

STORAGE NAME: h0563.cla

DATE: March 8, 2002

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SPECIAL MASTER'S FINAL REPORT

The Honorable Tom Feeney
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 563 - Representative Representative Smith
Relief of William and Anne Hennelly

FINDING OF FACT:

On a late Saturday morning of February 17, 1996, William and Anne Hennelly (visiting from out-of-state) were passengers in a camper van owned and operated by long-time friends. The van was heading west on State Road A1A near the intersection with Old Dixie Highway in Ft. Pierce, St. Lucie County. At the same time, the St. Lucie County Sheriff's Office had established a stationary radar speed zone on Old Dixie Highway near Chamberlain Boulevard in Fort Pierce. Around 10:50 am, a vehicle driven by James Parker, age 18, was clocked at 58 miles per hour in a 35 mile per hour zone.

Mr. Parker initially responded to the deputies working the radar zone, slowed and began to pull off the roadway. Suddenly, Mr. Parker accelerated rapidly and proceeded south on Old Dixie Highway. Deputy Evans got into his marked patrol vehicle and began to follow the Parker vehicle. Speeding at a high velocity with the deputy sheriff in pursuit, the traffic offender ultimately ran through a red light into the intersection of Old Dixie Highway and St. Road A1A. At a speed of 60 mph, the traffic offender's vehicle broadsided the van in which Mr. and Mrs. Hennelly were passengers. As a result of the collision both vehicles spun out of control and caught fire.

The collision killed one occupant (the driver's spouse) and seriously injured the driver and the Hennellys. The Hennellys sustained severe burns, prolonged comas and suffered numerous immediate, permanent, and severe injuries to the head, face, and body. The entire pursuit lasted approximately 48 seconds from the time of first communication with the dispatcher until the collision. The pursuit spanned 1.4 miles through a mixed commercial and residential area.

Mr. Hennelly was 69 years old at the time of the incident and

father of two adult children. The record reflects that he was an active and very well-educated person (masters in art education) involved in everything from handling all the financial duties of the home to working on his boat to frequent solo-piloting a single-engine plane. As a result of receiving debilitating injuries in the accident, including a severe closed head injury, Mr. Hennelly can only perform very menial tasks and is heavily reliant upon his spouse for daily supervision of his living activities. Mr. Hennelly suffers severe permanent cognitive, behavioral and emotional impairment. Prognosis for improvement is not favorable and ultimately, if Mrs. Hennelly is no longer able to care for him, Mr. Hennelly will have to be placed in a long-term care facility.

Mrs. Hennelly was a 54-year old retired teacher at the time of the incident. She also suffered numerous injuries including traumatic brain injury producing a coma. She similarly experienced cognitive, emotional and behavioral deficits consistent with the brain damage. Unlike her spouse, Mrs. Hennelly underwent a significant amount of successful rehabilitation but continues to experience emotional deficits, including difficulty in coping with anxiety, depression and the taxing responsibility of caring for her spouse. The Hennellys' relationship resembles that of a child to a parent rather than a man to a woman on an emotional, intellectual, and physical basis. The graphic details regarding the "undeniably horrific" injuries (as the parties admitted) need not be further laid out in this report.

PROCEDURAL SUMMARY:

I
In April 1997, the Hennellys filed suit against a deputy sheriff of the St. Lucie County Sheriff's Office for the negligent causation of the vehicular collision between the fleeing traffic offender and the Hennellys' passenger van. In May 1998, the St. Lucie County Sheriff's Office in conjunction with the Florida Sheriffs' Self-Insurance Fund settled litigation filed on behalf of the driver of the vehicle in which an occupant (the driver's husband) had died for the amount of \$225,000. Several unsuccessful settlement offers and demands were made, including a demand by the claimants for \$2.5 million (inclusive of costs and attorneys' fees). A 10-day trial took place, beginning April 10, 2000. The St. Lucie County Sheriff's Office filed two motions for directed verdicts, one at the close of plaintiffs' case and one at the close of the defendants' case. The motions were denied. On April 24, 2000, the jury returned with a verdict of liability. The jury apportioned 50 percent negligence against the traffic offender, 50 percent against the deputy and 0 percent against the driver of the van in which the Hennellys were passengers. The jury awarded past and future damages as follows:

For Anne Hennelly, \$226,735 for medical expenses, \$871,523 for loss of services and consortium, and \$531,995 for pain and suffering. For William Hennelly, \$1,946,805 for medical expenses, \$435,761 for loss of

services and consortium, and \$871,523 for pain and suffering. Total damages for Anne Hennelly: \$1,630,253; total damages for William Hennelly: \$3,254,089.

A motion to set aside the verdict or alternatively, to grant a new trial to the deputy was subsequently denied. An amended final judgment was entered on June 5, 2000 for \$3,508,941, representing the apportioned percentage of liability against the deputy of St. Lucie County Sheriff's Office. On June 19, 2000, the deputy appealed to the Fourth District Court of Appeal and the Hennellys cross-appealed on June 26, 2000. A legislative claim bill was filed in August 2000, but the claim was not yet ripe for legislative review due to the pending appeal. On August 1, 2001, the appellate court issued an opinion upholding the final judgment based on the jury verdict against the deputy. See *Knowles v. Hennelly*, 793 So.2d 1063 (Fla. 4th DCA 2001). On September 26, 2001, the deputy's motion for certification of the issue as a question of great public importance was denied. The Hennellys recently filed a notice of withdrawal with prejudice for a claim for attorney fees in order to proceed with the legislative claim.

CONCLUSION OF LAW:

Claimant's Position

- The St. Lucie County Sheriff's Office is liable due to the breach of the duty of reasonable care by Deputy Evans when he pursued the traffic offender in a high-speed chase that was negligently conducted, exceeded proper and rational bounds in light of the foreseeable risk of injury, and caused the collision resulting in the injuries to the claimants.
- The jury awarded damages based on the competent substantial evidence and testimony and the final judgment was upheld on appeal.

Respondent's Position

- The St. Lucie County Sheriff Office (and the Florida Sheriffs' Self-Insurance Fund) did and do dispute and challenge vigorously the assignment of liability. The Respondent's primary position is based on the following arguments:
- The St. Lucie County Sheriff Office is not liable based on the same legal arguments made at the trial court and appellate court that the deputy did not operate his vehicle in a negligent manner or exceed proper and rational bounds but rather conducted the pursuit in accordance with the St. Lucie Sheriff's Office Motor Vehicle Pursuit policy and Florida law as authorized under §316.072, F.S.
- St. Lucie County Sheriff's Office should not be found liable for the excess claim on the pursuit for public policy reasons: impact on law enforcement

discretionary enforcement decisions which may ultimately include banning such pursuits and impact on law enforcement's ability to secure insurance coverage such that general revenues may have to be tapped to pay these types of claims.

- This claim bill is not ripe for legislative review on several grounds including that the claim bill process was not conducted in accordance with Senate Rules and that the claimants have not exhausted their legal remedies including recovery of attorney's fees.

Conclusion

There is no evidence that Deputy Evans either operated his vehicle in a negligent manner in attempting to stop Parker or that Deputy Evans caused the collision between Mr. Parker and the Claimants. However, the Sheriff did offer expert evidence in the form of opinion testimony from Lou Reiter that under Florida Law this was not a pursuit, but rather a "catch-up" and attempted pursuit. In Mr. Reiter expert opinion, Deputy Evans did not act negligently and did not exceed proper and rational bounds. In addition, Mr. Reiter testified that Deputy Evans did not violate the St. Lucie County Sheriffs Department Motor Vehicle Pursuit policy.

The principle evidence that the Claimants relied upon to establish liability is Mr. Baughman's testimony regarding the "momentum effect." According to Mr. Baughman, the effect occurs as a fleeing criminal speeds up, causing the deputy to speed up, which in turn pushes the suspect to go faster. This theory or effect attributes responsibility to the law enforcement officer for the acts of a fleeing suspect, which is contrary to Florida Law because there are no laws that require a law enforcement officer to give a fleeing suspect "breathing room." Liability predicated on the momentum effect is equivalent to saying that the Sheriff is responsible for Parker's failure to stop, exceed the speed limit, and run the red light.

Another important consideration are the facts of this case in comparison to cases where pursuit liability was found. When the facts of the *City of Miami v. Horne*, 198 So.2d 10 (Fla. 1967) and *City of Pinellas Park v. Brown*, 604 So.2d 1222 (Fla. 1992) decisions are compared to the facts of the present case, it is clear that in every respect the manner in which those officers conducted their pursuit was far more hazardous than the Deputy Evans. In *Horne*, the deputies were traveling 95 mph in a 30 mph zone, 65 mph over the speed limit. In *Pinellas Park*, the deputies were traveling 80 and 120 mph in congested traffic areas. In this case, Deputy Evans was traveling 60 and 85 mph in a 35 mph speed zone, 25 to 50 mph over the speed limit.

There were two law enforcement vehicles involved in *Horne*, 14-20 law enforcement vehicles involved in *Pinellas Park*, and only one law enforcement vehicle involved in this case.

The length of the pursuit in *Pinellas Park* was 25 miles versus the length of the pursuit in this case was 1.4 miles. The length of the pursuit in the *Horne* case is unknown.

In the *Horne* case, the deputy closest to the offender was approximately one block away from the pursued. In this case, Deputy Evans was from as far away as three tenths of a mile to as close as 350 feet behind Parker. It is unknown how far away the law enforcement vehicles were from the pursued in *Pinellas Park*.

In *Horne*, the pursued disregarded several stop signs and red lights prior to the crash. In *Pinellas Park*, the pursuit traveled through 34 stop signs and traffic lights. In this case, there were no stop signs or traffic lights during the course of the pursuit with the exception of the light on AIA where the crash occurred.

In *Horne*, the pursuit traveled through a well-populated area. In *Pinellas Park*, the pursuit commenced in a suburban area and continued into an urban area that was densely populated with urban traffic. In this case, the population density was sparse and the areas were undeveloped or semi-developed neighborhoods consisting of mixed residential and industrial buildings.

In *Pinellas Park*, it is clear that the pursuit traveled through at least 34 intersections based upon the number of traffic signals. In *Horne*, the pursuit traveled through several intersections. In this case, the course traveled by Deputy Evans was intersected by only five streets. It should be noted that none of these streets faced traffic signals.

In *Pinellas Park*, the pursuit traveled through heavy urban traffic. In *Horne*, it is unknown how many cars were on the road at the time. In this case, there was not one single car traveling in either the opposite or same direction on Old Dixie Highway during the pursuit.

In all three cases, the deputies engaged their lights and sirens. In this case, the siren of Deputy Evans was heard by nearly every witness at the intersection, including Mr. Gibbons, Mr. Jenson, Mr. Parker, Mr. Young and Mr. Hardin.

Although the offense committed by the pursued is irrelevant for purposes of evaluating the manner in which the pursuit was conducted for purposes of civil liability, the facts of this case are analogous to those in *Horne*. In *Horne*, the pursued was stopped for speeding in a 30 mph zone. The pursued stopped and exited his vehicle, and then ran back to his vehicle and fled because he had no driver's license. In *Pinellas Park*, the offender ran a red light. In this case, Parker was stopped for speeding (58 mph in a 35 mph zone), he pulled his car to the edge of the road, came to a near stop, and then fled because he said he had no driver's license. The time duration of the pursuits in *Horne* and *Pinellas Park* are unknown. The duration

of the pursuit in this case is only 48 seconds.

The mechanism of the crash of these cases was also similar. In *Horne*, the pursued ran through an intersection and collided with the plaintiffs vehicle causing her immediate death. In *Pinellas Park*, the pursued ran through an intersection, collided with the Horchler vehicle, and caused their deaths. In this case, Parker ran a red light and struck the vehicle in which the Claimants were passengers killing one occupant and seriously injuring the Claimants.

It should be noted that in *Pinellas Park*, there was a deputy at the intersection next to the Brown sisters who was aware that the pursued was driving recklessly and approaching the intersection at the time the Brown sisters entered the intersection. Rather than warning the Brown sisters of the upcoming danger, the deputy turned onto the roadway in an effort to join the caravan instead of protecting the Brown sisters. *Brown v. City of Pinellas Park*, 557 So. 2d 161 (Fla. 2d DCA 1990). There are no such similar facts in this case.

Because settlements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, settlement agreements between the parties to a claim bill are not binding on the Legislature or its committees, or on the Special Master assigned to the case by the Speaker of the House. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect.

ATTORNEY'S FEES:

The claimants' attorney has submitted an affidavit that the attorney fees will be, and have been, limited to the statutorily prescribed amount of 25 percent in accordance with §768.28, F.S.

RECOMMENDATIONS:

Based on the review of the record, the claim bill hearing, and the supplemental documentation, I find that the St. Lucie County Sheriff's Office is not liable. Based on the foregoing, I recommend that HB 563 be reported UNFAVORABLY.

Subsequent to the hearing the parties agreed to settle this claims bill for \$1,250,000. The responsibility for payment is divided between the Florida Sheriffs' Self-Insurance Fund (\$1,000,000) and St. Lucie County (\$250,000).

Respectfully submitted,

Eric S. Haug
House Special Master

Stephanie Birtman
Staff Director

cc: Representative Chris Smith
Senator Bill Posey
Maria Matthews, Senate Special Master
House Claims Committee