A LAST WORD ON RECENT DEVELOPMENTS

WHEN CATEGORY II MEETS CATEGORY III: SOVEREIGN IMMUNITY OR LIABILITY FOR THE CRIMINAL ACTS OF THIRD PARTIES ON MUNICIPALLY OWNED PROPERTY

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I. INTRODUCTION

In *City of Belle Glade v. Woodson*,[1] the Fourth District Court of Appeal was presented with the issue of whether a municipality is entitled to sovereign immunity when a plaintiff brings a personal injury suit as a result of a third-party criminal attack on city-owned property. *Woodson* presents a hybrid in sovereign immunity case law that has not yet been addressed by Florida courts. Specifically, the case concerns whether, given the facts in *Woodson*,[2] the city acted in its law enforcement capacity and thus was immune from suit based on Category II in *Trianon Park Condominium Association v. City of Hialeah*,[3] or whether it waived its immunity and subjected itself to suit for its alleged negligent operation of the civic center under *Trianon*'s Category III.[4]

This Last Word sets out Florida's statutory framework for the waiver of sovereign immunity and examines how Florida courts have interpreted the statute. Next, it discusses the facts surround-

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Mr. Matzner represented the appellant, the City of Belle Glade, before the Fourth District Court of Appeal in *City of Belle Glade v. Woodson*, 731 S.2d 797 (Fla. Dist. App. 4th 1999), *rev. denied*, 743 S.2d 11 (Fla. 1999).

1. 731 S.2d 797 (Fla. Dist. App. 4th 1999), *rev. denied*, 743 S.2d 11 (Fla. 1999).
2. *Infra* nn. 35–50 and accompanying text (describing the facts in *Woodson*).
3. 468 S.2d 912, 919–920 (Fla. 1985).
4. *Id.* at 920–921.

ing *Woodson* and analyzes the case from both the perspectives of *Trianon*'s Category II and Category III.

In the context of Category II, this Last Word examines case law interpreting a municipality's immunity for its enforcement of the law and the decisions that law enforcement officers necessarily must make to enforce the law. In the context of Category III, it examines the basis for the *Woodson* court's holding and examines how courts in other states have decided the same issue. This Last Word concludes by applying the law of negligent security to *Woodson*.

II. THE LIMITED WAIVER OF SOVEREIGN IMMUNITY

By enacting Section 768.28, the legislature instituted a limited waiver of immunity from suit for the state government and its many subdivisions.[5] The relevant portion of the statute provides,

> In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.[6]

The statute includes municipalities under its definition of state subdivisions[7] and caps liability at $100,000 per person and $200,000 per occurrence, short of further action by the legislature.[8]

However, the statute failed to provide a framework to determine which governmental functions are immune and which are not, leaving the Florida Supreme Court in *Commercial Carrier Corpora-*

5. Fla. Stat. § 768.28 (2000).
6. *Id.* § 768.28(1).
7. *Id.* § 768.28(2).
8. *Id.* § 768.28(5).

tion v. Indian River County[9] to ask, "What, then, is the scope of waiver contemplated by section 768.28?"[10]

III. PLANNING VERSUS OPERATIONAL LEVEL FUNCTIONS

In answering its own question, the court in *Commercial Carrier* first distinguished between a municipality's planning and operational level activities.[11] It undertook this analysis in the context of whether Florida municipalities were liable for the alleged negligent failure to maintain a stop sign and a traffic light.[12]

The *Commercial Carrier* court adopted the approach of the federal courts[13] and California's state courts[14] in distinguishing between planning and operational level functions.[15] It explained that the former was "generally interpreted to be those requiring basic policy decisions," while the latter encompassed "those that implement[ed] policy."[16] The court went on to hold that planning level functions were immune from tort liability while operational level functions were not.[17] Thus, the court concluded that the maintenance of both the traffic light and signal were operational level functions and not immune.[18]

The *Trianon* court refined the distinctions between planning and operational level functions set forth in *Commercial Carrier* and clarified the law on governmental tort liability by setting forth five basic principles.[19] The first principle established by the *Trianon* court was that there can be no governmental tort liability absent either a common law or statutory duty of care regarding the conduct.[20] Second, the legislature's waiver of sovereign immunity did not establish any new duty of care on the part of government entities.[21] The court stated the third principle as follows:

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9. 371 S.2d 1010 (Fla. 1979).
10. *Id.* at 1016.
11. *Id.* at 1021.
12. *Id.* at 1013.
13. The first federal decision to recognize the distinction between planning and operational functions was *Dalehite v. United States*, 346 U.S. 15, 32–33 (1953).
14. *E.g. Johnson v. State*, 447 P.2d 352, 362 (Cal. 1968).
15. 371 S.2d at 1021.
16. *Id.*
17. *Id.* at 1022.
18. *Id.*
19. 468 S.2d at 917–918 (citing *Com. Carrier*, 371 S.2d at 1015–1021).
20. *Id.* at 917.
21. *Id.*

> [T]here is not now, nor has there ever been, any common law duty for either a private person or a governmental entity to enforce the law for the benefit of an individual or a specific group of individuals. In addition, there is no common law duty to prevent the misconduct of third persons.[22]

The fourth principle was that judicial intervention through private tort suits against the remaining branches of government stemming from political or police power decisions would violate the separation of powers doctrine.[23] The final principle that the *Trianon* court set out was that "certain discretionary functions of government are inherent in the act of governing and are immune from suit."[24]

"To better clarify the concept of governmental tort liability," the court broke down governmental functions and activities into four categories.[25] Categories I and II constitute those planning level functions for which there is governmental tort immunity.[26] Categories III and IV make up those operational level functions for which there is no immunity from suit.[27]

Category I functions include legislative decisions, such as "permitting, licensing, and executive officer functions" for which there has never been a duty of care.[28] Category II functions encompass the discretionary powers to enforce compliance with the law and the authority to protect public safety, which has been invested in "judges, prosecutors, arresting officers, and other law enforcement officials."[29] The government's capital improvements and property controls are covered under Category III.[30] The *Trianon* court stated that "once a governmental entity builds or takes control of property or an improvement, it has the same common law duty as a private person to properly maintain and operate the property."[31] Finally, Category IV covers the government's provision of "profes-

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22. *Id.* at 918.
23. *Id.*
24. *Id.*
25. *Id.* at 919.
26. *Id.* at 921.
27. *Id.*
28. *Id.* at 919.
29. *Id.*
30. *Id.* at 920.
31. *Id.* at 921.

sional, educational, and general services for the health and welfare of citizens."[32]

IV. WOODSON v. CITY OF BELLE GLADE

When the Fourth District Court of Appeal decided *Woodson*, it blurred the lines between the immune Category II functions and the nonimmune Category III functions.[33] *Woodson* involved a negligence claim against the City of Belle Glade arising out of the shooting death of Willie Police, Jr. and the personal injury to Kamara Woodson, both of whom attended a dance at the city-owned civic center.[34] The civic center was available for use by the general public and could be reserved by contacting the city and paying a fee.[35] Event organizers were not required to provide security at the event; however, off-duty Belle Glade police officers normally would be made available to event organizers at a predetermined hourly rate.[36]

The organizers of the dance neither reserved the civic center nor notified the city of their plans.[37] Instead, organizers broke into the civic center and held the event without the city's knowledge.[38] After the Belle Glade Police Department received a complaint regarding loud music coming from the civic center, a police officer was dispatched to the civic center.[39] Upon his arrival, the officer entered the lobby and asked to speak with the person in charge of the event.[40] An individual immediately presented himself as the person in charge and assured the officer that the music would be turned down.[41] Satisfied with the cooperation that he received and observ-

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32. *Id.*

33. Because the case involved death and injury resulting from a third-party criminal assault at the publicly owned civic center, the case could have been treated as either an immune Category II function, centering around whether the city and its police force had a duty to protect the plaintiffs, or a nonimmune Category III function centering around whether the plaintiffs' injuries resulted from the city's alleged negligent operation or maintenance of the building. *Woodson*, 731 S.2d at 797.

34. Br. of Appellant at 1, *Woodson*, 731 S.2d 797. To facilitate an in-depth discussion of the court's decision and the law of sovereign immunity, the facts of the case, taken directly from the appellant's brief, are set out in greater detail than that found in the court's published opinion.

35. *Id.*

36. *Id.*

37. *Id.* at 2.

38. *Id.*

39. *Id.* at 1.

40. *Id.* at 2.

41. *Id.*

ing no criminal activity, the officer cleared the call and left the scene.[42]

Woodson and Police arrived at the civic center at approximately the same time as the officer, although there was no contact between the plaintiffs and the officer.[43] Woodson testified that he learned of a disturbance in the parking lot about two hours after he arrived at the dance.[44] When he went outside, he observed Police arguing with two other individuals.[45] Woodson also testified that as he approached Police, one of the individuals pulled out a gun and shot Police and him.[46]

Following the trial of their civil suit against the city, the jury returned a verdict against Belle Glade.[47] The city appealed and the Fourth District Court of Appeal affirmed, holding the city liable for Police's death and Woodson's injuries as a result of its negligence in maintaining and operating the civic center.[48] Because maintenance and operation of the civic center is a *Trianon* Category III function, the city was not protected by sovereign immunity.[49]

V. IS IT CATEGORY II OR CATEGORY III?

Woodson raises the question whether a municipality is liable for the criminal acts of third persons on city-owned property. Although not directly addressed in its decision, the court seemingly took for granted that Category III applied. The issue presents a hybrid that does not fit neatly in either *Trianon*'s Category II or Category III. To demonstrate this point, the facts outlined above will first be analyzed as an immune Category II function and then as a nonimmune Category III function.

A. Category II Analysis

"The initial inquiry in sovereign immunity cases is whether the governmental entity was under either a common law or statutory

42. *Id.*
43. *Id.*
44. *Id.* at 2–3.
45. *Id.* at 3.
46. *Id.*
47. *Woodson*, 731 S.2d at 797.
48. *Id.* at 797–798.
49. *Id.*

duty of care with respect to the alleged negligent conduct."[50] The actions of the Belle Glade officer in investigating the complaint of loud music at the civic center and his decision to take no action beyond dealing with the specifics of the complaint is an immune Category II law enforcement activity.[51] The city cannot be liable for such discretionary decisions, because there is no common law duty of care on the part of a law enforcement officer to an individual citizen.[52] Moreover, absent any contact between an officer and the injured party, there can be no special relationship that gives rise to a duty of care.[53] Courts have found a duty when an individual citizen is injured as a result of a peril created by a law enforcement officer that the endangered person could not readily discover.[54] However, in *Woodson* there was no danger created by the Belle Glade officer.[55]

It is also well established that a law enforcement agency's decision about the location for the deployment of its officers is an immune Category II function.[56] In both *Wong v. City of Miami*[57] and

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50. *Alderman v. Lamar*, 493 S.2d 495, 497 (Fla. Dist. App. 5th 1986) (citing *Trianon*, 468 S.2d at 917).

51. *See Trianon*, 468 S.2d at 919 (stating that under Category II there is no duty of care for how a governmental body chooses to undertake enforcement of the law).

52. *Id.* A law enforcement agency does not have a common law duty of care justifying tort liability unless there is a special duty to the victim. *Leibman v. Burbank*, 490 S.2d 218, 219 (Fla. Dist. App. 4th 1986) (holding that "[a] law enforcement officer's duty to protect the [citizenry] is a general duty owed to the public as a whole"); *Sapp v. City of Tallahassee*, 348 S.2d 363, 364–365 (Fla. Dist. App. 1st 1977) (stating that a special duty to the victim must exist before a municipality can be held liable for its employee's negligent conduct).

53. The finding of a special relationship between an officer and an individual citizen has been limited to those circumstances in which the officer has made assurances to that individual, the individual is injured while in police custody, or the officer creates a peril that results in harm to the individual. *E.g. Kaisner v. Kolb*, 543 S.2d 732, 734 (Fla. 1989) (holding that a duty of care existed when a motorist, deemed to be in police custody after exiting his vehicle during a traffic stop, was injured by another motorist who struck the rear of the deputy's car, thus precluding sovereign immunity); *Sams v. Oelrich*, 717 S.2d 1044, 1047 (Fla. Dist. App. 1st 1998) (concluding that the city was not entitled to sovereign immunity when a bystander was injured by a handcuffed suspect who briefly escaped from an officer's control); *Sanders v. City of Belle Glade*, 510 S.2d 962, 963–964 (Fla. Dist. App. 4th 1987) (concluding that the city did not have sovereign immunity when the victim was stabbed by a third party while handcuffed and in police custody).

54. *White v. City of Waldo*, 659 S.2d 707, 712 (Fla. Dist. App. 1st 1995) (holding that a duty existed when a citizen was injured while assisting an officer).

55. *See supra* nn. 40–43 and accompanying text (discussing the conduct of the police officer in *Woodson*).

56. *See Wong v. City of Miami*, 237 S.2d 132, 133–134 (Fla. 1970) (holding that the city owed no special obligation to merchants located in an area of civil protest even when the city initially complied with their request for police protection and provided an increased police presence, because "sovereign authorities ought to be left free to exercise their discretion and choose the tactics deemed appropriate without worry over possible allegations of negligence");

Ellmer v. City of St. Petersburg,[58] government immunity applied even though the authorities either knew or should have known that unlawful conduct was likely to take place or already was taking place.[59] The facts in *Woodson* present an even more compelling situation for immunity, because, unlike the decisions in *Wong* and *Ellmer*, the Belle Glade officer in *Woodson* had no indication that violence would erupt two hours after he cleared the call for the complaint of loud music. Furthermore, there was a finding of immunity in *Wong*, where police presence was initially requested and supplied but later withdrawn at the city's discretion.[60] Accordingly, there should have been a similar finding in *Woodson*, where there was no request for police presence in connection with the prevention of violence.[61] In fact, the City of Belle Glade had no knowledge of the event until the officer responded to the complaint of loud music, and even then, the police officer had no indication that the event was unauthorized.[62] Had the Belle Glade officer known that the event was unsanctioned, like the facts in *Wong* and *Ellmer*, any subsequent law enforcement decision to stop the event would have been an immune Category II function, involving the decision to deploy law enforcement officers.[63] Furthermore, if either the officer or the city had notice of the event, any decision to provide city law enforcement personnel as security for the event, with or without a request from event organizers, would have been an immune Category II function.[64]

Ellmer v. City of St. Petersburg, 378 S.2d 825, 826–827 (Fla. Dist. App. 2d 1979) (holding that the city was protected by sovereign immunity when a motorist unwittingly drove into the middle of a riot and was injured even though the city knew a riot was occurring).

57. 237 S.2d 132 (Fla. 1970).

58. 378 S.2d 825 (Fla. Dist. App. 2d 1979).

59. *Wong*, 237 S.2d at 133–134; *Ellmer*, 378 S.2d at 826–827.

60. 237 S.2d at 133–134.

61. Br. of Appellant at 2; *supra* nn. 35–50 and accompanying text.

62. Br. of Appellant at 2; *supra* nn. 35–50 and accompanying text.

63. *Trianon*, 468 S.2d at 919. Upon learning that the event was unsanctioned, the city's police department could have declined to shut down the event if it determined that to do so could result in a greater social disturbance.

64. *See id.* (stating that "[h]ow a governmental entity, through its officials and employees, exercises its discretionary power to enforce compliance with the laws . . . is a matter of governance . . . .").

B. Category III Analysis

The *Woodson* plaintiffs argued and the appellate court held that the city's Category III duty to properly operate and maintain the civic center included a duty to provide adequate security.[65]

Traditionally, courts have placed claims into Category III if the plaintiff's injuries are directly related to, or have a significant nexus to, the municipally owned property.[66] For example, in *City of Jacksonville v. Mills*,[67] the court consolidated two cases against the City of Jacksonville involving slip-and-fall injuries arising from incidents in the hallways of the Jacksonville court house.[68] In finding that the city was not protected by sovereign immunity, the court held that "[t]here has always been a common law duty of care with respect to the maintenance of a building."[69]

The closest a Florida court has come to deciding whether Category III extends to negligent security was in *Durrance v. City of Jacksonville*,[70] the case consolidated with *Mills*. In *Durrance*, the court drew the following distinction between a city's duty in a slip-and-fall accident in a municipally owned building and injury to an individual resulting from a criminal attack on city-owned property: "We perceive a significant difference between the duty to maintain the floor of a building in a safe condition and the *potential* duty to provide security protection from criminal attacks by third persons."[71]

Recently, the Fourth District Court of Appeal decided *Cunningham v. City of Dania*.[72] In *Cunningham*, the plaintiff was shot and killed in a drive-by shooting while in a park owned by the

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65. 731 S.2d at 797–798.

66. *See Fla. Dept. of Nat. Resources v. Garcia*, 753 S.2d 72, 76 (Fla. 2000) (holding the city of Miami Beach and the State of Florida liable when the city operated a section of state-owned beach as a public swimming area and a swimmer was injured there). In *Garcia*, the court based the state's liability on the fact that the state derived revenue from the beach rather than on the affirmative actions of a third party. *Id.* The plaintiff's injury occurred at the state-owned beach, forming the nexus required by *Trianon*'s Category III; once it took control of the property, the state had the same common law duty as a private person to safely operate it. *Id.* at 73–74, 76–77. Liability in *Garcia* was based on the danger inherent in the premises rather than the criminal acts of a third party.

67. 544 S.2d 190 (Fla. 1989).

68. *Id.* at 191.

69. *Id.* at 192.

70. 532 S.2d 696 (Fla. Dist. App. 1st 1988).

71. *Id.* at 698 (emphasis in original).

72. 771 S.2d 12 (Fla. Dist. App. 4th 2000).

City of Dania.[73] The plaintiff's estate sued the City of Dania and the Broward County Sheriff's Office, alleging that the city operated the park and "specifically undertook to provide security for the park through its own employees and the Broward County Sheriff's Office."[74] The trial court dismissed the claims against both defendants on the grounds that both were protected by sovereign immunity; however, on appeal, the Fourth District Court of Appeal reversed the dismissal of the claim against the city.[75]

The appellate court distinguished between the city and the sheriff even though the complaint alleged that both entities were obligated to provide security at the park.[76] As in *Woodson*, the court concluded that the city's obligation to operate the park included a duty to provide security.[77]

When the question is whether a municipality owes a duty of security to an individual on publicly owned property, courts should look to the manner in which the property is operated, rather than mere ownership. Municipalities should not be subject to liability under Category III when the plaintiff's injuries do not result from a defect in the publicly owned property. In *Cunningham*, there should have been no distinction in the security function of the sheriff's office and the security function of the city. Both should have received the same protection of Category II for security-related functions.

Courts in at least two other states have found that sovereign immunity applied when plaintiffs brought negligent security claims after being attacked by third-party criminals on publicly owned property.[78] In *Battle v. Philadelphia Housing Authority*[79] and

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73. *Id.* at 13.

74. *Id.* at 12–13.

75. *Id.* at 13. The court found that the city, as landowner, owed a duty to the plaintiff under Category III and that the sheriff was immune under Category II. *Id.* at 14, 16.

76. *Id.* at 13, 16.

77. *Id.* at 14. Although the court in *Cunningham* relied heavily on its prior decision in *Woodson*, there is one significant fact that distinguishes *Woodson* from *Cunningham*. In *Woodson*, the city and its police force had no advance notice of the unauthorized dance taking place at the publicly owned civic center. Br. of Appellant at 2; *supra* nn. 35–50 and accompanying text. In contrast, in *Cunningham*, the City of Dania was on notice that the park, which presumably was open to the public at the time of the shooting, had a history as a location for violent crimes. 771 S.2d at 13. Accordingly, this calls into question whether *Woodson* is controlling precedent for *Cunningham*.

78. *E.g. Twente v. Ellis Fischel St. Cancer Hosp.*, 665 S.W.2d 2, 11–12 (Mo. App. W. Dist. 1983); *Battle v. Phila. Hous. Auth.*, 594 A.2d 769, 771 (Pa. Super. 1991).

79. 594 A.2d 769 (Pa. Super. 1991) (involving an individual who was attacked by a third party in the lobby of a state-owned housing project).

Alexander v. Commonwealth,[80] the Pennsylvania courts held that the public entity defendant was entitled to sovereign immunity, because the plaintiffs' physical injuries, inflicted by third-party criminals, were not caused by the physical characteristics of the government-owned property.[81]

Two Missouri cases reached similar conclusions.[82] In both *Twente v. Ellis Fischel State Cancer Hospital*[83] and *Dreon v. City of St. Louis Municipal Library District*,[84] the Missouri courts held that the term "dangerous condition" as contained in Section 537.600 included defects only in the physical property and thus did not include third-party criminal attacks.[85]

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80. 586 A.2d 475, 476 (Pa. Cmmw. 1991) (involving a profoundly retarded female who was kidnapped from a publicly owned hospital and raped).

81. *Battle*, 594 A.2d at 772; *Alexander*, 586 A.2d at 478. Unlike Florida, where sovereign immunity exceptions are left open to common law interpretation, Pennsylvania enacted Section 8522. 42 Pa. Consol. Stat. § 8522 (West 1998). This statute enumerates those instances in which Pennsylvania has waived sovereign immunity. *Id.* Section 8522(b)(4), which can be analogized to Category III in *Trianon*, is entitled "Commonwealth real estate, highways and sidewalks," and arguably would apply in both cases. *Id.* § 8522(b)(4).

82. *Dreon v. City of St. Louis Mun. Lib. Dist.*, 780 S.W.2d 60, 61 (Mo. App. E. Dist. 1989); *Twente*, 665 S.W.2d at 11–12. Missouri enacted a statute similar to that of Pennsylvania. Section 537.600 of the Missouri Revised Statutes provides,

> [I]mmunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances:
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> . . .
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> (2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in *dangerous condition* at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

Mo. Rev. Stat. Ann. § 537.600.1(2) (West 1999) (emphasis added). The determination by Missouri courts regarding whether immunity has been waived in a given matter turns on its interpretation of the phrase "dangerous condition" in light of the facts of the case.

83. 665 S.W.2d 2 (Mo. App. W. Dist. 1983) (involving a female state hospital employee who was assaulted and raped as she walked from the hospital building to her car in the parking lot).

84. 780 S.W.2d 60 (Mo. App. E. Dist. 1989) (involving a plaintiff who was assaulted by an unknown assailant while on the premises of a municipal library).

85. *Dreon*, 780 S.W.2d at 61 (citing *Bates v. State*, 664 S.W.2d 563, 565 (Mo. App. E. Dist. 1983)); *Twente*, 665 S.W.2d at 11–12. The Missouri Court of Appeals later expanded the definition of "dangerous condition" to include "physical deficiencies" in the property, but affirmed the reasoning in *Twente*. *Johnson v. City of Springfield*, 817 S.W.2d 611, 614–615 (Mo. App. S. Dist. 1991).

In *Woodson*, the plaintiffs' injuries resulted from neither a physical defect nor a deficiency in the civic center.[86] Florida courts should look to the Pennsylvania and Missouri decisions and limit the waiver of sovereign immunity under Category III to those instances when a plaintiff's injuries directly result from a defect in the state-owned property.

Putting aside the legal status of Woodson and Police while at the civic center,[87] one could conclude that the city nonetheless would have been under a common law duty of care. Therefore, it would not be entitled to sovereign immunity under Category III if Woodson or Police had been injured due to a slip-and-fall, loose handrail, falling ceiling tile, or some such other *physical* defect at the civic center.[88] The same would be true if the city failed to inspect or properly maintain the premises, thus resulting in injury to Woodson or Police.[89]

To support its conclusion that the incident in *Woodson* fell under Category III, the court agreed with the plaintiffs' reasoning that

> the City breached its duty to properly maintain and operate its Civic Center as a place of public entertainment by failing to provide adequate security for the teen dance when the City knew from past experience that such dances were dangerous events generally involving disorderly conduct.[90]

This finding ignores the fact that the city had no notice of the event until the officer responded to the loud music complaint and that any decisions made by the officer while at the scene were immune decisions.[91] Additionally, there is reason to question whether the

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86. *See supra* nn. 38–47 and accompanying text (describing the events leading up to the injuries of the plaintiffs in *Woodson*).

87. *See infra* nn. 99–107 and accompanying text (describing landowners' duties to invitees, trespassers, and licensees).

88. *See Izzo v. City of N. Miami*, 551 S.2d 534, 534 (Fla. Dist. App. 3d 1989) (relying on *Mills* in holding that the City of North Miami was not entitled to sovereign immunity where the plaintiff sued the city for injuries resulting from a slip-and-fall in the city-owned court house); *supra* nn. 70–77 and accompanying text (discussing Florida's application of negligent security to government immunity).

89. *See Simmonds-Hewett v. Keaton*, 626 S.2d 249, 249, 251 (Fla. Dist. App. 4th 1993) (holding that the Florida Department of Transportation owed a duty under Category III and was not entitled to sovereign immunity for its failure to inspect or maintain a light pole).

90. 731 S.2d at 797.

91. *See supra* nn. 53–56 and accompanying text (stating that a law enforcement officer's actions are discretionary because no common law duty of care exists to any individual citizen).

city owed the plaintiffs a duty to protect them from or warn them of third-party criminal attacks.[92]

VI. THE STATUS OF INDIVIDUALS ON PUBLICLY OWNED LAND AND THE CORRESPONDING DUTY

It is unclear whether the city's obligation to provide security at its publicly owned civic center is a Category II or Category III function. On one hand, protection of public safety is an immune Category II function.[93] On the other hand, premises liability has been classified as a nonimmune Category III function.[94]

A number of Florida decisions have addressed the issue whether municipalities are liable for criminal attacks that occurred on publicly owned land from the perspective of premises liability. The case most factually similar to *Woodson* is *Barrio v. City of Miami Beach*,[95] where the plaintiff and a companion were robbed at gunpoint and then shot while sitting on a publicly owned beach at approximately 3:30 a.m.[96] The *Barrio* court noted that "the City neither affirmatively promote[d] nor discourage[d] visitation to the beach during [the] early morning hours."[97]

The court's initial focus was to determine, as a matter of law,[98] whether Barrio was a public invitee,[99] uninvited licensee,[100] or a trespasser[101] at the time she was shot. The significance of a plaintiff's legal status on another's property is that the landowner owes the plaintiff varying duties of care depending on the plaintiff's legal

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92. *See infra* nn. 99–107 and accompanying text (describing landowners' duties to invitees, trespassers, and licensees).

93. *Trianon*, 468 S.2d at 919–920.

94. *Id.* at 920–921.

95. 698 S.2d 1241 (Fla. Dist. App. 3d 1997).

96. *Id.* at 1242–1243.

97. *Id.* at 1243.

98. *Id.* (citing *Wood v. Camp*, 284 S.2d 691, 696 (Fla. 1973) and *Zipkin v. Rubin Constr. Co.*, 418 S.2d 1040, 1043 (Fla. Dist. App. 4th 1982)).

99. *Id.* "A public invitee is a licensee on the premises by invitation, either express or reasonably implied, of the owner or controller of the property." *Id.* (citing *Wood*, 284 S.2d at 691).

100. *Id.* "An uninvited licensee is a person who chooses 'to come upon the premises solely for [his or her] own convenience without invitation either expressed or reasonably implied under the circumstances.'" *Id.* (quoting *Wood*, 284 S.2d at 695) (alteration in original).

101. *Id.* "[A] trespasser is a person 'who enters the premises of another without license, invitation, or other right, and intrudes for some definite purpose of his [or her] own, or at his [or her] convenience, or merely as an idler with no apparent purpose, other than perhaps to satisfy his [or her] curiosity.'" *Id.* (quoting *Post v. Lunney*, 261 S.2d 146, 147 (Fla. 1972)) (second, third, and fourth alterations in original).

status at the time of the injury.[102] A landowner has a duty to protect a public invitee from dangers of which the owner should be aware and "to warn the invitee of concealed dangers which are or should be known to the owner and which are unknown to the invitee and cannot be discovered by him through the exercise of due care."[103] Some courts have held that "[a] landowner has a duty to protect an invitee on his premises from a criminal attack that is reasonably foreseeable" as a result of "*similar* criminal acts committed on his premises."[104] Other courts have held that, absent prior knowledge of the danger or a special relationship between the parties, "a property owner has no duty to protect a person on his premises from the criminal attack of a third party."[105]

The duty owed by a landowner to an uninvited licensee is

> to refrain from wanton negligence or willful misconduct which would injure [the uninvited licensee], to refrain from intentionally exposing [the individual] to danger, and to warn him of a defect or condition known to the landowners to be dangerous when such danger is not open to ordinary observation by the licensee.[106]

The only duty owed to a trespasser is "to avoid willful and wanton harm . . . and upon discovery of [the trespasser's] presence to warn him of known dangers not open to ordinary observation."[107]

Based on undisputed evidence on the record, the *Barrio* court determined, as a matter of law, that Barrio was an uninvited licensee.[108] The court went on to hold that "the danger of crime and criminal assaults is an open and obvious danger for which there is no duty to warn. Therefore, the City breached no duty to Barrio as a matter of law."[109]

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102. *Id.*

103. *Pelz v. City of Clearwater*, 568 S.2d 949, 951 (Fla. Dist. App. 2d 1990) (citing *Levy v. Home Depot, Inc.*, 518 S.2d 941, 942 (Fla. Dist. App. 3d 1987)).

104. *Metro. Dade County v. Ivanov*, 689 S.2d 1267, 1267–1268 (Fla. Dist. App. 3d 1997) (emphasis in original).

105. *E.g. Drake v. Sun Bank & Trust Co. of St. Petersburg*, 377 S.2d 1013, 1014 (Fla. Dist. App. 2d 1979).

106. *Bishop v. First Natl. Bank of Fla., Inc.*, 609 S.2d 722, 725 (Fla. Dist. App. 5th 1992).

107. *Seitz v. Surfside, Inc.*, 517 S.2d 49, 50 (Fla. Dist. App. 3d 1988) (citing *Wood*, 384 S.2d at 695); *see Bishop*, 609 S.2d at 726 n. 5 (observing that "the duty of care owed to a trespasser is substantially the same as the duty owed to an uninvited licensee").

108. 698 S.2d at 1244.

109. *Id.* (citations omitted).

The *Woodson* court held that the plaintiffs' injuries were caused by the city's negligent operation of the civic center; thus, it waived sovereign immunity under Category III.[110] Accordingly, the city owed the same common law duty as a private landowner. Under the facts of the case, the court could have determined that the plaintiffs were public invitees, because Woodson and Police reasonably may have believed that the event was sanctioned. The court also could have found that the plaintiffs were uninvited licensees based on the fact that the event was unsanctioned. However, their status was ultimately irrelevant, as neither classification encompasses a duty on the part of the city to warn of third-party criminal acts, and therefore, there would be no liability on the part of the city under a premises liability analysis.

VII. CONCLUSION

Prior to the decision in *Woodson*, no Florida court had addressed whether sovereign immunity would bar a claim for injuries resulting from a third-party criminal attack on publicly owned property. Because of the brevity of the *Woodson* decision, practitioners will be unable to determine the court's basis for holding that this scenario presents a Category III issue. When this issue is squarely addressed, the court should examine whether the plaintiff's injuries are directly related to a government-owned property's physical defect or deficiency before placing the case into Category III.

110. *Woodson*, 731 S.2d at 798.