IN THE SUPREME COURT OF MISSISSIPPI

CITY OF JACKSON, MISSISSIPPI **APPELLANT**

VS. **CAUSE NO. 2009-CA-01610**

MARY GRAY AND PEGGY PETTAWAY AS CO-ADMINISTRATORS OF THE ESTATE OF ALICE FAYE CLAUSELL, DECEASED AND ON BEHALF OF ALL WRONGFUL DEATH BENEFICIARIES OF ALICE FAYE CLAUSELL, DECEASED, KIMBERLY CLAUSELL, LILLIAN BYRD AND CHRIS CLAUSELL **APPELLEES**

On Appeal From the Circuit Court of Hinds County, Mississippi Cause Number 251-07-755 Consolidated with Cause Number 251-07-784 Honorable William Coleman

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Reply Brief

Oral Argument Requested

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Miss.R.App. 28(a)(1), 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:

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The City of Jackson does not take lightly the issues presented in this case. However, the overwhelming weight of the evidence in this matter clearly shows that City of Jackson officers were not actively engaged in the pursuit of Alice Wilson, and rather were only acting in a support and assistance role. Never the less, if this Court finds that City of Jackson officers were engaged in a pursuit of Alice Wilson, the overwhelming weight of the evidence also shows that City of Jackson officers did not act in reckless disregard, and that City of Jackson officers were not the proximate cause of the accident between Alice Wilson and the Plaintiffs. The lower court's ruling is therefore against the overwhelming weight of the evidence and should be overturned.

The Plaintiffs' cause of action is governed by the Mississippi Tort Claims Act, which controls civil actions against a municipality. The Mississippi Tort Claims Act shields and provides immunity to political subdivisions from civil liability. The Mississippi Supreme Court has consistently stated that immunity is a question of law. *City of Laurel v. Williams*, No.2008-CA-01137-SCT (*citing Miss.Dep't of Pub. Safety v. Durn*, 861 So.2d 990, 994 (Miss.2003)). The Supreme Court further stated that "[t]his Court reviews errors of law *de novo*, including the proper application of the Mississippi Tort Claims Act." *Id.* (quoting *Phillips v. Miss. Dep't of Pub. Safety*, 978 So.2d 656, 660 (Miss.2008)). Accordingly, this Court as an appellate court reviews the trial judge's application of the Tort Claims Act *de novo*.

While Plaintiffs submit separate briefs, the briefs collectively contain three misguided arguments to this Court. First, Plaintiffs assert that General Order 600-20 is applicable to the facts and circumstances in the case *sub judice* because City of Jackson officers were in pursuit of Alice Wilson. Second, Plaintiffs assert that City of Jackson

officers acted in reckless disregard, and lastly Plaintiffs incorrectly assert that City of Jackson officers were a proximate cause of the accident between Plaintiffs and Alice Wilson.

A. General Order 600-20 is inapplicable to this matter, as City of Jackson's officers were not pursuing Alice Wilson, and were only in an assistance and support role of Raymond Officer Randy Razor in his pursuit of Alice Wilson.

City of Jackson officers were not in pursuit of Alice Wilson during the course of Raymond officer Randy Razor's pursuit. The evidence at trial clearly shows that the actions of Det. Coleman and Officer Spann were in an assistance and support role of Officer Randy Razor's pursuit of Wilson. Wilson's gold SUV was pursued by Raymond officer Razor from Highway 18 in Raymond into the City of Jackson. T.E. 2, p.27. Det. Coleman was on Highway 80, in Precinct 2 when a BOLO (be on the lookout) came over the radio that a Raymond officer was pursuing a vehicle into the City of Jackson. T.T. at 174. It is undisputed that Officer Terrance Spann and Det. Coleman proceeded to the intersection of Highway 80 and Robinson Road to block off traffic and minimize the risk to other drivers. T.T. at 175, T.E. 10. Moreover, it is undisputed that Sgt. Amy Barlow instructed Det. Coleman and Officer Spann to monitor and assist with traffic during City of Raymond's pursuit. T.T. at 218, T.E. 12, *admitted for ID only*.[1]

The Mississippi Court of Appeals has reviewed this issue in the matter styled *Linda McCoy, et al. v. City of Florence, et al.*, 949 So.2d 69 (Miss.Ct.App.2006). In *McCoy*, City of Florence officers pursued suspect Corey Tate, the driver of a stolen

[1] There may be references herein to documents admitted for ID only at the trial of this matter. While the City understands that ID documents are not evidence, these references are included to show that there are facts elsewhere that support such assertion.

vehicle, on Highway 49. City of Richland officers attempted to minimize the risk to other drivers, by blocking traffic from entering Highway 49 as City of Florence officer Culpepper pursued suspect Tate. *Id.* at 74. The Court of Appeals held that City of Richland officers **were not involved in the pursuit when they blocked traffic from entering Highway 49 during the pursuit**, and at best, City of Richland officers were bystanders. *Id.* at 79. (Emphasis Supplied). Therefore the court did not apply the *Brister* pursuit factors to the City of Richland's actions. *Id.*

In addition, the Court of Appeals held that Rankin County was also not involved in the pursuit of suspect Tate. *Id.* at 79. The Court held that the only evidence presented that Rankin County was involved in the pursuit of suspect Tate was the deposition testimony of a City of a Richland officer that stated: Rankin County was involved in the pursuit; Rankin County and City of Florence were working together in the pursuit; Rankin County vehicles passed while the Richland officer blocked traffic, but said deponent officer did not know how far behind Rankin County was; the Richland officer also testified that Rankin County units were at the scene after suspect Tate lost control of the stolen vehicle. *Id.* The Court of Appeals held that this testimony by City of Richland officer presented no definitive testimony of Rankin County's participation in the pursuit, and that there was evidence to the contrary. Specifically there was testimony from other officers that corroborated that Rankin County officers were not involved in the pursuit. *Id.* at 79-80. Therefore the Court in *McCoy*, also did not apply the *Brister* factors to Rankin County's actions. *Id.*

These are the same facts as present in the case at bar. Just as the City of Richland officers blocked off traffic to minimize the risk to other drivers, City of Jackson officers blocked traffic at Highway 80 and Robinson Road and followed behind Raymond officer

Razor with their blue lights and sirens engaged to alert oncoming traffic to also minimize the risk to other drivers. T.E. 10, T.T. at 175. The substantial and overwhelming weight of the evidence in this matter is that City of Jackson officers were not involved in Raymond officer Razor's pursuit. In fact, the only evidence that City of Jackson officers were involved in the pursuit, is the deposition of Raymond officer Razor[2].

Raymond officer Razor testified that because City of Jackson officers were behind him, he **believed** they were in the pursuit with him. T.E. 2, p. 59. It is undisputed that Raymond officer Razor and City of Jackson officers had no direct radio communication, and therefore Raymond officer Razor never received acknowledgement from the City of Jackson that they joined him in the pursuit of Wilson. T.E. 2, p. 43. In fact, Raymond officer Razor never even received authorization from the City of Jackson to enter its jurisdictional limits and pursue Wilson. Razor testified that because he was the Sgt. on duty, he authorized himself to enter Jackson city limits. T. E.2, p. 41-42.

The Court in *McCoy* did not accept one officer's deposition testimony when the substantial and overwhelming weight of the evidence showed that Rankin County officers were not involved in the pursuit. *McCoy,* 949 So.2d 69, 79. The lower court's ruling is in error with respect to the City of Jackson's engagement in Raymond officer Razor's pursuit. The following substantial and overwhelming evidence was only rebutted by Raymond officer Razor, a witness who was not observed by the trial judge, as his only testimony was *via* deposition. The facts are as follows:

[2] Raymond officer Randy Razor did not testify live at trial. His deposition testimony was admitted in lieu of his testimony.

- Det. Coleman and Officer Spann blocked off traffic at the intersection of Highway 80 and Robinson Road. T.T. at 175, T.E. 10;

- Sgt. Amy Barlow, Precinct 2 supervisor, testified at trial that she instructed Det. Coleman and Officer Spann to monitor traffic and assist with traffic in intersections. T.T. at 218, T.E. 12, admitted for ID only. In addition, Sgt. Barlow in her report completed on April 21, 2007, stated that she, "advised nearby units to monitor intersections and assist with traffic as a safety measure." T.E. 12, *admitted for ID only*;

- Det. Coleman and Officer Spann got behind Officer Razor to assist Razor and to alert oncoming traffic. T.T. at 201, T.E.10;

- Sgt. Barlow testified that the City of Jackson was not in an active attempt to apprehend or subdue a suspect. T.T. at 206;

- Det. Coleman and Officer Spann did not witness the accident and when Det. Coleman arrived on the scene of the accident, Alice Wilson was in the back of Raymond Officer Razor's patrol car. T.T. at 206; and

- The Raymond Police Chief apologized to Sgt. Barlow when he arrived on the accident scene on April 21, 2007. T.T. at 222.

Pursuant to *McCoy*, the lower court's ruling is in error, as the above referenced testimony was not only corroborated, but uncontested. *McCoy,* 949 So.2d 69, 79. It is tantamount that corroborated, uncontested evidence is substantial and overwhelming compared to the speculative deposition testimony of Raymond officer Razor. Thus, without a pursuit by the Jackson Police Department, no liability attaches. *Id.* A contrary finding by the trial court is error as a matter of law.

Distinguishable from the actions of the City of Jackson, the Court in *McCoy* held that City of Florence officer Culpepper was in pursuit of suspect Corey Tate. *Id.* at 78. In *McCoy*, Officer Culpepper initiated the traffic stop of suspect Corey Tate, and officer Culpepper's patrol car was the first one "in line" behind the suspect. *Id.* at 74, 78. It is axiomatic that if this Court can find that the City of Jackson was engaged in the pursuit of Alice Wilson by its actions of support, monitoring, and assistance; then Metro 1 is also

liable for its support and assistance role in pursuits. The substantial and overwhelming weight of the evidence is that City of Jackson officers provided assistance and support of Raymond officer Razor and attempted to alert oncoming traffic. Therefore, as a matter of law, the lower court's order must be reversed.

1. If this Court does find that City of Jackson officers pursued Alice Wilson; actions by City of Jackson officers did not constitute reckless disregard.

If this Court finds that City of Jackson officers were engaged in the pursuit of Alice Wilson, then the lower court's ruling should also be reversed because the lower court misapplied the law with respect to the Mississippi Tort Claims Act, in that the substantial, overwhelming and credible evidence is against the findings by the trial court. Specifically, the lower court incorrectly found that Det. Coleman and Officer Spann acted in reckless disregard because of the following:

- Officers violated City of Jackson General Order 600-20;
- the pursuit of Alice Wilson was six miles in the City of Jackson;
- that Alice Wilson was speeding and traveling on the wrong side of the roadway, and that she violated numerous traffic signals;
- that City of Jackson officers were aware at a point during the pursuit of information that could lead to the apprehension of Alice Wilson;
- that at some point officers of the City of Jackson knew Metro 1 was in the air and could trail the gold SUV;
- the officers were aware that the offenses were not felonies; and
- at no point did City of Jackson officers Coleman, Spann, Barlow, or McDonald order Randy Razor to terminate the pursuit.

R. at 141.

This Court has stated that "apparent in the language of Miss. Code Ann. §11-46-9 is that those officers that act within the course and scope of their employment, while engaged in the performance of duties relating to police protection, without reckless disregard for the safety and well being of others, will be entitled to immunity." *McGarth v. City of Gautier*, 794 So.2d 983, 985 (Miss.2001). The Mississippi Supreme Court has held that the reckless disregard standard encompasses willful and wanton conduct, which signifies "knowingly and intentionally" committing a wrongful act. *Titus v. Williams,* 844 So.2d 459 (Miss.2003). While stopping short of requiring intentional conduct, it embodies "conscious indifference to consequences, amounting almost to a willingness that harm should follow." *Id.* The MTCA states that for liability to attach against a municipality, a police officer ***has to act*** with reckless disregard. Reckless disregard is a higher standard than gross negligence, and certainly a higher standard than negligence. *Kelley v. Grenada County,* 859 So.2d 1049 (Miss.2003).

Moreover, this Court recently handed down an opinion in which it held that "reckless disregard is the 'entire abandonment of any care,' while negligence is the failure to exercise due care." *Rayner v. Pennington*, 25 So.3d 305, 309 (Miss.2010), (citing *Maldonado v. Kelly*, 768 So. 2d. 906, 910 (Miss.2000); *Turner v. City of Ruleville*, 735 So.2d 226 (Miss.1996)).

In *McCoy*, the Mississippi Court of Appeals examined the *Brister* factors, specifically the length of pursuit, type of neighborhood, characteristics of the streets, traffic, weather, seriousness of offense, sirens and blue lights, alternative means of apprehension, and policy. *McCoy*, 949 So.2d 81-83. The court in *McCoy* first examined length of pursuit. *Id.* at 81. In *McCoy*, the court held that there was nothing indicative

of reckless disregard in City of Florence's five mile pursuit in a matter of minutes of suspect Corey Tate. *Id.* The four-six mile pursuit in the case *sub judice* also is not indicative of reckless disregard, as there was no credible or reasonable evidence in the record that the length of the pursuit was unreasonable, extreme, or outrageous. T.T. at 182.

The court in *McCoy* next examined the neighborhood, and found that there was nothing indicative of reckless disregard of the pursuit of Corey Tate on Highway 49, a four lane highway, as it was not in a residential neighborhood or on a neighborhood street. *McCoy*, 949 So.2d 81. The evidence in the record in the instant matter is that Robinson Road is a four lane road with mixed use, being both residential and commercial with light traffic, on the date of the pursuit on April 21, 2007. T.T. at 180. The pursuit in the instant matter occurred on a Saturday evening between 5:00 p.m. and 5:30 p.m. T.T. at 181. The uncontested evidence is that Robinson Road contained schools and churches which are not open on a Saturday evening. *Id.* Because churches and schools are not open on Saturday evening, there is nothing indicative of reckless disregard in this matter, as there was no reasonable, credible evidence in the record that traveling on Robinson Road was unreasonable, extreme, or outrageous.

In addition, the court in *McCoy* examined characteristics of the streets. *McCoy*, 949 So.2d 81. In *McCoy* there was little to no testimony regarding the characteristics of the streets, therefore the in *McCoy* the court held there was no reckless disregard. *Id.* The same is true in the case at bar, there is little to no evidence in the record with respect to characteristics of the streets. Accordingly, there can be no reckless disregard with respect to the characteristics of the streets in the case at bar.

The court in *McCoy* also held that all testimony indicated that the traffic was light during the pursuit, and therefore not indicative of reckless disregard. *Id.* Det. Coleman testified that the traffic on Robinson Road on April 21, 2007 was light. T.T. at 180. That evidence was uncontested. Accordingly, there can be no reckless disregard with respect to the traffic on Robinson Road, because the unrebutted testimony is that said traffic was light.

Next, the court in *McCoy* examined the weather and visibility on the date of the incident. *McCoy*, 949 So.2d 81-82. The court in *McCoy* held that the weather was sunny and clear with no diminished visibility. *Id.* Likewise, in the case *sub judice*, the unrebutted testimony is that weather and visibility conditions on April 21, 2007 were clear, dry, and sunny. T.E. 2, p. 22, 37. Therefore, City of Jackson officers did not act with reckless disregard with respect to this factor.

The court next examined the seriousness of the offense. *McCoy*, 949 So.2d 81-82. The court in *McCoy* states that suspect Corey Tate caught the attention of Officer Culpepper because of the suspect's excessive speed and reckless driving before the pursuit. *Id.* at 82. The court in *McCoy* held that suspect Tate's actions presented a serious and life-threatening risk to himself, his passengers, and other motorists prior to the pursuit therefore Officer Culpepper's actions were not reckless. *Id.* Likewise, Alice Wilson was driving recklessly when she caught the attention of Officer Razor. T.E. 2, p.25. Specifically, Officer Razor looked in his rear view mirror, and spotted a gold SUV approaching, swerving in and out of traffic and running other vehicles off the highway onto the shoulder. *Id.* Officer Razor then began to pursue Alice Wilson because of her erratic driving. *Id.* Because Alice Wilson's conduct presented a serious and life-

threatening risk to herself and others before the initiation of the pursuit, there is no reckless disregard.

The court in *McCoy* next examined whether the officers engaged their blue lights and sirens. *McCoy*, 949 So.2d 82. Officer Spann and Det. Coleman both testified that while they were following Raymond officer Razor, their blue lights and sirens were engaged. T.T. at 208, T.E.10. Therefore, pursuant to *McCoy*, there was no reckless disregard.

The court also examined whether there was an alternative means of apprehending the suspect. *McCoy*, 949 So.2d 82. The court in *McCoy* held that even though Officer Culpepper initiated a traffic stop of suspect Tate, and had in his possession the drivers license of Tate prior to the pursuit, there was no reckless disregard because Officer Culpepper did not compare the picture on the drivers license to the actual driver, and therefore an alternate means of apprehension could not be concluded. *Id.* This is factually analogous to the facts and circumstances in the instant action, in that simply because Det. Coleman called in the license plate number of the gold SUV and was informed that the SUV was registered to Alice Wilson does not mean that Alice Wilson was the driver of the SUV. In fact at the intersection of Highway 80 and Highway 18, Det. Coleman called in the suspect driver of the gold SUV as a male and not female. T.T. at 210. Certainly, if Officer Culpepper was not reckless when he was in possession of the suspect's drivers license before the pursuit, City of Jackson officers were not reckless when they thought that a male was driving the SUV registered to Alice Wilson. Accordingly, an alternate means of apprehension was not feasible and therefore no reckless disregard.

Lastly the court in *McCoy* examined policy and speed. *McCoy*, 949 So.2d 82. With respect to policy, the court in *McCoy* stated that they must consider whether the municipalities had a policy which prohibited the circumstances. *Id.* Given that City of Jackson officers terminated their actions when Alice Wilson and Raymond officer Razor went in the wrong direction on a one-way street at the Capitol-Amite split, the only plausible argument for Plaintiffs with respect to a violation of General Orders, is that there were more than two (2) officers in the pursuit. For arguendo, if this Court finds that the City of Jackson followed Officer Razor with more than the allowable number of patrol vehicles this violation is still of no consequence. The Plaintiffs in this matter have failed to cite any authority for the proposition that a violation of an internal police operating procedure constitutes reckless disregard. *City of Jackson v. Presley*. 40 So.3d 520 (Miss.2010). A violation of an internal police operating procedure in and of itself does not constitute reckless disregard. *Id.* at 40, ¶ 16. Accordingly, there can be no finding of reckless disregard with respect to this factor.

In *McCoy*, Officer Culpepper testified that he was traveling from 100 to 115 miles per hour on Highway 49 during the pursuit. *McCoy*, 949 So.2d 82. The court in *McCoy* held that officer Culpepper's actions were not reckless because Officer Culpepper had difficulty keeping suspect Corey Tate within his sight, and an effort to maintain sight of a suspect is no way indicative of reckless disregard. *Id.* In the case *sub judice*, even the lower court found that Wilson was traveling 65 mph in a 65 mph zone. R. at 136. The only instance the lower court found that Wilson was traveling in excess of the speed limit is on Robinson Road, when traveling 45 mph in a 35 mph zone. R. at 141. There is no evidence in the record that suggest the speeds City of Jackson officers were traveling

were reckless, nor were said speeds reckless in comparison to the speeds Officer Culpepper was traveling on Highway 49. It is axiomatic that if traveling 100-115 miles per hour is not reckless, then certainly only traveling 10 miles over the posted speed limit is not reckless.

In conclusion, the court in *McCoy* reasoned that based on the totality of the circumstances, City of Florence officers did not act in reckless disregard. *McCoy*, 949 So.2d 83. Based on the Court of Appeals' ruling in *McCoy* with respect to reckless disregard, the lower court was in error when it found that based on the totality of the circumstances City of Jackson officers acted in reckless disregard. As explained *supra*, Mississippi courts have found no reckless disregard for municipalities who have had in their possession, before the pursuit, the drivers license of the suspect, and also found no reckless disregard for municipalities who have traveled 100-115 miles per hour on a highway that the maximum speed is 60 miles per hour.[3]

Certainly the substantial and overwhelming weight of the totality of the evidence in this case shows that City of Jackson officers did not act with reckless disregard. Specifically, the overwhelming weight of the evidence proves by a preponderance of the evidence that Officers Spann and Det. Coleman terminated their actions approximately one mile before the accident. When Officer Randy Razor and Alice Wilson proceed the wrong way down a one-way at the Capitol-Amite split, it is uncontroverted that the City of Jackson officers terminated their support and assistance of Raymond officer Razor. T.E. 20, p.6, T.E.9, T.E.10, T.E. 11, *admitted for ID only*, T.E. 12, *admitted for ID only*, T.E. 14(a) *admitted for ID only*.

[3] Because Highway 49 is a State of Mississippi Highway, the City of Jackson would respectfully request that this Court take judicial notice of the maximum speed limit on Highway 49.

The evidence further shows that not only did they terminate their actions, but Det. Coleman and Officers Spann along with Lt. McDonald advised over the recorded dispatch audio that they were terminating support. Lt. McDonald further advised dispatch to contact Raymond and tell Raymond to terminate their pursuit and let Metro 1 follow it. T.E. 20, p.6, T.E.9, T.E.10, T.E. 11, *admitted for ID only*, T.E. 12, *admitted for ID only*, T.E. 14(a) *admitted for ID only*.

Therefore, the overwhelming and substantial weight of the totality of the evidence does not sustain a finding of reckless disregard against the City of Jackson.

B. City of Jackson officers were not the proximate cause of the accident between Alice Wilson and the Plaintiffs.

Plaintiffs in this matter have conceded, along with the trial court that City of Jackson officers were not the proximate cause of the accident between Alice Wilson and the Plaintiffs. As evidenced by the lower court's finding that Razor, "observed in his rear view mirror a Ford Explorer that was being driven erratically, weaving from side to side and causing other traffic to run off the road..." R. at 136. Plaintiffs evidence their concession that the City of Jackson was not the proximate cause of the accident when they state that Razor observed Wilson swerving in and out of traffic and decided to follow her. *Appellees Brief*, P.2. As a result of this concession by the lower court and Plaintiffs, City of Jackson cannot be the proximate cause of the accident between Alice Wilson and the Plaintiffs pursuant to *Ogburn v. City of Wiggins*, 919 So.2d 85 (Miss.Ct.App.2007).

The Mississippi Court of Appeals opinion in *Ogburn* is clear in that when an individual is driving reckless and erratic before the initiation of a pursuit, the pursuing officer is not the proximate cause of the resulting accident, if any. *Id.* Accordingly, it

simply cannot be said that without the actions of the City of Jackson that the harm would not have occurred. A reasonable person cannot conclude that City of Jackson officers were the proximate cause of this accident because Alice Wilson's erratic and reckless driving behavior began before the pursuit and continued during the pursuit.

Because one must prove reckless disregard and proximate cause, Plaintiffs cannot prove proximate cause by a preponderance of the evidence when the record is devoid of any evidence that supports that City of Jackson officers were the proximate cause of the accident.

Importantly, the only evidence in the record with respect to Alice Wilson's state of mind is that Officer Razor called Wilson in as a 10-92, mental person, on Highway 18 in Raymond, because she was talking to a passenger in the car, but there was no one in the vehicle other than Wilson. T.E. 2, p.28-29. While Plaintiffs would like to assert that because Alice Wilson allegedly increased her speed, one can infer that she was aware that Officer Razor was pursuing her, this simply is incorrect. Appellees Brief, P.27-28. Because Alice Wilson was driving erratically and swerving in and out of traffic prior to Officer Razor's pursuit, and after the initiation of the pursuit; one can reasonably infer without the testimony of Alice Wilson, that Wilson did not know that she was being pursued. Therefore, a finding that Alice Wilson was the proximate cause of the accident was not proved by a preponderance of the evidence.

Moreover, Plaintiffs own expert testified that he did not know anything about Alice Wilson's state of mind, and therefore could not conclusively conclude whether Alice Wilson knew she was being pursued, or that she would have stopped at all. T.T. at 88, 105. The only state of mind in evidence is that Alice Wilson's state of mind was more similar to that in *Ogburn*, in that it was impaired. As stated *supra*, Alice Wilson,

the instant driver was reported 10-92, mental person, while traveling on Highway 18 in Raymond. T.E. 2, p.28-29. Wilson was talking to a non-existent passenger in her vehicle. *Id.* Likewise, the driver of the vehicle in *Ogburn* was also impaired as he was intoxicated. In conclusion, Plaintiffs did not prove by a preponderance of the evidence that the City of Jackson was a proximate cause of the accident on April 21, 2007.

CONCLUSION

As stated in the City of Jackson's Brief, and emphasized in the City's Reply Brief herein, this Court should reverse the lower court's ruling as it is not supported by the substantial, credible, and reasonable evidence in the record. Specifically, the lower court's ruling was in error when it found that the City of Jackson was involved in the pursuit of Wilson and further analyzed the City's actions under the City of Ellisville factors. Moreover, the lower court was also in error when it found that not only that City of Jackson officers were involved in the pursuit but also found that they acted in reckless disregard. Lastly, the lower court's ruling should be reversed because notwithstanding, the proximate cause and bystander argument, the City of Jackson was not the proximate cause of the accident in this matter. And in fact, the overwhelming and substantial evidence is contrary to the ruling by the lower court and therefore the lower court's order should be reversed.

RESPECTFULLY SUBMITTED, this the 18th day of January, 2011.

CITY OF JACKSON, MISSISSIPPI

By: Kimberly Banks

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The undersigned does certify that she has this date mailed, via United States mail, postage pre-paid, a true and correct copy of the above and foregoing ***Reply Brief*** on the following:

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So certified, this the 18th day of January, 2011.

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