No. 127236

IN THE
SUPREME COURT OF ILLINOIS

JAVIER ROBINSON,

Plaintiff-Appellee,

v.

THE VILLAGE OF SAUK VILLAGE, THE VILLAGE OF CRETE, OFFICER MARK BUGAJSKI, OFFICER ANDREW VAUGHN, OFFICER ALLEN RINCHICH, and OFFICER JUAN GARCIA,

Defendants-Appellants.

On Appeal from the Illinois Appellate Court, First Judicial District, No. 20-0223.
There Heard on Appeal from the Circuit Court of Cook County, Illinois, County Department, Law Division, No. 18 L 2000
The Honorable Melissa A. Durkin, Judge Presiding

BRIEF AMICUS CURIAE OF THE ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE

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POINTS AND AUTHORITIES

IDENTITY AND INTEREST OF AMICUS CURIAE

The Illinois Trial Lawyers Association ("ITLA") is a nonprofit association of over 2,000 Illinois attorneys who represent injured workers and consumers in the courts of this state, including innocent victims of reckless, high-speed police pursuits. Such pursuits pose a danger of serious injury or death to the involved officers, fleeing suspects, and innocent road users. Indeed, more than 5,000 bystanders and passengers have been killed in police pursuits since 1979, and tens of thousands more have been injured. *High-speed police chases have killed thousands of innocent bystanders*, Thomas Frank, USA TODAY (July 30, 2015), available at https://www.usatoday.com/story/news/2015/07/30/police-pursuits-fatal-injuries/30187827/. In 1990, the International Association of Chiefs of Police promulgated a model policy aimed at stopping high-speed pursuits for minor traffic infractions, on grounds that the danger to the public vastly outweighed any benefit in apprehending a petty offender. See Police Pursuit and the Use of Force, Geoffrey P. Alpert, National Institute of Justice (1996), available at https://www.ncjrs.gov/pdffiles1/pr/164833_part1.pdf. Despite the promulgation of more restrictive pursuit policies, and increased awareness and training, reckless pursuits continue, and innocent bystanders are harmed as a result. Our civil justice system plays an important role in compensating victims and deterring wrongdoing by individual officers and departments. See, e.g., Freeman v. City of Chicago, 2017 IL App (1st) 153644

(affirming plaintiff's verdict against police officer and municipality in high-speed crash causing death of innocent bystander). In such a case, the plaintiff must prove that the involved law enforcement officer was willful and wanton, and that the officer's willful and wanton conduct was a proximate cause of her injury. See, e.g., id.; see also 745 ILCS 10/2-109; 745 ILCS 10/2-202.

The appellate court properly reversed the circuit court's erroneous summary judgment, and this Court should affirm the decision of the appellate court. The circuit court's decision, which deemed a fleeing motorist to be an "escaping prisoner," threatened to upend settled understandings regarding police liability for reckless motor vehicle pursuits. Cloaking reckless high-speed pursuits with absolute immunity is not what the General Assembly intended in enacting an "escaping prisoner" immunity, meant to shield correctional and law enforcement officials from injuries inflicted by escaped or escaping persons "held in custody." The conclusion reached by the circuit court was untenable. And it was profoundly unwise as a matter of public policy besides.

ARGUMENT

As with most police pursuits, the fleeing offender here was actively resisting all police efforts to take him into custody at the time of plaintiff's injury. Indeed, the offender had successfully thwarted the officers' many attempts to arrest him. In deeming the offender to be an escaping prisoner,

the circuit court critically erred. That court emphasized that the offender should not have felt free to leave, but that is true whenever an officer attempts to curb a vehicle, and does not a holding in police custody make. The court also deemed the case to be "on all fours with the Ries [v. City of Chicago] case," but Ries is readily distinguishable. It was crucial in Ries that the officer exercised physical dominion over the suspect, placing him in the back of his squad car as desired. 242 Ill. 2d 205, 217 (2011) ("Oliva then placed Lowe in the back of his squad car. Lowe was in custody at this point."). Here, conversely, the officers were actively attempting to make a full custodial arrest, but never gained sufficient physical dominion over the suspect to effectuate that goal. In sum, the attempts to take and hold the suspect in police custody were incomplete and ongoing at the time, which means the escaped prisoner immunity does not apply. Defendants' invitation to reinstate the circuit court's summary judgment should be flatly rejected.

A MOTORIST FLEEING, ELUDING, OR RESISTING POLICE IS NOT AN ESCAPING PRISONER BECAUSE NOT "HELD IN CUSTODY."

Under the familiar legal standards that apply to statutory construction, the circuit court's summary judgment was in error. In interpreting a statute, the foremost goal is to ascertain and give effect to the General Assembly's intent. Wilkins v. Williams, 2013 IL 114310, ¶ 14. The best indicator of the General Assembly's intent is the statutory language, given its plain and ordinary meaning. Id. Where the language is clear and unambiguous, "we are not at liberty to depart from the language's plain

meaning." Ries, 242 Ill. 2d 205, 215 (2011). Because the Tort Immunity Act is in derogation of the common law, any ambiguities should be strictly construed against defendants. See, e.g., Van Meter v. Darien Park Dist., 207 Ill. 2d 359 (2003).

The escaping prisoner immunity is found at section 4-106(b) of the Tort Immunity Act. It provides, "Neither a local public entity nor a public employee is liable for any injury inflicted by an escaped or escaping prisoner." 745 ILCS 10/4-106(b). "Prisoner" is defined by the Act to mean "a person held in custody." 745 ILCS 10/4-101. Related immunities in the same Article, captioned "Police and Correctional Activities," include immunities for failing to prevent or solve crimes, 745 ILCS 10/4-102, failing to provide a jail at all, or providing one with allegedly inadequate personnel or supervision, 745 ILCS 10/4-103, and failing to protect prisoners, 745 ILCS 10/4-105. Section 4-106(b), taken in its proper context, evinces the General Assembly's intent to insulate municipalities and public employees from injuries inflicted by those they have taken and held in their custody, but who manage to subsequently escape that confinement. See also 745 ILCS 10/4-104 (conferring a qualified immunity for local public entities and public employees who interfere "with the right of a prisoner to obtain a judicial determination or review of the legality of his confinement….").

The question in this case is accordingly whether the fleeing suspect, Mark Coffey, was taken into and "held in custody," and then subsequently

became an escaping prisoner. As we have explained, the efforts to take Coffey into custody, much less hold him there, were unsuccessful at the time of plaintiff's injury. Because Coffey was not successfully taken into or held in custody for any meaningful time period prior to plaintiff's injury, he should not be deemed an escaping prisoner based on the plain text of the statute, which defines a "prisoner" to be a "person held in custody." 745 ILCS 10/4-101.

Reis v. City of Chicago does not compel a different conclusion. As we have observed, the officer there exercised physical dominion over the suspect by placing the suspect in the rear of his squad and confining him there. 242 Ill. 2d at 217. The officer did not handcuff the suspect because he was still investigating the circumstances of the accident precipitating the police contact, but the officer nonetheless confined the suspect to the rear of the police vehicle. Id. Although Reis contains a discussion regarding the meaning of the term "custody," the Court did not settle on one specific definition, and expressly declined to do so. Id. at 217 ("For purposes of this case, it is not necessary to determine how broad the term 'custody' may be, as it is certainly broad enough to include situations as this."). The sole factual basis recited by the Court for its conclusion that the suspect there was an escaping prisoner was that the suspect was "placed … in the back of a squad car by a police officer…." Id. at 218.

Townsend v. City of Chicago, 2019 IL App (1st) 180771, a decision of the appellate court on which defendants rely, should not persuade the Court. Indeed, ITLA respectfully submits that Townsend was wrongly decided, for the reasons expressed in Justice Hyman's detailed dissent. Id. at ¶¶ 39-53 (Hyman, J., dissenting). Besides, Townsend is distinguishable on its facts. That case concerned whether a rear seat passenger was in police custody during a traffic stop while the officers had the driver and front seat passenger handcuffed and were investigating. Id. at ¶¶ 31-32. This case arises in the context of a police pursuit, where the offender actively resisted police, and did so continuously. To be clear, we do not contend that a formal arrest or handcuffing is required for a person to be under police custody; instead, our submission is that a suspect continuously fleeing and actively resisting police efforts to apprehend him or her is not "held in custody" and thus is not an escaping prisoner. The General Assembly's intent in passing an escaping prisoner immunity was to insulate local governments from a failure to properly secure those in its custody, not to insulate police from claims that they initiated or continued a reckless pursuit.

In addition to not being what the General Assembly intended, deeming fleeing suspects to be "escaping prisoners" would set troubling precedent for future police pursuit cases. Although many police departments have placed restrictions on when their members may commence and continue high-speed pursuits, Illinois courts and juries play an important role in promoting those

sensible policies, and deterring reckless pursuits. Local public entities and public employees are already shielded from liability from mere negligence in this context, and so a merely negligent decision to engage in a high-speed pursuit of an offender would not be actionable. But if all it takes for a person to be "held in custody" is the mere knowledge that they are not free to leave, then any person who fails to stop for police is an "escaping prisoner." Such a result would close Illinois courthouse doors to innocent bystanders of unnecessary high-speed police pursuits. And because traffic accidents stemming from high-speed pursuits are not deemed seizures within the meaning of Fourth Amendment jurisprudence, see, e.g., Steen v. Meyers, 486 F.3d 1017, 1022 (7th Cir. 2007), such victims are also without a federal remedy.

* * * *

This Court should affirm the judgment of the appellate court because Coffey was a fleeing suspect, not an escaped prisoner. Just like any other person fleeing or eluding police, Coffey should not have felt free to leave at any point. But that does not mean he was taken into or held in police custody, such that he could be said to be an escaping prisoner. Defendants tried mightily to bring him under their physical dominion and control, and into their custody, but he successfully defeated those efforts, continuously, until after plaintiff's injury. A mere show of authority does not custody or a prisoner make.

CONCLUSION

This Court should affirm the appellate court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is eight pages.

/s/ John K. Kennedy
JOHN K. KENNEDY, Attorney

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on December 15, 2021, I electronically submitted the foregoing Amicus Curiae Brief with the Clerk of the Supreme Court of Illinois via an approved Electronic Filing Service Provider, OdysseyeFileIL, which will send copies of the same to all counsel of record listed below at the email addresses indicated once accepted by this Court's clerk.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ John K. Kennedy
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