IN THE SUPREME COURT OF TEXAS

No. 16-0356

CITY OF SAN ANTONIO, PETITIONER,

V.

ROXANA TENORIO, INDIVIDUALLY AND
ON BEHALF OF PEDRO TENORIO, DECEASED, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

JUSTICE GUZMAN, dissenting.

Dogmatic adherence to language divorced from context can distort the law. This axiom has long guided our interpretation of statutes,[1] and it applies with equal force when we construe precedent. Application of precedent requires us to consider not only the language an opinion employs, but also the animating logic.[2] In this case, which involves the Texas Tort Claims Act's actual-notice exception, the Court's cramped construction of *Cathey v. Booth*[3] and its progeny thwarts, rather than effectuates, legislative intent. By construing the actual-notice exception to

[1] *See, e.g.*, *Tex. Student Hous. Auth. v. Brazos Cty. Appraisal Dist.*, 460 S.W.3d 137, 141 (Tex. 2015).

[2] *See* BRYAN A. GARNER, CARLOS BEA, REBECCA WHITE BERCH, NEIL M. GORSUCH, HARRIS L. HARTZ, NATHAN L. HECHT, BRETT M. KAVANAUGH, ALEX KOZINSKI, SANDRA L. LYNCH, WILLIAM H. PRYOR JR., THOMAS M. REAVLEY, JEFFREY S. SUTTON & DIANE P. WOOD, THE LAW OF JUDICIAL PRECEDENT 89 (2016) ("Courts must therefore deduce legal rules not only from the language of opinions but from their underlying logic as well.").

[3] 900 S.W.2d 339 (Tex. 1995).

require self-acknowledgment of error, the Court erects an undue impediment to a merits-based disposition that is neither grounded in the statute's language nor consistent with the rationale that informs our precedent.

As we explained in *Cathey*, "[t]he purpose of the [Tort Claims Act's] notice requirement is to ensure prompt reporting of claims in order to enable governmental units to gather information necessary to guard against unfounded claims, settle claims, and prepare for trial."[4] Whether the purpose is satisfied through formal notice or actual notice, the statutory notice requirement strikes a fair balance between providing injured parties a remedy while allowing governmental defendants a fair opportunity to prepare a defense. The Court's analysis skews this balance. Whether the plaintiffs will ultimately prevail on their claims is not the issue here. For purposes of the City of San Antonio's jurisdictional plea, the only issue is whether the record bears some evidence that, even without formal notice of a claim, the City knew enough about its role in the accident to incentivize it to protect its own interests.[5] Because I conclude the record bears such evidence, and the Court holds otherwise, I respectfully dissent.

The Texas Tort Claims Act provides a limited waiver of governmental immunity for certain acts resulting in death, personal injury, or property damage.[6] A damages claim may be prosecuted against the governmental unit if, within six months after the incident occurred, the claimant notifies the defendant of a claim under the Act and the notice "reasonably describe[s]: (1) the damage or

[4] *Id.* at 341.

[5] *Id.* at 340-41 (access to medical records did not convey to the hospital its possible culpability as required to satisfy the purpose of the statutory notice requirement).

[6] TEX. CIV. PRAC. & REM. CODE § 101.021, .025.

injury claimed; (2) the time and place of the incident; and (3) the incident."[7] Formal notice of a claim is not required, however, "if the governmental unit has actual notice that death has occurred, that the claimant has received some injury, or that the claimant's property has been damaged."[8]

In *Cathey*, we held the Act's actual-notice exception is satisfied only when the governmental unit has "knowledge of (1) a death, injury, or property damage; (2) the governmental unit's alleged fault producing or contributing to the death, injury, or property damage; and (3) the identity of the parties involved."[9] The second element of the formal-notice bypass is at issue here—whether the record bears more than a scintilla of evidence that the City of San Antonio had subjective knowledge of its alleged fault producing or contributing to the harm that occurred.

We elaborated on the alleged-fault prong in *Texas Department of Criminal Justice v. Simons*,[10] in which we clarified that

> [w]hat we intended in *Cathey* by the second requirement for actual notice was that a governmental unit have knowledge that *amounts to the same notice* to which it is entitled by [the formal notice requirement in] section 101.101(a). That includes subjective awareness of its fault, as ultimately alleged by the claimant, in producing or contributing to the claimed injury.[11]

Such knowledge obviates the need for formal written notice, because the purpose of the notice statute is merely "'to enable governmental units to gather information necessary to guard against

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[7] *Id.* § 101.101(a).

[8] *Id.* § 101.101(c).

[9] 900 S.W.2d at 341.

[10] 140 S.W.3d 338, 345-48 (Tex. 2004).

[11] *Id.* at 347 (emphasis added).

unfounded claims, settle claims, and prepare for trial.'"[12] In rough translation, actual notice is satisfied when the governmental unit has sufficient information to create "the same incentive to gather information" as would arise from formal notice.[13]

The Tort Claims Act's formal-notice requirement apprises governmental units that an individual has "a claim against it" for specific "damage or injury" that occurred during an "incident" at a specific "time and place."[14] When a governmental unit knows that its role in an incident may have caused or contributed to an injury, the "incentive to gather information" arises.[15] Knowledge of alleged fault cannot require, as the Court suggests, the defendant's subjective belief that it is actually at fault.[16] Even with formal notice of a claim, governmental units will no doubt vigorously disclaim responsibility. Acknowledgment of error is neither a statutory requirement nor a fair reading of our case law. In accordance with the spirit, if not the word, of our precedent, the Tort Claims Act's notice requirement is satisfied when the governmental unit has subjective awareness of *potential* fault "as ultimately alleged by the claimant."[17]

Whether the City of San Antonio had actual notice of potential culpability as alleged in this lawsuit is a fact question.[18] "If the evidence raises a fact question on jurisdiction, the trial court

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[12] *Id.* (quoting *Cathey*, 900 S.W.2d at 341).

[13] *Id.* at 348.

[14] TEX. CIV. PRAC. & REM. CODE § 101.101(a).

[15] *See Simons*, 140 S.W.3d at 348.

[16] *See ante* at 9 (requiring proof the City of San Antonio "subjectively believed its officers acted in error").

[17] *Simons*, 140 S.W.3d at 347.

[18] *Id.* at 348.

cannot grant [a jurisdictional] plea, and the issue must be resolved by the trier of fact."[19] In reviewing a plea to the jurisdiction, we must "take as true all evidence favorable to the movant,"[20] "indulge every reasonable inference and resolve any doubts in the nonmovant's favor,"[21] and disregard contrary evidence unless a reasonable factfinder could not.[22] Direct evidence of subjective awareness is not required;[23] indeed, when a party's state of mind is at issue, circumstantial evidence is often the only proof available.[24]

This is one such case. At minimum, the jurisdictional evidence raises a fact issue regarding the City's actual knowledge of potential fault as ultimately alleged by the Tenorios. To that end, the City had both the incentive to gather information to mount a defense and the opportunity to do so.

First, in response to the collision, the San Antonio Police Department conducted a crash investigation that went well above and beyond the investigation mandated by its internal policies and, moreover, did so while the facts were fresh and the conditions the same or substantially the same.[25] Although incident reports are required only from pursuing officers, more than thirty

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[19] *Univ. of Tex. at Austin v. Hayes*, 327 S.W.3d 113, 116 (Tex. 2010).

[20] *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004).

[21] *Id.*

[22] *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005).

[23] *Simons*, 140 S.W.3d at 348 ("There will, of course, be times when subjective awareness must be proved, if at all, by circumstantial evidence.").

[24] *Bentley v. Bunton*, 94 S.W.3d 561, 596 (Tex. 2002) (noting state of mind "must usually . . . be proved by circumstantial evidence"); *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 23 (Tex. 1994) (noting "the practical difficulty of producing direct evidence" of a party's mental state).

[25] *See City of Houston v. Torres*, 621 S.W.2d 588, 591 (Tex. 1981) ("The purpose of the 'notice of claim' requirement, as recognized by this Court, is to ensure a prompt reporting of claims to enable the municipality to investigate while facts are fresh and conditions remain substantially the same.").

officers completed reports following the crash. A third of those additional officers were called to the scene after the crash, solely to assist with traffic control. One report simply narrated, in its entirety: "Assisted redirecting traffic at 410 north and 35, cleared once I was no longer needed due to plenty of officers assisting with traffic." A fact-finder could reasonably infer that such an extensive investigation—well beyond what is required by departmental policies—was sufficient to meet the purpose of the notice provision, allowing the City to fully document the incident in anticipation of potential fault allegations.

Second, on a Texas Department of Transportation "Texas Peace Officer's Crash Report" form, "Fleeing or Evading Police" was identified as the *only* contributing factor to the crash. Notably, wrong-way driving was not listed as a factor in the crash, even though that was an available option on the form.[26] The allegation in this lawsuit that the police pursuit caused or contributed to the collision is consistent with the crash report's designation of police pursuit as a contributing factor.

Finally, according to a witness statement included in the investigative report, the collision occurred immediately after the police chase terminated at the highway ramp. Temporal proximity between the police officers' actions and the ensuing collision creates a reasonable inference that the City was aware of the police officers' active role in the injury-producing incident, whether they are ultimately determined to be at fault or not.

None of this is an acknowledgment of fault, but it is circumstantial evidence that the City understood the police officers' decision to pursue the fleeing vehicle towards the highway ramp

[26] The form provides multiple boxes and codes that allow an investigator to identify more than one contributing factor to a crash. One available code that was not used here is "Wrong Way."

was causally connected to the ensuing wreck, which is precisely what the Tenorios allege in this lawsuit. A fact issue exists concerning the City's "knowledge of . . . the governmental unit's alleged fault producing or contributing to the death [or] injury."[27]

The majority likens this case to *City of Dallas v. Carbajal*,[28] but the comparison collapses when the facts are carefully analyzed. In *Carbajal*, the plaintiff was injured when she drove onto an excavated road lacking properly placed barricades.[29] We rejected the plaintiff's argument that the responding police officer's report reflected actual notice of her claim under the Tort Claims Act.[30] The one-page police report in *Carbajal* was "at most an initial response to the accident,"[31] whereas here, the crash precipitated a thorough police inquiry with over one hundred pages of written statements and reports. The report in *Carbajal* did not attribute any contributing factors to the governmental defendant.[32] The crash report here, on the other hand, identified evading the police as the accident's sole contributing factor, which necessarily pinpoints two potentially culpable parties: the driver of the vehicle being pursued and the pursuing law enforcement officers. We have repeatedly emphasized that we found no actual notice in *Carbajal* because "'a private contractor or another governmental entity (such as the county or state) could have been

[27] *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995).

[28] 324 S.W.3d 537 (Tex. 2010).

[29] *Id.* at 538.

[30] *Id.* at 539.

[31] *Id.* at 537.

[32] *Id.* at 539.

responsible'" for the placement of barricades that might have prevented the accident.[33] In this case, there are no alternative actors or contributing or producing causes: the police-initiated pursuit was an evident factor in the collision and was expressly identified as a causal contributor; consequently, the City may have had knowledge of its fault "as ultimately alleged by the claimant."[34]

The Court frets that, without a narrow application of our precedent, "actual notice would exist every time a collision with injuries or property damage occurred when a driver was fleeing or evading police, regardless of the other facts."[35] *Muniz v. Cameron County*, ably distinguished by the court of appeals in this case, refutes that argument.[36] In *Muniz*, "[t]he Brownsville Police Department investigation *only* attributed responsibility for the accident to Moreno," who was driving under the influence of cocaine, marijuana, barbiturates, and amphetamines.[37] As *Muniz* illustrates, a police investigation may well determine that a driver's actions alone caused a crash, regardless of an ongoing chase. In those circumstances, where the chase itself is not an evident factor, no actual notice would be established under the standard we articulated in *Cathey* and *Simons*.

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[33] *Univ. of Tex. Sw. Med. Ctr. at Dallas v. Estate of Arancibia*, 324 S.W.3d 544, 550 (Tex. 2010) (quoting *Carbajal*, 324 S.W.3d at 539).

[34] *Tex. Dep't of Criminal Justice v. Simons*, 140 S.W.3d 338, 347 (Tex. 2003).

[35] *Ante* at 8-9.

[36] No. 13-10-00689-CV, 2012 WL 1656326, at *1 (Tex. App.—Corpus Christi May 10, 2012, pet. denied) (mem. op.).

[37] *Id.* at *2 (emphasis added).

In rejecting the City of San Antonio's jurisdictional plea, the lower courts followed our precedent in crediting circumstantial evidence of actual notice, just as other appellate courts have done. In one case, for example, a fact issue existed about actual notice based on evidence that the governmental defendant ordered a contractor to examine a door that fell on the plaintiff and to provide any needed service.[38] Another appellate court similarly found a fact issue regarding actual notice in a slip-and-fall case, citing evidence that the governmental defendant knew a fall occurred in the same location earlier the same day.[39] And in another case, the appellate court determined a fact issue existed based simply on a district official being informed that the plaintiff "tripped over a broken and crumbling area of pavement" that the district controlled.[40]

When we interpreted section 101.101 in *Cathey*, we effectuated the balance the notice requirement strikes between providing injured plaintiffs a remedy while allowing "governmental units to gather information necessary to guard against unfounded claims, settle claims, and prepare for trial."[41] We eschewed a construction of the statute that would tilt the scales to the government's detriment because doing so would "eviscerate the purpose of the statute."[42] Swinging the pendulum too far the other way, as the Court does today, is the same evil packaged differently.

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[38] *City of El Paso v. Viel*, 523 S.W.3d 876, 888-89 (Tex. App.—El Paso 2017, no pet.).

[39] *DFW Int'l Airport Bd. v. Boykin*, No. 02-13-00260-CV, 2014 WL 345642, at *5-6 (Tex. App.—Fort Worth Jan. 30, 2014, pet. denied) (mem. op.).

[40] *Sullivan v. Aransas Cty. Navigation Dist.*, No. 13-10-00135-CV, 2011 WL 61846, at *6 (Tex. App.—Corpus Christi Jan. 6, 2011, no pet.) (mem. op.).

[41] *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995); *accord Univ. of Tex. Sw. Med. Ctr. at Dallas v. Estate of Arancibia*, 324 S.W.3d 544, 550 (Tex. 2010); *Tex. Dep't of Criminal Justice v. Simons*, 140 S.W.3d 338, 348 (Tex. 2004).

[42] 900 S.W.2d at 341.

We can give effect to legislative intent without revisiting *Cathey*, as JUSTICE BOYD suggests,[43] so long as our precedent is applied according to its rationale and reason, which remain sound. Departing from precedent is an extreme option that should be employed sparingly, and the Court need not do so here to conclude the evidence in this case presents a fact issue under *Cathey*'s framework. The purpose of the notice requirement is to allow adequate, timely investigations.[44] The City of San Antonio Police Department had the incentive and opportunity to conduct a timely and thorough investigation; more notice "'would do nothing to further the purpose of the statute.'"[45] Rather than settling with the equilibrium that meets the statute's language, today's ruling moves dangerously near a construction of the statute that requires a "confession of fault" for actual notice, an approach the Court has already rejected.[46]

Because an ever narrower construction of the Tort Claims Act's actual-notice exception is discordant with legislative intent plainly expressed in the statute and our precedent construing the statute, I respectfully dissent.

Eva M. Guzman
Justice

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[43] *See post* at 6-7 (Boyd, J., dissenting).

[44] *Arancibia*, 324 S.W.3d at 550.

[45] *Id.* (quoting *Simons*, 140 S.W.3d at 347).

[46] *Id.*