

## DPS DISPATCHER IS ENTITLED TO QUALIFIED IMMUNITY IN SUIT ALLEGING NEGLIGENCE

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*Hariato v. State of Arizona*

(Court of Appeals, Division One, October 15, 2020)

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Arizona Court of Appeals held that a DPS dispatcher is entitled to qualified immunity in a suit that alleged negligent handling of calls regarding a wrong-way driver.

Horan was spotted before dawn one morning driving north in the southbound lanes of I-17 in northern Maricopa County. Southbound motorists began calling 911 at 4:05 a.m. Because Horan was in Maricopa County when the first calls were received, they were routed to the Metro West district, which extends north to the southern boundary of Yavapai County. A DPS dispatcher alerted law enforcement officers. As Horan approached Yavapai County, the dispatcher alerted the Flagstaff district, which in turn notified DPS troopers in Yavapai County. Before a Yavapai trooper could stop Horan, though, Horan crashed into a minivan, killing three passengers and injuring three others. Plaintiffs sued the State, alleging negligent failure to take appropriate measures to prevent wrong-way driving and failing to adopt law enforcement standards to prevent such accidents.

The State moved for and won summary judgment on the ground that the officers were qualifiedly immune for any allegedly negligent decisions they made in trying to stop Horan. Plaintiff moved to reconsider, arguing that the DPS dispatcher was not qualifiedly immune, and was negligent in failing to contact field officers sooner. The trial court held the DPS dispatcher was also qualifiedly immune, and plaintiff appealed.

The court of appeals affirmed. Plaintiffs' theory was that had the dispatcher contacted the Yavapai officer earlier, he would have been able to stop Horan before the collision by setting up a traffic break, using stop sticks, implementing a roadblock, or other proactive measures. The essence of plaintiffs' allegations, then, was that the dispatcher's delay in contacting the Yavapai officer resulted in the failure to stop or arrest Horan before the collision. And an alleged failure to stop or arrest "plainly falls under § 12-802.02(A)(1)." For this reason, the dispatcher was entitled to qualified immunity against plaintiffs' allegations that she negligently handled the emergency. The duties of 911 dispatchers, said the court, are integrated into law enforcement investigation and arrest processes. Indeed, the need for officers' immediate action to make an arrest or an investigatory stop is often based on the actions of 911 dispatchers. For this reason, it makes sense that dispatchers should be entitled to same qualified immunity as the officers.

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[Eileen GilBride](#) leads the firm's [Appellate Department](#), and focuses her practice on representing clients in federal and state appellate matters and dispositive motions. She also counsels and assists trial lawyers in the substantive areas of their practices, from the answer stage through the post-trial motion stage. Eileen has handled more than 400 appeals at every level of the state and federal courts, in Arizona and other states, which have resulted in more than 80 published decisions.