

[Cite as *Taylor v. Dept. of Pub. Safety, Ohio State Hwy. Patrol*, 2008-Ohio-5720.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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JUWANNA E. TAYLOR, Admx.

Plaintiff

v.

DEPARTMENT OF PUBLIC SAFETY,
OHIO STATE HIGHWAY PATROL

Defendant

[Cite as *Taylor v. Dept. of Pub. Safety, Ohio State Hwy. Patrol*, 2008-Ohio-5720.]

Case No. 2005-10489

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DECISION

Case No. 2005-10489

Judge Joseph T. Clark

DECISION

{¶ 1} Plaintiff brought this action asserting survivorship and wrongful death claims on behalf of the beneficiaries of the estate of decedent, Eric Taylor. Officer Taylor was shot and killed while attempting to apprehend the offender, Donald Matthews, who was fleeing from Ohio State Highway Patrol (OSHP) Trooper Ryan Hershey. Plaintiff claims that defendant is liable for the death of Officer Taylor due to Trooper Hershey's willful and wanton misconduct in failing to communicate that Matthews posed a threat to officers who were responding to assist in his apprehension. The issues of liability and damages were bifurcated, and the case proceeded to trial on the issue of liability.

{¶ 2} Trooper Hershey testified that on August 9, 2002, at approximately 8:22 p.m., he initiated a traffic stop after he witnessed a red Ford Taurus speeding southbound on State Route 21 (SR 21). The trooper also had noted that the driver was not wearing a seatbelt, that the driver was an older male, and that he was alone in the car. As the driver pulled over near the intersection of SR 21 and Edwards Road, Trooper Hershey transmitted the license plate number¹ to the dispatcher at the OSHP Wooster post. When Trooper Hershey approached the driver and requested to see his identification, Matthews lowered the window slightly and displayed his license to the trooper through the glass. Trooper Hershey recalled that when he informed Matthews that he would be issued a ticket for speeding and for violation of the seatbelt law, Matthews became agitated and argumentative. As Trooper Hershey returned to the patrol car to complete the ticket, Matthews accelerated onto the roadway and proceeded southbound.

{¶ 3} According to Trooper Hershey, he radioed the dispatcher and stated that he had initiated a stop, that the driver was now eluding the stop, and that he was in pursuit. Trooper Hershey maintained radio contact throughout the chase, during which he communicated the description of the car, the license plate number, and periodic updates on their location. Meanwhile, the dispatcher at Wooster had radioed to the Canton post for assistance but was informed that there were no available units. The dispatcher at the Canton post agreed to contact the sheriff's office and other local

¹The car was registered to a female named Matthews and the driver, Donald Matthews, was not identified until the ensuing investigation after he was killed. For the purposes of this decision, the term "driver" refers to Donald Matthews.

municipalities for help. (Plaintiff's Exhibit 4.) The Wooster dispatcher also notified Trooper Hershey's supervisor, Sergeant Carpenter, of the situation. (Plaintiff's Exhibit 4.) Carpenter stated that he was several miles away and that he directed the Wooster dispatcher to request assistance from the Massillon Police Department (MPD). (Plaintiff's Exhibit 4.)

{¶ 4} After five or six minutes, Matthews pulled over near the intersection of SR 21 and Butterbridge Road. Trooper Hershey testified that he again exited his patrol car and approached the driver. Trooper Hershey noticed that the doors to the car were locked and he ordered Matthews to exit his vehicle. Matthews refused to comply and suddenly reached his hands under the front seat of his car. Trooper Hershey recalled that he immediately pointed his gun at the driver and ordered him to put his hands on the steering wheel. Matthews complied. At this time, Trooper Hershey attempted to extract Matthews from the car by force. He described how he walked to the passenger side and attempted to break a window with his ASP baton in order to unlock the car doors and remove the driver. It is unclear whether the window actually broke; however, Matthews sped off again.

{¶ 5} Trooper Hershey testified that he then returned to his patrol car and resumed the chase southbound on SR 21 at speeds approaching 100 miles per hour (mph). He notified the dispatcher that he was once again in pursuit of the same vehicle. The Wooster dispatcher relayed this message to both the Canton post and to Carpenter. (Plaintiff's Exhibit 4.) The Canton post dispatcher informed the Massillon city dispatcher that the pursuit was continuing down SR 21 past Butterbridge Road. (Plaintiff's Exhibit 3.) Massillon dispatched available officers to head northbound on SR 21 to assist the OSHP in the pursuit. (Plaintiff's Exhibit 2.)

{¶ 6} Matthews stopped a third time just north of Massillon near the Cherry Street exit. Trooper Hershey testified that as he was exiting his patrol car he began to remove his gun from its holster. At that time, he realized that Matthews had turned

around in his seat and was aiming a gun over his right shoulder pointed in the trooper's direction. According to Trooper Hershey, he retreated to the rear of his patrol car seeking cover; Matthews took off again, this time exiting SR 21 at Cherry Street. Matthews essentially swerved from the right berm of SR 21 and crossed several lanes of traffic with Trooper Hershey in close pursuit. Trooper Hershey notified the dispatcher that Matthews had pointed a gun at him and that he had run a red light. (Plaintiff's Exhibit 4.) The dispatcher relayed the warning "weapon seen" to both Carpenter and to the Canton post dispatcher. The Canton post dispatcher informed the Massillon dispatcher that a weapon had been seen. (Plaintiff's Exhibit 3.)

{¶ 7} Matthews traveled westbound on Cherry Street and then turned right heading southbound on First Street and immediately pulled his car into a deserted gravel lot behind some construction trailers. Trooper Hershey positioned his patrol car at the southern edge of the lot behind a metal tank and there he took cover. At about the same time, two MPD patrol cars arrived and attempted to block Matthews' exit from the lot. Matthews began firing his weapon at Trooper Hershey as well as firing at the officers from MPD.² Both Officers Solinger and Smith testified that they, along with Officer Rogers, jumped from and took cover behind their patrol cars and returned fire. Solinger and Smith also testified that Matthews drove directly at them and circled their parked patrol cars, all the while firing his weapon at them. At some point, Matthews exited his car while it was still moving, and he stood there firing at the officers. Eventually, he was mortally wounded and fell to the ground. At that time, the officers and Trooper Hershey noticed Officer Taylor of the MPD lying motionless on the ground nearby.

{¶ 8} It remains unclear when in the sequence of events Officer Taylor arrived; however, at some point during the shootout Officer Taylor drove onto the lot, Matthews

²MPD Officer Rogers was in the first patrol car. MPD Officers Smith and Solinger were in the second car.

either aimed or fired at him, and Officer Taylor dove out of the passenger side of his patrol car without placing the transmission in park. (Plaintiff's Exhibit 10.) Officer Taylor's patrol car rolled away from him leaving him exposed to Matthews without any available cover. Matthews shot and killed Officer Taylor before other officers shot and killed Matthews.

{¶ 9} From all the evidence that could be pieced together, it became evident that Officer Taylor had exited his patrol car while it was still moving, and that his car coasted through the gravel lot followed by the suspect's moving vehicle. Both cars drifted in tandem in a southeasterly direction down a slight embankment and came to rest at the edge of a field. (Plaintiff's Exhibits 27, 28.) Trooper Hershey testified that he had not seen Officer Taylor arrive at the scene although he did recall seeing the rolling patrol car followed by the suspect's vehicle as they both traveled across the lot into a field.

{¶ 10} Based upon the transcripts of the dispatcher logs, the pursuit from the initial stop near Edwards Road until the encounter at Cherry Street lasted approximately fifteen minutes and spanned 14 miles. Once Trooper Hershey radioed that a weapon was seen, less than ninety seconds elapsed before Trooper Hershey began notifying the dispatcher that the suspect was down and that they needed a rescue squad. (Plaintiff's Exhibit 4.)

{¶ 11} Plaintiff alleges that Trooper Hershey deviated from established OSHP policies when he neglected to convey important information to the dispatcher regarding the Butterbridge Road stop. Specifically, plaintiff contends that Trooper Hershey had actual knowledge of the risk posed by the driver, that he should have told the dispatcher that he viewed the offender as being a threat to him, and that had this information been conveyed, Officer Taylor would have responded to the situation in a different manner.

{¶ 12} In *York v. Ohio State Hwy. Patrol* (1991), 60 Ohio St.3d 143, the Supreme Court of Ohio determined that if an OSHP officer inflicts injury upon an individual while

the officer is operating a motor vehicle during an emergency, and that the injury is the result of the officer's negligence, the agency is immune from liability pursuant to R.C. 2744.02.

{¶ 13} R.C. 2744.02(B)(1)(a) provides in relevant part as follows:

{¶ 14} "(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees [upon the public roads, highways, or streets] when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

{¶ 15} "(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct[.]"

{¶ 16} R.C. 2744.01(A) defines "emergency call" as "a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer."

{¶ 17} In *Baum v. Ohio State Hwy. Patrol*, 72 Ohio St.3d 469, 1995-Ohio-155, the Supreme Court of Ohio recognized that R.C. Chapter 2744 is applicable only to political subdivisions, and that it is not applicable to the OSHP, which is an agency of the state of Ohio. The court noted that the "state" as defined in both R.C. 2743.01(A) and 2744.01(H) does not include "political subdivisions." Nevertheless, the Supreme Court extended the immunity provided to county, city, and township police officers by R.C. 2744.02(B)(1)(a) to the OSHP.

{¶ 18} In making this determination, the Supreme Court reasoned as follows: "patrol troopers often work in cooperation with other officers in the state in pursuing fleeing suspects. Accordingly, public policy dictates that a trooper responding to an emergency call be cloaked with the same level of immunity as every other peace officer

who might also be responding to that call. * * * Patrol troopers have the duty to preserve the public peace, safety, and welfare. R.C. 5503.01 and 5503.02. Patrol troopers are expected to act promptly in emergency situations in order to protect the public. If troopers were held to a higher standard of care than other officers in pursuit of a suspect, they might hesitate for fear that the pursuit could result in potential liability. Thus, the goal of promoting patrol troopers' prompt action in emergency situations will be furthered by a finding that the State Highway Patrol is immune from liability. See *Fish v. Coffey* (1986), 33 Ohio App.3d 129, 130, 514 N.E.2d 896, 898. Based on the foregoing, we conclude that, *in the absence of willful or wanton misconduct*, the State Highway Patrol is immune from liability for injuries caused by a patrol officer in the operation of his vehicle while responding to an emergency call.” *Baum*, at 472. (Emphasis added.)³

{¶ 19} The court recognizes that the facts of this case differ from the above-cited cases in that Trooper Hershey did not cause or become involved in an accident with his patrol vehicle. Nevertheless, plaintiff maintains that Trooper Hershey caused the injury to Officer Taylor as a result of his alleged willful or wanton misconduct while in the course of operating his patrol car in pursuit of Matthews. Plaintiff argues that Trooper Hershey had a responsibility to communicate to the dispatcher that Matthews had acted strangely in that he had uttered at least one reference to his rights under the 13th Amendment of the United States Constitution and had gestured wildly with his arms

³The issue of the public duty rule as applied to actions brought in the Court of Claims, was addressed in a later decision by the Supreme Court wherein the court stated that “*Baum v. Ohio State Hwy. Patrol* (1995), 72 Ohio St.3d 469, 650 N.E.2d 1347, is not one of the cases that we overrule today. It is true that *Baum*, which precluded liability for negligence arising out of a state trooper's operation of his vehicle while responding to an emergency call, cited [the public-duty rule] for the proposition that ‘liability under R.C. Chapter 2743 cannot be imposed since the action did not result from the breach [of any duty] owed to the particular plaintiff.’ *Id.* at 471-472. *Baum* did not, however, involve the public-duty rule. *Baum* held that the state was immune from liability unless a state trooper committed willful or wanton misconduct while operating his or her vehicle in response to an emergency call. *Id.* at syllabus. If *Baum* had truly hinged on the public-duty rule, there would have been no need for us to address whether the

while driving. In addition, plaintiff contends that Trooper Hershey should have told the dispatcher about the details of the Butterbridge Road stop, including the fact that Trooper Hershey had considered Matthews to be a threat to him.

{¶ 20} Defendant maintains that Trooper Hershey followed OSHP policy throughout the entire pursuit and that he communicated the information that was mandated by such policy. In addition, defendant asserts that any alleged misconduct attributed to Trooper Hershey was not the proximate cause of Officer Taylor's death.

{¶ 21} OSHP Policy 200.06-01 addresses motor vehicle pursuits and states in pertinent part:

{¶ 22} "When the primary pursuing officer determines that a suspect is fleeing and decides to pursue, he/she will immediately notify the dispatcher that he/she is in pursuit and relay the following information:

- "a. Location of the pursuit;
- "b. Direction of travel;
- "c. Estimated speed of violator;
- "d. Description, including the license number of the pursued vehicle and occupants;
- "e. Reason for the pursuit; and
- "f. Officer's intention.

{¶ 23} "The primary pursuing officer has an obligation to ensure that complete and accurate information is transmitted to the dispatcher at regular intervals during the pursuit." (Plaintiff's Exhibit 17.)

{¶ 24} Trooper Hershey testified that he was concentrating on maintaining visual contact with the offender who was fleeing at speeds reaching 100 mph, but that he was able to relay the information as required by the pursuit policy. Trooper Hershey recalled

that at Edwards Road, Matthews insisted that he could not be issued a ticket for failure to wear a seatbelt. According to Trooper Hershey, he did not initially interpret Matthews' opposition to be directed at him personally but at legal authority in general. Trooper Hershey opined that "I thought he was an older guy having a bad day." Trooper Hershey stated that his feelings toward Matthews changed at the Butterbridge Road stop, but he also testified that once Matthews complied with his order and placed his hands on the steering wheel, Trooper Hershey felt that the threat of harm to him had been diminished. In addition, Trooper Hershey testified that he knew from his experience and training not to make any declarations to the dispatcher based upon supposition and that therefore he only reported seeing a gun after he had, in fact, seen the weapon.

{¶ 25} Plaintiff offered the expert testimony of Dr. Van Meter, who has worked for OSHP for over 15 years, first as a trooper and then after being promoted to sergeant. He subsequently reached the rank of lieutenant at the patrol academy where he taught cadets for several years. Dr. Van Meter opined that, in his experience and training, a trooper is required to communicate all information that the trooper deems relevant. Dr. Van Meter was particularly critical of Trooper Hershey in that Trooper Hershey should have reported his use of force at the Butterbridge Road encounter. Dr. Van Meter also opined that Trooper Hershey's actions were not reasonable in that he should not have approached the car, but rather that he should have called for back-up and used the amplified address system to order the driver out of the car. Upon cross-examination, Dr. Van Meter admitted that officers are taught to use caution and to be vigilant when approaching a suspect at the conclusion of a pursuit. He also acknowledged that officers are trained to expect that anything can happen. The court determined, however, that the witness was not competent to offer expert testimony as to whether Trooper Hershey acted recklessly or with intent to injure others during his pursuit;

neither was he competent to opine what Officer Taylor might have seen, heard or thought when he arrived at the gravel lot.

{¶ 26} To impart liability upon defendant, plaintiff must first show that Trooper Hershey engaged in some negligent act while operating his patrol car in pursuit of Matthews which caused injury to Officer Taylor. R.C.2744.02(B). In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed plaintiff's decedent a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused decedent's injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. If the trooper was on an emergency call at the time of plaintiff's decedent's death then defendant is entitled to immunity as long as the trooper did not act willfully or wantonly. See *Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319; *Fogle v. Vill. of Bentleyville*, Cuyahoga App. No. 88375, 2008-Ohio-3660.

{¶ 27} Plaintiff criticizes Trooper Hershey for his alleged breach of OSHP policy for the manner in which he approached the offender at the Butterbridge Road and Cherry Street encounters. Plaintiff asserted that Trooper Hershey should have conducted a "felony stop" by exiting his patrol car with his shotgun trained on the offender, and then remaining at a distance awaiting the arrival of other officers before approaching Matthews. The court finds that plaintiff failed to prove that Trooper Hershey was mandated by OSHP policy to instigate a felony stop at both locations. Even assuming the failure to conduct a felony stop violated OSHP policy, the court views this issue as irrelevant inasmuch as the alleged lapse was not causally related to Officer Taylor's death.

{¶ 28} Each officer who testified acknowledged that police officers are trained to expect the worst when engaged in a pursuit, that pursuit is inherently dangerous, and that an officer must always proceed with caution when confronting an offender. They

also acknowledged that an officer must always assess the situation as he finds it, regardless of what information is known beforehand. Officers Smith and Solinger testified to the events as they were able to recall them. Officer Solinger testified that he was riding with Officer Smith, that Officer Rogers arrived ahead of them, and that he never saw Officer Taylor arrive at the scene. Smith testified that he heard gunfire and saw muzzle flashes as soon as he arrived at the scene, that he could not hear the radio dispatches when he took cover out of the car, and that he never saw Officer Taylor before he was found lying on the ground.

{¶ 29} In attempting to prove that Trooper Hershey acted in a manner that constitutes willful or wanton misconduct, plaintiff relies on an older Supreme Court case that defined willful misconduct as “an intentional deviation from a clear legal duty or from a definite rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or purposefully doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury.” *Tighe v. Diamond* (1948), 149 Ohio St. 520, 527. In *Tighe*, the court emphasized that “[i]n order that one may be guilty of ‘wilful misconduct,’ an actual intention to injure need not be shown.” *Id.* at 527.

{¶ 30} Defendant argues, conversely, that the Tenth District Court of Appeals has rejected the standard set forth in *Tighe*. Specifically, the appellate court held that “[i]n applying R.C. 2744.02(B)(1)(a), this court has defined ‘willful misconduct’ to mean conduct involving ‘the intent, purpose, or design to injure.’” *Robertson v. Dep’t of Pub. Safety*, Franklin App. No. 06AP-1064, 2007-Ohio-5080, ¶14, citing *Byrd v. Kirby*, Franklin App. No. 04AP-451, 2005-Ohio-1261. The court further explained that it had “adopted this standard from *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 1996-Ohio-137.” *Id.* In resolving the issue, the Tenth District reasoned that inasmuch as the Supreme Court “never overruled (or even addressed) *Tighe* in *Gladon* or in any other case containing the same definition as *Gladon*, the controlling precedent includes two inconsistent definitions of willful misconduct. In such a situation,

courts are required to follow the more recent precedent. *Miller v. Lindsay-Green, Inc.*, Franklin App. No. 04AP-848, 2005-Ohio-6366, at 101. ('[A] prior decision is not determinative of a legal question when a latter case of the same court to the contrary is available.')." Id. at ¶15.

{¶ 31} Plaintiff argues that Trooper Hershey made a deliberate choice to communicate selective information to the dispatcher during the pursuit. According to plaintiff, Trooper Hershey's failure to inform the dispatcher that he had viewed Matthews as posing a threat to him constitutes the absence of care for other officers who may be en route to assist in the capture of the fleeing suspect. Plaintiff contends that had he known of the of the risk presented by Matthews, Officer Taylor would have avoided a confrontation in the open lot where the shootout occurred. Thus, plaintiff posits that Trooper Hershey's willful misconduct and lack of care were a proximate cause of Officer Taylor's death.

{¶ 32} At the close of plaintiff's case, defendant moved the court for dismissal of plaintiff's claims pursuant to Civ.R.41 (B)(2) for the reasons that: 1) plaintiff failed to present any evidence that Trooper Hershey engaged in wanton or willful misconduct; and 2) plaintiff failed to rebut the fact that the proximate cause of Officer Taylor's death was the heinous, murderous act committed by Matthews. The court reserved ruling on defendant's motion and allowed defendant to proceed with its case.

{¶ 33} Defendant presented the testimony of its expert, Jack Ryan, who worked for several years as a police officer and who has provided training in nearly every area of police work. Ryan opined that Trooper Hershey did not violate the OSHP pursuit policy and that he provided all the information that was required. In addition, Ryan noted that while Matthews had reached his hands under the seat at the Butterbridge Road stop, such act did not necessarily mean that he was searching for a gun. For instance, Matthews could have been reaching for a wallet or identification or any other object of interest to him. According to Ryan, data transmitted by an officer is presumed

to be accurate and verified, thus, he opined that Trooper Hershey acted reasonably when he communicated the presence of a weapon only after Matthews displayed the gun. Moreover, there is no dispute that Trooper Hershey did inform the dispatcher that Matthews had pointed a gun at him and that the Canton dispatcher informed the Massillon dispatcher that a weapon had been seen.

{¶ 34} After careful consideration of all the testimony and evidence submitted, the court finds that plaintiff failed to prove either that Trooper Hershey committed a breach of a duty owed to Officer Taylor or that any act or omission on the part of Trooper Hershey proximately caused the death of Officer Taylor. Indeed, the court finds that Trooper Hershey followed OSHP policy throughout the pursuit, that he offered credible explanations for his actions taken at the times during which he was confronted by Matthews, and that those actions were reasonable under the circumstances.

{¶ 35} The court's determination is also based, at least in part, upon the fact that no witness could testify with any certainty as to when in the sequence of events Officer Taylor arrived or from what direction. Based upon the MPD logs, Officer Taylor learned of the pursuit while listening to the intercom at the Massillon police station. (Plaintiff's Exhibit 2.) No one can do more than speculate as to what Officer Taylor expected to encounter when he headed toward the chase. Likewise, no one knows what Officer Taylor saw or heard as he entered the lot. Indeed, only one witness purports to have observed Officer Taylor exit his patrol car while it was still moving, and that witness made her observations from her home located near the intersection of First and Cherry Streets. (Plaintiff's Exhibit 10.)

{¶ 36} Even assuming that the court could find negligence, it is clear that Trooper Hershey was on an emergency call and that, as such, defendant is entitled to immunity for any injuries proximately caused by his negligence. R.C.2744.02(B).

{¶ 37} As previously determined, Trooper Hershey communicated all the information that was required by the OSHP pursuit policy. Based upon a review of the

testimony and evidence presented, the court finds that Trooper Hershey had discretion as to what information he had to communicate outside of the required information listed in the policy. In addition, the court finds that Trooper Hershey acted reasonably and that he did not act recklessly. The court also finds that plaintiff failed to prove that Trooper Hershey intended to cause injury to Officer Taylor or to any other responding officer. As such, the court finds that plaintiff failed to prove that Trooper Hershey engaged in willful misconduct.

{¶ 38} In *Whitfield v. City of Dayton*, 167 Ohio App.3d 172, ¶28, 2006-Ohio-2917, the Second District Court of Appeals explained that wanton misconduct is “the failure to exercise any care toward one to whom a duty of care is owed when the failure occurs under circumstances for which the probability of harm is great and when the probability of harm is known to the tortfeasor.” Id. quoting *Brockman v. Bell* (1992), 78 Ohio App.3d 508. The court finds the record in this matter lacks sufficient probative evidence to support the allegation that Trooper Hershey engaged in conduct or omitted a duty to act that could be considered as failing to exercise any care, knowing that the probability of harm is great.

{¶ 39} The court notes that inasmuch as “there must always be a causal connection between disputed conduct and an injury, a plaintiff would have to satisfy proximate cause requirements even if an officer’s conduct is wanton or reckless.” *Whitfield*, supra, at ¶44. Moreover, Officer Taylor had a duty to exercise ordinary care for his own safety. See *Cleveland Rolling-Mill Co. v. Corrigan* (1889), 46 Ohio St. 283, 290; *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45. Officer Taylor’s “practical capabilities for self-protection under the particular circumstances must be considered in determining whether he exercised due care for his own safety.” *Monaco v. Ohio Expositions Comm’n* (1995), 74 Ohio Misc.2d 103, 109. Given the fact that Officer Taylor was an exemplary police officer, known to be extremely cautious, and thoroughly trained in police procedure, the court finds that Officer Taylor knew or should have known of the

danger he faced in confronting an unknown suspect who had failed to comply with an officer's command to stop, who had exceeded the speed limit, and who had recklessly endangered the lives of others.

{¶ 40} For the foregoing reasons, the court finds Trooper Hershey did not engage in willful or wanton misconduct and that, as such, defendant is immune from liability. Accordingly, judgment shall be rendered in favor of defendant. In light of the court's decision, defendant's motion to dismiss is DENIED as moot.

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DEPARTMENT OF PUBLIC SAFETY,
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JUDGMENT ENTRY

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This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

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SJM/cmd
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