civil liability when acting negligently in the course of their discretionary duties.
>
> **The Court finds that the officer in question who had the K-9, the Defendant in this case, was acting in a discretionary capacity. He was looking for a suspect, he was assisting in looking for a suspect, he was getting back into his car to do so. Those are all discretionary capacities of him as a police officer when he was trying to get back into the car and opened the other door. He did so without malice and within the scope of his official employment as a police officer.**

> **Therefore, since he was acting within the scope of his law enforcement functions of pursuing the suspect, the Court finds that he would be therefore immune from civil suit.**
>
> The only count here is Count I, which is negligence. It's not pled as gross negligence. There's, obviously, a different standard for gross negligence, but within this complaint of negligence, the Court does not find that he was acting in a ministerial capacity but in a discretionary capacity without malice and within his scope of his employment.
>
> So I'll grant the motion to dismiss. And since that's the only count, then it dismisses the case. (Emphasis added).

Appellant timely noted the instant appeal on May 29, 2025.

STANDARD OF REVIEW

This Court reviews the circuit court's interpretation and application of Maryland statutory and case law *de novo*. *See Baltimore County v. Aecome Servs., Inc.*, 200 Md. App. 380, 397 (2011). The same standard applies for reviewing a grant of a motion to dismiss. *See Reiner v. Ehrlich*, 212 Md. App. 142, 151 (2013). To determine whether the doctrine of public official immunity applies, the following criteria is examined: (i) whether the position was created by law and involves continuing and not occasional duties; (ii) whether the holder performs an important public duty; (iii) whether the position calls for the exercise of some portion of the sovereign power of the State; (iv) and whether position has a definite term for which a commission is issued and a bond and an oath are required. *See James v. Prince George's Cnty.*, 288 Md. 315, 324 (1980), *superseded by statute as stated in Prince George's Cnty. v. Fitzhugh*, 308 Md. 384 (1987).[1] "These guidelines are not

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[1] In *James*, the Court analyzed the scope of sovereign immunity as prescribed by the Prince George's County Charter. *See Fitzhugh*, 308 Md. at 388 (discussing *James*). Subsequently, in *Fitzhugh*, the Court examined an amendment to that same Charter (continued)

conclusive, and the emphasis which may be placed on each varies depending upon the circumstances present in each case." *Id.*

DISCUSSION

I. The Circuit Court Erred in Granting Appellee's Motion to Dismiss Because Opening a Vehicle Door is a Ministerial Act.

A. The Parties' Arguments

Appellant argues Appellee is not protected by the doctrine of public official immunity because the underlying act was ministerial act in nature. He asserts the circuit court improperly expanded the definition of a discretionary act under the circumstances presented by concluding "so long as [a] police officer is doing something during a search, any act that they perform is a discretionary act for which they have immunity." Appellant asserts that since the underlying act was simply "mistakenly opening the wrong [vehicle] door[,]" no discretion was involved. Additionally, Appellant points to Appellee stating he "never consciously thought about his K9 at all" in opening the vehicle door to demonstrate why Appellee's actions did not involve discretion.

Appellant cites *Ashburn v. Anne Arundel County*, 306 Md. 617 (1987) and *Houghton v. Forrest*, 412 Md. 578 (2010) for the proposition that "being involved in police activity when [an] act takes place is not enough to entitle the public official to public official immunity[.]" He argues that in those cases, the Supreme Court of Maryland "could

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intended to limit the County's waiver of sovereign immunity. *Id.* at 388–89. In resolving whether sovereign immunity was waived in *Fitzhugh*, the Court did not substantively address the distinction between discretionary and ministerial acts. *See generally id.* Accordingly, the Court's analysis in *James* regarding the distinction between discretionary and ministerial acts remains good law.

have, but did not, hold that" police officers acting within the scope of an investigation had immunity for any actions taken within that investigation.

In contrast, Appellee argues the underlying act was discretionary because "[h]is handling of the canine required the use of his own judgment and discretion." He counters Appellant's argument—that the act was ministerial because he opened the door "mistakenly"—by asserting "[a] ministerial act is not defined by whether an action or outcome is mistaken or intentional." Rather, he argues the standard for ministerial acts is whether the officer or employee has "little choice as to when, where, how or under what circumstances their acts are to be done." (citing *D'Aoust v. Diamond*, 424 Md. 549, 589 (2012)). Furthermore, Appellee notes that Appellant failed "to identify the [ministerial] law, policy, procedure, or order" that he "allegedly violated. . . ."

Additionally, Appellee argues Appellant's claim is barred by the fireman's rule.[2] He argues "[b]ecause [Appellant] was conducting that search with the assistance of a police canine handled by another officer, it was reasonably foreseeable that he could be bitten by that canine[.] This is just the type of injury the fireman's rule is intended to bar."

[2] While Appellee seeks to avoid liability based on the fireman's rule, we hold the argument is waived, since it was not raised or preserved in the circuit court below. *See* Md. Rule 8-131(a). "The principal purpose of Rule 8–131(a) is to 'ensure fairness for all parties and to promote the orderly administration of law.'" *In re J.R.*, 246 Md. App. 707, 754–55 (2020). Since Appellant was not given proper notice of the fireman's rule argument in the circuit court, we believe it would be unfair to decide this issue on its merits. Moreover, to the extent this argument requires discovery, analyzing it at this stage would be premature.

B. Analysis

We conclude that mistakenly opening a vehicle door constitutes a ministerial act that neither involves the exercise of discretion or judgment, nor invokes the public official immunity doctrine. Accordingly, the circuit court erred in granting Appellee's motion to dismiss.

Public official immunity applies when a "governmental representative" performs a discretionary—rather than ministerial—act. *See* Md. Code Ann., Cts. & Jud. Proc. § 5-507(a)(1); *D'Aoust v. Diamond*, 424 Md. 549, 586 (2012) ("A governmental representative is entitled to public official immunity under the common law when he or she is acting as a public official, when the tortious conduct occurred *while that person was performing discretionary rather than ministerial acts*, and when the representative acted without malice.") (emphasis added) (quotation omitted). The public official immunity rationale is rooted in "(1) the injustice of subjecting to liability an officer who is legally required to exercise discretion, particularly absent bad faith, and (2) the danger of deterring willingness to exercise judgment with decisiveness posed by the threat of liability." *D'Aoust*, 424 Md. at 586 (quotation omitted).

Determining whether an action is discretionary or ministerial involves a measure of public policy because "in a strict sense, every action of a government employee . . . involves the use of some degree of discretion." *Id.* at 588 (quotation omitted). Indeed, the Supreme Court of Maryland noted that while "the line between ministerial and discretionary acts can, at times, become blurred, the difference can be delineated more clearly by considering whether 'the decision which involves an exercise of [the official's] personal judgment also

includes, to more than a minor degree, the manner in which the police power of the State should be utilized.'" *Id.* at 589 (quotation omitted).

By definition, a ministerial act is one in "which nothing is left to discretion[,]" is "positively imposed by law[,]" and "required at a time and in a manner, or upon conditions which are specifically designated[.]" *Id.* at 588–89 (quotations omitted). In other words, ministerial acts are those that are "absolute, certain, and imperative, involving merely the execution of a set task" and are "inflexibly mandatory." *Id.* (quotations omitted). In contrast, a discretionary act is one performed under "the dictates of [an officer's] own judgment and conscience and uncontrolled by the judgment or conscience of others." *Howard v. Crumlin*, 239 Md. App. 515, 526 (2018) (quotation omitted).

Precedent illustrates the distinction between discretionary and ministerial acts. In *James v. Prince George's County*, the Court held that driving an emergency vehicle, "such as an ambulance or fire truck[,]" constitutes a ministerial act because it "involve[s] to minimal degree, if at all, the exercise of discretion with regard to the State's sovereignty." 288 Md. at 327–28. Although the Court cited no statute or rule limiting the operation of emergency vehicles, it noted the existence of a statute granting privileges to emergency drivers. *See id.* (citing Md. Code Ann., Transp. § 21-106(b) (West 1977)). The Court found that "even if [the statute granting privileges for drivers of emergency vehicles] did not exist," it would still hold that driving an emergency vehicle constitutes a ministerial act. *See id.* The Court went on to cite a "decision of a fire chief . . . to destroy a specific non-burning building in order to contain a fire in another nearby building" as an example of a possible discretionary act. *Id.* at 328; *see also Howard*, 239 Md. App. at 527–28 (finding a

"failure to investigate further" is a discretionary act); *Ashburn v. Anne Arundel Cnty.*, 306 Md. 617, 626 (1986) (finding the decision not to stop or detain a drunk driver is a discretionary act).

Here, the underlying act supporting Appellant's negligence claim is Appellee mistakenly opening the rear door of his police cruiser, a ministerial act that involved neither the exercise of personal judgment nor the weighing of public policy. Indeed, opening a vehicle door is more ministerial than the act of driving itself. It is a task incidental to a vehicle's operation. Since the operation of a motor vehicle is ministerial in nature, *see James*, 288 Md. at 327–28, the act of opening a vehicle door is ministerial as well.

Proper canine deployment requires an officer to weigh various tactical factors, including safety and efficiency. Had Appellee intentionally opened the door to deploy the canine, he might assert the act was discretionary. However, an accident, by definition, is not a deliberative exercise of judgment. Therefore, by conceding the act was a mistake, Appellee effectively admits it was devoid of any judgment necessary to trigger immunity.

Although Appellee notes the absence of specific protocols for opening a vehicle door or handling a canine, this factor alone does not transform a routine ministerial act into a discretionary one. *Cf. id.* (stating the absence of a relevant statute or rule does not preclude finding an act is ministerial). Since many everyday tasks lack formal guidelines, ruling otherwise would mean that simple actions—like using a turn signal or checking a rearview mirror—qualify as discretionary acts. Such a holding would effectively shield government officials from all liability.

In conclusion, because the underlying act was ministerial, Appellee is not afforded protection under the doctrine of public official immunity, and the court erred in granting the motion to dismiss.

CONCLUSION

For the foregoing reasons, we reverse the judgment of the Circuit Court for Prince George's County.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED. COSTS TO BE PAID BY APPELLEE.