

## **“EMERGENCY OPERATIONS” UNDER VTL § 1104**

The New York State Vehicle and Traffic Law (hereinafter VTL) governs the operation of automobiles on public highways. A driver whose violation of the VTL causes injury is liable for such injury under an ordinary negligence standard. VTL § 1104, however, provides a carveout for certain emergency personnel. Under given circumstances, drivers of authorized emergency vehicles who cause an injury will be held to a recklessness standard of negligence. This is a much higher burden for a plaintiff. It “demands more than a showing of a lack of ‘due care under the circumstances’ - the showing typically associated with ordinary negligence claims. It requires evidence that ‘the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow’ and has done so with conscious indifference to the outcome.” *Saarinen v. Kerr*, 84 N.Y.2d 494, 501 (1994).

The driver of the emergency vehicle must meet certain criteria provided by VTL § 1104; first, the injury must have been the proximate result of the driver either:

1. Stopping, standing, or parking irrespective of the VTL
2. Proceeding past a steady red signal, a flashing red signal or a stop sign, after having slowed down as necessary for safe operation
3. Exceeding the maximum speed limits as long as he is not endangering life or property
4. Disregarding regulations governing directions of movement or turning in specified directions

Second, the driver must have done so while engaged in an emergency operation. VTL § 1104(b). An “emergency operation” is defined in VTL § 114 – b as: “[t]he operation, or parking, of an authorized emergency vehicle, when such vehicle is engaged in transporting a sick or injured person, transporting prisoners, delivering blood or blood products in a situation involving an imminent health risk, transporting human organs and/or medical personnel for the purpose of organ recovery or transplantation in a situation involving an imminent health risk where undue delay would jeopardize such recovery or transplantation, pursuing an actual or suspected violator of the law, or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm of fire, actual or potential release of hazardous materials or other emergency. Emergency operation shall not include returning from such service.”

Thus in order for VTL § 1104 to apply to a driver of an authorized emergency vehicle, two requirements must be met. First, the driver’s acts must have come within VTL § 1104(b)(1), (2), (3), or (4). Second, the driver must have been engaged in an “emergency operation.”

The term “emergency operation” covers a host of procedures performed by emergency personnel. Courts are often presented with the question of whether a procedure falls within the definition of “emergency operation.” The definition has been broadly interpreted by the courts.

### **SICK OR INJURED PASSENGERS**

VTL § 114 – b expressly covers the transportation of sick or injured persons. *Mulholland v. Nabisco, Inc.*, 264 A.D.2d 411 (2d Dept. 1999) arose out of an automobile accident involving an ambulance which had proceeded through a red light while transporting a patient to a hospital.

The patient was having difficulty breathing and appeared at the time to have suffered a stroke. The Second Department reversed the Supreme Court's determination that the ambulance driver was not engaged in an "emergency operation." "The undisputed testimony that Mulholland was transporting a patient who had experienced respiratory distress to the hospital demonstrates that she was engaged in an 'emergency operation' which is expressly defined to include the operation of a vehicle 'engaged in transporting a sick or injured person.'" *Id.* at 411 – 412.

## **POLICE CALLS**

The term "police call" has been interpreted as covering a wide range of signals to police officers. In *Gonzalez v. Iocovello*, 93 N.Y.2d 539 (1999) a police officer riding as a passenger in a police vehicle was injured when her partner drove through a red light and collided with a civilian vehicle. The officers were responding to a call relating to a burglary in progress. The Court of Appeals agreed with the Trial Court that the officers were engaged in an "emergency operation." See A response to a burglary in progress has long been considered an "emergency operation." See, *i.e.*, *Kabir v Cty of Monroe*, 16 N.Y.3d 217 (2011).

*Frezzell v. City of New York*, 24 N.Y.3d 213 (2014) involved a New York City police officer who had received a report of a man wielding a gun. In an attempt to respond to the incident the Officer drove in the wrong direction down a one – way street; a collision with another vehicle resulted. There was no dispute as to whether the Officer was engaged in an "emergency operation."

A police officer's belief that an operation is an "emergency operation" is not relevant. In *Criscione v. City of New York*, 97 N.Y.2d 152 (2001), two officers on patrol in a police car in Brooklyn received a call on their radio dispatching them to a "non - crime" incident. The officers attempted to respond to the call but while en route they were involved in an automobile accident. Consistent with the New York Police Department's protocol for non - emergency responses, the officers had not activated the siren or emergency lights, and the driver had not increased his speed. Plaintiff, the officer in the passenger seat, testified that he considered the radio call a "non emergency." The Court of Appeals determined that the officers had been engaged in an "emergency operation." Looking to the plain meaning of VTL § 114 – b, the Court determined that the officers were responding to a "police call" when the accident occurred and therefore were involved in an "emergency operation. "

In *Proce v. Town of Stony Point*, the police station received a call complaining of an attempted home intrusion. *Proce v. Town of Stony Point*, 185 A.D.3d 975 (2d Dept. 2020). A police officer in a patrol car drove toward the home with his siren and emergency lights activated. Before arriving at the home, he learned another officer had responded. The officer turned off the lights and siren and began to drive around the area looking for the suspect. After completing his investigation, the officer believed the call was no longer a "high" priority. He decided to drive to the caller's home to confer with the responding officer. On his way there, he was involved in an automobile accident. The Second Department agreed with the Trial Court that the collision had occurred in the course of an "emergency operation." Citing *Criscione*, the Court ignored the deactivation of the lights and siren and the mental state of the officer. "An 'emergency operation,'" said the Court, "is statutorily defined to mean, among other things, '[t]he operation .

. . of an authorized emergency vehicle, when such vehicle is . . . responding to . . . the scene of a . . police call.””

In *Gordon v. County of Nassau* a police officer was involved in an automobile accident with a civilian. *Gordon v. County of Nassau*, 261 A.D.2d 359 (App. Div. 2d Dept. 1999). The officer was responding to a call from a person in need of medical assistance. With knowledge that EMS and another police officer had already been dispatched to the scene, the officer sped down a congested road toward the intersection in which the accident occurred. The Second Department determined that, as a matter of law, these acts were considered an “emergency operation.”

A “police call” need not come from the public. Another officer’s call for assistance is sufficient to set a police officer into an “emergency operation.” In *Frezzell v. City of New York*, 24 N.Y.3d 213 (2014), two police vehicles were involved in a collision after one officer had driven the wrong way down a one way street. The officers were found to have been responding to “an urgent radio call from a fellow officer indicating that he was engaged in a foot pursuit of a man with a gun near a public housing development a few blocks away and needed assistance.” The Court of Appeals found the actions had been part of an “emergency operation” with little explanation. In *Santiago v. Boyer*, 193 A.D.3d 1006 (2d Dept. 2021), a police officer was involved in a collision while “responding to a call for assistance from another officer, which he and his partner deemed to be an emergency.” The Second Department found the response to be an “emergency operation,” demonstrating the mere existence of a radio call can set in motion the “emergency operation.”

## **PRISONERS**

Some operations are considered “emergency operations” though there has been no crime and no injury. VTL § 114 – b notably includes the transfer of prisoners within the definition of “emergency operation.” *Church v. City of New York*, 268 A.D.2d 382 (1st Dept. 2000) involved a police van carrying prisoners. The driver was operating the vehicle in excess of the speed limit and without attention to traffic in front of him. An evasive maneuver resulted in a collision. There was testimony that the van lacked air conditioning, and that since the day was hot, a police officer was concerned that prisoners could “[pass] out.” The First Department found the van was being driven as part of an “emergency operation,” but placed no weight on the air conditioning issue; it was enough that there were prisoners in the van.

Calls to corrections officers are also sufficient to set in motion an “emergency operation.” In *Klayman v. New York*, 130 A.D.2d 551 (2d Dept. 1987), two corrections officers were driving to Rikers Island from Manhattan in response to an inmate disturbance. The driver proceeded through a red light causing a four vehicle collision. The Second Department found that a jury could have concluded that the corrections officer had been engaged in an “emergency operation” at the time of the collision.

In *Nias v City of NY*, 2017 NY Slip Op 30957[U] [Sup Ct, NY County 2017], an unmarked police vehicle was crossing a Manhattan intersection when it was struck by a civilian vehicle. The traffic light was in the civilian’s favor. The police vehicle, driven by a defendant police officer was the last in a three vehicle convoy traveling to a precinct house where a prisoner, a passenger in the first vehicle, would be processed. The trial court’s opinion was dismissive of the

plaintiff's argument that because the prisoner was in another vehicle, the subject police vehicle was not transporting a passenger; an emergency operation was found. The Court placed weight on the defendant officer's testimony that he was part of the police detail assigned to bring the prisoner to justice and was "responsible" for the prisoner. To find that the officer was not engaged in an "emergency operation," said the Court, "would undermine the 'evident legislative purpose of Vehicle and Traffic Law §1104, i.e., affording operators of emergency vehicles the freedom to perform their duties unhampered by the normal rules of the road.'" *Id.* at 16 – 18.

### **PASSAGE OF TIME**

The passage of time does not necessarily put an "emergency operation" to an end. In *Gonyea v. County of Saratoga*, 23 A.D.3d 790 (3d Dept 2005) a police officer responded to an automobile accident. When she arrived at the scene she parked such that a portion of the police car was in a travel lane. After twenty to twenty – five minutes had passed, and after the officer investigated the scene she returned to the police car where she sat writing a ticket. The police car was struck by another driver. Despite the passage of time, the Third Department found that the authorized emergency vehicle was still parked as part of an "emergency operation." That any sense of urgency had passed was of no consequence.

### **"NON – EMERGENCY" OPERATIONS**

Not all operations rise to the level of "emergency operations." Traffic control is not generally understood as an "emergency operation." In *Lewis v. City of New York*, 19 Misc. 3d 1109(A) a person was struck with a tractor – trailer operated by a civilian during a parade. At the time of the accident, the parade was coming to an end, and an agitated police chief wanted the vehicle to

clear the area. He instructed a lower ranked officer to have the truck moved. Although it was surrounded by a large crowd, the lower ranked officer instructed the truck's driver, a civilian, to move the vehicle forward. The officer reached into the cab, sounding the horn. *Id.* The driver drove into the crowd, stopping only once the crowd began shouting, informing him that a person had been struck.

It was argued that the lower ranked officer had commandeered the vehicle for the purpose of his operation; even if he had, the trial court did not find an "emergency operation." The language of VTL § 114 – b, then, appears not to extend to traffic control.

*Cioffi v S.M. Foods, Inc.* involved a police vehicle that was struck by a tractor trailer. *Cioffi v. SM Foods*, 178 A.D.3d 1006 (2d Dept. 2019). An officer had been conducting a traffic stop on foot in connection with a seatbelt checkpoint. *Id.* The checkpoint had caused traffic to build up. *Id.* Another officer drove to the scene of the traffic stop and parked in the roadway. He had intended to assist with the traffic situation and offer to help his colleague. In an effort to avoid striking the second officer's police car a tractor – trailer driver inadvertently struck the first officer. The Second Department did not find an "emergency operation." The Court considered the plain meaning of VTL § 114 – b and found and determined the definition does not include offering assistance to an officer or assisting with a traffic delay.

## **CONCLUSION**

The VTL regulates the operation of vehicles on public highways in the State. A driver whose violation of the VTL causes injury is subject to a basic negligence standard at trial. The driver of



an authorized emergency vehicle may instead be held to a recklessness standard, a higher bar for a plaintiff to reach. In order for the driver of an authorized emergency vehicle to be subject to this standard, two requirements must be met. First, the driver must have been acting in one of the manners prescribed by VTL § 1104(b). Second, the driver must have been engaged in an “emergency operation.” The term “emergency operation” is defined in VTL § 114 – b and case law contains broad interpretations in favor of municipalities.

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