

No. 28479 -- John D. Sergeant, as Administrator of the Estate of David Sergeant, deceased v. The City of Charleston, West Virginia, a municipal corporation; William H. Hart and Greg White, police officers of the City of Charleston; the City of St. Albans; J. H. Crawford, police officer of the City of St. Albans; Terryonto McGrier, a convict; and Jerome Thomas, a convict

Starcher, J., dissenting:

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OF WEST VIRGINIA

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I dissent to the majority's opinion because I find it does not properly represent the record.

The record indicates that the defendant police officers attempted to use a drug informant to capture defendants Terryonto McGrier and Jerome Thomas in the course of a drug transaction at the Cutlip's Motor Inn. The area around the Inn was secured by at least 8 police officers in other vehicles. When McGrier and Thomas didn't show up, the officers moved the informant to a Days Inn for "safety reasons" -- but didn't bother to secure the area with any police backup.

By coincidence, the police officers discovered McGrier and Thomas in the Days Inn parking lot. Without any assistance, the officers attempted to capture the criminals. A shootout ensued, and the criminals fled. Racing at speeds as high as 80 miles per hour, with flat tires that had been shot out, the criminals raced onto highly congested roads in the middle of the afternoon. The police officers knew -- and so testified during their depositions -- that criminals fleeing a hot pursuit "will strike pedestrians with an automobile in order to stop the police from chasing them."

The police officers later testified that they never discussed terminating the pursuit of McGrier and Thomas. The two criminals passed cars on the left, and when presented with oncoming traffic, the police officers saw them pass traffic by leaving the road and passing on the right, on the berm.

David Sargent, age 19 years, -- wearing blaze orange and riding home from an afternoon of hunting -- was struck from behind while riding his bike on the berm.

Amazingly, none of the defendant police officers stopped to render aid. Instead, they continued their pursuit, radioing the dispatcher to send an ambulance.

The majority opinion refers to an affidavit proffered by the plaintiffs written by Sergeant Chester M. Miller, III, of the Maryland State Police. Sergeant Miller gave an opinion, based upon his professional experience, that the actions of the defendant police officers

... departed from the standard of professional police conduct, so as to constitute gross negligence, and wanton and reckless conduct on their part, which proximately contributed to the incident causing the death of David Sargent, to include, but not necessarily limited to:

...

4. Their high speed pursuit of the fugitives ... into the community and surrounding area of Marmet, without breaking off the same prior to reaching the congested area; and by otherwise failing to utilize accepted national standards for bringing a fleeing suspect's vehicle to a stop.

5. Failing to abide by the Charleston Police Department's own policies and procedures pertinent to:

a. Planning and executing their apprehension of the suspect Jerome Thomas;

b. The protection of life during vehicular pursuit;

c. Breaking off vehicular pursuit for the public safety; and

d. Rendering aid to an injured pedestrian.

6. Their failure to abide by and adhere to standards of professional police conduct, such as those contained in the International Association of Chiefs of Police, Inc., *Model Policy on Vehicular Pursuits*.

The majority characterizes this affidavit as failing to point to specific tortious conduct and “wholly insufficient to support a negligence action.”

The majority opinion states that police pursuits “are inherently dangerous, absent any negligence, to the pursuing officers, the pursued suspects, drivers of other automobiles, and pedestrians.”

___ W.Va. at ___, ___ S.E.2d at ___ (Slip op. at 14-15). I agree with this proposition wholeheartedly -- and it is exactly the reason that police pursuits are to be done with restraint, and, if at all possible, avoided.¹

Sergeant Miller’s affidavit indicates that commonly accepted standards of professional police conduct mandated that the pursuit by the defendants should have been terminated, and that the failure to terminate the pursuit was reckless. The record reflects that the police officers in the instant case had a subjective realization that people often die in hot pursuits. The criminal suspects had already shown a disregard for life by indiscriminately shooting at the police officers in the hotel parking lot; it was reasonably foreseeable that they would harm an innocent third party to slow the police down. Police pursuits are inherently dangerous -- and if the police choose to expose the public to that dangerousness and high likelihood of harm, they and the agency by whom they are employed should be held responsible like any other individual.

The record in this case makes it patently clear that the police have a difficult job. I have no doubts about it. But the Sergeant family has just as difficult a task -- facing life without their son. A jury could conclude that David Sergeant’s death did not have to happen had the defendant police officers

¹I would even go so far as to hold that police pursuits are inherently dangerous as a matter of law. As with any inherently dangerous activity, the police and the governmental agencies by which they are employed would then be strictly liable for any resulting harm.

followed their own departments' regulations, and the standards of conduct followed by police officers nationwide, and terminated the pursuit. Two violent drug dealers might have escaped that day -- but an innocent young man might still be alive.

I therefore respectfully dissent.