IN THE SUPREME COURT OF MISSISSIPPI

ERIC LAW AND KRISTINA LAW — **PLAINTIFFS/APPELLEES**

VS. — **NO. 2009-CA-01611**

THE CITY OF JACKSON
CITY OF JACKSON POLICE DEPARTMENT
ADRIAN MAY — **DEFENDANTS/APPELLANTS**

Civil Appeal from the Circuit Court
of Hinds County, Mississippi;
Civil Action No. 251-07-893
Honorable Swan Yerger

BRIEF OF APPELLEES, ERIC AND KRISTINA LAW

Barfield & Associates,
Attorneys at Law, P. A.
WES W. PETERS (MSB[redacted]
121 Village Boulevard
Madison, Mississippi 39110
Telephone: (601) 856-6411
Facsimile: (601) 856-6441

Attorney for Eric and Kristina Law, Appellees

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Rule 28(a)(1) of the Mississippi Rules of Appellate Procedure, 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. Officer Adrian May
   City of Jackson
   Appellant

2. Pieter Teeuwissen, Esq. City Attorney
   Kimberly Banks, Esq., Deputy City Attorney
   Office of the City Attorney
   455 East Capitol Street
   Jackson, MS 39201
   Counsel for Appellants

3. Eric Law and Kristina Law
   Appellees

4. Wes W. Peters
   Barfield & Associates
   Attorneys at Law, P.A.
   121 Village Blvd. (39110)
   Post Office Box 2749
   Madison, Mississippi 39130-2749
   Telephone: (601) 856-6411
   Facsimile: (601) 856-6441

4. Hon. Swan Yerger, Presiding Judge
Hinds County Circuit Court
407 East Pascagoula Street
Jackson, Mississippi 39201

Respectfully submitted,

Wes. W. Peters, Attorney of Record for
Appellees, Eric and Kristina Law.

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I. STATEMENT OF THE FACTS

After reading Appellant's Brief, one may get the picture that this case involved the pursuit of someone who was a serious and imminent danger to the public, through the deserted streets of a ghost town, at speeds barely above the speed limit. One may also believe that the chase ended five minutes before the accident occurred. However, the facts in the record provide a completely different version of what occurred. To say it legally, there is substantial evidence in the record to indicate otherwise.[1]

To begin, the participants in the subject pursuit were Officer Adrian May of the Jackson Police Department and Carol Dearman.

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[1] It is unknown where Appellant obtained some of its facts. Appellant has the pursuit beginning at 5:45. (Appellants' Brief at p. 4) However, Appellant's own records show that not only had the pursuit begun, but it was over 30 minutes prior to that; and there is nothing in the record suggesting that it began at 5:45. (Plaintiffs' Ex. 7 & 15) Appellant also has Officer Nash proceeding South on McDowell. (Appellant's Brief at p. 6). However, McDowell Road runs East and West; and Officer Nash was heading West on McDowell. (Plaintiffs' Ex. 1; R. Vol. 4 p. 450) Additionally, because the wreck did not occur until the chase was in its seventh mile, Appellant characterizes the first six miles as "uneventful"(Appellant's Brief at p. 5) Also, the audio tape of the pursuit clearly shows that it is less than 30 seconds between the time you last hear Officer May's siren on Monticello and the time he request an ambulance due to the accident. (Plaintiff's Ex. 3;R. Vol. 2 p. 136-162) However, Appellant simply ignores this evidence and relies on people guessing that it may have been 5 minutes between the accident and the first time they saw Officer May at the scene, to suggest that the chase was over five minutes before the accident happened. Appellant even suggests that a distinguishing factor between this case and the case of *Brister v. City of Jackson,* 838 So.2d 274 (Miss. 2003) is that the Officers actually ran stop lights in *Brister*. (Appellant's Brief at p. 11) However, Officer May admitted running at least 3 stop lights in this case. (R.Vol. 2 p. 56-60,64, 70, 76) Appellant even goes so far as to suggest that Officer May terminated the pursuit when he first entered the neighborhood in South Jackson. (Appellant's Brief at p. 5 & 24) However, not only does the audio tape make clear that Officer May still had his siren going for several streets after that point, but Officer May admitted that both he and Ms. Dearman ran another stop light after that point; and everybody, even Appellant's expert, agrees that Officer May ***never*** terminated the pursuit in the manner dictated by the City of Jackson's pursuit policy. (Plaintiff Ex. 3; R. Vol. 2 p. 76; R. Vol.5 p. 521, 530) In sum, simply because Appellant recites a fact in its Brief does not mean that fact is supported by the record or that the record may not also contain proof to the contrary.

Interestingly, the two knew each other. Officer May testified that he had seen Ms. Dearman in his precinct so many times that seeing her was like seeing family. (R. Vol. 2 p. 12, 62-66, 123) Based upon her conduct, Officer May perceived Ms. Dearman to be a prostitute and drug user. (R. Vol. 2 p. 12) Officer May had stopped and actually talked to Ms. Dearman on numerous occasions, and he had filled out an interview card on her. (R. Vol. 2 p. 62) Officer May even knew that Ms. Dearman did not have a valid driver's license; and he knew which beats within the precinct she most often frequented. (R. Vol. 2 p.13 & 62) However, Officer May never had cause to arrest Mr. Dearman for outstanding warrants or for any other reason. (R. Vol. 2 p. 65-66) Officer May testified that he perceived Ms. Dearman to be a danger to herself. However, Ms. Dearman never posed even the remotest danger to the public. (R. Vol. 2 p.65-66)

Officer May was 28 years old, and he had been on the force for 18 months at the time of the incident. (R. Vol. 2 p. 6-7) Before that, Officer May was a carpenter. (R.Vol. 2 p. 6) Officer May was familiar with the fact that the Jackson Police Department had a written vehicular pursuit policy. However, Officer May testified that the policy was kind of "boggy" to him. (R. Vol. 2 p.79) In fact, the Jackson Police Department has a pursuit policy which recognizes that there are several devices and tactics which can be used in a pursuit to actually stop or apprehend a fleeing suspect. (Plaintiffs' Ex. 4; R. Vol. 2 p.136-241) However, Officer May had not been trained in any of those tactics or devices; and it was his understanding that he was not supposed to try to use any of those tactics or devices to attempt to actually stop a fleeing suspect. (R. Vol. 2 p.55-56)

On June 11, 2006, Officer May saw Ms. Dearman with a male passenger in a new model Grey Jeep Cherokee at the corner of Terry Road and Evergreen Street. This area is basically an intersection of a neighborhood and major street on the outskirts of downtown Jackson. (Plaintiffs'

Ex. 1 & 5; R. Vol. 2 p.10-12) According to Officer May, Ms. Dearman was driving carefully, and she even stopped at the next stop sign. (R. Vol. 2 p.17) However, because Ms. Dearman was in a new looking jeep, Officer May decided to try to stop her. (R. Vol. 2 p.15) Officer May turned on his lights, then he chirped his siren. However, Ms. Dearman did not pull over. (R. Vol. 2 p.15-17) By the time they got to the third street in the neighborhood, Winter Street, Officer May had his lights and siren fully activated, he alerted dispatch that he had a vehicle that was not going to stop and he called in the vehicle's tag number. (Plaintiffs' Ex.1, 3 & 5; R. Vol. 2 p.17-18)

Officer May and Ms. Dearman exited the neighborhood South onto Gallatin. Once on Gallatin, they next proceeded through the traffic controlled intersections of Gallatin and Rankin, then Gallatin and Highway 80. (Plaintiffs Ex. 1 & 5; R. Vol. 2 p. 56) After they crossed the traffic controlled intersection of Gallatin and Highway 80 , but before they reached the ramps connecting Gallatin with Interstate 20, you can hear Officer May say that they are going about 50 miles per hour.[2] (Plaintiffs' Ex. 3; R. Vol. 2 p. 46) Obviously, this would have to mean that they either did not slow down much for the traffic controlled intersection of Gallatin and Highway 80, or they basically "floored it" through this area when they got through that intersection. In this regard, Officer May admitted that there were convenience stores in this area which are open on Sunday and whose driveways directly abut Gallatin, not to mention the fact that they are about to intersect with

[2] The communications during the pursuit were recorded. Appellant seems to suggest that Officer May was reporting his speed continuously through each new street. However, all one has to do is listen to the tape to realize that he was not. (Plaintiff's Ex. 3) The speeds that Officer May offered at trial were merely something he guessed at almost 3 years after the chase occurred; and those speeds obviously do not coincide with either the total distance covered in the time elapsed on the tape, or in Officer May's estimate of the total time of the chase. (Plaintiffs' Ex. 3 and R. Vol. 2 p. 31, 136-162)

the ramps of Interstate 20 and quickly come upon two more traffic controlled intersections.[3] (R. Vol. 2 p. 57-58)

Next, Officer May and Ms. Dearman cross the area of the ramps with Interstate 20, through yet another traffic controlled intersection at West and Gallatin as well as one at the I-20 ramps and Gallatin, at which time they embarked upon a part of Gallatin which Officer May testified was dangerous, due to its potholes and how bumpy it was. (Plaintiffs Ex. 1 & 5; R. Vol. 2 p. 57-58) At this point in the pursuit, Officer May testified that he did not remember which of the traffic controlled intersections they had just been through were red and which were green, but he acknowledged that they were not all green. (R. Vol. 2 p. 59) Also, Officer May acknowledged that, by this time, he knew that Ms. Dearman was not going to stop voluntarily, and he knew that there was no way for him to use the pursuit to get her stopped. (R. Vol. 2 p. 55-56)

At this time, Officer May's supervisor, Sgt. Campbell, instructed Officer May, if she started going through red lights, Officer May should let her go. (Plaintiffs' Ex. 3; R. Vol. 2 p. 60) In this regard, Officer May admitted that he never advised his supervisor that they had already done that. Neither did Officer May advise Sgt. Campbell that he knew exactly who it was that he was chasing, despite the fact that is an important consideration under the City of Jackson's pursuit policy. (Plaintiff's Ex. 4; R. Vol. 2 p. 60-61)

Next, the chase proceeded onto Interstate 55. However, as soon as they got on I-55, they got right back off at the Daniel Lake Boulevard esit. (Plaintiffs Ex. 1 & 5) At this point, Officer May

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[3]While Officer May initially admitted that the convenience stores in this area are open on Sundays, on examination by the Appellant, Officer May claimed to have noticed that each of the convenience stores just happened to be closed on the Sunday in question, and he was evidently able to notice this while driving 50 miles an hour through the area with a vehicle he was pursuing in front of him.

admitted that getting on the Interstate seemed like a reprieve from the bad roads, traffic controlled intersections and the driveways of stores abutting the roadway. (R. Vol. 2 p. 59-60). However, just as soon as they got on the Interstate, they got right back off and began heading right back into town into the same type areas all over again. (R. Vol. 2 p. 68-69) As a matter of fact, despite Sgt. Campbell's recent and explicit directive, they both proceeded through the busy intersection of Terry/Cooper/ Daniel Lake without even noticing which color the light at the intersection may have been.[4] (R. Vol. 2 p. 69-71)

Officer May and Carol Dearman then proceeded South on Terry, then took an immediate right heading West on Dona Avenue. (Plaintiff's Ex. 1 & 5; R. Vol. 2 p. 71) At this juncture, Officer May admitted that he was well out of his assigned precinct, he had never been in this area, and he was completely unfamiliar with the roads and the area. However, he could see that it was a family neighborhood with a park, narrow streets, driveways directly abutting the roadway, and he fully expected to see children and cars emerging from driveways. (R. Vol. 2 p. 72-73) Due to these facts, Appellant would obviously love it if the pursuit had ended here. As a matter of fact, in two separate points in its brief, Appellant actually tries to lead this Court to believe that the pursuit ended here.(Appellant's Brief at p.5 & 24)

However, Officer May admitted that the only siren you hear on the tape of the pursuit is his siren, when he keys his radio. (R. Vol. 2 p. 47) In the tape, you can clearly hear Officer May's siren continuing through multiple streets thereafter, including on the street where the accident

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[4] In his deposition, Officer May testified that he did not remember whether this light was red or green. At trial, however, Officer May tried to testify that this light was green. When reminded of his prior deposition testimony, however, Officer May admitted that he never actually noticed whether the light was red or green.(R. Vol. 2 p. 69-71)

ultimately occurred, and Officer May admitted that he did, in fact, have his siren going that entire time. (Plaintiffs' Ex. 3; R. Vol. 2 p. 25, 52, 70-77)

Accordingly, it is clear that the pursuit had not, in fact, terminated at this time. Nevertheless, Appellant proffers that, although Officer May still had his siren going, Ms. Dearman was still in his sight, and they were both still running red lights, this Court should determine that Officer May had somehow quasi-terminated the pursuit at this time; because Ms. Dearman was going so fast that Officer May could not keep up with her as closely and some sort of gap was being created between the two cars. However, creating some sort of unidentified gap is not even a quasi-termination of a pursuit. Moreover, Officer May admitted that, due to his unfamiliarity with the area, he would not be able to call out the next street name until he could actually read the next street sign. (R. Vol. 2 p. 72-77) Dona Avenue is a distance of .7 miles, and Officer May called out the next street name of Meadow Lane 7 seconds after he called out Dona Avenue; and the remainder of the streets were called out just that quick, so we are certainly not talking about any large gap.[5] (Plaintiffs Ex. 3; R. Vol. 3 p. 238) Further, whatever this gap is that they are trying to create, they both ran the next red light where Meadow Lane crosses back over Cooper Road. (R. Vol. 2 p. 76) Accordingly, whatever this gap is, Officer May completely and blatantly disregarded the direct order of his supervisor to let her go if she started going through red lights; and he did this knowing

[5] Like changing his testimony about all of the stores being closed on Gallatin, Appellant also had Officer May testify that he *did not notice* any children playing in Levelwood Park on Dona Avenue. However, covering .7 of a mile in 7 seconds while trying to follow where Ms. Dearman may next turn and find the next street sign, it is doubtful Officer May could have noticed any children, unless they ran right out in front of him. Further, it only took Officer May 22 seconds between the time he called out Meadow Lane, ran the red light crossing Cooper Road and the time he called out Woody Avenue, and it only took 8 seconds between Woody Avenue and Monticello. (Plaintiffs' Ex. 3)

he did not know the area, and that it was a very dangerous area to conduct a chase, and he had no way of getting her stopped anyway, unless of course, she wrecked. Obviously, this asserted gap is nothing even remotely similar to a quasi termination of the pursuit, as Appellant seems to suggest.

About this same time, Officer Nash, who is actually from the precinct Officer May and Ms. Dearman are now in, and who is more familiar with the area, is heading West on McDowell Road. Officer Nash testified that he was fearful that there was about to be a "major catastrophe" if the chase emerged out of that neighborhood into the intersection of McDowell/McFadden/Brookwood.[6] (R.Vol.5 p 459) Officer Nash's supervisor had instructed him to stay out of the chase. However, Officer Nash believed that he had to try to do something to serve the public. (R.Vol.5 p 459)

Also, at this time, Eric and Kristina Law had just left their home on McDowell and are headed East on McDowell to go to the Subway on Terry Road to get something to eat before going on vacation. (R. Vol. 3 p. 250-254) Obviously, however, they do not have a police radio; and they know nothing about any chase going on in the area.

Accordingly, you now have Officer May and Carol Dearman headed North on Monticello toward McDowell[7], Officer Nash heading West on McDowell where it intersects with these streets and who is fearful that a "major catastrophe" is about to occur at that intersection; and Eric and Kristina Law who are headed East on McDowell towards this intersection about to go get something to eat and go on vacation and who know nothing about what is about to come into this intersection.

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[6] Officer May left his precinct where McDowell meets Interstate 55.

[7] Monticello changes its name to Brookwood before crossing McDowell and to McFadden after crossing McDowell. (Plaintiffs' Ex. 1 & 5; and R Vol. 2 p. 25)

As it turned out, Officer Nash was exactly right. At the seventh traffic controlled intersection through which the chase proceeded, Ms. Dearman ran the red light and slammed violently into the passenger side door causing the Law's vehicle to spin and the Jeep to flip several times. (Plaintiffs' Exs. 9-12).

In a similar vein to its quasi termination theory at Dona Avenue however, Appellant argues that Officer May finally lost sight of Ms. Dearman somewhere near Woody and Monticello; and later on Monticello, Officer May finally turned off his siren. Therefore, if the Court does not buy into its quasi-termination of the pursuit at Dona Avenue theory, it can consider another theory of quasi termination of the pursuit on the street from which they emerged to cause the accident.

However, the Jackson Police Department's policy is very specific about how you terminate a pursuit. It does not say momentarily losing sight of someone on a curvy road is the same thing as terminating the pursuit. To the contrary, the policy requires that the officer not only turn off his lights and siren, but that the Officer completely withdraw from and suspend all tracking and following activities or other attempts to apprehend the suspect and either stop or begin traveling in the opposite direction so that the person being pursued will clearly know that the pursuit is being terminated. (Plaintiffs' Ex. 4; R. Vol. 2 p. 163-165) Accordingly, turning off your siren after you can tell that the pursuee is about to be involved in a major accident hardly counts as terminating the pursuit. Rather, it is more akin to a defender in football turning his back when he is about to get blocked so the referee will call a clip.

Moreover, keeping sight of someone on Monticello/Brookwood is not like watching a ship sail over the horizon, where you will not lose sight of the ship until it goes over the horizon. To the contrary, Monticello/Brookwood is a twisty narrow neighborhood street where you can loose sight

of someone only a few yards ahead. Accordingly, the fact that Officer May may have momentarily lost sight of Ms. Dearman on a twisty neighborhood street means little to nothing.

The fact is that from the time that you last distinctly hear Officer Mays' siren on Monticello to the time you hear Officer May say send AMR J-1, meaning the accident has occurred, is less than 30 seconds.[8] (Plaintiffs Ex. 3; R. Vol.2 p. 136-150, 162). Moreover, the accident that occurred is the exact same accident that Officer Nash anticipated occurring.

In sum, while Appellant would seek for this Court to believe that the chase was just a leisurely Sunday afternoon drive through an empty parking lot, the facts are that, in five minutes and thirty three seconds, the chase went 7 miles, through almost every type thoroughfare imaginable in this State's largest city, from the streets of crime riddled neighborhoods, to major city streets in

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[8] This does not mean that Officer May actually turned off his siren 30 seconds before he called for an ambulance. Rather, it simply means that Officer May had not keyed his radio during that 30 seconds. In its brief, Appellant actually suggests that the time is closer to five minutes. However, in making this suggestion, Appellant simply ignores the evidence from the tape itself as well as Officer May's own estimate of 45 seconds. (Plaintiffs' Ex. 3; R. Vol. 2 p. 53, 136-150,162) Instead, Appellant focuses exclusively on the guestimates of witnesses who were so startled from seeing the violent collision that they offered three different versions of where the Laws' vehicle was either going to or coming from. Specifically, Officer Nash thought that the Laws' vehicle was in the Southern most East bound lane of McDowell about to turn North on McFadden. Conversely, Ms. Johnson was not sure whether the Laws' vehicle came from McDowell or McFadden. Finally, Nicholas Thomas thought that the Laws were actually West bound on McDowell and turning South onto Brookwood. Obviously, if either Officer Nash or Mr. Thomas were correct, the accident would have either been a rear end or head on collision, as opposed to an undisputed T-bone on the passenger side of the vehicle. (R. Vol. 4 p. 430-441;450-454; Defendant's Ex. 1). Further, this would mean that where it only took Officer May 5 minutes to go the first 5-6 miles of the chase, it took him an equal amount of time to go the last mile of the chase. Finally, this would mean that Officer Nash actually witnessed the violent collision, but waited 5 minutes to allow Officer May to be the one to call for the ambulance. Obviously, it is senseless to rely on admitted guesses of witnesses, when we know for a fact that the actual time between when you can clearly hear Officer May's siren on Monticello to the time he request an ambulance is less than 30 seconds. Moreover, on appeal, Appellant's burden is to show that no substantial evidence exists to support the Judgment of the Trial Court, not to simply pick some evidence of a fact while ignoring all other evidence.

a commercial area where open convenience stores directly abut the roadway, through pot hole filled city streets in an industrial area, across a state highway, along the interstate, through multiple major traffic controlled intersections, through two police precincts, to city streets in a nice family neighborhood with parks and churches on a Sunday afternoon, to the scene of the accident. Moreover, the facts are that Officer May had never received any type training to use a pursuit to actually apprehend a suspect; he knew Ms. Dearman would not pull over voluntarily, and he knew he had no way of getting her stopped. Nevertheless, he ignored a direct order from his supervisor and continued the pursuit through multiple traffic controlled intersections, and the accident finally occurred as they proceeded through the seventh traffic controlled intersection.

As will be shown, these facts completely support the Judgment of the Trial Court.

II. SUMMARY OF THE ARGUMENT

Admittedly, we have been chasing bad guys since well before the advent of the vehicle, when Roy Rogers chased the bad guy out of town on horseback. Further, as long as it is on TV in the context of a reality show and not actually coming through our neighborhood, a lot of us would probably sit down and watch a high speed chase and think it was pretty neat. As a matter of fact, if the chase ended with the bad guy simply pulling off the road, as opposed to a mass of crunched metal, a lot of us may actually feel let down or disappointed.

In the real world, as acknowledged by Plaintiffs' expert, vehicular pursuits serve a very legitimate function of law enforcement; and many law enforcement agencies train their officers in a variety of tactics and the use of various devices which allow the officers to actually use the pursuit as a very real means of apprehending the bad guy. However, this recognition together with the romance we have with television pursuits should not be interpreted as providing *carte blanche*

authority and immunity for chasing anyone anywhere you want, simply because you have been provided a vehicle with lights and a siren.

This Court has had the opportunity, or regret, of considering several cases in which innocent members of the public have been the ultimate victim of a police pursuit. In those cases, this Court has outlined and addressed the factors to be considered in determining whether the innocent victim is entitled to recover under Mississippi's Tort Claims Act; and this Court has applied those factors to either permit or deny recovery under the Act in a wide variety of contexts and facts.

In this case, we have an officer chasing a suspect 7 miles through the streets of Jackson. However, he had not been trained in any pursuit tactics or devices which would allow him to actually use the pursuit to apprehend the suspect. Rather, he had been told that he could not use any such tactics in a pursuit, he knew he had absolutely no way of using the pursuit to actually stop and apprehend the suspect, and he knew she was not going to stop voluntarily. The Officer's supervisor told him to terminate the chase if they started going through red lights. By this time, the pursuit had already proceeded through four traffic controlled intersections, and Officer May could not say which ones may have been red and which ones may have been green, but they certainly were not all green. Moreover, completely ignoring the direct order of his supervisor, Officer May went through another traffic controlled intersection without noticing whether it was red or green, then proceeded to run yet another red light through a family neighborhood with parks and churches, with which he was completely unfamiliar, on a Sunday afternoon. The way the chase finally ended was when the suspect had an accident with innocent motorist at the seventh traffic controlled intersection. All the while, the officer knew exactly who it was he was chasing, it was a person who posed no threat of imminent harm or danger to the public; and it was a person he knew where to find later without

chasing her. Regretfully, the best thing that can be said about this chase is that it was one that we would have all sat down and watched on a reality TV show; and if carnage was what we were after, we would not have been disappointed.

In sum, in considering this pursuit in the context of other pursuits which have been addressed by this Court, this may be the worst case scenario yet; and there is an abundance of substantial credible evidence in the record to support the Judgment of the Trial Court.

III. ARGUMENT AND AUTHORITIES

A. The Trial Court Applied the Appropriate Standard and Recent Case Law and Based Its Opinion on Substantial Credible Evidence in the Record

This Court has had several opportunities to address an innocent victim's right to recover under the Mississippi Torts Claims Act, in the context of police pursuits; and this Court has repeatedly held that, when a pursuit is conducted in reckless disregard of the rights and safety of the public, a person injured by the pursuit is entitled to recover under the Act, as long as that person was not engaged in criminal activity at the time of the injury. *Ogburn v. City of Wiggins*, 919 So.2d 85 (Miss. 2005); *City of Ellisville v. Richardson*, 913 So.2d 973 (Miss. 2005); *Mississippi Department of Public Safety v. Durn,* 861 So.2d 990 (Miss. 2003); *Johnson v. City of Cleveland,* 846 So.2d 1031 (Miss. 2003); *City of Jackson v. Brister*, 838 So.2d 274 (Miss. 2003).

It is undisputed that the Laws were not engaged in any criminal activity at the time of their injuries.

Moreover, Appellant acknowledges that the Trial Court addressed the factors which this Court said should be considered in determining reckless disregard, and applied those factors to the

facts of this case. (Appellant's Brief at p. 9) As a matter of fact, the Trial Court compared and contrasted the facts of this case with a number of prior cases handed down by this Court, and that is precisely what this Court has done in order to maintain consistency in determinations on the issue. (R. Vol. 1 p. 39-64)

> If this Court also found reckless disregard based on the facts of *City of Jackson v. Perry*, 764 So.2d 373 (Miss. 2000) and the allegations in *Turner v. City of Ruleville*, 735 So.2d 226 (Miss. 1999), then certainly this judgment should be upheld.

City of Jackson v. Brister, 838 So.2d 274 (Miss. 2003)

For some reason however, on appeal, Appellant addresses only one of those several cases and proffers that the facts of this case are distinguishable from the facts which established liability in *City of Jackson v. Brister*, 838 So.2d 274 (Miss. 2003). However, as will be shown, the only way that the facts in this record are distinguishable from *Brister*, or any of the prior cases where liability was found under the Act, is that the facts in the record of this case are actually much worse in terms of the needless danger to the public than any of those which have previously afforded liability.

To start, in this case, **both** side's experts agreed that this was a pursuit that needed to be terminated; and both sides experts agreed that this pursuit was never terminated in accordance with and as dictated by the Jackson Police Department's pursuit policy. (R. Vol.2. p. 162-178; Vol 5 p. 521-530) In fact, Appellant's argument, in itself, concedes that this was a pursuit that needed to be terminated. However, nowhere on the audio tape of the pursuit is there any indication whatsoever that Officer May considered, was thinking about, was about to or had terminated the pursuit. (Plaintiffs' Ex. 3) To the contrary, Officer Nash actually anticipated that the pursuit was just about to come out of the neighborhood at the subject intersection and cause a "major

catastrophe" (R. Vol.5 p. 459). Obviously, he was right. The only time you hear anything about the pursuit having been secretly quasi-terminated at some point was after the accident.

Nevertheless, by ignoring certain facts in the record, arguing others which are contrary to the facts in the record and skewing others, Appellant seeks for this Court to somehow favorably distinguish this case from the facts of *Brister*.

Obviously, comparing the facts of this case with those of *Brister* requires at least an initial basic outline of the facts of *Brister*. In *Brister*, like this case, the pursuit took place in the City of Jackson with the City of Jackson Police Department. A local bank called 911 and reported that someone was trying to utter a forged check. A police unit with a rookie officer as well as his more experienced training partner arrived at the Bank while the forger was still there. However, the forger jumped a curb in her vehicle, and the officers followed in pursuit. The officers pursued the lady for 40-60 seconds, through two traffic controlled intersections, and the accident was caused as the officers tried to pursue her through a third traffic controlled intersection In *Brister*, this Court ruled that the officer's decision to initiate and continue the pursuit under those facts evidenced a reckless disregard for the rights of the public, so as to entitle the Plaintiff to recover under the Act.

The first factor outlined by this Court to be considered is: the length of the chase and the type area and characteristics of the streets through which the suspect was being pursued. *Brister, supra* (finding a chase which lasted between 40-60 seconds, for almost a mile, through two traffic controlled intersections of the streets of Jackson where apartments, a school and houses were located to be reckless disregard with respect to an accident which occurred at the third traffic controlled intersection); *City of Ellisville, supra* (finding reckless disregard where officer pursued

suspect for almost a mile on a hilly, curvy two lane residential road); *City of Wiggins, supra* (not finding reckless disregard where the pursuit lasted less than 2 miles down a rural road in a sparsely populated area).

In its brief, in trying to favorably distinguish this case from *Brister,* Appellant simply avoids any discussion of the length of the chase. However, the fact which Appellant conspicuously avoids is that the subject chase went on for 7 miles, longer than *Brister* or any of the other chases referenced above. (R. Vol. 2 p. 30)

As it respects the character of the streets through which the suspect was being pursued, this is a fact which Appellant skews to paint a picture of abandoned streets in a ghost town. However, the actual facts are that the subject chase went through every type area imaginable from commercial and industrial city streets, across and on highways and interstates, through multiple traffic controlled intersections, to neighborhoods with parks and churches and every type of area and roadway imaginable in between.[9] Despite acknowledging that the pursuit finally ended up in an area with which Officer May was completely unfamiliar and which was clearly a family neighborhood with parks, churches, narrow streets and abutting driveways in which Officer May expected to see children, the tape makes it abundantly clear that Officer May is still pursuing Ms. Dearman with his siren on, and they even both run yet another red light in this area. (R Vol. 2 p. 70-78) As a matter of fact, the intersection where the accident occurred was the seventh traffic controlled intersection through which the chase proceeded, with Officer May admitting that they both ran the red light at the intersection immediately before that, and he did not even notice whether the light was red or green at the intersection before that, but he acknowledged that it was

[9] See Appellee's Brief at p. 8-9

a busy intersection with traffic.[10] (R. Vol. 2 p.56-57, 59, 64, 76)

Another factor for the Court to consider is the seriousness of the suspect's offense. *Brister, supra,* (finding reckless disregard for pursuing a person who had forged a check through the streets of Jackson); *City of Wiggins, supra* (not finding reckless disregard when the suspect was driving recklessly and actually running people off the road, before the pursuit even began).

In this case, Officer May perceived Carol Dearman to be a prostitute and drug user. However, he never had any prior cause to arrest her. When Officer May saw Ms. Dearman in the Jeep, he knew she did not have a driver's license; and he suspected and was correct that the Jeep was stolen. While this is a felony, it is a property crime; and it is obvious that the owner of the vehicle would rather have the vehicle recovered as opposed to being totaled in a pursuit. Moreover, as set forth in *Brister* as well as the City of Jackson Police Department's pursuit policy, the actual consideration is whether the danger of the suspect remaining at large outweighs the danger posed by the pursuit itself. (Plaintiffs' Ex. 4) As agreed by the experts, the danger to be considered and weighed is an actual physical danger, not danger that the suspect might commit another property crime. Officer May admitted that, in his multiple prior encounters with Carol Dearman, he never considered Ms. Dearman to pose any physical danger to the public. (R. Vol. 2 p. 12, 61-68 & 123) Further, Officer May admitted that before he got behind Ms. Dearman with

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[10] Amazingly, Appellant actually suggest that a fact which distinguishes this case from *Brister* is the fact that the Officers in *Brister* ran red lights. (Appellant's Brief at. p. 11 & 13) This is simply a proffer of a distinguishing factor which cannot be supported by the record. To the contrary, Officer May admitted that before his supervisor told him to terminate the chase if they started going through red lights, he had already been through 4 traffic controlled intersections, and they were not all green. Further, Officer May admitted that he ran through the traffic controlled intersection of Terry/Cooper/Daniel Lake without noticing the color of the light. Then, he and Carol Dearman both ran the red light at Meadow Lane and Cooper Road. (R. Vol. 2 p.56-57, 59, 64, 76)

his blue lights on, Ms. Dearman was driving slowly and was even stopped at a stop sign. (R Vol. 2 p. 17) In sum, the only proof of Carol Dearman presenting any physical danger to the public was that presented by the pursuit itself.

Another factor that this Court as well as the City of Jackson's pursuit policy addresses is whether there was a possible alternative means of apprehension. *City of Ellisville, supra* (finding reckless disregard when an officer continued to pursue a suspect that was known to the officer) *Brister, supra* (finding reckless disregard when an officer pursued the suspect through traffic controlled intersections in Jackson, after having already obtained the suspect's tag number).

In this case, Officer May admitted that he knew exactly who it was he was pursuing from the very beginning of the pursuit. (R Vol. 2 p. 12) Officer May testified that, during the year and a half he was on the force, he had occasion to stop Ms. Dearman and see her numerous times. Officer May had even filled out an interview card on Ms. Dearman. Despite stopping Ms. Dearman numerous times, Officer May continued to see Ms. Dearman; and he knew exactly which beats within the precinct she could be found most frequently. Officer May even testified that seeing Ms. Dearman was like seeing family. In fact, Officer May admitted that before the pursuit left Interstate 55 to go back again through city streets, he had everything he needed to charge Ms. Dearman with every crime for which he ultimately charged her . (R. Vol. 2 p. 12, 61-68 & 123).

Nevertheless, Officer May admitted that he never even considered this fact in deciding whether to continue or terminate the pursuit. (R. Vol. 2 p. 60-70) Moreover, at no time throughout the entire course of the pursuit did Officer May ever advise his supervisor that he knew exactly who it was that he was chasing, despite the fact that this is a factor within the Jackson Police

Department's Policy for terminating a pursuit. (R. Vol. 2 p. 64)

This Court has also suggested that the courts should consider the experience and training of the officer. *Brister, supra* (finding rookie officer accompanied by a training officer acted in reckless disregard by continuing pursuit into an area with which he was not familiar); *City of Ellisville, supra* (finding rookie officer who had received no training in actual pursuit tactics acted in reckless disregard in pursuing a suspect that he had no real opportunity to apprehend from the pursuit)

In this regard, Appellant emphasizes that Officer May was not a rookie and had been on the force 18 months prior to the subject pursuit. Before that, Officer May worked as a carpenter. (R. Vol. 2 p. 8) However, Officer May admitted that he never had any training in bumping, ramming, channeling, using tire deflation devices or any manner of using a pursuit to apprehend a suspect, unless that suspect simply chose to stop voluntarily. (R. Vol. 2 p.55-56) As a matter of fact, Officer May knew that there was absolutely nothing he could do to actually apprehend Ms. Dearman by chasing her, and he knew that she was not going to stop voluntarily. When asked about his department's policy regarding pursuit, Officer May testified that it was kind of boggy. (R. Vol. 2 p. 79) Officer May did not consider and apparently did not realize that knowing the suspect was an important factor in considering whether to terminate a pursuit. In sum, just like *Brister* and *City of Ellisville supra.*, Officer May admitted that the policy was kind of fuzzy to him, he had not been trained and did not know of any way to actually use a pursuit to apprehend a suspect, and he chased the suspect into an area with which he was completely unfamiliar.

This Court has also suggested that courts consider whether the applicable pursuit policy was followed. *City of Ellisville supra*, (finding that officer acted in reckless disregard because

he did not consider the seriousness of the suspect's crime and whether a pursuit would actually result in the suspect's apprehension, as required by the department's pursuit policy).

In this case, first and foremost, the City of Jackson's pursuit policy specifically states that an officer must determine that the danger to the public of the suspect remaining at large outweighs the danger posed by the pursuit. (Plaintiff Ex. 4) Officer May admitted that he never considered Carol Dearman to be a danger to the public; and the evidence is undisputed that she was driving slowly and even stopped before Officer May decided to try to pull her over. However, Officer May admitted that he never considered this factor in deciding to continue his pursuit of Ms. Dearman.

The Jackson Police Department's policy also instructs that, if the suspect's identity is known and apprehension at a later time is feasible, this factor should be considered in terminating the chase. (Plaintiffs' Ex. 4). Again, however, Officer May admitted that he never considered this factor in deciding to continue his pursuit of Ms. Dearman. As a matter of fact, Officer May admitted he never even advised his supervisor over the radio that he knew exactly who it was that he was chasing. (R. Vol. 2 p. 64) Accordingly, just as Officer Tolbert's failure to weigh these factors was considered a violation of his department's policy in *City of Ellisville, supra,* so should Officer May's in this case.

Finally, while Appellant argues that Officer May made up his own form of secretly terminating the chase, everyone agrees that Officer May made no effort and completely disregarded the manner in which the policy instructs to terminate a chase. (R. Vol. 2 p. 78; Vol. 5 p. 521)

What is even more alarming than Officer May's violation of the department's policy is

that Officer May completely disregarded a direct order from his supervisor to terminate the chase if they began going through red lights. (R. Vol. 2 p. 60, 64) Officer May had already been through four traffic controlled intersections when he received this directive, and he went through two more without advising his supervisor, until the wreck finally happened at the seventh one. (R. Vol. 2 p. 60-70) Obviously, it is a part of the Jackson Police Department's more general policy for officers to consider and follow the direct orders of their supervisors.

Finally, under the ostensible guise of distinguishing the facts of this case from those of *Brister*, Appellant AMAZINGLY launches into an attack of Plaintiffs' expert. Appellant also tries to throw out some argument that, in Officer May's opinion, Ms. Dearman never drove recklessly.

The attack on Plaintiffs' expert is simply that there is no national standard which says to stop every chase on Daniel Lake or some other specific road. This argument really makes no sense, as Daniel Lake Boulevard would not seem to be of national significance. Moreover, it is quite surprising that Appellant would seek to address the issue of experts, when it was learned that Plaintiffs' expert invented the continuum with which pursuit tactics are taught. Conversely, Appellant's expert was forced to admit that the college degrees he brags about actually came from an unaccredited school that was shut down for being a diploma mill and the President was sent to prison for fraud. (R Vol. 5 p. 489) More importantly, everything in Mr. Ashley's opinion was completely supported by the City of Jackson's own pursuit policy. Conversely, Appellant's expert actually agreed to be designated to testify that there never was a pursuit at all. However, when he could not find any support for that opinion in anything he reviewed, he was left merely to try to explain why everything in the policy could be discounted or ignored for one reason or another . (R Vol. 5 p. 489-498, 543)

As it respects Officer May's opinion that Ms. Dearman did not drive recklessly, Appellant's reference to this matter is equally amazing; because that is simply one matter that Officer May could not seem to get straight like Appellant wanted it to come out. At one point, Officer May testified that Ms. Dearman's only reckless driving was when she was weaving in and out of lanes on the interstate. Later, however, Officer May testified there was no traffic on the interstate. (R Vol. 2 p.100-117) Nevertheless, he considered changing lanes on the interstate reckless, even if there was no traffic. Obviously, if that was the only point Ms. Dearman was supposedly reckless, Officer May had to say that exceeding the speed limit and driving through red lights was not reckless, so he did testify to just that. (R. Vol. 2 p. 100-117) However, in his deposition, Officer May had to admit that he had actually ticketed Ms. Dearman for reckless driving; and the reckless driving he ticketed her for was the manner in which she drive through the neighborhoods. In the end, Officer May simply could not explain in any coherent fashion where Ms. Dearman may or may not have been reckless. (R. Vol. 2 p. 100-117)

In sum, Appellant does not dispute that the Trial Court took the exact factors which this Court said that should be considered in determining liability under the Act in the context of a police pursuit, compared them to the application of those factors in this Court's prior police pursuit cases, and applied them to the facts of this case in the same manner in which this Court applied them in its prior cases. Appellant's only argument is for this Court to apply those very same factors differently to reach a different conclusion. However, to make this argument, Appellant simply ignores the numerous facts which weigh against any different conclusion, make arguments based on facts which can nowhere be found or supported by the record, and skews other factors to make it sound like they are something they are not. However, a review of the

facts which are actually in and supported by the record in this case reveals that the subject case is probably the worst fact scenario for a chase that this Court has had to deal with to the present date.

B. Appellant's Proximate Cause Argument Lacks Authority, Consistency and Support From the Facts in the Record

In the event this Court is unwilling to overturn the Trial Court's determination with respect to a 5-6 minute, 7 mile long chase, which was pursued in direct contradiction not only of the department's policy but the direct orders of the supervisor, and which resulted in substantial injuries to innocent victims at the seventh traffic controlled intersection through which the chase proceeded, Appellant offers an alternative argument. In this alternative argument, Appellant proffers that this Court should undertake something called a *de novo* review of the Trial Court's determination of proximate cause. (Appellant's Brief at p. 20) Appellant concludes this alternative argument with the suggestion that this Court should assign 25% of the fault for the accident to Eric Law. (Appellant's Brief at p.27) In between its proffer of what it believes this Court should do and the ultimate conclusion it wants this Court to reach, Appellant proffers so many disjointed propositions that it cannot even maintain consistency as to exactly what it believes the record shows.

However, Appellees know of no authority supporting anything called a *de novo* review of a trial court's proximate cause determination; and no authority has been cited by the Appellant. Moreover, by requesting that this Court undertake a *de novo* review, Appellant is apparently conceding that it cannot meet its burden of showing that the Trial Court's determination is not supported by substantial credible evidence in the record.

Further, Appellees know of no authority which would support any appellate court's original determination of a particular percentage of fault which should be attributed to a specific actor; and again, Appellant cites no supporting authority.

Obviously, if there was any authority supporting such an undertaking by an appellate court, we could be better guided on how to proceed in having an appellate court make such an original determination. However, with no methodology whatsoever in mind, Appellant simply proceeds in offering so many different disjointed points that it makes no attempt to maintain any consistency in what it believes the records shows.

To illustrate, Appellant certainly appears to be dissatisfied with the Trial Court only attributing 60% of the fault to Carol Dearman; and Appellant seeks for this Court to characterize Ms. Dearman's negligence as something it calls "the significant proximate cause". (Appellant's Brief at p. 20 & 23) At the same time, however, Appellant suggests that while we know the light in Eric Law's direction was green, we do not actually know that the light facing Carol Dearman's direction was red. (Appellant's Brief at p.24 fn.2). In other words, one the one hand, Appellant wants a higher degree of fault attributed to Ms. Dearman. However, on the other hand, if one were to wildly speculate that the traffic light may not have been working properly, one could ostensibly relieve Ms. Dearman of all fault, as she was doing nothing more than proceeding under a green light.

Additionally, on the one hand, Appellant points out that there was no way for the Plaintiffs' expert to see inside Ms. Dearman's head in order for him to offer any opinion on proximate cause. (Appellant's Brief at p. 23) On the other hand, while Appellant's expert would have been equally unable to see inside Ms. Dearman's head, Appellant offers its expert's

completely unexplained and otherwise unsupported opinion of no proximate cause. (Appellant's Brief at p. 22) Of course, we also know that Appellant's expert was at least at one time of the opinion that there never was a chase, but he could not remember anything about what caused him to arrive at that opinion. (R Vol. 5 p.543).

Perhaps most telling, however, on the one hand, Appellant proffers that Officer May had terminated the chase and there was no reason for anybody to foresee that Ms. Dearman would come barreling into the McDowell/McFadden intersection. On the other hand, Appellant argues that this is the precise basis on which this Court should attribute 25% of the fault in the accident to Eric Law.[11]

The only thing that actually makes any sense in Appellant's proximate cause argument is Appellant's citation of *Ogburn v. City of Wiggins*, 919 So.2d 85 (Miss. App. 2005) in which the Mississippi Court of Appeals addressed whether a pursuit was a proximate cause of an accident. However, the Mississippi Court of Appeals did not undertake any kind of *de novo* review of the Trial Court's determination of proximate cause or undertake any kind of original determination of what percentages of fault should be attributed to which parties. To the contrary, the Court of Appeals affirmed the Trial Court's finding of no proximate cause on the basis that it was supported by substantial evidence in the record.

The facts and analysis of the Court in *Ogburn* actually illustrates exactly why Officer

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[11] Appellant also throws out that Eric Law had worked 13 days straight in the ostensible hope that this Court will be willing to wildly speculate that Mr. Law fell asleep at the wheel, despite the fact that he had just woken up from a full 8 hours of sleep. (Appellant's Brief at p. 27)(R.Vol. 4 p. 341) Further, Appellant cites laws about how you are supposed to yield the right of way to an officer with his lights on. However, nobody failed to yield to or had any collision with Officer Nash. Obviously, arguing things like this illustrate the Appellant's complete and utter desperation to simply come up with something.

May's chasing of Ms. Dearman was a proximate cause of the subject accident. Specifically, in *Ogburn,* the proof showed the asserted pursuee, John Wortham, was driving above the speed limit in the wrong lane of traffic before Mr. Wortham first encountered the officer. As a matter of fact, Mr. Wortham actually ran the officer off the road, and the officer had to leave the road to avoid colliding with Mr. Wortham before there even was a chase. Accordingly, the officer had to get his car turned around and back on the road before he could even begin the chase; and before he could ever, even remotely, catch up to Mr. Wortham, the accident had already occurred. As it turned out, Mr. Wortham's blood alcohol content was three times the legal limit. In sum, there was never any proof that Mr. Wortham operated his vehicle any differently after the pursuit than he did before the pursuit.

However, the facts in the record before this Court present the exact opposite scenario. As a matter of fact, due to the fact that this pursuit continued through every possible thoroughfare over the course of seven miles, the causal link is probably more profound in this case than in any other case previously addressed by this Court. Specifically, unlike Mr. Worthham in *Ogburn,* not only was Ms. Dearman driving safely and reasonably before the pursuit began and not endangering anybody, but the proof shows that she stopped at a stop sign, was obeying all of the rules of the road and was not endangering anybody. (R. Vol. 2 p. 17) Moreover, unlike Mr. Wortham in *Ogburn,* there was never any doubt that Ms. Dearman knew that Officer May was behind her pursuing her (R. Vol. 2 p. 10-24) Once Officer May initiated the pursuit, Carol Dearman began disregarding traffic controlled intersections and speed limits to try to get away from Officer May. It soon became clear that Officer May would continue to pursue her despite four separate traffic controlled intersections and a road in an industrial area that was distinctly

dangerous at high speeds. Therefore, if Ms. Dearman wanted to avoid getting caught, she had to do still more. According to Officer May, Ms. Dearman then began weaving in and out of lanes in a reckless manner on the interstate. Still, however, that would not stop Officer May from pursuing her; and neither would going through a major intersection like Terry Road/Cooper Road/Daniel Lake. Therefore, if Ms. Dearman wanted to try to lose Officer May she would need to do still more. So, Ms. Dearman tries another tactic of ditching into a family neighborhood with parks and churches. Here, according to Officer May, Ms. Dearman picks up even more speed and starts pulling away. Still, however, Officer May stays on her with his siren going strong; and both of them even run the red light crossing Cooper Road. Officer May follows her on every single road with his siren going which leads up to the scene of the accident; and the accident finally occurs at the seventh traffic controlled intersection through which the chase proceeded.

Since there is no one that has any hint of this secretive termination of the pursuit, Officer Nash is actually proceeding to the very same intersection where the accident occurred with the thought that the chase is about to emerge into that very dangerous intersection and cause a "major catastrophe". Ostensibly, under the proximate cause part of its argument, Appellant would now argue that Officer Nash's anticipation of the chase emerging at that point and cause an accident was a completely fortuitous and an unpredictable coincidence.

However, with no thought whatsoever of trying to maintain any consistency, Appellant comes right back and tries to argue Eric Law's asserted comparative negligence for not anticipating that chase vehicles may emerge into the intersection. In other words, according to Appellant, Officer May had no reason to believe that his pursuit of Ms. Dearman may lead to an accident at the seventh traffic controlled intersection through which they proceeded, but Eric Law

should be charged with comparative negligence for not foreseeing that very same thing, even though he had no police radio in his car to even know a chase was going on.

In sum, Appellant's proximate cause argument is nothing more than a sheep in different clothing in regard to its quasi termination of the pursuit theory. However, considering this argument from a proximate cause standpoint reveals that **the one and only thing that ever made Carol Dearman in any way dangerous to the public was the chase itself, and the more Officer May continued to pursue Ms. Dearman, the more dangerous she became.**

Appellant's argument simply cannot be consistently maintained. On the one hand, Appellants seek for the accident to be in no way foreseeable and predictable based on the chase, when it is clear that Officer Nash did just that. On the other hand, Appellant wants to argue Eric Law's comparative negligence for not foreseeing and predicting that the chase would actually emerge at that intersection. However, when the only thing one can find to argue is how many days a person has worked or speculation about a light being green on one side but not red on the other, one simply throws out whatever it can.

IV. CONCLUSION

In sum, the facts of this case are that:

(1) the chase encompassed city streets through a crime riddled neighborhood, through commercial sections of the city where open convenience stores abutted the streets, across intersections with state highways and interstates, through industrial sections of the city where the roads themselves are dangerous and have abrupt right angle turns, along the interstate, back into and across multiple traffic controlled intersections, through two police precincts, and into family neighborhoods with a park and churches on a Sunday afternoon and driveways abutting narrow streets.

(Plaintiffs' Exhibit 1 & 5 and R. Vol. 2 p. 10-30,34, 56-60,69-84).

(2) the chase was seven miles long; and from the point that you can hear Officer Clement say "look at that grey Cherokee", where the chase begins, to the point you hear Officer May say "Send AMR J-1", meaning that the accident has occurred, is 5 minutes and 33 seconds.

(R. Vol. 2 p. 30-31,136-162; Plaintiffs' Ex. 3)

(3) Officer May knew exactly who he was chasing. According to Officer May, she was not the least bit of a danger to the public; and she posed no imminent threat of bodily danger to anyone when he encountered her on June 11.

(R. Vol. 2 p. 12, 61-68, 123)

(4) At the latest, by the time that the chase proceeded onto the interstate, Officer May had all of the evidence he needed and ultimately obtained to charge her with the crimes for which he charged her; and he saw her so often that she was like family, and he knew not only the precinct, but the beats within the precinct where he had seen her on multiple occasions.

(R. Vol. 2 p. 55-84, 94)

(5) Officer May did not believe that Ms. Dearman would pull over voluntarily, he had not been trained on how to use a chase to actually get a person stopped; and he knew he had no way to get her stopped by chasing her.

(R. Vol. 2 p.55-56, 112)

(6) Officer May disregarded his supervisor's instruction to terminate the pursuit if they started going through red lights; and both Ms. Dearman and Officer May ran red lights, including through the neighborhood from which they emerged and the accident occurred.

(R. Vol. 2 p.48,56-60, 64, 70, 76)

(7) Despite admitting that he was completely unfamiliar with the area, Officer May admitted that you can continue to hear his siren every time he keyed the microphone, all throughout this neighborhood, until you finally hear him call for the ambulance due to the accident which, Officer Nash actually anticipated, finally occurred.

(R. Vol. 2 p. 24-25, 52-53, 71-78; Vol 5 p.459)

Based on these facts, this is probably the worst case of this nature this Court has had to address to the present date; and there is substantial credible evidence in the record to support the Judgment of the Trial Court; and the Judgment of the Trial Court should be affirmed.

Respectfully submitted, this the 23rd day of August, 2010.

ERIC and KRISTINA LAW, APPELLEES

BY: 
Wes W. Peters, Their Attorney

OF COUNSEL:

Wes W. Peters
MS Bar No. [redacted]
BARFIELD & ASSOCIATES
ATTORNEYS AT LAW, P.A.
121 Village Blvd. (39110)
Post Office Box 2749
Madison, Mississippi 39130-2749
Telephone: (601) 856-6411
Facsimile: (601) 856-6441

CERTIFICATE OF SERVICE

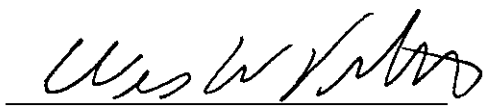
I, Wes W. Peters, do hereby certify that I have this day hand-delivered a true and correct copy of the above and foregoing document to:

Pieter Teeusisses, Esq.
Kimberly Banks, Esq.
Office of the City Attorney
P.O. Box 2779
Jackson, MS 39207-2779

ATTORNEYS FOR APPELLANTS

Hon. Swan Yerger, Presiding Judge
Hinds County Circuit Court
407 East Pascagoula Street
Jackson, Mississippi 39201

SO CERTIFIED, this the 23rd day of August, 2010.



Wes W. Peters