



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

402 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
4/07/09	SM	Fav/1 amendment
4/15/09	CJ	Fav/CS

April 7, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 40 (2009)** – Senator Ken Pruitt
HB 827 (2009) – Representative Ralph Poppell
Relief of Angela Isham

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,235,219.25 BASED ON A JURY AWARD FOR ANGELA ISHAM AND THE ESTATE OF HER HUSBAND, DAVID ISHAM, AGAINST THE CITY OF FT. LAUDERDALE TO COMPENSATE CLAIMANTS FOR THE DEATH OF DAVID ISHAM IN A MOTOR VEHICLE CRASH THAT OCCURRED IN A POLICE PURSUIT.

FINDINGS OF FACT:

In the late afternoon of November 15, 2001, three Ft. Lauderdale narcotic detectives were patrolling an area of the City where drug transactions frequently occur. The detectives were in an unmarked car driven by Detective Carl Hannold. They were wearing black t-shirts with the word "POLICE" printed in large letters across the front. Although the detectives were in an unmarked vehicle, many people in the neighborhood saw the vehicle frequently and knew it was a police car.

The detectives observed a parked BMW with several persons standing around it. When the driver of the BMW saw the police vehicle, he immediately sped off with tires squealing. No drug related activity was seen by the detectives.

The detectives turned around to follow the BMW. The driver of the BMW took evasive maneuvers on the neighborhood streets and the detectives lost sight of the BMW for several minutes. The detectives circled back and spotted the BMW again. Detective Hannold pulled behind the BMW, which made a right turn at the next intersection without stopping at the stop sign. Detective Hannold followed. The detectives got behind the BMW and turned on their blue light inside the police car. The BMW accelerated away and ran the next stop sign at the intersection with a busy four-lane road. The BMW collided with a pickup truck driven by 42-year-old David Isham. Mr. Isham died at the scene from his injuries.

The driver of the BMW was identified as Jimmie Jean Charles, 20 years old. Charles was injured in the collision and was hospitalized for a short time. The BMW he was driving had been stolen. Charles was tried and convicted of vehicular homicide. He was sentenced to 15 years in prison.

The central dispute in this case was whether Detective Hannold was engaged in a pursuit of the BMW. The Ft. Lauderdale Police Department's policy manual defines a "pursuit" as:

The operation or use of a police vehicle so as to pursue and attempt to apprehend a subject operating a motor vehicle who willfully or knowingly uses either high speed, illegal, or evasive driving tactics in an effort to avoid detention, apprehension, or arrest.

The pursuit policy prohibits police pursuit in an unmarked car "except when it is necessary to apprehend an individual who has caused serious bodily harm or death to any person." Pursuit for a traffic violation would be contrary to the policy. The pursuit policy also states that "accountability cannot be circumvented by verbally disguising what is actually a pursuit by using terms such as monitoring, tracking, shadowing, or following."

The City's pursuit policy was revised in 1996 to make it more restrictive. Doing so was consistent with a trend for police departments throughout the United States in response to the injuries, deaths, and associated liability that often resulted from high speed police pursuits.

Detective Hannold said he was familiar with the pursuit policy and that he was not engaged in a pursuit. He claims that he followed the BMW because it is common for drug dealers to speed away and then “ditch” their cars and run away on foot. Hannold said that when the BMW sped away again when the blue light was activated in the unmarked police car, he did not accelerate to overtake the BMW, but, instead, came to a stop “to make it clear [to the driver of the BMW] that we were in no manner trying to catch up with him.” The City claims that Detective Hannold’s actions did not constitute a pursuit because he was not attempting to “apprehend” the BMW driver; he was merely attempting a traffic stop which he had the right to do when he saw the BMW driver run a stop sign.

The other two detectives supported Detective Hannold’s account. The three detectives prepared individual written reports just after the incident, but they got together beforehand and agreed on what to say in their reports. Critical portions of the reports have identical wording. In their trial depositions and testimony, Hannold and the other two detectives were evasive and, in some instances, their answers lacked credibility.

At the scene of the collision, there was a large gathering of people from the neighborhood and some of them were telling media representatives and police investigators that the police were pursuing the BMW in a high-speed chase. The Police Department obtained several witness statements. One teenage boy said the police car was a block behind the BMW when the collision occurred, but the other witnesses, including two adult women closer to the scene of the collision, testified that the unmarked car was close behind the BMW and that both cars were going fast. One woman said that when the police car turned on its blue light, the BMW immediately accelerated away and the police car also “gunned it.” The speed limit on the narrow residential street was 25 mph.

A traffic accident reconstruction conducted by the Police Department estimated that the BMW was traveling about 54 mph when it struck David Isham’s truck. At trial, the City presented another accident reconstruction that concluded the BMW was going between 61 and 70 mph. The City argues that, since Detective Hannold’s vehicle stopped

without leaving skid marks, it could not have been traveling as fast as the BMW, nor could it have been very close behind the BMW.

The Police Department admits that its own investigation of whether a pursuit had occurred, conducted at the time of the incident, was not thorough. The evidence suggests that there was no objective search for the truth by the Police Department.

Based on the extensive witness testimony and other evidence and argument presented by the parties, and taking into account the credibility of the witnesses, the more persuasive evidence supports the following essential facts:

- At their first encounter, Detective Hannold had reason to believe that the BMW driver was fleeing to evade apprehension.
- At their second encounter, when the BMW sped away through a stop sign, it should have been clear to Detective Hannold that the BMW driver was fleeing to evade apprehension.
- It was reasonable for the BMW driver to believe he was being pursued.
- The BMW driver sped through the next stop sign at the four-lane road to evade apprehension and it is unlikely that he would have done so if the police car had not continued to follow him.
- Whether Detective Hannold was driving as fast as the BMW and whether he was close behind the BMW in the two blocks leading to the intersection where the collision occurred are not controlling facts for determining whether Detective Hannold was engaged in a pursuit. The definition of a pursuit is not restricted to high speeds and small distances between the vehicles.
- Detective Hannold's move to follow the BMW after their first encounter might not have been a pursuit, but his action in continuing after the BMW when it sped away again at their second encounter was a pursuit.

- Even if, as Detective Hannold claims, he stopped his vehicle immediately and turned off the flashing light when the BMW sped away the last time, it only means that he broke off his pursuit of the BMW, but the pursuit had commenced earlier. Detective Hannold might have terminated the pursuit, but it was too late to avoid the tragedy that he had set in motion.

The action of Detective Hannold, the reaction of the BMW driver, and the crash that killed David Isham, fall squarely within the predictable scenarios that the City's pursuit policy was designed to avoid. Pursuing a "subject" who is trying to avoid apprehension can cause the subject to react by driving dangerously so as to cause injury or death. Therefore, a pursuit is prohibited if the only infraction known to the police officer is a traffic violation.

LITIGATION HISTORY:

In 2003, a lawsuit was filed in the circuit court for Broward County by Angela Isham, the wife of David Isham, on behalf of herself and the estate of David Isham, against the City of Ft. Lauderdale. Prior to trial, the parties stipulated that the economic damages were \$1,270,438.50. In February 2008, after a five-day trial, the jury found that the City and the BMW driver were each 50 percent liable for Mr. Isham's death. The jury also determined that Angela Isham's damages for the loss of her husband's companionship and for pain and suffering was \$600,000. Based upon the division of damages under the version of s. 768.81, F.S., then in effect, the City is liable for \$1,435,219.25. Of this amount, the City has already paid the sovereign immunity limit of \$200,000, leaving \$1,235,219.25, which is the amount sought through this claim bill.

CLAIMANTS' POSITION:

Officer Hannold was negligent in engaging in a pursuit of the BMW, which was contrary to Police Department policy. The City was also negligent for not properly training the detectives regarding the pursuit policy.

CITY OF FT. LAUDERDALE'S POSITION:

The City contests liability and objects to any payment to Claimant through a claim bill. The City contends that Detective Hannold never was engaged in a pursuit and it was the negligence of the BMW driver, alone, that was the proximate cause of Mr. Isham's death.

CONCLUSIONS OF LAW:

Detective Hannold had a duty to comply with the Police Department's policies regarding pursuits and to operate his vehicle at all times with consideration for the safety of pedestrians and other drivers. It is foreseeable that injuries to motorists and pedestrians can occur during a police pursuit. Detective Hannold breached his duty and the breach was the proximate cause of the death of David Isham. The City of Ft. Lauderdale is vicariously liable for the negligence of Detective Hannold.

The jury's allocation of 50 percent liability to the City is a reasonable allocation and should not be disturbed.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

Claimants' attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. They have not agreed to include their costs or the lobbyist's fee in the 25 percent figure. The bill requires that attorney's fees and lobbyist's fees not exceed 25 percent of the amount paid. The bill does not require costs to be included, as do most other claim bills. It is recommended that the bill be amended to require that the 25 percent figure include costs.

OTHER ISSUES:

The City currently has reserves in the amount of \$2,186,419.65 for Police Professional liability claims. Therefore, the City's operations would not be adversely affected if this claim bill is approved.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 40 (2009) be reported FAVORABLY, as amended.

- Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Ken Pruitt
Philip Twogood, Secretary of the Senate
Counsel of Record

CS by Criminal Justice on April 15, 2009:

- Corrects the outstanding judgment amount from \$1,435,219.25 to 1,235,219.25;
- Removes unnecessary language that describes the way in which the final judgment was calculated;
- Removes reference to post-verdict attorney's fees and costs; and
- Provides that costs and similar expenses are included in the 25% limitation for amounts may be paid for attorney and lobbyist fees.