



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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November 18, 1999

<u>SPECIAL MASTER'S FINAL REPORT</u>	<u>DATE</u>	<u>COMM</u>	<u>ACTION</u>
The Honorable Toni Jennings	11/19/99	SM	Fav/1 amend
President, The Florida Senate	01/19/00	CJ	Fav/1 amend
Suite 409, The Capitol	02/09/00	FR	Favorable
Tallahassee, Florida 32399-1100			

Re: SB 40 - Senator Richard Mitchell
Relief of Jason and Donna Crosby

THIS IS A CONSENT EXCESS JUDGMENT CLAIM FOR \$200,000 ENTERED PURSUANT TO A SETTLEMENT AGREEMENT BETWEEN THE CITY OF TALLAHASSEE AND THE CLAIMANTS, JASON CROSBY AND HIS MOTHER, DONNA CROSBY, FOR DAMAGES SUSTAINED BY JASON CROSBY WHEN HIS CAR WAS RAMMED BY ANOTHER CAR ATTEMPTING TO ELUDE CITY OF TALLAHASSEE POLICE OFFICERS. THIS BILL DIRECTS THE CITY OF TALLAHASSEE TO PAY THE CLAIM FROM ITS OWN FUNDS.

FINDINGS OF FACT:

At approximately 1:49 a.m., on the morning of January 16, 1996, Tallahassee Police Officers Robert Hamby and Jarred Wiseman attempted to initiate a traffic stop on a white Chevy Camaro driven by David Sykes. Officer Wiseman testified that he saw Mr. Sykes wearing a white hockey mask while operating the vehicle. The traffic stop was premised on fact that the wearing of a mask is a common method used to conceal one's identity when engaged in a crime. It was the officers' belief that Mr. Sykes had just committed, or was about to commit, a forcible felony, such as a robbery. Unresolved contradictory testimony by Mr. Sykes indicated that he was not wearing the mask. The mask, according to Mr. Sykes, was only a decoration hanging from the car's rear view mirror.

As Officer Hamby initiated the traffic stop on West Tennessee Street, Mr. Sykes refused to yield and fled at speeds up to 60 mph. Officer Hamby pursued the vehicle with both his light bar and siren on. Officer Wiseman activated his light bar and siren and followed as a back-up unit. During the course of the pursuit, the vehicles traveled west on Tennessee Street, south on Ocala Street, and east on Pensacola Street. Traffic was sparse or nonexistent. The weather was clear. The pursuit was terminated by Officer Hamby's supervisor, Sgt. Maurice Laws, via radio just east of the Florida State University football stadium as the officers were pursuing Mr. Sykes the wrong way down a one-way street.

The Tallahassee Police Department's pursuit policy provided, in part, that an officer may initiate a pursuit only upon the reasonable belief that the driver or occupant of a vehicle has committed a felony involving violence or the threat of violence to the officer or another person. All other pursuits are prohibited. A pursuit may be canceled by the officer's sworn supervisor at any time. During pursuits, Tallahassee police officers may engage in emergency vehicle operations that allow them to, among other things, exceed the speed limit and disregard, within safety considerations, traffic signals and signs. Once a pursuit is canceled, an officer must again abide by all regulations governing direction or movement of traffic.

Sgt. Laws testified that he ordered Officer Hamby to terminate the pursuit because it was not justified based on the circumstances and because of his concerns for public safety. The following factors were considered by Sgt. Laws in making his determination to terminate the pursuit. The wearing of a mask, which was the offense for which Mr. Sykes was initially being stopped, is only a misdemeanor in Florida (s. 876.12, F.S.). No violent crimes or robberies had been reported which would support Mr. Sykes involvement in a violent felony. As a result of the search of the license tag number called in by Officer Hamby, the police had actually talked by telephone to the owner of the car. The police knew the owner's address and that David Sykes, the son of the owner, was authorized to drive the car.

Once Sgt. Laws terminated the pursuit, Officers Hamby and Wiseman turned off their light bars and sirens but continued to pursue Mr. Sykes through the downtown Capitol area, continuing east on Apalachee Parkway, north on Magnolia Drive and finally east on Mahan Drive. At the intersection of Mahan Drive and Capitol Circle Southeast, Mr. Sykes entered the intersection traveling east at a high rate of speed and rammed the car driven by Jason Crosby, the claimant. Mr. Crosby was traveling south and, at the time of the impact, was approximately three-quarters through the intersection. Jason Crosby received a closed head injury and pulmonary contusions. Officer Hamby was approximately $\frac{1}{2}$ to $\frac{3}{4}$ of a mile behind Mr. Sykes when the accident occurred. Officer Wiseman was approximately $\frac{1}{4}$ of a mile behind Officer Hamby.

There is conflicting testimony as to whether Mr. Sykes knew the police were pursuing him on Mahan Drive prior to the crash. The record does reflect, however, that Mr. Sykes, at approximately $\frac{1}{2}$ mile west of the intersection, looked back and saw one police car still following him. Mr. Sykes looked back at the police car a second time just before entering the intersection. Upon facing forward, Mr. Sykes was unable to avoid ramming the car driven by the claimant.

There is no evidence in the record to determine which driver had the right of way at the intersection at the time of the crash. The claimant does not remember the events immediately before or after the crash. Mr. Sykes and the police officers did not notice the traffic signal prior to the crash. The signal control box was destroyed in the crash preventing reconstruction of the signal timing at the time of the crash. There were no skid marks by either vehicle at the accident scene. Florida Department of Law Enforcement tests indicate that neither driver was under the influence of drugs or alcohol. A traffic investigator concluded that based on the nature of injuries Mr. Sykes received in the crash, he probably was not wearing the hockey mask at the time of the crash. The investigator could find no evidence to prove or disprove that Mr. Sykes was wearing the mask when first observed by Officer Wiseman prior to the pursuit.

Officer Hamby, by his own admission, stated that he exceeded the posted speed limits while continuing to pursue David Sykes after the pursuit was terminated. Officer Wiseman denied exceeding the posted speed limits. An internal police department speed study indicated that the officers averaged between 60-65 mph from the time the pursuit was officially terminated until the time of the accident. It took Officer Hamby approximately 4 minutes and 42 seconds to travel the measured 5.16 miles. The posted speed in the areas traveled ranged from 25 to 45 mph. In conducting the speed study, the average time to transverse the same route while abiding by all traffic regulations was 9 minutes and 20 seconds. Officers conducting the speed study were unable to travel the route without stopping for at least one red light.

Officer Hamby was ultimately disciplined by the department for exceeding posted speed limits, disregarding regulations governing the direction of traffic, leaving his assigned patrol area without supervisory permission, and insubordination for following Mr. Sykes after the pursuit was terminated.

Officer Wiseman was ultimately disciplined by the department for exceeding posted speed limits, disregarding regulations governing the direction of traffic, leaving his assigned patrol area without supervisory permission, and giving falsified information regarding speeds at which he had operated his vehicle.

STANDARDS FOR
FINDINGS OF FACT:

Findings of fact must be supported by a preponderance of the evidence. The Special Master may collect, consider, and include in the record any reasonably believable information that the Special Master finds to be relevant or persuasive. At the Special Master's level, each claimant has the burden of proof on each element required to show negligence. Those elements being duty, breach, proximate cause and damages. However, once the Special Master's report is filed, a claim bill is handled in the same manner as any other legislative measure. Objections to the Special Master's findings, conclusions, and recommendations can be addressed by the parties directly to the members of the Senate, either in committee or individually.

CLAIMANT'S MAIN ARGUMENT:

It is undisputed that Mr. Crosby, the claimant, was without fault. The police officers pursuing Mr. Sykes were directed by a superior officer to terminate the pursuit. The officers did, in fact, continue the pursuit in violation of a direct order and contrary to department policy. The officers continued to pursue Mr. Sykes at speeds between 60-65 mph without their light bars or sirens activated. As a result, the city did owe a duty to the claimant which was breached by the negligent pursuit. Mr. Sykes' actions of turning around just before entering the intersection of Mahan Drive and Capitol Circle Southeast to see if the officers were still following him was a proximate cause of the claimant's injuries.

CITY'S MAIN ARGUMENT:

It is undisputed that Mr. Sykes caused the accident in question and Mr. Crosby was without fault. Clearly, but for the fact that Mr. Sykes fled from the police this incident would not have occurred. On the other hand, the city, by and through its police officers, was likewise at fault because its officers continued to follow Mr. Sykes after they were advised to terminate their pursuit. Based upon the facts in this case, there is evidence to support the conclusion that the city had a duty to Mr. Crosby, breached that duty, and that breach was a contributing cause to the claimant's injuries.

CONCLUSIONS OF LAW:

At the Special Master's level, every claim bill must be measured anew against the four standard elements of negligence. Senate rules specifically state that stipulations entered into by the parties are not binding on the Special Master, the Senate or its committees. Therefore, even though an agreed to settlement exists in this matter as it stands before the courts, all four elements must still be found in order for the Special Master to recommend the claim bill favorably.

The Florida Supreme Court in City of Pinellas Park v. Brown, 604 So.2d 1222 (Fla. 1992) discussed the duty that a city owes to innocent motorists during high speed pursuits. Police in Pinellas Park engaged in a high speed 20-car caravan pursuit for 25 miles through areas that had normal urban traffic. Speeds reached up to 120 mph. The violator was being pursued for running a red light. During the pursuit, the violator illegally entered an

intersection and struck another vehicle at 90 mph, killing two adult sisters. The Court, in citing to Kaisner v. Kolb, 543 So.2d 732 (Fla. 1989), recognized that if a defendant's conduct creates a foreseeable zone of risk, that defendant has a duty either to lessen the risk or to protect others from the harm of that risk. The Court in Pinellas Park found that the police did have a duty to innocent motorists since high speed pursuits were likely to result in injury to a foreseeable victim. Discontinuance of the pursuit would have likely diminished the risk. The Court went on to note that in high speed pursuits, the police themselves create some substantial portion of the risk of harm to others, notwithstanding the negligence on the part of the person being pursued.

The Pinellas Park Court also makes clear that the degree of duty owed innocent motorists and whether negligence is involved in high speed pursuits depends on a balancing of many factors. Such factors include: the nature of the offense, whether the person being pursued is violent and likely to harm others, and the ability to identify the person from a license plate search and determine his or her location for arrest at a later time. The City of Pinellas Park had maintained a written pursuit policy at that time which included these, among other, factors that were to be applied in determining whether a high speed pursuit was appropriate.

In 1997, the First District Court of Appeal in Porter v. State, Department of Agriculture, 689 So.2d 1152 (Fla. 1997), took the opportunity to interpret the Pinellas Park decision. In Porter two Department of Agricultural officers initiated a pursuit of two escaped youths who had stolen a van. The pursuit reached 100 mph, forced private vehicles off the road, and included county deputies attempting a rolling roadblock. The two officers that initiated the pursuit withdrew from the chase 35 miles prior to the collision which resulted in injuries to innocent drivers and passengers. The Court found that these two officers could not be held liable because they had discontinued the chase prior to the time the plaintiffs were injured. The department, therefore, had no legal duty of care to the plaintiffs. The act of engaging in a high speed chase is not, by itself, a basis to impose

liability. Liability of a law enforcement agency for injuries caused during a high speed chase depends on the manner in which the chase was conducted.

Upon review of the law and the evidence, the Special Master concludes that the officers did, in fact, continue the pursuit of Mr. Sykes contrary to orders that the pursuit be terminated. Such continued pursuit did create a foreseeable zone of risk which placed a duty upon the officers and the City of Tallahassee. As such, the officers were under a duty to use reasonable means in light of the nature of the alleged offense and the threats to safety involved. Based on the evidence in the record related to the continued pursuit, the Special Master also concludes that this duty was breached.

The Florida Supreme Court in McCain v. Florida Power Corp., 593 So.2d 500 (Fla. 1992), addressed the proximate causation element of negligence. This element relates to whether, and to what extent, an individual's conduct foreseeably and substantially caused the injury that actually occurred. It is immaterial that the precise manner in which the injury occurred could not be foreseen. Under this foreseeability test for proximate cause, there can be no recovery for a resulting injury which was not a reasonably foreseeable consequence of the defendant's negligence. Unless the specific injury is an improbable freak result, the issue of proximate cause, in the judicial system, is a question for the trier of fact. That question being, does foresight support the conclusion that Mr. Sykes' reckless driving conduct was the result of being chased by the police, and would that reckless conduct had ceased if the police had terminated the pursuit when ordered to do so?

LIABILITY:

Upon review of the law and the evidence, the Special Master finds that the officers did, in fact, continue the pursuit of Mr. Sykes contrary to orders that the pursuit be terminated. Such continued pursuit did create a foreseeable zone of risk which placed a duty upon the officers and the City of Tallahassee. The ensuing negligent pursuit breached that duty. That breach was a proximate cause of the injuries suffered by the claimant.

DAMAGES:

Jason Crosby suffered a closed head injury in the crash. This injury includes a traumatic subarachnoid hemorrhage and intraventricular hemorrhage. There is some evidence of a contusion to the right temporal area and temporary right hemiparesis. Mr. Crosby also sustained pulmonary contusions. Mr. Crosby was in a coma or semi-conscious state for a period of 3 weeks while hospitalized following the accident. The claimant was 20 years old at the time of the accident.

Tests conducted during Mr. Crosby's post-accident recovery demonstrate the following conditions, some of which are of a permanent nature. Mr. Crosby has a cognitive defect, especially in terms of auditory memory. The speed at which he thinks and processes information is slowed. As a result, it is very difficult for the claimant to benefit from returning to school. Likewise, it will be very difficult for him to pursue the same full time career opportunities available to him prior to the accident. He has completed a computer training program provided by the Easter Seals Foundation. Mr. Crosby also experiences mild speech disarticulation. Other effects from the accident include poor balance, dizziness, right sided weakness and loss of dexterity. He has experienced a loss of sensation to temperature. From a psychological standpoint, the claimant is more withdrawn and reclusive. Although Mr. Crosby continues to improve in his cognitive and emotional status, he still manifests difficulty in attention, concentration, and memory functioning.

Mr. Crosby's medical expenses totaled \$129,681. Future medical bills are estimated at \$250,000. Future estimated medical *and* economical expenses range from \$500,000 to \$800,000 without reduction to present value.

Mr. Crosby has received from Mr. Sykes' insurance carrier the sum of \$25,000 which is the limits of Mr. Sykes coverage. Mr. Crosby has also received from his own insurance carrier \$10,000 in personal injury protection coverage and \$100,000 in under insured coverage. The claimant receives \$520 in monthly Social Security disability benefits. Mr. Crosby lives with his parents.

Ms. Crosby's specific damages are uncalculated. Relief is being sought based on the living facilities and daily care she is providing the claimant and will continue to provide in the future.

The parties have agreed to a settlement by which the City of Tallahassee will provide Mr. Crosby a structured settlement with monthly lifetime care and income. The settlement includes a 3 percent cost of living adjustment. Pending the outcome of this claim bill, the city has established a separate interest bearing account containing \$200,000 which represents the sovereign immunity limits under Florida law. The authority to expend an additional \$200,000 is the basis of this claim bill. Upon passage of this bill, the city will pay the Crosby's \$100,000 in cash which will go to the Crosby's attorney for his costs and fees. The remaining \$300,000 will be used to purchase an annuity for Jason Crosby. The annuity will provide funds to pay Mr. Crosby's future medical expenses and provide him with additional income for the rest of his life.

ATTORNEY'S FEES:

Section 768.28(8), F.S., limits claimant's attorney's fees to 25 percent of claimant's total recovery by way of any judgment or settlement obtained pursuant to the waiver of sovereign immunity. Claimant's attorney has acknowledged this limitation and has verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorney's fees.

RECOMMENDATIONS:

The bill, as filed, alleges facts not in the record and incapable of being proved. The bill states that David Sykes ran a red light, hitting the claimant. There is no evidence in the record to determine which driver had the right of way upon entering the intersection at the time of the crash. The claimant does not remember the events immediately before or after the crash. Mr. Sykes and the police officers did not notice the traffic signal prior to the crash. The signal control box was destroyed in the crash preventing reconstruction of the signal timing at the time of the crash. The Special Master recommends that the attached amendment deleting the unsupported facts be offered as a conforming amendment.

SPECIAL MASTER'S FINAL REPORT--SB 40

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Accordingly, I recommend that Senate Bill 44 be reported
FAVORABLY, AS AMENDED.

Respectfully submitted,

Greg Krasovsky
Senate Special Master

cc: Senator Richard Mitchell
Faye Blanton, Secretary of the Senate
Tom Tedcastle, House Special Master