



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**APRIL ABIGAIL GUERRA, et al. v. STATE OF ARIZONA, et al.
CV-14-0144-PR**

PARTIES:

Petitioners/Appellants/Defendants:

The State of Arizona, a governmental entity; Robert Halliday, in his individual and official capacity as Director of the Arizona Department of Public Safety (“DPS”); Officer John Doe Dudas; Officer John Doe Guerrero; Officer John Doe Ortiz; and Sergeant John Doe Ortolano (collectively “the State”)

Respondents/Appellees/Plaintiffs:

April Abigail Guerra, Maria Guerra, and Jose Sergio Guerra (collectively “the Guerras”)

FACTS:

On July 18, 2010, five friends were traveling home to Arizona from California when their vehicle suffered a rear tire failure, causing it to roll. During the rollover, two female passengers were ejected; one of them was pronounced dead at the scene.

DPS responded to the accident scene. Once there, DPS officers discovered a purse near the deceased that contained Arizona driver’s licenses for April Guerra and M.C., who were close friends and shared similar physical attributes. Due to the extent of their injuries, none of the passengers were positively identified at the accident scene. DPS released the body of the decedent to the Maricopa County Medical Examiner’s Office as “Jane Doe,” and airlifted the four remaining passengers, three females and one male, to St. Joseph’s Hospital.

DPS Sergeant Ortolano directed DPS Officers Ortiz and Guerrero, who were not present at the accident scene, to identify the four passengers being treated at the hospital. Volunteer DPS Chaplain Eddingfield subsequently joined the two officers at the hospital.

Once at the hospital, Officers Ortiz and Guerrero interviewed the driver, Laura P. She self-identified and provided the officers with the names of the vehicle’s other occupants, two of whom were M.C. and April.

Next, Officers Ortiz and Guerrero contacted the nurse who appeared to be in charge of the hospital’s emergency care unit (the “charge nurse”) to determine if the hospital had been able to identify any of the patients. After speaking with other hospital staff, the charge nurse told them two female patients had not yet been identified, but that she would find out their identities. After

the charge nurse talked to family members and hospital staff, she concluded one of the female patients was G.M., meaning the remaining unidentified female patient was either M.C. or April.

When the charge nurse next spoke to the officers, she informed them April's family had advised her that April had a birthmark on her chest. After examining the remaining unidentified patient, the charge nurse concluded the patient did not have the described birthmark. During this time, Officer Ortiz contacted another DPS officer who was at the accident scene to inquire if the decedent had the birth mark; because of the severity of the injuries, however, the officer could not determine if the decedent bore the described birthmark. After obtaining more information regarding the passengers' clothing and other possible identifying marks, the charge nurse identified the remaining unidentified patient as M.C., and told the officers she was certain of her identification. Thereafter, by process of elimination, the officers determined the deceased passenger was April.

April's mother, Maria, and aunt were then placed in a hospital conference room where, pursuant to DPS's NOK [Next-of-Kin] Notification Manual, Officers Ortiz and Guerrero and Chaplain Eddingfield notified them of April's death. Following the notification, Chaplain Eddingfield told Maria she still needed to positively identify the body at the Medical Examiner's Office. Maria then called April's father, Jose, who was out of town, to inform him of their daughter's death.

The next day, April's family contacted the Medical Examiner's Office and was advised they would not be able to view the body until it was released to a funeral home. The family was also requested to have April's dental records forwarded to the Medical Examiner's Office to help with the identification. The Medical Examiner's Office informed the family that the body would be released for burial preparation on July 24, 2010.

Before releasing the body, however, the Medical Examiner's Office contacted Sergeant Ortolano and informed him that April's dental records did not match those of the decedent. Sergeant Ortolano, along with another DPS officer and a chaplain, visited the Guerra family to advise them of the development and gather more identifying information for April. The Guerra family informed the officers that April recently had her wisdom teeth removed, had the tragus of her left ear pierced, and stated again that April had a birthmark on her chest. The Guerra family also provided the officers with school identification cards for both April and M.C.

Officers then visited the hospital to examine the patient previously identified as M.C., and observed a small mark on the patient's chest and that her left ear tragus appeared to be pierced. While at the hospital, the officers spoke with M.C.'s family and informed them of the recent developments. When asked for further information to help positively identify the female patient, M.C.'s family stated they believed M.C. still had her wisdom teeth and they remembered she had a scar on her abdomen from an appendectomy. The patient, then believed to be M.C., did not have a scar on her abdomen.

The Guerra family then informed Sergeant Ortolano they had located a child identification card for April that contained her thumbprint. Officers matched the thumbprint of the patient at St. Joseph's to the thumbprint on April's identification card, and positively identified the person

previously believed to be M.C. as April. On July 26, 2010, the deceased passenger was positively identified as M.C.

The Guerras sued the State, alleging claims of negligence, negligent training, and intentional infliction of emotional distress. The State then moved for summary judgment on all claims; the Guerras cross-moved for partial summary judgment on the issue of duty, arguing the State had assumed a duty of reasonable care when its officers undertook the NOK notification. The trial court granted the State's motion for summary judgment and denied the Guerras' cross-motion, impliedly finding the State did not owe a duty to the Guerras. The Guerras timely appealed.

Finding the DPS officers assumed a duty of reasonable care when they provided the Guerra family with a NOK notification, the court of appeals reversed the trial court's granting of summary judgment on the negligence claim. The court affirmed, however, the trial court's ruling on the Guerras' negligent training and intentional infliction of emotional distress claims.

In finding that DPS assumed a duty in this matter, the court of appeals distinguished the cases relied upon by the State, *Morton* and *Vasquez*, because "neither involved the issue before us: whether law enforcement agencies affirmatively assume a duty by undertaking to notify a decedent's family of the decedent's death." *Guerra v. State*, 234 Ariz. 482, 487 ¶ 18, 323 P.3d 765, 770 (App. 2014) (hereafter "Op."), referring to *Morton v. Maricopa County*, 177 Ariz. 147, 865 P.2d 808 (App. 1993), and *Vasquez v. State*, 220 Ariz. 304, 206 P.3d 753 (App. 2008). In *Morton*, "neither the sheriff's office nor the Medical Examiner made any representations to the Mortons regarding their investigation." 177 Ariz. at 150-51, 865 P.2d at 811-12. And, in *Vasquez*, the court acknowledged that it "did not quarrel with the dissent's general proposition that defendants, including law enforcement agencies, may acquire a duty of care to others by undertaking conduct." 220 Ariz. at 318 ¶ 49, 150 P.3d at 232. Thus, the court of appeals concluded as follows in the case at hand:

. . . [A] NOK notification is different than an investigation into the identity of a deceased. There is little doubt that the primary purpose of a NOK notification is not to foster public safety but is, instead, to directly benefit the decedent's next of kin. *See id.* at 319-20, ¶ 54, 206 P.3d at 768-69 (Eckerstrom, J., concurring in part, dissenting in part) (arguing the Court should have imposed a duty as "the [decedent's] mother would have been an obvious and primary beneficiary of the agencies' efforts to identify [the decedent's] remains—and that, by undertaking the task of doing so, the agencies created a special relationship with her"). DPS's own manual further evidences that the purpose of the NOK notification is to benefit specific, individual survivors, rather than the public at large: [quotation omitted]. Given the primary purpose of the notification is to benefit the survivors, coupled with the weight society gives law enforcement's statements, and the inarguably devastating emotional impact a family member's death has on survivors, when the State undertakes the actual NOK notification it must communicate the information with reasonable care being given to the accuracy of what is conveyed.

Op. at ¶ 24.

The State thereafter filed its petition for review in this Court.

ISSUES FOR WHICH REVIEW WAS GRANTED:

Next-of-kin (“NOK”) notifications often occur in time-sensitive and tragic circumstances, when law-enforcement officers strive to identify crash or crime victims. Relying on information provided by hospital personnel following a rollover accident with multiple victims, Department of Public Safety (“DPS”) officers made an NOK notification, informing the Guerras that their daughter, April, had died in the crash. Six days later, the Guerras learned that their daughter had been misidentified; although severely injured, she had survived. Her friend was the one who had actually died. The specter of tort liability stemming from communicating investigative findings to concerned family members under such circumstances raises several issues meriting this Courts’ review:

1. *Morton* and *Vasquez* held that law-enforcement agencies have no legal duty in investigating and identifying deceased individuals. The court here held that there *is* such a duty; it arises when law enforcement assumes the duty to make an NOK notification. Can *Morton* and *Vasquez* be legitimately distinguished on this basis?
2. Arizona has adopted § 323 of the Second Restatement of Torts to determine the limits of liability for a defendant’s voluntary undertaking. It would not impose liability here. Although the court said that it did not rely on § 323, it based its holding on cases that relied on § 323 or its principles, and it identifies no legal basis for the duty that it established. Did the court err in establishing a new duty?
3. In reaching its decision, the court dismissed public-policy concerns, ignoring the fact that its ruling will have a chilling effect on socially desirable communications. Did the court fail to adequately consider the adverse public-policy implications of its holding?

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