No liability for deaths when cars stopped

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Neither a suburban police officer nor the municipality for which she worked can be held liable for a fatal collision allegedly caused by the officer's failure to warn motorists that she had blocked traffic, a state appeals panel ruled Friday.

A three-judge panel of the 1st District Appellate Court ruled that Hoffman Estates Police Officer Catherine Bloss was engaged in a "police service" when she stopped traffic to help a stranded motorist and therefore her conduct was protected by section 4-102 of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/4-102.

Friday's 8-page ruling, written by Justice Calvin C. Campbell, turned aside an appeal from Matthew J. Lounds and the family of Anthony D. McElmeel, who claimed that, in not giving better warning to motorists that she had blocked traffic, Bloss was liable for an accident that left McElmeel, 18, dead, his brother, Eric, then 17, brain damaged and Lounds, then 18, paralyzed on his right side.

Cook County Circuit Judge Jennifer Duncan-Brice granted a motion to dismiss the Lounds-McElmeel suit in 2002. Friday's opinion affirms that dismissal.

Lounds and the McElmeels claimed that Bloss' failure to provide a better warning was "willful and wanton conduct" that should strip Bloss — and Hoffman Estates — of their immunity under section 2-202 of the Tort Immunity Act.

The accident occurred on Dec. 23, 2000, on Barrington Road in Hoffman Estates, Campbell wrote.

When a minivan slid off the road into a ditch, Bloss went to help, Campbell wrote. She blocked traffic in the southbound lane by stopping her squad car and turning on the car's flashing lights, Campbell wrote.

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Six cars lined up behind Bloss' squad car, Campbell said. Lounds was driving the sixth car and the McElmeel brothers were his passengers, Campbell said.

As the line waited, a car driven by Dagoberto Noyola slammed into the rear of Lounds' car, Campbell wrote. Noyola was cited for drunk driving and "is currently incarcerated," Campbell wrote.

In late 2000, Lounds and the McElmeel family "filed suit against a number of defendants," Campbell wrote.

They settled dramshop claims against two defendants, dismissed four other defendants and "obtained a $16 million default judgment against Noyola, which remains uncollected," Campbell wrote.

"There's no prospect of recovering that," said sole practitioner Richard M. Goldwasser, one of two lawyers who handled the Lounds-McElmeel appeal.

Noyola, an immigrant, had no insurance and is facing deportation at the end of his prison sentence, Goldwasser said.

In their appeal, the plaintiffs relied on section 2-202 of the Tort Immunities Act and the Illinois Supreme Court's decision in *Doe v. Calumet City*, 161 Ill.2d 374, 388-90, 641 N.E.2d 498, 505 (1994), Goldwasser said.

In *Doe*, which Campbell quoted in Friday's opinion, the Supreme Court held that "plaintiffs can escape the statutory immunities granted municipalities and their employees either by proving facts that show the existence of a special duty and proving simple negligence or by proving willful and wanton conduct alone."

Hoffman Estates argued that Bloss and the village were immune under section 4-102 of the Tort Immunities Act, which states, "Neither a local public entity nor a public employee is liable for failure ... to provide adequate police protection .or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals," Campbell wrote.

In siding with Hoffman Estates, the appellate panel relied on two previous 1st District opinions, *Long v. Soderquist*, 126 Ill.App.3d 1059, 1064-65, 467 N.E.2d 1153, 1157 (1984), and *Kavanaugh v. Midwest Club Inc.*, 164 Ill.App.3d 213, 221, 517 N.E.2d 656, 662 (1987), Campbell wrote.

In *Long*, the Appellate Court held that a law enforcement official who assisted at the scene of a traffic accident was immune from liability even though he didn't light flares, didn't clear the vehicles off the road, didn't warn other drivers about the obstruction and didn't call for assistance, Campbell said.

In *Kavanaugh*, the court held that section 4-102's phrase "adequate police protection or service" included responding to a traffic call, Campbell wrote.

"In this case, plaintiffs' allegations describe police action far more similar to that alleged in *Long* and *Kavanaugh* than to that alleged in *Doe* or its progeny," Campbell wrote.

"Therefore, we conclude that at the time of the collision, [Hoffman Estates] and Officer Bloss were providing police service immunized by ... the [Tort Immunity] Act...," Campbell wrote.

Justices Sheila M. O'Brien and P. Scott Neville Jr. joined Campbell in Friday's opinion.

Michael E. Kujawa of Judge, James & Kujawa LLC defended Hoffman Estates and Bloss. He couldn't be reached for comment Friday.

Steven J. Rizzi, of Weinberg & Rizzi, was co-counsel for the plaintiffs. He and Goldwasser said their clients would file a petition for leave to appeal.

Eric McElmeel, et al. v. Village of Hoffman Estates, et al., No. 1-04-0431.