

Case Brief

CITATION:	<i>VIA v. Garcia</i> , 397 S.W.3d 702 (Tex.App.—San Antonio 2012)
PARTIES:	VIA Metropolitan Transit/defendant below/appellant here v. Gerald Anthony Garcia/plaintiff below/respondent here
OBJECTIVES OF PARTIES:	Garcia wants to prove VIA was negligent and collect money for damages. VIA wants to avoid liability for damages.
HISTORY OF THE LITIGATION	1. TRIAL: A negligence suit was brought against VIA by Garcia in the 438 th District Court (Bexar) with Victor Hugo Negron Jr., J. presiding.
Prior Proceeding:	RESULT: VIA was found negligent and damages were awarded to Garcia.
Present Proceeding:	2. APPEAL: VIA now appeals the finding of negligence to the Court of Appeals (San Antonio)
THEORIES OF THE LITIGATION:	1. TRIAL: Garcia sought to prove negligent liability of VIA. VIA denied the allegations and asserted negligence by Garcia. 2. APPEAL: “VIA contends the trial court erred in refusing to submit to the jury its requested questions on Garcia’s negligence and proportionate responsibility.
FACTS:	While directing traffic, SAPD Officer Garcia was struck by a VIA van after waving the van to proceed through the intersection.
ISSUE 1:	Does a police officer directing traffic have the same duty to keep the lookout as a pedestrian?
HOLDING 1:	No
REASONING 1:	One role that a police officer has is directing traffic. Tex.Civ.Prac. & Rem Code Ann. § 101.0215(a)(21). Acting in this capacity can place them in danger. The Court of Appeals held “that a police officer directing traffic has a duty to keep the lookout that a reasonable police officer would keep while directing traffic under similar circumstances.” <i>VIA v. Garcia</i> , 397 S.W.3d 702, at 708.

ISSUE 2: Is expert testimony required to determine the duty of care of a police officer for his own safety while directing traffic?

HOLDING 2: Yes

REASONING 2: The actions of an officer directing traffic involve “the use of techniques unfamiliar to the ordinary person.” *FFE Trans. Servs.*, 154 S.W.3d 90. “Therefore, VIA was required to present expert testimony to establish the standard of care applicable to a law enforcement officer directing traffic and evidence of the breach of that standard.” *See id*, 90-1.

DISPOSITION: “We conclude that the trial court did not err in refusing to submit to the jury VIA’s requested questions on Garcia’s negligence and proportionate responsibility. Therefore, we affirm the trial court’s judgment.”