

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

MARY JONES, as Executrix of )  
the Estate of SAMUEL JONES, )  
deceased, and MARY JONES, )  
individually, )  
 )  
Plaintiff, )  
 ) C.A. No. 05C-09-215 RRC  
v. )  
 )  
KURTIS CRAWFORD, an individual, )  
and the CITY OF WILMINGTON, )  
 )  
Defendants. )

Submitted: April 27, 2009

Decided: July 23, 2009

On Defendants' Motion for Summary Judgment.

**GRANTED.**

**MEMORANDUM OPINION**

Martin J. Siegel, Esquire, Law Offices of Martin J. Siegel, New Castle,  
Delaware, Attorney for Plaintiff.

Andrea J. F. Rhen, Esquire, Senior Assistant City Solicitor, City of  
Wilmington Law Department, Wilmington, Delaware, Attorney for  
Defendants.

COOCH, J.

## **I. INTRODUCTION**

Samuel Jones (“Decedent”) was killed as a result of the independent actions of Lamar Comer and Curtis J. Matthews (“Suspects”) immediately following a terminated high speed police chase on September 26, 2003. A vehicle driven by Lamar Comer, in which Curtis Matthews was a passenger, ran through a red light at the intersection of A Street and New Castle Avenue in Wilmington, and while doing so, struck the Decedent’s vehicle and killed him.

His widow, Mary Jones (“Plaintiff”), acting on behalf of herself and as executrix of Samuel Jones’ estate, has brought an action against Officer Kurtis Crawford, the City of Wilmington, and the Wilmington Police Department (“Defendants”) claiming that because Officer Crawford initiated and prosecuted the allegedly reckless police chase, his actions were a proximate cause of Decedent’s death. Plaintiff also contends that Officer Crawford’s actions were negligent because there was “foreseeable” harm when Officer Crawford elected to pursue Lamar Comer and Curtis Matthews at a high rate of speed.

Defendants have filed a motion for summary judgment, arguing, among other things, that Officer Crawford’s actions were not a proximate cause of Decedent’s death because they were not “extreme or outrageous”

and, separately, that Officer Crawford's actions, leading up to and throughout the police chase, were not negligent.

The proximate causation issue presented is an issue of apparent first impression in Delaware. Accordingly, this Court must determine the appropriate standard of proximate causation pursuant to which a police officer and/or a police department may be potentially liable for the independent actions of individuals being pursued by police in high speed chases that cause injuries or death during, or after, such police chases. This Court concludes that a police officer and/or a police department may be held potentially liable for the independent actions of pursued individuals during or after high speed chases only when the pursuing officer's actions are "extreme or outrageous." This appears to be the approach followed by most other jurisdictions that have considered the issue. Therefore, because this Court finds that Officer Crawford's actions in this case were not "extreme or outrageous" as a matter of law, Defendants' motion for summary judgment is **GRANTED**. It is therefore not necessary to reach Plaintiff's other contentions.

## **II. BRIEF FACTUAL<sup>1</sup> AND PROCEDURAL HISTORY**

On September 26, 2003, the Decedent was operating a vehicle traveling northbound on New Castle Avenue approaching the intersection with A Street. That intersection is controlled by a traffic light. As the Decedent was approaching the intersection of A Street, the traffic light for his northbound travel on New Castle Avenue was green, allowing him to cross the A Street intersection. At that time, a vehicle driven by the Suspects was traveling eastbound at a high rate of speed on A Street. The vehicle driven by the Suspects disregarded the red traffic signal at New Castle Avenue causing the Comer vehicle to collide with the Decedent's. The Decedent died as a result of the injuries suffered in the collision.

At the time of the collision, Suspects Comer and Matthews were fleeing from apprehension by Wilmington Police Officers Crawford (the driver) and his partner, Officer Mitchell Rentz, as described below:

Comer, about four hours before the initiation of the chase that resulted in the Decedent's death, had been unsuccessfully pursued by law enforcement officers in another section of Wilmington seeking to apprehend

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<sup>1</sup> In order to view the facts in a light most favorable to the plaintiff, the factual background of the case has been taken largely from the "Counterstatement of Facts" in Plaintiff's Answering Brief. Other undisputed facts from Defendants' brief are also included. The facts have been set forth in some detail in light of Plaintiff's argument that there are genuine issues of material fact that should defeat summary judgment.

him in connection with an “armed carjacking.”<sup>2</sup> During that earlier pursuit, which occurred at about 10:00 a.m., Suspect Comer, operating the same vehicle that he was operating at the time of his later collision with the Decedent, had led law enforcement officers, in a white Acura Legend, on a high speed chase through city streets, during which time Suspect Comer had disregarded numerous traffic control devices and nearly caused motor vehicle collisions.<sup>3</sup> Suspect Comer evaded apprehension at that time.

At about 2:00 p.m. that same day, Officers Crawford and Rentz spotted a white Acura Legend at the intersection of 8th Street and King Street. Officer Crawford began pursuing the Acura southbound on King Street (although not at high speed at this point), and requested verification by radio that this was the same vehicle and suspects involved in the chase earlier in the day.<sup>4</sup> Officer Crawford decided to passively pursue the white Acura Legend without activating any emergency equipment until he received confirmation that the vehicle’s tag matched the tag of the vehicle involved in the earlier pursuit.<sup>5</sup>

In his March 13, 2008 affidavit in support of Defendants’ Motion for Summary Judgment, Officer Crawford stated that:

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<sup>2</sup> Defs’ . Mot. for Summ. J. Ex. A at 2.

<sup>3</sup> Pl’s. Resp. to Defs’ . Mot. for Summ. J. Ex. A at 9, 13-17.

<sup>4</sup> Pl’s. Resp. to Defs’ . Mot. for Summ. J. Ex. B at 37-38.

<sup>5</sup> *Id.* at 38.

[A]s we began to follow the suspect vehicle, the driver of the vehicle began to cross over lanes seemingly to prevent us from staying behind him. At the intersection of Second and Market Street, the suspect vehicle stopped at the light and then continued south cutting in front of a white van in order to get into the left turning lane for South Market Street.<sup>6</sup>

At Suspect Comer's criminal trial in May of 2004, Officer Crawford testified that the Suspects' vehicle was "just . . . cutting . . . in and out of traffic trying to keep distance between the patrol car and ourselves. There was a considerable amount of traffic in the afternoon on that part of the street so they couldn't go very fast."<sup>7</sup> He also testified that traffic on King Street was "relatively light."<sup>8</sup>

As the two vehicles approached the Martin Luther King, Jr. Boulevard intersection while still traveling southbound on King Street, Officer Crawford received confirmation via police radio that the occupants of the white Acura Legend were believed to be Curtis Matthews and Lamar Comer, and that the vehicle was believed to be the same vehicle involved in the chase earlier that day.<sup>9</sup> Officer Crawford further stated in his affidavit that "I then pulled in behind the suspect vehicle and activated my emergency

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<sup>6</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. D at 2.

<sup>7</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. C at 44.

<sup>8</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. B at 39.

<sup>9</sup> *Id.*

lights in an attempt to stop the suspects before they left the Wilmington City limits.”<sup>10</sup>

Meanwhile, the Suspects’ vehicle had continued southbound on King Street and continued south onto South Market Street.<sup>11</sup> While proceeding over the South Market Street Bridge, Officer Crawford “attempt[ed] to initiate a traffic stop” and “activated [his] emergency lights.”<sup>12</sup>

Officer Rentz, at Suspect Comer’s criminal trial, testified that “we, at this point, we were waiting for other units to come to assist us in the stop, but at that point, the driver seemed to be trying to [elude us]. He turned and clipped the car while he was turning onto A Street. We activated our lights and sirens and began following the vehicle as they took off at a high rate of speed.”<sup>13</sup>

As stated above, as Officer Crawford attempted to pull over the Suspects at the intersection of A Street and South Market Street, the Suspects collided with another vehicle as they were turning left onto A Street (causing little damage and apparently no injuries to anyone). In his deposition testimony of February 12, 2009, Officer Crawford indicated that, following briefly speaking to the man who was struck by the Suspect’s

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<sup>10</sup> Pl’s. Resp. to Defs’. Mot. for Summ. J. Ex. D at 2.

<sup>11</sup> Pl’s. Resp. to Defs’. Mot. for Summ. J. Ex. B at 43.

<sup>12</sup> *Id.* at 42.

<sup>13</sup> Pl’s. Resp. to Defs’. Mot. for Summ. J. Ex. E at 8-9.

vehicle at the intersection of South Market and A Streets, he “decided to re-engage” the pursuit eastward on A Street. Officer Crawford, while pursuing Comer eastward on A Street, estimated that Comer operated his vehicle at speeds approaching or exceeding 120 mph.<sup>14</sup> Officer Crawford further testified that Comer disregarded three red traffic signals on A Street.<sup>15</sup>

He further indicated that the Suspects’ vehicle was “already almost to the light for South Walnut Street when we decided to re-engage after we talked to the gentleman that was in the other vehicle. Distance wise it’s one city block. But it’s really probably the distance of two city blocks with three city blocks.”<sup>16</sup>

During this last leg of the pursuit, the only part of the pursuit that was “high speed,” Officer Crawford stated that he stopped for a red traffic light at South Walnut Street for “a couple of seconds. Five maybe,”<sup>17</sup> and that once he crossed South Walnut Street, the Suspects’ vehicle “was a good quarter to a half mile away.”<sup>18</sup>

Officer Rentz testified at Comer’s criminal trial that as he and Officer Crawford were pursuing the Suspects’ vehicle down A Street, approaching

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<sup>14</sup> Pl’s. Resp. to Defs’. Mot. for Summ. J. Ex. B at 65.

<sup>15</sup> Pl’s. Resp. to Defs’. Mot. for Summ. J. Ex. C at 54-55.

<sup>16</sup> Pl’s. Resp. to Defs’. Mot. for Summ. J. Ex. B at 55.

<sup>17</sup> *Id.* at 59.

<sup>18</sup> *Id.*



the Walnut Street intersection, the Suspects' vehicle was at one point between "30 to 40 feet" in front of their cruiser.<sup>19</sup>

Officer Rentz further testified that after clearing the Walnut Street intersection, the vehicle in which he and Officer Crawford were traveling was probably "60 or 70 feet"<sup>20</sup> behind the Suspects' vehicle (as opposed to "a good quarter to a half mile" testified to by Officer Crawford).<sup>21</sup>

After crossing the intersection of A and Walnut Streets, Officer Crawford noted that his police vehicle was traveling at "a speed of 78 to 80 mph."<sup>22</sup> When Officer Crawford considered "the speed they were traveling . . . in a residential area,"<sup>23</sup> he chose to stop the pursuit "based on the potential harm to [his] partner, the public, and [him]self."<sup>24</sup> When Officer Crawford decided to stop the pursuit because of these safety concerns, his vehicle was approximately in the 700 block of A Street, which is about four blocks before A Street becomes primarily residential.<sup>25</sup>

Curtis Matthews testified at Comer's criminal trial that the Suspects thought that the pursuit had been discontinued because they did not see any

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<sup>19</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. E at 31.

<sup>20</sup> *Id.* at 32-33.

<sup>21</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. B at 59.

<sup>22</sup> Defs'. Mot. for Summ. J. Ex. D at 62.

<sup>23</sup> Defs'. Mot. for Summ. J. Ex. C at 56.

<sup>24</sup> Defs'. Mot. for Summ. J. Ex. A at 3.

<sup>25</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. B at 67.

lights or hear any sirens.<sup>26</sup> Despite apparently knowing that police pursuit had been discontinued, the Suspects continued to flee at a high rate of speed.<sup>27</sup> According to Officer Crawford's deposition, the Suspect's vehicle collided with the Decedent's vehicle "almost instantaneously" after he terminated pursuit.<sup>28</sup> However, in Officer Crawford's affidavit he stated that the pursuit was discontinued "long before" the collision between the Suspects' and Decedent's vehicles.<sup>29</sup> As stated above, it was at this point that the Suspects' vehicle ran the red light at the intersection of New Castle Avenue and A Street and struck the Decedent's vehicle.

Officer Rentz testified at the Comer criminal trial that the police vehicle was "350 to 400 feet" away from the Suspects' vehicle at the time it collided with the Decedent's vehicle.<sup>30</sup> Officer Crawford, however, testified that their cruiser was "probably about 1500 feet or so back from that intersection" when the Suspects' and Decedent's vehicles collided.<sup>31</sup>

The Wilmington Police Department had several regulations in effect in 2003 that prescribed the factors a police officer should consider in deciding whether to initiate pursuit, the conduct to be used during the

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<sup>26</sup> Defs'. Mot. for Summ. J. Ex. K at 17.

<sup>27</sup> *Id.* at 17-18.

<sup>28</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. B at 72.

<sup>29</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. D at 3.

<sup>30</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. E at 38.

<sup>31</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. C at 59.

pursuit, and factors to consider when determining whether high speed pursuits should be discontinued. When deciding whether or not to initiate a chase, the following pertinent regulations, among others, applied:

In making the decision to initiate or continue pursuit, the officer's decision shall include a consideration of the following factors: (1) Due regard for the safety of all persons; (2) The level of seriousness of the offense that the person(s) in the pursued vehicle has committed . . . (3) the pursuing officer's certainty that the person(s) in the pursued vehicle has committed the offense; (4) . . . the ease of apprehending the persons at another time . . . (5) The effectiveness of audible warnings . . . (6) The effectiveness of a visible warning . . . (7) The ability to maintain a proper lookout, especially in connection with the presence of other traffic and pedestrians; (8) Whether there is a need for speed in excess of the posted limits . . . (9) The condition of vehicular traffic; (10) The condition of pedestrian traffic; (11) Weather conditions; (12) Time of day; (13) Ability to decrease speed when approaching intersections; . . .<sup>32</sup>

Should a Wilmington police officer decide to initiate a high speed pursuit, the pursuing officer was required to abide by the following regulations:

a. In all situations in which an officer who is engaged in pursuits exceeds the speed limit or violates any rules of the road, the officer shall activate all the vehicle's emergency equipment before exceeding the speed limit or violating any rules of the road . . . b. While other drivers are required to yield the right-of-way to an authorized emergency vehicle, the driver of the authorized emergency vehicle has a duty to operate his or her vehicle with due regard for the safety of all persons using the roadway . . . the operator of an emergency vehicle may exceed speed limits during the pursuit, as long as the conduct does not endanger life or property. c. Whenever practical, during a high speed pursuit, if a two-man car is involved in the chase, that vehicle's activity officer will transmit the street location and direction of travel during the chase.<sup>33</sup>

Wilmington Police regulations also required police officers to continually reevaluate their decision to pursue in light of changing conditions:

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<sup>32</sup> Defs. Mot. for Summ. J., Ex. H at 6-7.

<sup>33</sup> *Id.* at 8-9.

Each officer engaged in a pursuit has an independent duty to evaluate continually the validity of his course of action . . . Therefore, if conditions change, each officer shall re-evaluate the decision whether to continue pursuit or terminate the pursuit.<sup>34</sup>

In total, Officer Crawford's high speed pursuit of the Suspects on A Street took less than two minutes<sup>35</sup> and traversed about six blocks.<sup>36</sup> The weather conditions were good<sup>37</sup> and pedestrian and vehicular traffic were light<sup>38</sup> at all relevant times of the pursuit. Officer Crawford testified that he always maintained a proper lookout for vehicles and pedestrians during the pursuit.<sup>39</sup>

After a standard review by the Wilmington Police Department Office of Professional Standards, no disciplinary charges were filed against Officer Crawford, and it was determined by his department that he acted responsibly and followed all Departmental rules and guidelines.<sup>40</sup>

Officer Crawford, by training and experience, was qualified to operate a police vehicle and to perform patrol duties. At the time of this incident, Officer Crawford had been a patrol officer for approximately thirteen years.<sup>41</sup> As a recruit, he successfully completed a weeklong course in

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<sup>34</sup> *Id.* at 11.

<sup>35</sup> Defs. Mot. for Summ. J., Ex. A at 3.

<sup>36</sup> *Id.*

<sup>37</sup> Defs. Mot. for Summ. J., Ex. D at 32.

<sup>38</sup> Defs. Mot. for Summ. J., Ex. B at 2.

<sup>39</sup> Defs. Mot. for Summ. J., Ex. A at 3.

<sup>40</sup> *Id.* at 3-4.

<sup>41</sup> *Id.* at 1.

emergency vehicle training,<sup>42</sup> and since that time had successfully completed a space and visibility driving class offered by the Delaware State Police Training Academy.<sup>43</sup> Outside of the accident referenced in the Complaint, Officer Crawford had never been involved in a pursuit where anyone was injured or killed.<sup>44</sup>

### **III. CONTENTIONS OF THE PARTIES**

Defendants contend that they are entitled to summary judgment because 1) Officer Crawford's actions, not being "extreme or outrageous," thereby did not, as a matter of law, proximately cause the Decedent's death<sup>45</sup>, and 2) his actions during the high-speed chase were not negligent.<sup>46</sup> Defendants also assert that none of the purported factual "disputes" raised by the Plaintiff are "material" issues of fact that would otherwise defeat summary judgment.

In response, Plaintiff contends that Officer Crawford's actions were a proximate cause of decedent's death because, while acknowledging that defendant Comer's actions were also a proximate cause, it is possible to

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Id.* at 4.

<sup>45</sup> Defs. Mot. for Summ. J., at 12.

<sup>46</sup> *Id.* at 9, 10.

have “more than one proximate cause of an accident.”<sup>47</sup> Plaintiff also argues that Officer Crawford breached his duty of reasonable care because “issues of negligence will boil down to whether or not the harm caused to the plaintiff was foreseeable.”<sup>48</sup> Therefore, Plaintiff maintains, since it was “foreseeable that harm could befall innocent bystanders,”<sup>49</sup> Officer Crawford was negligent. Plaintiff also argues that the various factual disparities (stemming primarily from Officer Crawford’s trial testimony, his deposition, and his affidavit) identified are genuine issues of material fact, thereby precluding summary judgment.<sup>50</sup>

#### **IV. STANDARD OF REVIEW**

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”<sup>51</sup> A genuine issue of material fact occurs when “the parties are in disagreement

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<sup>47</sup> Pl. Opp’n to Defs. Mot. for Summ. J., at 12.

<sup>48</sup> *Id.* at 11.

<sup>49</sup> *Id.* at 11, 12.

<sup>50</sup> Plaintiff concedes that there is no evidence to support a claim of negligent entrustment or negligent training or supervision against the City of Wilmington. Plaintiff also concedes that the Wilmington Police Department is not a legal entity capable of being individually named and sued. Therefore, the Plaintiff does not oppose summary judgment on those issues; summary judgment is granted on those issues.

<sup>51</sup> Super. Ct. Civ. R. 56(c).

concerning the factual predicate for the legal principles they advance.”<sup>52</sup> A material fact is a “fact which would sustain a verdict in its [Plaintiff’s] favor.”<sup>53</sup> Although the moving party has the burden of demonstrating that no material issues of fact are in dispute and it is entitled to judgment as a matter of law, the facts must be viewed “in the light most favorable to the non-moving party.”<sup>54</sup> In order to view facts in a light most favorable to the non-moving party, the court “will accept as established all undisputed factual assertions, made by either party, and accept the non-movant’s version of any disputed facts.”<sup>55</sup>

## V. DISCUSSION

### A. The Applicable Legal Standard

The Court must determine whether Officer Crawford’s conduct was a proximate cause of an innocent third party’s death when the Suspects independently caused that death immediately following a short police chase. This Court concludes that Officer Crawford’s actions during the high-speed

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<sup>52</sup> *Merrill v. Crothall-American, inc.*, 606 A.2d 96, 99 (Del. 1992).

<sup>53</sup> *Sterling v. Beneficial Nat’l Bank, N.A.*, 1994 WL 315365, \*3 (Del. Super.).

<sup>54</sup> *Mason v. United Servs. Auto. Ass’n*, 697 A.2d 388, 392 (Del. 1997) (“A party moving for summary judgment concedes the absence of a factual issue and the truth of the nonmoving party’s allegations only for purposes of its own motion, and does not waive its rights to assert that there are disputed facts that preclude summary judgment in favor of the other party.”).

<sup>55</sup> *Merrill*, 606 A.2d 99-100 (Del. 1992).

chase were not “extreme or outrageous” and were thus not a proximate cause of the innocent third party’s death. This court finds also that there are no genuine issues of material fact.

There is no apparent precedent in Delaware on the appropriate standard to apply to proximate causation in the context of a high speed police chase. However, numerous other courts and at least two secondary authorities have adopted or endorsed an “extreme or outrageous conduct” standard, which holds a police officer potentially liable only when that officer’s conduct during a high speed police pursuit is “extreme or outrageous.” Corpus Juris Secundum states that “a [police] officer’s conduct . . . is not the proximate cause of injuries to third persons unless the conduct was extreme or outrageous.”<sup>56</sup> The “extreme or outrageous conduct” standard was also endorsed in an annotation that states:

When [a] police officer pursues [a] fleeing violator and [that] violator injures [a] third party, [that] officer’s duty of care to [the] third party is what [a] reasonable peace officer of ordinary prudence would do under like circumstances to avoid undue risk of harm to citizens, but [that] officer’s conduct is not [the] proximate cause of those injuries unless it was extreme or outrageous.<sup>57</sup>

This principle, which appears to be the majority rule, can also be found in the case law of several jurisdictions. The Court of Appeals of Ohio

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<sup>56</sup> 60 C.J.S. *Motor Vehicles* Sec. 763 (2009).

<sup>57</sup> J. H. Cooper, Annotation, *Liability of Governmental unit or its Officer for Injury or Damage from Operation of Vehicle Pursued by Police*, 83 A.L.R. 2d 452 (1962).



has held that, while police officers can be potentially held to be a proximate cause for injuries inflicted upon third parties by pursued suspects, such liability should only occur if the conduct was “extreme or outrageous.” In *Lewis v. Bland*, an innocent third party was injured by a suspect being pursued by the police in a high speed chase.<sup>58</sup> Before the case went to trial, the trial court granted the city’s motion for summary judgment by finding that the pursuing officer did not operate his vehicle in a negligent manner during the pursuit, and that police officers have no duty to refrain from initiating a chase.<sup>59</sup> However, on appeal, the Court of Appeals of Ohio elected to affirm the trial court’s ruling on proximate causation grounds. In doing so, the appeals court held that the proximate cause of an accident between a pursued suspect and an innocent third party is the suspect’s reckless driving, and that liability would only attach upon “extreme or outrageous conduct” by the pursuing police officer<sup>60</sup>

[W]e agree with appellee's contention that the pursuit of [the fleeing individual] by the city's police officers was not the proximate cause of plaintiffs' injuries. It is the duty of law enforcement officials who observe reckless motorists to apprehend those motorists who make the highways dangerous to others. The proximate cause of an accident in such a situation is the reckless driving of the pursued, notwithstanding recognition of the fact that police pursuit contributed to the pursued's reckless driving. When a law enforcement officer pursues a fleeing violator and the violator injures a third party as a result of the chase, the officer's pursuit is not the proximate cause of those injuries unless the

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<sup>58</sup> *Lewis v. Bland*, 599 N.E. 2d 814, 815 (Ohio Ct. App. 1991).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 815-6.

circumstances indicate extreme or outrageous conduct by the officer, as the possibility that the violator will injure a third party is too remote to create liability until the officer's conduct becomes extreme.<sup>61</sup>

The “extreme or outrageous conduct” standard was again echoed in a case decided by the Court of Appeals of Oklahoma.<sup>62</sup> In *Kelly v. City of Tulsa*, an innocent third party was killed in a head-on collision with a suspect being actively pursued by the police. In affirming the trial court’s summary judgment for the defendant police department, the court followed what it called the “majority rule” and found that police officers can only be held potentially liable for injuries caused by the operation of their own vehicle and not by the operation of motor vehicles by others. Vicarious liability cannot be imposed on pursuing officers for injuries caused by the pursued party’s reckless driving unless that officer’s conduct was “extreme or outrageous.”<sup>63</sup> The *Kelly* court further held:

[W]e find that the officer's pursuit in this case was not, as a matter of law, the proximate cause of the accident. Where the facts of a case are undisputed, the issue of proximate cause is a question for the court. Again, the majority of jurisdictions addressing this issue refuse to impose liability on the officer for the independent acts of a law offender. The law allows police pursuit of fleeing violators as a matter of public policy; the benefit of apprehending these individuals outweighs the ordinary risks inherently involved in such pursuit. Unlike the cases relied upon by Plaintiff, the undisputed facts in this case show that [the police officer's] pursuit was not so extreme or outrageous as to pose a higher threat to public safety than ordinarily incident to high-speed police pursuit. As such, we hold as a

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<sup>61</sup> *Id.*

<sup>62</sup> *Kelly v. City of Tulsa*, 791 P.2d 826, 826-27 (Okla. Civ. App. 1990).

<sup>63</sup> *Id.* at 828-9.

matter of law that under these facts and circumstances the pursuit did not create a condition for which liability may be imposed.<sup>64</sup>

Likewise, in *DeWald v. State of Wyoming*, a drunk driver pursued by two police officers killed an innocent third party when his vehicle collided with the innocent third party's vehicle at a traffic light.<sup>65</sup> The decedent's wife brought suit against the two police officers involved in the pursuit, the State of Wyoming, and the State Highway Commission, alleging negligence on their part.<sup>66</sup> In affirming the trial court, the Supreme Court of Wyoming held:

[E]xcept in extreme or outrageous circumstances, an officer's pursuit of a vehicle which is involved in an accident not involving the officer's vehicle is not the proximate cause of that accident.<sup>67</sup>

While the "extreme or outrageous conduct" standard was not expressly adopted by the United States Supreme Court in the recent case of *Scott v. Harris*, a principle similar to the "extreme or outrageous conduct" standard was endorsed in a high speed chase that resulted in a constitutional claim brought by a fleeing suspect against the pursuing police officers.<sup>68</sup> In *Scott*, a police officer pursued a suspect in a high speed chase.<sup>69</sup> In order to end the pursuit, the pursuing officer rammed the suspect's vehicle, and in

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<sup>64</sup> *Id.*

<sup>65</sup> *DeWald v. State of Wyoming*, 719 P.2d 643, 645 (Wyo. 1986).

<sup>66</sup> *Id.* at 645-6.

<sup>67</sup> *Id.* at 649.

<sup>68</sup> *Scott v. Harris*, 127 S. Ct. 1769, 1773 (U.S. 2007).

<sup>69</sup> *Id.* at 1773.

doing so, injured the suspect.<sup>70</sup> The injured suspect then filed suit under 42 U.S.C. Sec. 1983 “alleging, *inter alia*, the use of excessive force resulting in an unreasonable seizure under the Fourth Amendment.”<sup>71</sup> In affirming both the District Court and the 11th Circuit, the Supreme Court declined to hold the pursuing officer liable for the injuries caused to the injured suspect during the high speed chase for policy reasons:<sup>72</sup>

[W]e are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people’s lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity earned by recklessness.<sup>73</sup>

This observation by the United States Supreme Court has applicability to the case at bar.

In addition to the cases cited above, there are numerous examples from other jurisdictions that have declined to hold police officers liable for the actions of law offenders during high-speed chases. *See also Doran v. City of Madison*, 519 So.2d 1308, 1314 (Ala. 1988) (holding that police officers are not responsible for the acts of pursued parties); *Morris v. Leaf*, 534 N.W.2d 388, 390 (Iowa 1995) (holding that a police officer can only be held liable for injuries caused during police chases if that police officer’s

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 1771.

<sup>72</sup> *Id.* at 1779.

<sup>73</sup> *Id.*

actions were in reckless disregard for the safety of others); *Sansonetti v. City of St. Joseph*, 976 S.W.2d 572, 577 (Mo. Ct. App. 1998) (finding that the pursued party's actions, not those of the pursuing police officer, were the proximate cause of the vehicular collision); *Peoples v. Conway*, 897 S.W.2d 206, 208 (Mo. Ct. App. 1995) (concluding that the pursued party's manner of driving was the proximate cause of the accident).

In determining whether an officer's conduct is extreme or outrageous during a police pursuit, a balancing test that considers multiple factors should be undertaken. First, when the police officer believes that the pursued party poses a substantial threat to society, a police officer's pursuit is more easily justified, and therefore less likely to be considered extreme or outrageous, than if the pursued party poses no apparent threat to public safety (apart from the driving). In cases where the suspects being pursued are suspected of a serious crime, a high speed pursuit is more easily justified than in pursuing a minor traffic offender.

Second, the safety considerations incidental to the area surrounding the chase should also be considered. Police officers should be more reluctant to conduct high speed pursuits in areas where harm to human life can occur more easily, such as school zones or residential areas. Likewise, if the traffic volume, whether vehicular or pedestrian, is high in an area, that impact on

potential harm should be considered. Should a police officer continue a high-speed pursuit through risk areas, it is more likely to be considered extreme or outrageous.

Third, in cases where, as here, the injury or death occurred only after the police chase was timely terminated, the connection between the police officer's actions and the resulting injury becomes so tenuous that proximate causation should lie only with the pursued party.

Finally, in determining if a police officer's conduct was extreme or outrageous, whether the officer adhered to statutes and department policies during the chase is relevant. If a police officer violates the procedures of the department, such violation may be indicative of extreme or outrageous behavior.

No above single factor is dispositive, but should be weighed in the totality of the circumstances in each particular case.

When applying each of these factors to the case at hand, and looking at the facts in a light most favorable to Plaintiff, it is readily apparent that Officer Crawford's actions were not "extreme or outrageous" as a matter of law, and that there are no genuine issues of material fact.

When Officer Crawford decided to engage in the high speed pursuit on A Street, he believed that he was chasing possible carjackers. Rather than

being suspected of a minor traffic violation, Officer Crawford believed the occupants of the pursued vehicle might have committed a dangerous felony, carjacking.

Additionally, the pursuit on A Street initially posed a relatively low safety risk, with speeds no higher than 25 mph. However, when Officer Crawford was forced to accelerate to about 80 mph in an attempt to catch up to the suspects (who were estimated by Officer Crawford to be traveling approximately 120 mph by this time), he quickly chose to cease his pursuit.

Also, the pursuit was discontinued several seconds before the collision<sup>74</sup>, and the occupants of the pursued vehicle were apparently aware that pursuit had been discontinued.

Finally, Officer Crawford conducted the pursuit in accordance with police regulations. In deciding to initiate pursuit, he weighed the pertinent factors identified in the police regulations. During the pursuit he followed the procedures that defined the conduct to be used during the pursuit by engaging his lights and sirens and maintaining a proper lookout. Finally, by constantly reevaluating the safety conditions, Officer Crawford was able to terminate the pursuit in a relatively timely manner.

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<sup>74</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. B at 72.

This Court now adopts the “extreme or outrageous conduct” standard, and accordingly holds that Officer Crawford’s actions were not “extreme or outrageous” as a matter of law. This Court also notes that Plaintiff has not presented any other contrary legal standard to guide the reasoning of this Court. Plaintiff’s only response to the “extreme or outrageous conduct” standard is to state that there can be more than one proximate cause for an injury. While this general proposition is correct,<sup>75</sup> Plaintiff has not shown that Officer Crawford’s actions as a matter of law were also a legally sufficient proximate cause, or to distinguish the present case from the numerous cases cited by the Defendants in support of the “extreme or outrageous conduct” standard.

B. No Genuine Issues of Material Fact Exist

Plaintiff has highlighted several purported discrepancies of material fact between Officer Crawford’s testimony in the Comer criminal case, his February 2009 deposition, and his affidavit in connection with this case. Plaintiff contends that these discrepancies are material and therefore summary judgment cannot be granted. While it is true that there are some discrepancies, all of those discrepancies are quite minor in the overall

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<sup>75</sup> *In re Asbestos Litigation*, 911 A.2d 1176, 1208 (Del. Super. Ct. 2006); Del. Super. P.J.I. Civ. Sec. 22.1 (2006).



context of this case, and do not present genuine issues of material fact for a jury.<sup>76</sup>

Plaintiff points to the following supposed material facts in dispute: First, Officer Crawford stated in his affidavit that the pursued vehicle was driving over the lanes and cut in front of a white van before turning left from South Market Street onto A street, but stated in his deposition that the pursued vehicle was driving within the law and not weaving in and out of traffic. This slight discrepancy, having nothing to do directly with the particulars of the high speed chase, is not material because either way the facts are viewed, they have scant applicability to the later high speed chase on A Street.

Second, the Plaintiff points out that Officer Crawford described traffic as “relatively light” in his deposition, but described traffic conditions as “considerable...in the afternoon on that part of the street so they couldn’t go very fast” in his trial testimony. These two statements however, are not a dispute of fact because they describe the same road during different portions of the pursuit. In the former statement, traffic was being described as Officer

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<sup>76</sup> Other courts deciding high speed police chase cases have granted summary judgment even though factual discrepancies were alleged by the non-moving parties. *Lewis v. Bland*, N.E.2d 814, 815, 817 (Ohio Ct. App. 1991) (holding that the evidence left only one reasonable conclusion despite appellant’s assertion that there were material facts in dispute); *DeWald v. State of Wyoming*, 719 P.2d 643, 651 (Wyo. 1986) (affirming summary judgment even though appellant claimed several questions of fact were sufficient to defeat summary judgment).

Crawford proceeded south on King Street towards South Market Street. The latter statement describes traffic as Officer Crawford was proceeding through the intersection of King Street and Martin Luther King, Jr. Boulevard onto South Market Street. These facts (whichever version is accepted) are really not in dispute, and are not part of the high speed chase facts.

Third, Plaintiff highlights that in Officer Crawford's affidavit he stated that he and his partner initiated pursuit "in an attempt to stop the suspects before they left the Wilmington City limits." This statement supposedly differs from Officer Crawford's deposition testimony because he made no mention of that concern during his deposition. There is no actual dispute between these statements, however, because an assertion was made in the former and that assertion is simply omitted in the latter. Therefore, there is no factual conflict between the two sources of testimony. Even assuming that there is a conflict, that conflict would not be material because whether Officer Crawford's actions were additionally motivated by a fear of the Suspects leaving city limits is not related to his alleged conduct.

Fourth, Plaintiff contends that there is a material dispute between Officer Crawford's affidavit and in his deposition in describing where the Suspects began to accelerate to approximately 80 mph. Officer Crawford's

affidavit states, “once across the bridge, however, the suspect vehicle turned onto “8th Street” and began to accelerate, approaching a speed of approximately 80 mph,” but that Officer Crawford testified at his deposition that, “He continued on slowly at that point making a turn onto “A street.” He struck a vehicle that was sitting at the stop sign . . . He began to accelerate from that point.”<sup>77</sup> These quotations, however, are not accurate. In actuality, the affidavit states, “once across the bridge, however, the suspect vehicle turned onto *A Street* and began to accelerate, approaching a speed of approximately 80 mph.” When quoted accurately, there is no discrepancy between the two statements except for the mention of a citizen’s vehicle being struck in the deposition, which is not mentioned in the affidavit. Several other points by the Plaintiff are made in reliance of this mistaken quotation. These points, when interpreted with the actual quotation from the affidavit, are unsustainable because no discrepancy exists.

Finally, there are some inconsistencies between Officer Crawford’s and Officer Rentz’s statements about their distance from the Suspects’ vehicle when it collided with the Decedent’s vehicle. Officer Crawford’s trial testimony states that their vehicle was “about 1500 feet or so back from that intersection” when the Suspects’ vehicle collided with the Decedent’s

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<sup>77</sup> Pl’s. Resp. to Defs’. Mot. for Summ. J. at 4-5.

vehicle.<sup>78</sup> However, Officer Rentz' trial testimony states that their vehicle was "350 to 400 feet away" from the Suspects' vehicle at the time of the collision.<sup>79</sup> This discrepancy, like the others, is not material. A material fact is a "specific fact which would sustain a verdict in its favor."<sup>80</sup> Even if Officer Crawford's vehicle was 350, instead of 1500, feet away, it would not sustain a verdict in Plaintiff's favor. Much more important than the location of the police cruiser when the collision occurred is whether the officer's conduct was "extreme or outrageous." This Court, looking at all facts in the light most favorable to Plaintiff, finds no genuine issues of material fact and that Officer Crawford's driving was not "extreme or outrageous" as a matter of law.

## **VI. CONCLUSION**

Officer Crawford's conduct was not "extreme or outrageous" as a matter of law, and Plaintiff's purported disputes of material fact are minor in the overall context of this case and do not present genuine issues of material fact for a jury. Defendant's Motion for Summary Judgment is **GRANTED**.

**IT IS SO ORDERED.**

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<sup>78</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. C at 59.

<sup>79</sup> Pl's. Resp. to Defs'. Mot. for Summ. J. Ex. E at 38.

<sup>80</sup> *Sterling v. Beneficial Nat'l Bank, N.A.*, 1994 WL 315365, \*3 (Del. Super.).



oc: Prothonotary