

No. 2007-CA-01299

IN THE SUPREME COURT OF MISSISSIPPI

JERRY WAYNE DUCKWORTH

Appellant,

-v-

BART WALKER and
THE STATE OF ALABAMA,

Appellees.

On Appeal From the Circuit Court of Monroe County
(CV-04-062-AM)

BRIEF OF THE APPELLANT

ORAL ARGUMENT REQUESTED

Charles R. Waits, III
Attorney for Appellant
809 6th Avenue SE
Decatur, Alabama 35601
(256) 301-5454 (telephone)
(256) 350-1771 (facsimile)
MS Bar No. [REDACTED]

B. Kelly Hardwick
Attorney for Appellant
120 N. Congress Street, Suite 904
Jackson, MS 39201
(601) 974-6075 (telephone)
(601) 974-6076 (facsimile)
MS Bar No. [REDACTED]

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IN THE SUPREME COURT OF MISSISSIPPI

JERRY WAYNE DUCKWORTH

APPELLANT

v.

SUPREME COURT # 2007-CA-01299

DAVID CARROL WARREN, ET AL.

APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Jerry Wayne Duckworth
Plaintiff
2. Alabama State Trooper Bart Walker
Defendant
3. The State of Alabama
Defendant
4. Charles R. Waits, III
Attorney for Plaintiff
809 6th Avenue SE
Decatur, AL 35601
5. B. Kelly Hardwick,
Attorney for Plaintiff
Colom & Hardwick
120 N. Congress St.
Suite 904
Jackson, MS 39201
6. James C. King
Attorney for Plaintiff
King, Wiley & Williams
1824 3rd Avenue South

Jasper, AL 35501

7. Wilbur O. Colom
Attorney for Plaintiff
The Colom Law Firm
200 6th Street North
Suite 102
Columbus, MS 39701
8. James T. Metz
Attorney for Defendants
Purdie & Metz
402 Legacy Park
Suite B
Ridgeland, MS 39157

Charles R. Waits, III
Charles R. Waits, III
Attorney of Record for: Appellant/ Plaintiff,
Jerry Wayne Duckworth

B. Kelly Hardwick
B. Kelly Hardwick
Attorney of Record for: Appellant/ Plaintiff,
Jerry Wayne Duckworth

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STATEMENT OF THE ISSUES

1. Whether the trial court erred in granting Defendants', Alabama State Trooper Bart Walker and the State of Alabama's Motion for Reconsideration of their Original Summary Judgment Motion when: 1) an affidavit from Plaintiff's pursuit expert, Dennis Waller, was part of the record for the trial court to consider; 2) when Plaintiff's expert stated in his affidavit (and provided the grounds for his opinion) that Defendant Trooper Bart Walker was reckless in his pursuit of a suspect from Alabama into Mississippi; 3) and when the Mississippi Supreme Court, in City of Jackson v. Brister, 838 So. 2d 274 (Miss. 2003), addressed and gave substantial weight to the findings of police pursuit expert, Dennis Waller, regarding the recklessness of City of Jackson police officers while conducting a police pursuit.
2. Whether the trial court erred in granting Defendants Bart Walker and the State of Alabama's Motion for Reconsideration of their Original Summary Judgment Motion when there were genuine issues of material fact supported by the record regarding: 1) the length of the subject police pursuit; 2) characteristics of Vernon Road where the pursuit occurred; 3) the seriousness of the offense(s) for which Defendant Trooper Walker was pursuing the suspect; 4) whether Defendant Trooper Walker had available alternatives to apprehend the suspect other than pursuit; and 5) the existence of police pursuit policy which prohibited the subject pursuit under the circumstances.
3. Whether the trial court erred in granting Defendants' Bart Walker and the

State of Alabama's Motion for Reconsideration of their Original Summary Judgment Motion when: 1) the trial court had previously denied the Alabama Defendants' Original Motion for Summary Judgment and found that there were genuine issues of material fact which necessitated a trial, and 2) when there was no new evidence (which justified granting summary judgment) presented on the record between the time of the trial Court's denial of the Alabama Defendants' Motion for Summary Judgment and the time of the trial court's inexplicable grant of the Alabama Defendants' renewed Motion for Reconsideration of Their Original Summary Judgment Motion.

STATEMENT OF THE CASE

On February 12, 2004, Plaintiff, Jerry Wayne Duckworth, filed his original complaint in the Circuit Court of Monroe County, Mississippi seeking relief for damages he received as a result of a car collision and subsequent ambulance accident, both of which occurred on or about February 12, 2002. (Excerpts, pgs. 25-43; Record, pgs. 22-40)¹. Plaintiff sued various Defendants who are listed as follows: 1) David Carrol Warren; 2) Alabama State Trooper Bart Walker; 3) the State of Alabama; 4) ambulance driver Ray Stockman; and 5) Emergystat, Inc. (Excerpts, pg. 25; Record, pg. 22). Plaintiff brought suit against the above Defendants alleging that their recklessness and/or negligence caused Plaintiff's injuries and damages. (Excerpts, pgs. 25-43; Record, pgs. 22-40).

¹Where appropriate, references are made both to the Record Excerpts filed with Plaintiff/Appellant's Brief and to the Record itself. References to the Record Excerpts shall be designated "Excerpts, pg. ____". References to the Record shall be designated "Record, pg. ____". References to the Videotape, which is part of the Record, shall be designated "Videotape". References to the Court Reporters' Transcripts will be designated either "Court Reporter's Transcript (Kimberly Bounds) pg. ____" or "Court Reporter's Transcript (Melanie Owen) pg. ____".

On May 20, 2005, Defendants Bart Walker and the State of Alabama (hereafter also referred to collectively as "the Alabama Defendants") filed their Motion for Summary Judgment. (Excerpts, pgs. 44-67; Record, pgs. 83-125). On June 16, 2006, a hearing was conducted before the trial court on Defendants Bart Walker and the State of Alabama's Motion for Summary Judgment. (Court Reporter's Transcript (Kimberly Bounds) pgs. 1-31).

On October 30, 2006, the trial court denied the Alabama Defendants' Motion for Summary Judgment citing that there were genuine issues of material fact which had to be submitted to the trier of fact. (Excerpts, pgs. 19-24; Record, pgs. 462-467). On November 6, 2006, the trial court set the instant case for trial on July 16, 2007. (Excerpts, pgs. 68-69; Record, pgs. 472-473).

On June 15, 2007, the Alabama Defendants filed their Motion for Reconsideration of their Motion for Summary Judgment. (Excerpts, pgs. 70-83; Record, pgs. 662-675). On June 26, 2007, Plaintiff filed his Response to the Alabama Defendants' Motion for Reconsideration of Their Motion for Summary Judgment. (Record, pgs. 704-746). On July 2, 2007, a hearing was had before the trial court on the Alabama Defendants' Motion for Reconsideration of their Motion for Summary Judgment. (Court Reporter's Transcript (Melanie Owen) pgs. 72-119). On July 5, 2007, the trial court erroneously granted the Alabama Defendants' Motion for Reconsideration of their Motion for Summary Judgment. (Excerpts, pgs. 11-18; Record, pgs. 791-798). Finally, on July 26, 2007, Plaintiff filed his Notice of Appeal. (Excerpts, pgs. 84-92; Record, pgs. 801-809).

STATEMENT OF THE FACTS

On or about February 12, 2002, Defendant Alabama State Trooper Bart Walker initiated a vehicular pursuit of a suspect (David Carrol Warren) in Lamar County, Alabama. (Excerpts, pgs. 51-55; Record, pgs. 90-94). Defendant Trooper Walker initiated the pursuit because the suspect had a broken windshield, because passengers were not wearing their seatbelts, and because the suspect attempted to elude Defendant Walker. (Excerpts, pgs. 51-55; Record, pgs. 90-94). Defendant Trooper Walker pursued the suspect from Alabama into Monroe County, Mississippi on Vernon Road. (Excerpts, pgs. 51-55; Record, pgs. 90-94). After the pursuit traveled a considerable distance into Mississippi, the suspect's vehicle collided nearly head-on with Plaintiff's vehicle. (Excerpts, pgs. 51-55; Record, pgs. 90-94; Videotape). Plaintiff's vehicle was knocked off the road by the impact and Plaintiff was trapped inside his vehicle. (Excerpts, pg. 114; Videotape). Plaintiff received various broken bones, dislocations, lacerations and other injuries from the collision. (Excerpts, pgs. 28-29; Record, pgs. 25-26). Upon being freed from his vehicle, Plaintiff was loaded into an Emergystat, Inc. ambulance for medical transport. (Excerpts, pgs. 28-29; Record, pgs. 25-26). The ambulance then had a minor accident. (Excerpts, pgs. 28-29; Record, pgs. 25-26).

The above-mentioned police pursuit lasted six minutes and twenty-three seconds and covered nearly six and one-half miles. (Excerpt, pgs. 51-54; Videotape). Defendant Trooper Walker came upon the collision site seconds after the collision occurred. (Videotape). Defendant Trooper Walker was not able to witness the collision because it happened at a

curvy, hilly area on Vernon Road. (Excerpts, pg. 52; Record, pg. 91; Videotape). The stretch of Vernon Road in Mississippi where the subject pursuit occurred was poorly paved and the road surface was in a state of disrepair. (Excerpts, pgs. 102-104; Record, pgs. 234-236; Videotape). Upon entering Mississippi, Defendant Trooper Walker's video camera was shaken severely because of the condition of the road surface. (Videotape). Furthermore, on the stretch of Vernon Road where the pursuit occurred in Mississippi, there were several substantial curves and hills which made driving at increased speeds dangerous. (Excerpts, pgs. 95-101; Record, pgs. 452-458; Videotape). Also, there were many blind spots along the pursuit route, and Defendant Trooper Walker lost sight of the suspect briefly during various stages of the pursuit because of the blind spots on the road. (Videotape). During the pursuit, Defendant Trooper Walker was able to obtain the suspect's license plate number. (Excerpts, pg. 105; Record, pg. 334). Defendant Trooper Walker encountered nine cars other than the suspect's vehicle during the pursuit. (Videotape). At the time of the pursuit, State of Alabama pursuit policy was in place which prohibited Defendant Trooper Walker's pursuit of a suspect into Mississippi. (Excerpts, pgs. 57-59; Record, pgs. 96-98). Though Defendant Trooper Walker radioed to the appropriate authorities that he was entering Mississippi, Defendant Trooper Walker still violated State of Alabama pursuit policy because circumstances did not warrant that he cross state lines. (Excerpts, pgs. 51-59; Record, pgs. 90-98). Lastly, the speed limit on Vernon Road was forty-five (45) miles per hour and the instant pursuit's average speed was around sixty (60) mph. (Excerpts, pgs. 54, 117; Record, 93, 389). Furthermore, Defendant Trooper Walker did not maintain a safe following distance at all times during the pursuit. (Videotape).

SUMMARY OF THE ARGUMENT

For summary judgment to be granted, there can be no genuine issues of material fact. Johnson v. City of Cleveland, 846 So.2d 1031, 1034-1035 (Miss. 2003). In the instant case, the trial court granted the Alabama Defendants' Motion for Reconsideration of Their Summary Judgment Motion in the face of overwhelming evidence on the record which showed that there were genuine issues of material fact which necessitated a trial.

The affidavit of Plaintiff's police pursuit expert, Dennis Waller, was filed and made part of the record long before the trial court granted the Alabama Defendants' Motion for Reconsideration of Their Summary Judgment Motion. (Excerpts, pgs. 93-101; Record, pgs. 450-458). Dennis Waller gave his expert opinion that Defendant Alabama State Trooper Bart Walker was reckless in his pursuit of a suspect from Alabama into Mississippi for the offenses of a broken windshield and passengers not wearing their seatbelts. (Excerpts, pgs. 95-101; Record, pgs. 452-458).

Prior to submitting his opinion in the instant case, Dennis Waller was mentioned by the Mississippi Supreme Court in City of Jackson v. Brister, 838 So.2d at 279. The Mississippi Supreme Court addressed Waller's opinions and placed great importance on them in affirming a trial court's judgment finding that City of Jackson police officers had conducted a pursuit in reckless disregard for the safety of the public. Id. Since this Court favorably viewed Waller's opinions in *Brister*, it was error for the trial court to ignore Waller's opinions in the instant case and conclude that there were no genuine issues of material fact. Waller's opinion clearly shows that there were genuine issues of material fact

which should be submitted to a jury.

In deciding whether a police pursuit was accomplished in reckless disregard of the safety of the public, a Mississippi court must consider the following factors: 1) the length of the chase; 2) the type of neighborhood; 3) characteristics of the streets; 4) the presence of vehicular or pedestrian traffic; 5) weather conditions and visibility; 6) the 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 apprehension of the suspect besides pursuit; 9) the existence of police policy which prohibits pursuit under the circumstances; and 10) the rate of speed of the officer in comparison to the posted speed limit. Johnson v. City of Cleveland, 846 So.2d at 1039; City of Ellisville v. Richardson, 913 So.2d 973, 977 (Miss. 2005). If there are disputes as to any of the above factors, or if the factors are undisputed but susceptible to more than one interpretation, then a genuine issue of material fact exists and summary judgment must be denied. Johnson v. City of Cleveland, 846 So.2d at 1036 (quoting Canizaro v. Mobile Comms. Corp of Am., 655 So. 2d 25, 28 (Miss.1995)).

Though Plaintiff and the Alabama Defendants agree as to the length and duration of the subject pursuit, Plaintiff contends that a pursuit which covered more than six miles and lasted more than six minutes is too lengthy. (Excerpts, pgs. 97-101; Record, pgs. 454-458). Defendants contend otherwise. (Excerpts, pg. 71; Record, pg. 663). In addition, Plaintiff contends that the road conditions of Vernon Road were poor for conducting a police pursuit. (Videotape). Again, the Defendants disagree. (Excerpts, pg. 71; Record, pg. 663). The road conditions are shown by the police pursuit videotape taken by Defendant Trooper

Walker during the instant pursuit. (Videotape). The videotape of the pursuit clearly shows curves, hills and other road conditions on Vernon Road which made the pursuit very hazardous, particularly in light of offenses for which trooper pursued the suspect. (Videotape).

Defendant Trooper Walker pursued the suspect for a broken windshield and passengers not wearing their seatbelts. (Excerpts, pgs. 51-52; Record, pgs. 90-91). In addition, the Alabama Defendants also cite attempting to elude as a reason for the pursuit. (Excerpts, pgs. 52; Record, pg. 91). First of all, attempting to elude is an offense in every pursuit case. If the offense of attempting to elude is enough to justify a pursuit, then all pursuits would be proper. The Alabama Defendants state that a broken windshield and passengers not wearing their seatbelts are primary offenses and, thereby, serious offenses. (Excerpts, pgs. 51-52; Record, pgs. 90-91). That conclusion is ludicrous. The offenses of a broken windshield and passengers not wearing their seatbelts are not serious offenses which warranted Defendant Alabama State Trooper Bart Walker crossing into Mississippi and risking the lives of Mississippi drivers. (See, City of Jackson v. Brister, 838 So.2d at 280-281; City of Ellisville v. Richardson, 913 So.2d at 978-979. The Alabama Defendants' also contend that Defendant Trooper Walker did not know what other offenses the suspect might have committed. (Excerpts, pg 73; Record, pg.665). In granting the Alabama Defendants' Motion for Reconsideration of Their Summary Judgment Motion, the trial court relied heavily on the argument of unknown offenses committed by the suspect. (Excerpts, pgs. 16-17; Record, pgs. 796-797). The trial court erroneously relied on the argument of unknown offenses in ruling that there were no issues of fact with regard to the factor of the seriousness

of the offense for which the police are pursuing the suspect. In every pursuit case, it can always be argued that the suspect might have committed additional offenses which are unknown to the pursuing officer. If this argument were valid, then the factor of seriousness of the offense for which police are pursuing the suspect becomes a non-factor because it can always be argued that the suspect could be guilty of some unknown serious offense.

Defendant Trooper Walker obtained the license plate number of the suspect. (Excerpts, pg. 105; Record, pg.334). Plaintiff argues that such license plate number provided an available alternative to apprehend the suspect other than the pursuit. (Excerpts, pg. 100; Record, pg. 457). The Alabama Defendants contend otherwise. (Excerpts, pg. 73; Record pg. 665). Whether having a license plate number is enough to provide an alternative to pursuit is a fact issue. The Mississippi Supreme Court, in City of Jackson v. Brister, assigned importance to the fact that officers could have obtained a license plate number but did not. 838 So.2d at 280. Thus, Plaintiff reasonably concludes that because Defendant Trooper Walker obtained the suspect's license plate number, a material issue of fact exists as to whether having such license plate number provided an alternative to apprehend the suspect other than pursuit. .

Also, Plaintiff contends that Defendant Trooper Walker's pursuit into Mississippi violated State of Alabama pursuit policy. (Excerpt, pgs. 57-59; Record, pgs. 96-98). State of Alabama pursuit policy states that, "Normally, pursuits into another state should be avoided", and the policy also directs that state lines can be crossed only if circumstances warrant such a crossing. (Excerpts, pg. 58; Record, pg. 97). This language at least creates an issue of fact as to whether the offenses of a broken windshield and passengers failing to

wear seatbelts are circumstances which warranted Defendant Trooper Walker continuing his pursuit of the suspect into Mississippi outside of his jurisdiction.

Originally, the trial court denied the Alabama Defendants' Motion for Summary Judgment and found that there were numerous genuine issues of material fact which had to be submitted to the trier of fact. (Excerpts, pgs. 19-24; Record, pgs. 462-467). No new evidence came to light between the time of the trial court's denial of summary judgment and its subsequent grant of the Alabama Defendants' renewed summary judgment motion which justified the grant of summary judgment. (See, Record, 468-857). Because it originally found genuine issues of material fact, the trial court erred in granting the renewed summary judgment request of the Alabama Defendants.

ARGUMENT

Standard of Review and Law Regarding Summary Judgment

For summary judgment to be granted, no genuine issues of material fact may exist, and the moving party must be entitled to a judgment as a matter of law. Johnson v. City of Cleveland, 846 So. 2d 1031, 1034-1035 (Miss. 2003). The Mississippi Supreme Court reviews de novo the grant of summary judgment by the trial court. Id. at 1035. The trial court "must carefully review all evidentiary matters before it; admissions in pleadings, answers to interrogatories, depositions, affidavits, etc., in the light most favorable to the party against whom the motion for summary judgment is made." Id. at 1035. Further, summary judgment is "inappropriate where there are undisputed facts which are susceptible to more than one interpretation." Id. at 1036 (quoting Canizaro v. Mobile Comms. Corp of Am., 655 So. 2d 25, 28 (Miss. 1995)). In addition, this Court has stated, "And should it determine that the undisputed facts can support more than one interpretation, the Court will not hesitate to reverse and remand for a trial on the merits." Id. at 1036. The evidence which was before the trial court in the instant action at the time the trial court granted summary judgment included the following: 1) Deposition of Defendant Bart Walker; 2) State of Alabama Pursuit Policy; 3) Affidavit of Plaintiff's expert Dennis Waller; 4) Affidavit of Arvel Grimes; 5) Videotape of the subject pursuit and the Interrogatory Responses of Defendant Bart Walker. (Excerpts, pgs. 57-59, 93-104, 106-121; Record, pgs. 237-420, 96-98, 450-458, 234-236, 378-393; Videotape).

**Factors to Consider in Determining Whether a Police Pursuit
Was Accomplished in Reckless Disregard of the Safety of the Public**

For police pursuit cases in Mississippi, the Mississippi Supreme Court has set forth ten factors to be considered in determining whether a police pursuit was accomplished in reckless disregard of the safety and well-being of the public. The factors are listed as follows: 1) the length of the chase; 2) the type of neighborhood; 3) characteristics of the streets; 4) the presence of vehicular or pedestrian traffic; 5) weather conditions and visibility; 6) the 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 apprehension of the suspect besides pursuit; 9) the existence of police policy which prohibits pursuit under the circumstances; and 10) the rate of speed of the officer in comparison to the posted speed limit. City of Ellisville v. Richardson, 913 So.2d at 977; Johnson v. City of Cleveland, 846 So.2d at 1037. Furthermore, this Court has stated, "It is appropriate for trial courts to consider all ten factors, and to look at the totality of the circumstances when analyzing whether someone acted in reckless disregard. City of Ellisville v. Richardson, 913 So.2d at 978.

Issue 1: Conclusions and Opinions of Plaintiff's Pursuit Expert, Dennis Waller

1. Whether the trial court erred in granting Defendants', Alabama State Trooper Bart Walker and the State of Alabama's Motion for Reconsideration of their Original Summary Judgment Motion when: 1) an affidavit from Plaintiff's pursuit expert, Dennis Waller, was part of the record for the trial court to consider; 2) when Plaintiff's expert stated in his affidavit (and provided the

grounds for his opinion) that Defendant Trooper Bart Walker was reckless in his pursuit of a suspect from Alabama into Mississippi; 3) and when the Mississippi Supreme Court, in City of Jackson v. Brister, 838 So. 2d 274 (Miss. 2003), addressed and gave substantial weight to the findings of police pursuit expert, Dennis Waller, regarding the recklessness of City of Jackson police officers while conducting a police pursuit.

In City of Jackson v. Brister, police responded to an incident at a bank where the suspect (Slater) was attempting to pass a forged check. 838 So. 2d at 277. One police car (with two officers inside) arrived at the bank and parked next to the suspect's vehicle. Id. The suspect was halfway inside her car when one of the officers got out of the patrol car. Id. The suspect then backed her car out of the parking space and the officer reentered his vehicle. Id. The suspect then sped out of the parking lot. Id. Another police car had arrived at the bank by this time and both units then began to pursue the suspect. Id. The police followed the suspect for a short time until the suspect's vehicle collided with another vehicle. Id. No police car struck any vehicle. Id. Officer Watson, who was in the first police car, stated that he considered the totality of the circumstances in pursuing the suspect. Id.

In Brister, the trial judge held that, "The court must balance the competing interests of the community's safety with the expectation that police will apprehend criminals" and that "pursuit was initiated and maintained despite the fact that the officers did not know whether Slater had committed a felony or a misdemeanor." 838 So.2d at 278-279. The Court found "that the officers acted with reckless disregard." Id. at 279. The City of Jackson claimed that

the police pursuit was not reckless because blue lights and sirens were used, because no police car was involved in a collision, and because the pursuit lasted less than 60 seconds and covered less than a mile in distance. Id. Ultimately, the Mississippi Supreme Court found that the trial court was correct in its ruling and was supported by substantial, credible, and reasonable evidence. Id. at 279, 281.

Of particular note, the Mississippi Supreme Court addressed the findings of the Plaintiff's expert in Brister. 838 So.2d at 279. The Court stated,

"Dennis Waller, plaintiff's expert witness, who had previously testified on over 100 occasions on related subject matter, concluded that the officers' conduct here presented an extreme and unreasonable danger to the public. Waller based his opinion on the following: 1) the chase was contrary to General Order 600-20; 2) the officers were still engaged in active pursuit up to the collision; 3) pursuit should have been terminated after the officers turned onto Ridgewood Road and realized the suspect would not stop; 4) the officers did not attempt to obtain a the license plate number which would have eliminated the need for continued pursuit; and 5) the officers did not properly balance the public's safety versus immediate apprehension of a check forger. The circuit judge clearly based his findings on substantial, credible, and reasonable evidence. Applying our appropriate legal standard and recent caselaw, that is all that is necessary. Had a jury tried this case, it could have found that all of these circumstances establish more than simple negligence. The learned trial judge found by looking at the totality of the circumstances that the officers acted with reckless disregard to public safety."

Id. at 279.

In the instant action, Plaintiff Duckworth retained Dennis Waller, the same expert which was used by the Brister plaintiff. See Id. at 279. (Excerpts, pgs. 93-101; Record, pgs. 450-458). On June 13, 2006, Plaintiff Duckworth filed his Notice of Filing Affidavit of Dennis Waller (which included the affidavit of Dennis Waller) with the circuit clerk of

Monroe County, Mississippi. (Excerpts, pgs. 93-101; Record, pgs. 450-458). In his affidavit, Dennis Waller gives his expert opinion that Defendant Alabama State Trooper Bart Walker's pursuit was accomplished in reckless disregard of the safety of the public. (Excerpts, pgs. 93-101; Record, pgs. 450-458). Waller states that Defendant Trooper Walker's pursuit of the suspect into Mississippi was "deliberately reckless and indifferent to the safety of the occupants and to any innocent, uninvolved third parties who may encounter them during the course of the pursuit." (Excerpts, pg. 98; Record, pg. 455). In addition, Waller notes that "the pursuit, and the manner in which it was conducted, posed an inherently dangerous situation for anyone approaching, or being overtaken by, the pursued vehicle." (Excerpts, pg. 99; Record, pg. 456). Waller found that Defendant Trooper Walker's pursuit was reckless because of the following reasons: 1) the pursuit was conducted in violation of the Alabama Highway Patrol pursuit policy and "sound law enforcement practice,"; 2) the offenses of a broken windshield and occupants not wearing seatbelts did not warrant a pursuit across state lines; 3) the road way in Mississippi was narrow and in disrepair; 4) the road was curvy with little to no shoulder and trees and ditches were close to the roadway; 5) the pursuit speed of 60 mph on Vernon Road in Mississippi posed an inherently dangerous situation to oncoming traffic; 6) Alabama Highway Patrol pursuit policy states that "Normally pursuits into another state should be avoided"; 7) Defendant Trooper Walker obtained the license plate number of the suspect's vehicle; 8) the Curriculum and Materials for Vehicle Pursuits from the Mississippi Law Enforcement Academy states, "Consider what is warranted by the offense you pursued. If the risk of continuing outweighs the benefit of apprehension get out of it. Keep care and concern for public safety foremost in

your mind.”; 9) “a trained, experienced police officer with an understanding and consideration of department policy and nationally accepted standards of law enforcement practice under similar circumstances would have terminated the pursuit prior to or shortly after entering Mississippi”; and 10) based on the duration of the pursuit, the distance traveled, and Mr. Warren’s (the suspect’s) driving, it should have been obvious that the suspect was not going to stop. (Excerpts, pgs. 99-101; Record 456-458). In reaching his conclusions, Waller reviewed the following materials: 1) the original complaint, 2) the videotape of the pursuit, 3) Bart Walker’s Responses to Plaintiff’s First Set of Interrogatories, 4) Trooper Bart Walker’s statement from 2/15/02, 5) Trooper Bart Walker’s Affidavit from 5/12/05, 6) Trooper Walker’s Deposition, 7) the Radio Log of the pursuit, 8) the Traffic Homicide Investigator’s Case Summary, 9) Alabama Highway Patrol pursuit policy, 10) the accident report, 11) Defendant Bart Walker and the State of Alabama’s Motion for Summary Judgment, and 12) the Affidavit of Arvel Grimes. (Excerpts, pg. 97; Record, pg. 454). In addition, Dennis Waller made a visit to the pursuit route on Vernon Road. (Excerpts, pg. 97; Record, pg. 454).

The trial court erred in granting Defendants’ Bart Walker and the State of Alabama’s Motion for Reconsideration of their original Summary Judgment Motion because the expert opinions of Dennis Waller (which were made part of the record in this matter through the filing of his affidavit) contradict the contentions of Bart Walker and the State of Alabama that the pursuit was not accomplished in reckless disregard of the public. See, City of Jackson v. Brister, 838 So.2d at 279. (Excerpts, pgs. 93-101; Record, pgs. 450-458). Dennis Waller’s expert affidavit regarding the instant pursuit addresses many of the ten factors

which Mississippi courts are to consider when determining whether a pursuit was conducted in reckless disregard. See, City of Ellisville v. Richardson, 913 So.2d at 977. (Excerpts, pgs. 97-101; Record, pgs. 454-458). Waller states that Alabama pursuit policy was not followed, that the offenses of a broken windshield and occupants not wearing their seatbelts did not justify the dangers of a pursuit, that Trooper Walker had the license plate number of the suspect and thus had an alternative way to possibly apprehend the suspect at a later, less dangerous time, that the pursuit lasted too long, that the rate of speed at which the pursuit was conducted was too high, and that Vernon Road was in disrepair and had curves and trees near the shoulder which made a police pursuit hazardous. (Excerpts, 95-101; Record 452-458). Based on Dennis Waller's opinion alone, Plaintiff put forth enough proof that there were genuine issues of material fact in the instant action. See, City of Jackson v. Brister, 838 So.2d at 279. Therefore, the trial court's grant of summary judgment to Defendants Bart Walker and the State of Alabama was in error and should be reversed by this honorable Court.

Issue 2: Genuine Issues of Material Fact Exist Surrounding the Factors Set Forth by the Mississippi Supreme Court to Determine Whether a Police Pursuit Was Accomplished in Reckless Disregard of the Safety of the Public

2. Whether the trial court erred in granting Defendants' Bart Walker's and the State of Alabama's Motion for Reconsideration of their Original Summary Judgment Motion when there were genuine issues of material fact supported by the record regarding: 1) the length of the subject police pursuit; 2) characteristics of Vernon Road where the pursuit occurred; 3) the seriousness of the offense(s) for which Defendant Trooper Walker was pursuing the

suspect; 4) whether Defendant Trooper Walker had available alternatives to apprehend the suspect other than pursuit; and 5) the existence of police pursuit policy which prohibited the subject pursuit under the circumstances.

In addition to the opinions of Plaintiff's expert Dennis Waller, an examination of the facts in this case, in relation to the ten factors which are to be considered in determining if a police pursuit was conducted in reckless disregard, also shows that there are genuine issues of material fact which required the trial court to deny Defendants' Bart Walker and the State of Alabama's Motion for Reconsideration of Their Motion for Summary Judgment. Because the trial court granted summary judgment when genuine issues of material fact were clearly set forth by the Plaintiff, this Court should reverse the trial court's grant of summary judgment and remand the instant case for trial proceedings in the Circuit Court of Monroe County, Mississippi.

The first factor to be considered in determining whether a pursuit was accomplished in reckless disregard of the safety of the public is the length of the pursuit. City of Ellisville v. Richardson, 913 So.2d at 977. Plaintiff Duckworth contends that a pursuit which lasted more than six minutes and covered more than six miles is a pursuit which lasted too long. (Excerpts, pgs. 97-101; Record, pgs. 454-458). Defendants Bart Walker and the State of Alabama contend that the pursuit was short in time and duration. (Excerpts, pg. 71; Record, pg. 663). Though the distance traveled during the pursuit and the duration of the pursuit are undisputed by the parties, those facts are capable of more than one interpretation. See, Johnson v. City of Cleveland, 846 So.2d at 1036 (quoting Canizaro v. Mobile Comms. Corp

of Am., 655 So. 2d 25, 28 (Miss.1995)). Reasonable minds could differ as to whether a pursuit which covered more than six miles and lasted more than six minutes would constitute a lengthy pursuit. See, Id.

Time is relative. While six minutes during an eight-hour period of sleep would be a short time, certainly, six consistent minutes in a boxing match is a veritable lifetime. Six minutes driving down a narrow, potholed road at high speeds around curves and over hills is a long time.

The length of the pursuit is susceptible to more than one interpretation in the instant case. See, Id. Therefore, a material issue of fact exists which necessitates this case being submitted to the trier of fact. See, Id. Just because the Plaintiff and Defendants agree as to the length of the pursuit does not allow the trial court to dismiss this factor as being an undisputed material fact. Both the Alabama Defendants (in their Motion for Reconsideration of their Original Summary Judgment Motion) and the trial court (in its Opinion and Order granting Summary Judgment in favor of the Alabama Defendants) reason that because the Plaintiff and Defendants agree as to the length and duration of the pursuit, there is no issue of fact regarding the length of the pursuit factor. (Excerpts, 70-77, 11-18; Record, pgs. 662-669, 791-798). If such reasoning were followed to its logical conclusion, then a two hundred mile police chase from Alabama into Mississippi where the length (both in time and distance) of the police pursuit is agreed upon by the parties would not provide a material disputed fact for the trier of fact to decide. If no other reckless disregard factors were at issue, such logic would make Alabama State Troopers immune from prosecution for damages caused by their pursuits into Mississippi as long as the length of the police pursuit,

whether one minute or one hour and whether one mile or one hundred miles, was undisputed by the parties. The length of the pursuit must be submitted to the trier of fact to decide whether the pursuit lasted too long. See, Johnson v. City of Cleveland, 846 So. 2d at 1036 (quoting Canizaro v. Mobile Comms. Corp of Am., 655 So. 2d 25, 28 (Miss.1995)).

Another factor to be considered in determining whether a police pursuit was performed in reckless disregard is the characteristics of the streets. City of Ellisville v. Richardson, 913 So.2d at 977. Defendants Bart Walker and the State of Alabama contend that the stretch of Vernon Road where the police pursuit occurred had some "soft curves and hills." (Excerpts, pg. 72; Record, pg. 664). That contention is a fantasy, to say the least, and Defendants simply try to minimize the nature of the road with their language. (Videotape). Vernon Road has several substantial curves and hills. (Excerpts, pgs.102-104; Record, pgs. 234-236; Videotape). The dangers that these curves pose is exacerbated by various hills, narrowness of the road, poor condition of the pavement, and trees and growth very near the road. (Excerpts, pgs. 102-104; Record, pgs. 234-236; Videotape). All of these conditions combine to create many blind spots along Vernon Road where the subject pursuit took place. (Excerpts, pgs. 102-104; Record, pgs. 234-236; Videotape). Defendant Trooper Walker lost sight of the suspect many times during the pursuit. (Videotape). When Trooper Walker entered Mississippi, the road conditions deteriorated substantially and made the video recorder in Trooper Walker's police car shake substantially. (Videotape). The hazardous nature of the road conditions combined with the fact that Trooper Walker was pursuing the suspect for a broken windshield and occupants not wearing their seatbelts should have compelled Trooper Walker to cease his pursuit of the suspect from Alabama into

Mississippi. (Excerpts, pgs. 97-101; Record, 454-458).

Defendants Trooper Walker and the State of Alabama contend that the road was safe for a police pursuit. (Excerpts, pg. 72; Record, pg. 664). Plaintiff contends that the characteristics of Vernon Road were very dangerous. (Excerpts, pgs.97-101; Record, 454-458). The video of the pursuit, the affidavit of Arvel Grimes who has lived on Vernon Road since 1981, and the affidavit of Plaintiff's police pursuit expert all show the fact that the characteristics of Vernon Road make it hazardous for a police pursuit. (Excerpts, pgs. 95-104; Record, pgs. 234-236, 452-458; Videotape). Since there is a dispute between the Plaintiff and the Defendants as to the characteristics of Vernon Road and since Plaintiff's contention (that Vernon Road is a hazardous, curvy road) is supported by the substantial, credible and reasonable evidence of the videotape of the subject police pursuit and the affidavits of a witness and Plaintiff's police pursuit expert, Dennis Waller, a genuine issue of material fact exists with regard to the conditions of the road which must be submitted to the jury for resolution. See, Johnson v. City of Cleveland, 846 So.2d at 1034-1036. (Excerpts, pgs. 95-104; Record, pgs. 234-236, 452-458; Videotape).

The next factor to be considered in determining whether a pursuit was accomplished in reckless disregard of the safety of the public is the seriousness of the offense for which the police are pursuing the suspect. City of Ellisville v. Richardson, 913 So.2d at 977. Of the ten factors to be considered in determining whether the subject pursuit was accomplished in reckless disregard of the safety of the public, the seriousness of the offense is perhaps the factor which most supports a finding of reckless disregard. Defendant Trooper Walker was not pursuing the suspect for a felony such as a robbery, rape or murder. (Excerpts, pgs. 51-

54; Record, pgs. 90-93). Alabama State Trooper Bart Walker recklessly pursued the suspect from Alabama into Monroe County, Mississippi for a broken windshield and because occupants were not wearing seatbelts. (Excerpts, pgs. 51-54; Record, pgs. 90-93).

The Alabama defendants try to elevate the severity of the offenses of a broken windshield and passengers not wearing seatbelts by calling them primary offenses.² (Excerpts, pgs. 51-52; Record, pgs. 90-91). If characterizing an offense as a primary offense is all that is needed to justify a pursuit from Alabama into Mississippi, then one would have difficulty in finding an offense which would not justify pursuit. The Alabama Defendants are just plain wrong in saying that a broken windshield and occupants failing to wear seatbelts are serious offenses. Calling such offenses serious is like calling water guns dangerous weapons; both are potentially harmful but neither is on the surface. In Brister, check forgery was not considered serious enough to justify a pursuit. City of Jackson v. Brister, 838 So.2d at 280-281. Therefore, a broken windshield and passengers not wearing their seatbelts would not be considered serious enough to justify a pursuit. See, Id.

Whether the officer had available alternatives which would lead to the apprehension of the suspect other than pursuit is another factor to be considered in determining reckless disregard. City of Ellisville v. Richardson, 913 So.2d at 977. The Alabama Defendants assert that no alternatives existed which would have led to the apprehension of the suspect besides the pursuit. (Excerpts, pg. 53; Record, 92). However, Defendant Trooper Walker

² A primary offense is simply an offense which allows an Alabama State Trooper can stop a motorist. (Record, pg. 331).

admitted in his deposition that he had obtained the license plate number of the suspect's vehicle. (Excerpts, pg. 105; Record, pg. 334). Therefore, Defendant Trooper Walker did have the opportunity to use the suspect's license plate number to find the suspect at a later date, and a material issue of fact existed as to whether having the license plate number of the suspect provided an available alternative to pursuit which would have led to the apprehension of the suspect.

In Brister, the Mississippi Supreme Court noted that the officers involved in the pursuit "could have easily written down the tag number there instead of attempting such in a hot pursuit chase." 838 So.2d at 280. By addressing the fact that the police officers did not get the license plate number in Brister, the Mississippi Supreme Court has at least conceded that a police officer obtaining the license plate number of a suspect is enough to create an issue of fact as to whether an alternative to pursuit existed. See, Id.

Another factor in determining reckless disregard in a pursuit is whether police policy existed which prohibited the pursuit under the circumstances. City of Ellisville v. Richardson, 913 So. 2d at 977. Defendant Trooper Walker violated State of Alabama Pursuit policy by pursuing the suspect from Alabama into Mississippi in the instant case. (Excerpts, pg. 58; Record, pg. 97). State of Alabama pursuit policy states that, "Normally, pursuits into another state should be avoided." (Excerpts, pg. 58; Record, pg. 97). The State of Alabama pursuit policy does provide for a pursuit into another state only if circumstances warrant continuing the pursuit. (Excerpts, pg. 58; Record, pg. 97). Plaintiff argues that the language of the State of Alabama pursuit policy clearly shows that Defendant Trooper Walker was reckless by pursuing the suspect from Alabama into Mississippi. (Excerpts, pg.

58; Record, pg. 97). A broken windshield and passengers not wearing their seatbelts did not provide circumstances which objectively warranted pursuit into another state. (Excerpts, pgs. 98-100; Record, pgs. 455-457). Because the language of the Alabama pursuit policy directs troopers to avoid crossing state lines unless circumstances warrant a crossing, it can reasonably be argued that Defendant Trooper Walker violated the State of Alabama pursuit policy. (Excerpts, pg. 58; Record, pg. 97). Thus, a genuine issue of material fact exists as to whether Defendant Trooper Walker violated State of Alabama pursuit policy.

Issue 3: The Trial Court Was Correct in Denying the Alabama Defendants' Original Motion For Summary Judgment and the Trial Court Erred When It Granted the Alabama Defendant's Motion for Reconsideration of Their Original Summary Judgment Motion

3. Whether the trial court erred in granting Defendants Bart Walker and the State of Alabama's Motion for Reconsideration of their Original Summary Judgment Motion when: 1) the trial court had previously denied the Alabama Defendants' Original Motion for Summary Judgment and found that there were genuine issues of material fact which necessitated a trial, and 2) when there was no new evidence presented on the record (which justified granting summary judgment) between the time of the trial Court's denial of the Alabama Defendants' Motion for Summary Judgment and the time of the trial court's inexplicable grant of the Alabama Defendants' renewed Motion for Reconsideration of Their Original Summary Judgment Motion.

In its October 30, 2006 Order Denying Defendants', Trooper Bart Walker and The State of Alabama's Motion for Summary Judgment, the trial court specifically addressed a number of the ten factors set forth by the Mississippi Supreme Court which are to be considered in determining if a pursuit was accomplished in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of the injury. (Excerpts, pgs. 19-24; Record, pgs. 462-467).

First the trial court addressed the length of the pursuit. The trial court stated,

"The instant pursuit lasted almost six and one half minutes and covered approximately six miles. While the length and time period of the instant pursuit are undisputed, the Plaintiff and Defendants Trooper Walker and the State of Alabama disagree as to whether the pursuit was too long and whether the pursuit should have been terminated earlier. In City of Jackson v. Brister, 838 So. 2d at 279, a finding of reckless disregard was upheld when the pursuit lasted less than sixty seconds and covered less than a mile. Id. Therefore, reasonable people could find that the instant pursuit lasted too long."

(Excerpts, pg. 22, Record, pg. 465). Though the length of the pursuit was undisputed by both Duckworth and the Defendants Bart Walker and the State of Alabama, the trial court correctly found that "reasonable people could find that the instant pursuit lasted too long." (Excerpts, pg. 22, Record, pg. 465). The trial court found that the length of the pursuit, though undisputed, was susceptible to more than one interpretation, thereby rendering it a disputed material fact. See, Johnson v. City of Cleveland, 846 So.2d at 1036 (quoting Canizaro v. Mobile Comms. Corp of Am., 655 So. 2d 25, 28 (Miss.1995)).

Next, the trial court addressed the seriousness of the offense for which Alabama Trooper Bart Walker was pursuing the suspect. (Excerpts, pgs. 22-23; Record, pgs. 465-

466). The court found that "the offenses of a broken windshield and passengers failing to wear their seatbelts are not serious offenses, and reasonable people could find that the instant pursuit from Alabama into Mississippi by an Alabama state trooper was not justified because of a broken windshield and passengers not wearing their seatbelts." (Excerpts, pg. 23; Record, pg. 466). The trial court correctly held in its October 30, 2006 order that the offenses of passengers not wearing safety belts and a broken windshield could not be seen as serious offenses. (Excerpts, pgs. 22-23; Record, pgs. 465-466). The court seemingly understood that the trier of fact, i.e. the jury in the instant case, could view the offenses of passengers not wearing their safety belts and a broken windshield as very minor offenses which did not justify Defendant Trooper Walker's pursuit of the suspect from Alabama into Mississippi.

In addition, the trial court also considered whether there were reasonable alternatives available to the officer which would have led to the apprehension of the suspect besides pursuit. (Excerpts, pg. 23; Record, pg. 466). The trial court noted, "Trooper Walker obtained the license plate number of Defendant Warren's vehicle. With such number, he had the alternative of locating the residence of the person the car was registered to and potentially finding the driver of the vehicle." (Excerpts, pg. 23; Record, pg. 466). Further, the trial court stated that "since Defendant Trooper Walker had obtained the license plate number of Defendant Warren's (the suspect's) vehicle, reasonable people could find that obtaining the license plate number provided a means to apprehend the suspect rather than continuing pursuit." (Excerpts, pg. 23; Record, pg. 466). The court was correct in viewing the issue of Defendant Walker having the suspect's license plate number as a genuine issue

of material fact as to whether such was an available alternative to the subject pursuit.

The trial court also addressed the State of Alabama pursuit policy. (Excerpts, pg. 24; Record, pg. 467). The trial court found, "Alabama pursuit policy states that normally pursuits into other states are to be avoided. Alabama pursuit policy does allow pursuit into another state, but only if there are circumstances present which warrant continuing the pursuit into another state." (Excerpts, pg. 24; Record, pg. 467). Further, the trial court concluded and found that reasonable jurors could have determined "that a broken windshield and passengers not wearing their seat belts were not circumstances which warranted Defendant Trooper Walker's pursuit of Defendant Warren into Mississippi." (Excerpts, pg. 24; Record, pg. 467).

Ultimately, on October 30, 2006, the trial court found that there were issues of fact which had to be submitted to the trier of fact. (Excerpts, pg. 24; Record, pg. 467). The trial court ruled that "Based on the totality of the circumstances of this case and the analysis of the pursuit in light of the factors enumerated by the Mississippi Supreme Court, the Plaintiff has shown that there are genuine issues of material facts for trial. (Excerpts, pg. 24; Record, pg. 467).

On July 5, 2007, less than one month before the trial in this action was scheduled, the trial court considered the Alabama Defendant's Motion for Reconsideration of their Motion for Summary Judgment. (Excerpts, pgs. 70-83; Record, pgs. 662-675). In a complete and unexplainable reversal of its previous Order denying Summary Judgment on October 30, 2006, the trial court erroneously granted the Alabama Defendants' Motion for Summary Judgment. (Excerpts, pgs. 11-18; Record, pgs. 791-798). Where, in its October 2006 order,

the trial court had found that issues of fact existed regarding the length of the pursuit, the seriousness of the offenses for which pursuit was engaged, reasonable alternatives to apprehend the suspect other than pursuit, and the existence of State of Alabama pursuit policy which prohibited pursuit under the circumstances, the trial court now changed its thinking and found there to be no genuine issues of material fact. (Excerpts, pgs. 19-24, 11-18; Record, pgs. 462-467, 791-798). The trial court addressed only three reckless disregard factors in detail: the seriousness of the offense, alternatives to pursuit, and the existence of police policy which prohibits pursuit under the circumstances. (Excerpts, pgs. 15-17; Record, pgs. 795-797).

The trial court correctly reasoned that the offenses of a broken windshield and passengers not wearing their seatbelts could not be classified as serious offenses. (Excerpts, pg. 16; Record, pg. 796). However, the trial court fallaciously reasoned that Trooper Walker was not unreasonable in believing a more serious offense had taken place. (Excerpts, pg. 16; Record, pg. 796). No evidence was presented that Defendant Trooper Walker knew of any offense being committed other than the suspect having a broken windshield, passengers failing to wear seatbelts, and attempting to elude. (Excerpts, pgs. 51-54; Record, pgs. 90-93). In any pursuit situation, whether for speeding or for running a stop sign, a pursuing officer can always argue that the police pursuit was justified because the officer did not know what other offenses the suspect might have committed. With this rationale, all pursuits would be justified because it could always be reasoned that there is the possibility that a more serious offense has been committed by the suspect. Such rationale would make this a non-factor in determining whether a pursuit was accomplished in reckless

disregard. Furthermore, the offense of attempting to elude is present in all police pursuits. Therefore, additional offenses have to be considered to justify a pursuit.

In the Mississippi cases of City of Jackson v. Brister, 838 So.2d 274 (Miss. 2003), City of Ellisville v. Richardson, 913 So.2d 973 (Miss. 2005), and Johnson v. City of Cleveland, 846 So.2d 1031 (Miss. 2003), which deal with pursuits accomplished in reckless disregard of the safety of the public, no reference is made to offenses a pursued suspect might have committed. Those above cases only address the offenses the suspect actually committed and whether those actual offenses warranted police pursuit of the suspect. See, Id. No mention is made of possible unknown offenses and the Mississippi Supreme Court has not made the possibility of unknown offenses committed by the suspect a factor in determining if a pursuit was performed in reckless disregard of the safety of the public. See, City of Ellisville v. Richardson, 913 So.2d at 977.

In granting the Alabama Defendants' Motion for Reconsideration of their Summary Judgment Motion in the instant action, the trial court addressed whether Defendant Trooper Walker had available alternatives which would have likely led to the apprehension of the suspect in the instant pursuit. (Excerpts, pg. 16; Record, pg. 796). The trial court found that Defendant Trooper Walker did obtain the license plate number of the suspect, but reasoned that a tag number does not necessarily identify the driver. (Excerpts, pg. 16; Record, pg. 796). Thus, the trial court found there to be a genuine issue of material fact as to available alternatives other than pursuit. (Excerpts, pg. 16; Record, pg. 796).

Whether having the license plate number of the suspect in the instant pursuit provided Defendant Trooper Walker an available alternative to pursuit is an issue for the

finder of fact to decide at trial and should not have been summarily dismissed by the trial judge. See, City of Jackson v. Brister, 838 So.2d at 280. In Brister, the Mississippi Supreme Court, in finding reckless disregard on the part of the police officers, noted that the police officers could have written down the suspect's license plate number rather than pursue. Id. This Court has considered that having a license plate number might give a police officer an alternative to apprehend the suspect other than pursuit. See Id. Since this Court has attached some importance to obtaining a license plate number, surely the fact that Defendant Trooper Walker actually admitted that he obtained the suspect's license plate number is enough to provide a material issue of fact on the issue of whether there was an available alternative for apprehending the suspect other than pursuit in the instant case. See, Id. (Excerpts, pg. 105; Record, 334).

Lastly, in its Order and Opinion granting the Alabama Defendants' Motion for Summary Judgment, the trial court discussed in depth whether there was any genuine issue of material fact regarding the existence of police policy which prohibited pursuit under the circumstances. (Excerpt, pgs. 16-17; Record, pgs. 796-797). The State of Alabama pursuit policy clearly and unequivocally states that, "**Normally, pursuits into another state should be avoided.**" (Excerpts, pg. 58; Record, pg. 97). The Alabama pursuit policy goes on to state that "if circumstances warrant continuing a pursuit into another state, a supervisor and the affected Division Chief must be notified, as well as the primary law enforcement agency of the other state." (Excerpts, pg. 58; Record, pg. 97). The trial court noted that "the Alabama pursuit policy clearly discourages pursuits into another jurisdiction, but it does permit pursuits 'if circumstances warrant' and the appropriate agencies are contacted."

(Excerpt, pg. 16; Record, pg. 796). The trial court then found that no genuine, material fact issue existed with regard to the pursuit policy. (Excerpt, pg. 16; Record, pg. 796). The trial court's own brief summation of the pursuit policy shows that there is an issue of fact because the trial court acknowledges that there are situations which allow a pursuit and situations which do not allow a pursuit across state lines. Instead of allowing the jury to decide whether Alabama pursuit policy prohibited pursuit in the instant case, the trial court invaded the province of the jury. Clearly, a reasonable juror might conclude that since the Alabama pursuit policy states that "**Normally, pursuits into another state should be avoided**", the offenses of a broken windshield and passengers not wearing their seatbelts, even on the clearest day and on the remotest road, might not give rise to circumstances which warrant a pursuit into another state. (Excerpts, pg. 58; Record, pg. 97). Defendant Walker did not pursue the suspect into another county in Alabama. (Excerpts, pgs. 51-54; Record, pgs. 90-93). He intentionally left his jurisdiction and entered into Mississippi for two very minor offenses. (Excerpts, pgs. 51-54; Record, pgs. 90-93). If a broken windshield and passengers not wearing their seatbelts are offenses which justify an Alabama state trooper pursuing a suspect from Alabama into Mississippi, then I do not know what offenses would not allow an Alabama State Trooper to pursue a suspect into Mississippi. The trial court erred in its grant of summary judgment because Alabama pursuit policy clearly prohibits pursuits into another state. (Excerpts, pg. 58; Record, pg. 97).

CONCLUSION

The trial court erred in granting the Alabama Defendants' Motion for

Reconsideration of Their Motion for Summary Judgment. First of all, Plaintiff's expert, Dennis Waller, opined in his affidavit (which is part of the record) that Defendant Trooper Walker was reckless in pursuing the suspect from Alabama into Mississippi.

Second, genuine issues of material fact do exist regarding several factors set forth by the Mississippi Supreme Court which are to be analyzed in determining whether a police pursuit was conducted in reckless disregard of the safety of the public. The pursuit lasted too long. The offenses of a broken windshield and passengers not wearing their seatbelts are not serious offenses which justified pursuit of the suspect from Alabama into Mississippi. State of Alabama pursuit policy clearly prohibits a pursuit under the circumstances of the instant pursuit. And Defendant Trooper Walker obtained the suspect's license plate number which gave him an alternative other than pursuit to apprehend the suspect.

Third, the trial Court (having the benefit of the videotape of the pursuit) found that there were genuine issues of material fact on October 30, 2006. In a complete reversal, the trial court then erroneously found that there were no genuine issues of material fact on July 5, 2007.

Plaintiff, Jerry Wayne Duckworth, respectfully requests that this Honorable Court reverse the decision of the trial court and remand this case back to the Circuit Court of Monroe County for a jury trial on the merits.

Respectfully submitted,

sf Charles R. Waits, III

Charles R. Waits, III
Attorney for Plaintiff/ Appellant
809 6th Avenue SE
Decatur, AL 35601
(256) 301-5454 (telephone)
(256) 350-1771 (facsimile)
MS Bar No. [REDACTED]

sf B. Kelly Hardwick

B. Kelly Hardwick
Attorney for Plaintiff/ Appellant
Colom & Hardwick
120 N. Congress St.
Suite 904
Jackson, MS 39201
(601)-974-6075 (telephone)
(601) 974-6076 (facsimile)
MS Bar No. [REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of June, 2008, I served a copy of the foregoing by placing the same in the U.S. mail, first class postage pre-paid and properly addressed to the following:

Hon. James T. Metz
PURDIE & METZ, PLLC
P.O. Box 2659
Ridgeland, Mississippi 39158

Honorable James L. Roberts, Jr.
Circuit Court Judge
50 Liberty Street
Pontotoc, Mississippi 38863

Honorable Sharion Aycock
U.S. District Judge
P.O. Box 847
Aberdeen, Mississippi 39730

B. Kelly Hardwick
B. Kelly Hardwick