IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-CA-01706-COA

TONJALA LYNELLE HOUSTON SMITH, ADMINISTRATRIX OF THE ESTATE OF PERCY WILLIS, DECEASED FOR AND ON BEHALF OF JORDAN PERCY WILLIS, MINOR AND TRAVIS LAMARR WILLIS — **APPELLANTS**

v.

CITY OF SOUTHAVEN, MISSISSIPPI — **APPELLEE**

DATE OF JUDGMENT:	11/12/2019
TRIAL JUDGE:	HON. GERALD W. CHATHAM SR.
COURT FROM WHICH APPEALED:	DESOTO COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANTS:	CHARLES RICHARD MULLINS OLUFEMI GBOLAHAN SALU
ATTORNEY FOR APPELLEE:	ROBERT E. HAYES JR.
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
DISPOSITION:	AFFIRMED - 12/01/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

CARLTON, P.J., FOR THE COURT:

¶1. Percy Willis was killed when Kameron Williams ran a red light at a high rate of speed and crashed into Willis's vehicle. Tonjala Lynelle Houston Smith, the administratrix of Willis's estate, filed a wrongful death action on behalf of Willis's two children (plaintiffs) against the City of Southaven, Mississippi (City), in DeSoto County Circuit Court. The plaintiffs alleged that Southaven police officers were in pursuit of Williams at the time of the fatal accident and that the City was not entitled to police-protection immunity under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-9(1)(c) (Rev. 2012), because

the police officers allegedly acted with "reckless disregard" in pursuing Williams. After discovery, the City moved for summary judgment on all of the plaintiffs' claims. The circuit court granted the City's summary judgment motion and dismissed the plaintiffs' case with prejudice. The plaintiffs appeal. After careful de novo review of the record, we find no error in the circuit court's decision to grant summary judgment in the City's favor. We therefore affirm.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

¶2. On July 25, 2017, Kameron Williams sped through a red light and crashed into a vehicle being driven by Percy Willis. Willis was killed. The plaintiffs sued the City in DeSoto County Circuit Court. In the ensuing discovery, the plaintiffs focused their claims on the actions of Officer Kenny Bryant of the Southaven Police Department. The plaintiffs allege that Officer Bryant initiated Williams's "pursuit" in allegedly "reckless disregard" of Willis's safety. According to the plaintiffs, due to Officer Bryant's actions, the City was not entitled to the police-protection immunity afforded to it under section 11-46-9(1)(c).

¶3. The City moved for summary judgment as to all of the plaintiffs' claims, asserting that it was entitled to the police-protection immunity afforded the City under the MTCA because at no time did Officer Bryant act in "reckless disregard" for Willis's safety. The plaintiffs responded, asserting that genuine issues of material fact existed as to whether Officer Bryant's alleged "pursuit" of Williams's speeding car could amount to "reckless disregard" under the MTCA.

¶4. On October 28, 2019, after having reviewed the City's motion, along with the plaintiffs' response, the City's rebuttal, and the parties' accompanying briefs, and after having heard oral arguments and taking the matter under advisement, the circuit court granted the City's summary judgment motion and dismissed the plaintiffs' case with prejudice. The circuit court found

> that the Plaintiffs have not set forth facts creating a genuine issue of material fact as whether Officer Bryant was acting in reckless disregard. The undisputed facts show that Bryant was not in pursuit of Williams at the time he caused the death of [Willis] which would necessitate this court evaluating the factors set forth in *City of Jackson v. Brister*, 838 So. 2d 274 (Miss. 2003) and *Ellisville v. Richardson*, 913 So. 2d 973 (Miss. 2005).

The plaintiffs appealed.

¶5. We now turn to a statement of the facts as established by the record before us.

¶6. On Tuesday, July 25, 2017, Williams was driving a 2004 Chevrolet Tahoe when he bumped into a vehicle driven by Rhonda Landrum (Landrum) on an on-ramp at Church Road in Southaven, Mississippi, near the I-55 northbound ramp. Isabella Czolba was a passenger in the Tahoe. The Tahoe was her father's car, and Williams had driven it before. The accident was minor. Landrum walked over to the Tahoe and briefly spoke with Williams. The record contains Mississippi Department of Transportation (MDOT) camera surveillance footage that shows Williams then cut the Tahoe's steering wheel to get around Landrum's car, got on Church Road going eastbound, and left the scene of the Church Road accident. The MDOT surveillance footage shows that Williams was going faster than the traffic around him when he left the scene. In his deposition Williams said he then cut the corner at Church

Road and Airways Boulevard by driving through a service station parking lot and continued northbound on Airways Boulevard. Williams said he started "going faster . . . probably going about 70, about 70 almost 80" down Airways Boulevard. Airways Boulevard is a highly traveled area of Southaven, and it contains multiple shopping centers and restaurants. The speed limit on Airways Boulevard is forty miles per hour.

¶7. Williams had just been released from jail a day or two before he was involved in the Church Road accident. He was on probation and driving with a suspended driver's license. Williams said that after he hit Landrum, his thought was to "get to Memphis" as fast as he could. He said that he "was scared if the cops showed up [he was] going to go back to jail." As Williams explained, "[I was] [t]rying to get . . . out of Mississippi. I was trying to get into Tennessee because I knew I just hit and run . . . [a woman] right here, so I'm trying to get to Memphis." Williams admitted that he was speeding after he left the first accident (and before he saw any Southaven police officer) and driving in a "dangerous manner."

¶8. Williams's passenger, Czolba, was also deposed. Her testimony corroborates Williams's admissions and testimony on these points. She testified that Williams's driving was "reckless from the point of the fender-bender . . . . [She noticed it] from the first cut he made to the left with the wheel and then made it to right to continue onto Church Road [when leaving the first accident]." She further testified that before they saw any police officer, "[Williams] was speeding." She explained that "he was driving very recklessly before [he saw] the cop." She confirmed her statement to a Southaven police investigator that she and

Williams were "going 80 to 85 miles an hour from the beginning of Airways [Boulevard] to the end."

¶9. Officer Bryant said in his deposition he was driving southbound on Airways Boulevard, and at approximately one-fourth to a half mile from the Goodman Road intersection (where the fatal accident between Williams and Willis occurred) he saw a white SUV-style vehicle (later identified as the white Tahoe Williams was driving) driving northbound at an "extremely fast" rate of speed. Officer Bryant estimated the vehicle's speed to be nearly 100 miles per hour. He said that as he passed Williams's car, he saw "the front end dip consistent with somebody pressing the brake pedal," and then the car "zoomed off again heading north."

¶10. As the vehicle passed him, Officer Bryant said that he "came to a stop in the roadway, did a U-turn, turned on my [blue] lights in an attempt . . . to make a traffic stop on this guy just to see why he was going so fast." Officer Bryant said that when he initially saw the vehicle, he "got on the radio and he relayed information to dispatch that there was an SUV going northbound on Airways at a high rate of speed." He said that when he made the call to dispatch he was not aware that the vehicle's tag number had been called in on a hit-and-run; he was only aware of the speeding that he observed.

¶11. A recording of the dispatch exchange in the record corroborates Officer Bryant's deposition testimony. The call to dispatch began at 16:22:23 (4:22 p.m.). In this exchange Officer Bryant reported that he had observed a car "approaching Goodman in excess of 100

miles per hour" and that he was "trying to catch up." At this point the dispatcher said that this vehicle could "possibly [be one involved] in hit and run." Seconds after that, Officer Bryant said, "They just wrecked out at Goodman."

¶12. Officer Bryant elaborated on the circumstances in his deposition. He testified:

> In my opinion, [Williams is] approximately going 100 miles an hour northbound. So by the time I can turn around, he's—he's a good ways in front of me. You know, other than him running the red light at Marathon Way, which I could witness, he crest[ed]. . . . I don't see him again until I top the same crest and could see that he's been involved in an accident at Goodman and Airways.

¶13. The MDOT surveillance footage from the Airways Boulevard and Goodman Road intersection shows that the accident between Williams and the Willis vehicle occurred at approximately 16:22:46,[1] approximately twenty-three seconds from when Officer Bryant called dispatch and approximately eleven seconds after the MDOT surveillance footage from the Marathon Way and Airways Boulevard shows Williams going through a red light at that intersection at a high rate of speed. The MDOT surveillance footage at the scene of the fatal accident shows there were almost thirty seconds between the crash and when Officer Bryant's patrol car arrived at approximately 16:23:14, with other patrol cars arriving after that time. According to the report prepared by Southaven Police Department Investigator Matt DeFore, Williams had already fled the scene on foot by the time Officer Bryant arrived, as witnessed by several civilian witnesses who were later identified and gave statements.

[1] The video does not show the actual collision, but it does show the vehicles sliding through the intersection immediately after the collision occurred.

¶14. When asked about the circumstances leading up to the fatal accident, Czolba said that she remembered seeing a police car going in the opposite direction down Airways Boulevard about "midway . . . down Airways . . . between Church and Goodman." She further testified that the police car turned around because "maybe he saw us zooming because it was clearly visible, I felt like . . . we were going very fast." She estimated they were going about 80 miles per hour at that time, but she also said that she was not surprised that the police officer who saw them believed they were going close to 100 miles per hour. In describing Williams's reaction to seeing the patrol car, she said that he was "kind of freaking out a little bit" and that he braked briefly, but then he "gunned it" and continued speeding down Airways Boulevard. Regarding the distance between them and Officer Bryant's patrol car, she said that Officer Bryant was "not very close" to their vehicle: "he wasn't very close at all."

¶15. Williams also was asked about encountering the southbound patrol car (Officer Bryant). He said that he was "almost . . . to Goodman" when he saw the patrol car and that he "tried to slow down," but "[the officer] turned around immediately . . . as soon as [Williams] passed him." Williams said that when the police officer put his lights on, "I kept going, I didn't stop. I kept going. I was trying to get across to Memphis to the state line." He said that he increased his speed about five miles per hour when he saw the patrol car turn around. According to Williams, he could see Officer Bryant's patrol car in his rearview mirror, just "a car length" behind him, and if the patrol car had not been "chasing him," he

would have stopped at the Goodman Road and Airways Boulevard intersection.

STANDARD OF REVIEW

¶16. We review a trial court's grant of summary judgment de novo. *Duckworth v. Warren*, 10 So. 3d 433, 436 (¶9) (Miss. 2009). Mississippi Rule of Civil Procedure 56(c) provides that 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." "'The evidence must be viewed in the light most favorable to the party against whom the motion has been made,'" *Duckworth*, 10 So. 3d at 436-37 (¶9) (quoting *One S. Inc. v. Hollowell*, 963 So. 2d 1156, 1160 (¶6) (Miss. 2007)), and "[t]he moving party has the burden of demonstrating that no genuine issue of material facts exists, [giving] . . . the non-moving party . . . the benefit of the doubt concerning the existence of a material fact." *Id.* at 437 (¶9) (quoting *One S. Inc.*, 963 So. 2d at 1160 (¶6)). The mere existence of some alleged factual dispute between the parties, however, will not defeat an otherwise properly supported motion for summary judgment; "[t]he dispute must be genuine, and the facts must be material." *Williams v. Bennett*, 921 So. 2d 1269, 1272 (¶10) (Miss. 2006).

DISCUSSION

Police-Protection Immunity Under the MTCA

¶17. The plaintiffs assert that the circuit court erred when it granted summary judgment in the City's favor based upon it's determination that the plaintiffs did "not set forth facts

creating a genuine issue of material fact . . . whether Officer Bryant was acting in reckless disregard." In undertaking our own de novo review of the record, we find no error in the circuit court's determination and affirm summary judgment in the City's favor for the reasons addressed below.

A. Applicable Law

¶18. Pursuant to section 11-46-9(1)(c) of the Mississippi Tort Claims Act:

> (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:
>
> . . . .
>
> (c) [a]rising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection *unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury*[.]

(Emphasis added).

¶19. Willis (the person killed when Williams struck his vehicle) was not engaged in "criminal activity" at the time of the collision; therefore the issue in this case is whether the City, namely Officer Bryant, was acting in "reckless disregard" of public safety in attempting to perform a traffic stop when he saw Williams speeding by him prior to the fatal collision.

¶20. The Mississippi Supreme Court has held that "'reckless disregard' under Section 11-46-9(1)(c) embraces willful and wanton conduct which requires knowingly or intentionally doing a thing or wrongful act." *Rayner v. Pennington*, 25 So. 3d 305, 308-09 (¶11) (Miss. 2010). In *Rayner*, the supreme court recognized that "reckless disregard" requires

> the voluntary doing . . . of an improper or wrongful act, or with knowledge of existing conditions, the voluntary refraining from doing a proper or prudent act when such act or failure to act evinces an entire abandonment of any care, and heedless indifference to results which may follow and the reckless taking of chance of [an] accident happening without intent that any occur[.]

Id. at 309 (¶11). "Reckless disregard usually is accompanied by a conscious indifference to consequences, amounting almost to a willingness that harm should follow." *Id.*

B. "Pursuit" and "Reckless Disregard"

¶21. The plaintiffs assert that Williams's and Czolba's testimonies and MDOT surveillance camera footage from the Marathon Way and Airways Boulevard intersection create a genuine issue of material fact whether Officer Bryant was "in pursuit" of Williams when he collided with Willis. According to plaintiffs, the circuit court therefore erred when it found that they failed to raise a genuine issue of material fact whether Officer Bryant acted in "reckless disregard" in this case because the circuit court did not analyze Officer Bryant's conduct using the ten-factor *Brister*[2]*/Richardson*[3] test used in police "pursuit" cases to make a "reckless disregard" assessment.[4]

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[2] *City of Jackson v. Brister*, 838 So. 2d 274, 280 (¶22) (Miss. 2003).

[3] *City of Ellisville v. Richardson*, 913 So. 2d 973, 977 (¶15) (Miss. 2005).

[4] In assessing "reckless disregard" in police-pursuit cases, the Mississippi courts apply numerous factors, including the

> (1) length of the chase; (2) type of neighborhood; (3) characteristics of the streets; (4) presence of vehicular or pedestrian traffic; (5) weather conditions and visibility; (6) seriousness of the offense for which the police are pursuing the suspect; (7) whether the officer proceeded with sirens and blue lights; (8) whether the officer had available alternatives which would lead to the

¶22. We find these assertions are without merit. Even viewing the facts in the light most favorable to the plaintiffs, we find that the plaintiffs did not establish a genuine issue of material fact that Officer Bryant "pursued" Williams in this case. As such, in determining whether the plaintiffs have established a genuine issue of material fact whether Officer Bryant acted in "reckless disregard" under the circumstances, we do not apply the ten-factor *Brister/Richardson* test utilized by the Mississippi courts in making this assessment in police pursuit cases. Rather, we apply the Mississippi courts' definition of "reckless disregard" under the MTCA as set forth above.

¶23. Based upon our de novo review of the record, we find that the plaintiffs have not established the existence of a genuine issue of material fact that Officer Bryant acted in "reckless disregard" for public safety in this case. Accordingly, for the reasons addressed below, we affirm the circuit court's grant of summary judgment in the City's favor, and dismissing the plaintiffs' claims with prejudice.

1. Pursuit

¶24. It is undisputed that Williams was driving at an excessive speed before encountering any Southaven police officer. Williams had just been released from jail, he was on

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> apprehension of the suspect besides pursuit; (9) existence of a police policy which prohibits pursuit under the circumstances; and (10) rate of speed of the officer in comparison to the posted speed limit.

City of Jackson v. Gray, 72 So. 3d 491, 496-97 (¶17) (Miss. 2011) (citing *Richardson*, 913 So. 2d at 977 (¶15)); *see also Brister*, 838 So. 2d at 280 (¶22).

probation, and he was driving with a suspended driver's license. After Williams hit Landrum's vehicle on Church Road, he was afraid of going back to jail. Williams testified that his only thought was to "get to Memphis," and he confirmed that he was going to do that "as fast and quick as [he] could." After leaving the scene of the Church Road accident, Williams said he was going "almost 80" as he traveled northbound on Airways Boulevard. He admitted he was speeding and driving "dangerous[ly]" when he left that accident.

¶25. Passenger Czolba likewise testified that Williams was driving "very reckless" *before* encountering any police officer; she said Williams was going "80 to 85" miles per hour all the way down Airways Boulevard. When asked to describe how Williams was driving before seeing any police officer, she said, "He was driving very fast. He was up in his seat. He was really just like—he almost looked kind of crazy. . . . And he said 'I can't go to jail again.'"

¶26. Officer Bryant was traveling southbound on Airways Boulevard when he saw Williams traveling northbound at an extreme speed. Officer Bryant saw the front of Williams's vehicle "dip," consistent with someone pressing the brake pedal, but then Williams quickly resumed speeding north on Airways Boulevard. There is no evidence in the record that at this time Officer Bryant knew of the earlier hit-and-run Williams had been involved in.

¶27. Officer Bryant testified that upon seeing Williams traveling at that excessive rate of speed, he stopped, made a U-turn, and turned on his blue lights in an attempt to make a traffic stop. He did not turn on his siren because "it's not common for an officer to turn on his siren

every time he makes a traffic stop."

¶28. Officer Bryant saw Williams run a red light at the Airways Boulevard and Marathon Way intersection. Officer Bryant testified that he was traveling at, or near, the forty-mile-per-hour speed limit as he approached that intersection after seeing Williams speed through it, and then he (Officer Bryant) had to "slow down to way less than 40 miles an hour" as he maneuvered through it. Officer Bryant did not see Williams again until he saw that Williams had already run the red light at the intersection of Airways Boulevard and Goodman Road and crashed into Willis.

¶29. Because of Williams's speed, Officer Bryant said that he was a "good ways" behind Williams when the fatal collision occurred. Similarly, Czolba (Williams's passenger) said that after Officer Bryant turned around and was following them, he was "not very close" to their vehicle, "[l]ike he wasn't very close at all."

¶30. We find it relevant that when asked by the plaintiffs' counsel, "Who was the primary pursuing unit [in this case]?" Officer Bryant responded, "There was none." When he was asked if a pursuit would have been justified, Officer Bryant refused to speculate because that was not what occurred in this case. He said:

> You know, I don't want to speculate. . . . [A]t the time that that vehicle passed me going what I believed to be twice the speed limit—we have a hospital right there. I didn't know if that was a medical emergency. I didn't know if somebody had just been robbed, murdered, armed robbery. I didn't know if it was a serious felony. I didn't know . . . [if] it was a speeding . . . violation in and of itself. . . . [A]s a police officer, I have a . . . sworn duty to uphold the law when I see a violation. . . . I turned around to initiate a traffic stop. It happened so fast, . . . when I went to initiate the traffic stop, . . . within just a

> matter of seconds [the driver of that vehicle] had already been involved in an accident. You know, it's just really hard for me to speculate whether a pursuit, you know, would have been justified or not justified, you know.

¶31. The recording of Officer Bryant's call to dispatch and the MDOT surveillance footage from the Airways Boulevard and Marathon Way and Goodman Road intersections objectively corroborate these facts. Officer Bryant testified that he called dispatch when he initially saw the speeding vehicle (Williams). That call began at 16:22:23, as evidenced both by the recording of that call and the incident-data-sheet report in the record. He reported observing a white SUV (Williams) "approaching Goodman in excess of 100 miles per hour." The dispatcher said that the vehicle could "*possibly* [be one involved] in hit and run," and another police officer offered to assist if needed. *Just seconds after that*, Officer Bryant said, "They just wrecked out at Goodman."

¶32. The MDOT surveillance footage from the Airways Boulevard and Marathon Way intersection (the last sighting Officer Bryant had of Williams) shows Williams's car going through the red light at Marathon Way at a high rate of speed at approximately 16:22:38—just eight seconds before the fatal collision occurred at 16:22:46. This surveillance footage shows Officer Bryant's patrol car slowly maneuvering through that intersection at approximately 16:23:00 (*after* the fatal accident had occurred) and a second police car maneuvering through the intersection at approximately 16:23:14.

¶33. We recognize that the plaintiffs assert that the MDOT surveillance footage of this intersection shows that the two patrol cars were "in hot pursuit" of Williams. Our review of

the time-stamped MDOT surveillance footage, however, as we have described above, demonstrates that the plaintiffs' description is not supported by the record.

¶34. The plaintiffs also assert that Williams's testimony that Officer Bryant was just "a car length" behind him, and that if the patrol car had not been "chasing him" he would have stopped at the red light at the Goodman Road and Airways Boulevard intersection, creates a genuine issue of fact on the "pursuit" issue. In addition to Officer Bryant's and Czolba's testimonies on this issue that directly contradict Williams's version of the facts, the MDOT surveillance footage of the Airways Boulevard and Goodman Road intersection *objectively* shows that Officer Bryant was well behind Williams's vehicle. As shown on that surveillance footage, the fatal accident happened at approximately 16:22:46. Nearly thirty seconds elapsed before Officer Bryant's patrol car arrived at the crash scene at approximately 16:23:14. At least two other civilian cars came through the intersection and stopped before Officer Bryant arrived. By the time Officer Bryant arrived at the accident scene, the undisputed evidence also shows that Williams had already fled the scene on foot.

¶35. In reviewing this record for summary judgment purposes we find *Duckworth v. Warren*, 10 So. 3d 433 (Miss. 2009), and *Scott v. Harris*, 550 U.S. 372 (2007), instructive. As the Mississippi Supreme Court explained in *Duckworth*, "[i]n *Scott*, the [United States Supreme] Court reversed a decision of the Eleventh Circuit Court of Appeals based on the record of a high-speed police chase recorded by a video camera positioned in a police cruiser." *Duckworth*, 10 So. 3d at 438 (¶12). The United States Supreme Court in *Scott*

specifically addressed the applicable summary judgment standard where one party's version of events is "blatantly contradicted" by objective evidence in the record, holding:

> When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.
>
> That was the case here with regard to the factual issue whether respondent was driving in such fashion as to endanger human life. Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape.

Scott, 550 U.S. at 380-81. As the Mississippi Supreme Court explained in *Duckworth*, "*Scott* thus informs our courts that where the record contains a videotape of disputed facts capturing the events in question, the courts should view the story as depicted by the videotape, when one party's version is blatantly contradicted, for the purpose of ruling on a summary judgment motion." *Duckworth*, 10 So. 3d at 438 (¶12).

¶36. In the case at hand, we find that Williams's version of the events leading up to his collision with Willis's vehicle is so "blatantly contradicted" and "so utterly discredited by the record that no reasonable jury could . . . believe[] him." *Scott*, 550 U.S. at 380. We will not rely "on such visible fiction," but rather we will "view the facts in the light depicted by [the MDOT surveillance footage from both the Airways Boulevard and Marathon Way and the Airways Boulevard and Goodman Road intersections]," *id.* at 380-81, as well as the recording of Officer Bryant's exchange with dispatch, and Czolba's and Officer Bryant's testimonies that Officer Bryant was never close to Williams at all. We therefore find that

neither Williams's version of events, nor the plaintiffs' inaccurate portrayal of the MDOT surveillance footage from the Airways Boulevard and Marathon Way intersection, create a genuine issue of material fact that Officer Bryant was "pursued" Williams in this case.

¶37. The plaintiffs also assert that the discrepancy in the record about where the alleged "chase" began creates a genuine issue of material fact whether Officer Bryant was "in pursuit" of Williams. Officer Bryant testified that he saw Williams approximately one-fourth to a half mile from the Airways Boulevard and Goodman Road intersection when he turned around to attempt a traffic stop. Czolba testified that she remembered seeing a police car going in the opposite direction down Airways Boulevard about "midway . . . down Airways . . . between Church and Goodman" (about a mile from the Airways Boulevard and Goodman Road intersection).

¶38. We do not find that this distance discrepancy creates a genuine issue of material fact as to whether a "pursuit" ensued. As this Court has found in the police "pursuit" context, "[l]ength [of the alleged pursuit] could suggest either duration or distance." *McCoy*, 949 So. 2d at 81 (¶45). In this case the *duration* of the alleged "pursuit" is objectively shown by Officer Bryant's call to dispatch reporting the speeding white SUV, and the MDOT surveillance footage from the Airways Boulevard and Marathon Way and Goodman Road intersections. Specifically, as we have described above, Officer Bryant's call to dispatch began at 16:22:23. Officer Bryant lost sight of Williams at the Airways Boulevard and Marathon Way intersection. The MDOT surveillance footage from that intersection shows

Williams speeding through that intersection at approximately 16:22:38. The MDOT surveillance footage from the Airways Boulevard and Goodman Road intersection shows that the collision occurred at approximately 16:22:46—just eight seconds later.[5]

¶39. We find that the disputed distance evidence in the record does not create a genuine issue of material fact whether Officer Bryant "pursued" Williams. On the contrary, we find that the duration evidence described above objectively corroborates Officer Bryant's testimony that he simply had no time to even make a "pursuit" decision before Williams crashed into the Willis vehicle.

¶40. Plaintiffs also contend that Officer Bryant's actions in this case constitute a "pursuit" that is "similar, if not identical, to the officers' actions in both *City of Jackson v. Lewis*, [153 So. 3d 689 (Miss. 2014)] and *McCoy v. City of Florence*, [949 So. 2d 69 (Miss. Ct. App. 2006)]." We disagree. In *Lewis*, whether the police officer was "in pursuit" of the suspect was not raised by the defendant, *City of Jackson*, 153 So. 3d at 692 (¶3), and the issue was not addressed by the supreme court. As such, *Lewis* offers no guidance on what constitutes a "pursuit." The issue in *Lewis* concerned whether the police officer acted in "reckless disregard" in an ongoing "pursuit" situation under the ten-factor *Brister/Richardson* ten-factor test we have set forth above. *Id.*

¶41. Regarding *McCoy*, although the Court did address whether the Florence police were

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[5] As shown in the MDOT surveillance footage from the Airways Boulevard and Marathon Way intersection, Officer Bryant had not even maneuvered through *that* intersection until after the fatal collision.

"in pursuit" of the suspect, 949 So. 2d at 78 (¶32), we find that the facts in that case are distinguishable from the facts before us. In *McCoy*, Officer Culpepper of the Florence Police Department (FPD) noticed the suspect speeding and driving recklessly as he traveled northbound on Highway 49. *Id.* at 73 (¶5). Officer Culpepper followed him. *Id.* at (¶6). Unlike Williams in the case at hand, the suspect in *McCoy* voluntarily stopped at a service station. *Id.*

¶42. At the service station—after FPD back-up had arrived and after Officer Culpepper had obtained the suspect's license and taken it back to his patrol car—the suspect locked the doors of his car and left the parking lot at a high rate of speed. *Id.* The FPD police officers "rushed to their patrol cars" and followed the suspect. *Id.* at 74 (¶10). Officer Culpepper, the leading officer, activated his blue lights and siren, *id.* at 82 (¶51), and got on a "common band" on the radio so as to contact other law enforcement officers in the area for assistance. *Id.* at 74 (¶11). Both the suspect and Officer Culpepper exceeded speeds of 100 miles per hour along Highway 49. *Id.* at 82 (¶¶50, 54). The chase was over five miles, *id.* at 81 (¶45), ending when the suspect lost control of the car he was driving, killing three passengers who were ejected as it flipped. *Id.* at 74 (¶13). This Court found these circumstances demonstrated a genuine issue of material fact whether the FPD officers "pursued" the suspect. *Id.* at 78 (¶32). We find no such comparable circumstances that would lead to such a result in this case.

¶43. We find that neither *Lewis* nor *McCoy* provide any basis for finding that the plaintiffs

have raised a genuine issue of material fact that a "pursuit" occurred in this case. We reject this contention on the merits.

¶44. In sum, based upon our de novo review of the credible evidence in the record, we find that Officer Bryant observed a vehicle traveling on a busy roadway at what appeared to be at least twice the legal speed limit. Officer Bryant knew nothing about the vehicle or the driver at that time, except that the vehicle was traveling at a very excessive rate of speed. Officer Bryant stopped, made a U-turn, and followed Williams intending to make a traffic stop. As the record reflects, when Officer Bryant was able to clearly observe Williams's vehicle again, it already had crashed into Willis's vehicle at the Airways Boulevard and Goodman Road intersection. For the reasons stated above, we find that the plaintiffs failed to raise a genuine issue of material fact whether Officer Bryant "pursued" Williams: there was simply no time for Officer Bryant to decide whether to "pursue" Williams (as he testified and as reflected in his call to dispatch and the MDOT surveillance footage from the Airways Boulevard and Marathon Way and Goodman Road intersections).

2. Reckless Disregard

¶45. As we stated above, we also find that there is no credible evidence in the record that Officer Bryant acted with "reckless disregard" in attempting to initiate a traffic stop against Williams. Williams admitted he was speeding (going "about 80" in a 40 mile per hour zone) and was driving "dangerous[ly]" *before* encountering a police officer. In Williams's own words, from the time he fled the Church Road accident he "was trying to get into Tennessee

because I knew I just hit and run [a woman] . . . right here, so I'm trying to get to Memphis"—he did not want to go back to jail. A police officer has a duty to attempt to stop a speeding vehicle. As the record reflects, Southaven Police Department policy provides that it would constitute "neglect of duty" if an officer "[f]ail[s] to take appropriate action involving offenses while on or off duty."[6]

¶46. The plaintiffs, however, assert that because Officer Bryant allegedly "knew" that Williams had been involved in a hit-and-run and that his tag number had been reported, Officer Bryant had an alternative means of apprehending Williams. As such, according to plaintiffs, there is at least a genuine issue of material fact whether Officer Bryant acted in "reckless disregard" by following Williams.

¶47. We reject this contention because it is not supported by the facts in the record. As we have detailed above, when Officer Bryant stopped and made a U-turn to initiate a traffic stop against Williams he did *not* know that Williams had been involved in the Church Road hit-

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[6] Although this case does not involve a police "pursuit" situation, cases assessing "reckless disregard" in that context likewise recognize a police officer's duty to stop conduct placing both the driver and others at risk. *See McCoy*, 949 So. 2d at 82 (¶50) (In the "pursuit" context this Court found that there existed "no genuine issue of material fact indicative of reckless disregard" where Officer Culpepper first noticed the suspect "because [of his] excessive speed and reckless driving" and pursued the suspect who fled at speeds "in excess of one-hundred miles per hour[,] . . . [thus] present[ing] a serious life-threatening risk to himself, his passengers, and all other motorists and pedestrians."); *see also Lewis*, 153 So. 3d at 696 n.6 (In the "pursuit" context the supreme court found that the police officer's decision to "blue-light[] [the suspect] . . . after observing him turn off the car's headlights and make a u-turn cannot be construed as error on [the officer's] part. The danger posed to the public by a person's driving a vehicle after dark without headlights illuminated, clearly a law violation, necessitates pursuit by police.").

and-run. All Officer Bryant knew was that Williams was traveling at a very excessive rate of speed. It was not until Officer Bryant called dispatch to report this event that the dispatcher said that this vehicle could "possibly [be one involved] in hit and run." As evidenced by the recording of this call, just seconds after the dispatcher made this statement, Officer Bryant said, "They just wrecked out at Goodman." The plaintiffs' assertion on this point is without merit.

¶48. The plaintiffs also assert that because Williams briefly braked and then sped up again after seeing the patrol car, Officer Bryant "should have known that Williams had no intention of stopping and [should have] called off the 'pursuit.'" According to the plaintiffs, Officer Bryant's failure to call off the alleged "pursuit" raises at least a genuine issue of material fact whether Officer Bryant was acting in reckless disregard for public safety.

¶49. We reject this contention. As we have addressed above, we find that there is no credible evidence that there was any "pursuit" in this case for Officer Bryant to "call off." When he saw Williams speeding in the opposite direction northbound on Airways Boulevard, Officer Bryant took action by making a U-turn to initiate a traffic stop at approximately 16:22:23. Williams initially braked when he first saw the patrol car, but then resumed his excessive rate of speed northbound on Airways, driving more erratically. Officer Bryant lost sight of Williams after Williams sped through the Airways Boulevard and Marathon Way intersection at approximately 16:22:38—approximately fifteen seconds after Officer Bryant called dispatch at the time he initiated action. Williams collided with Willis at approximately

16:22:46—eight seconds after that.

¶50. The plaintiffs rely on *Lewis*, 153 So. 3d at 695-701 (¶¶9-30), to support their argument, specifically the supreme court's discussion whether the pursuing police officer adequately *terminated* pursuit of the suspect after being commanded to do so. *See id.* at 700-01 (¶¶29-30). The circumstances in *Lewis* are entirely distinguishable from those in this case.

¶51. In *Lewis*, after observing the suspect make a u-turn at a roadblock and begin traveling with his headlights off in the opposite direction, the police officer "blue-lighted" the suspect and pursued the suspect for 1.2 miles at normal speeds. *Id.* at 700 (¶28). The suspect then "punched it," accelerating to approximately sixty miles per hour on a city street. *Id.* at (¶29). At that point, the police officer was ordered to terminate pursuit. *Id.* at 693 (¶3). The police officer turned off his siren and blue lights, but continued following the suspect. *Id.*

¶52. As noted above, the supreme court found "no error" in the officer's initial pursuit of the suspect. *Id.* at 696 n.6. The supreme court determined, however, that the police officer's "wanton defiance of the order of his superior to terminate pursuit" when the suspect accelerated, and the officer's "failure to comply with the standard articulated by this Court for communicating termination to the pursued party [by either stopping or turning around,]" displayed "reckless disregard" for public safety. *Id.* at 700 (¶29).

¶53. These circumstances are not present here. When Williams saw Officer Bryant's patrol car traveling in the opposite direction, Williams initially braked and then *resumed* the

excessive speed at which he had *already* been traveling—continuing to endanger himself, his passenger, and all other motorists and pedestrians in the area. After making a U-turn to initiate a traffic stop, Officer Bryant lost sight of Williams within seconds after Williams passed through Airways Boulevard and Marathon Way intersection; just seconds after than Williams had crashed into the Willis vehicle. Officer Bryant had no time to decide whether a pursuit was justified—much less time to determine whether to terminate a pursuit. As we have delineated above, we find no "reckless disregard" in Officer Bryant's conduct under these circumstances.

¶54. Based upon the record before us, we find that the plaintiffs failed to raise any genuine issue of material fact that turning on his blue lights and making a U-turn in order to stop a vehicle proceeding in a reckless and dangerous manner, less than thirty seconds before the speeding vehicle crashes, constitutes "reckless disregard" for public safety as that phrase is defined under Mississippi law. In short, we find no evidence that Officer Bryant, in fulfilling his duty as a police officer, acted with "conscious indifference to consequences, amounting almost to a willingness that harm should follow" in this case. *Rayner*, 25 So. 3d at 309 (¶11). The circuit court's summary judgment in the City's favor is affirmed.

¶55. **AFFIRMED.**

BARNES, C.J., WILSON, P.J., GREENLEE, WESTBROOKS, McDONALD, LAWRENCE AND McCARTY, JJ, CONCUR.