

## LAW ENFORCEMENT ALERT

# *Pumping the Brakes on Liability in High-Speed Police Pursuits...*

## *The Third Circuit Weighs In!*

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Recently, the Third Circuit Court of Appeals issued much-needed guidance on the legal parameters governing police liability for injuries arising from police pursuits. In *Otero v. Kane*,<sup>1</sup> the Court recognized that police officers make snap judgments every day to pursue dangerously fleeing suspects. During the chase, regrettably, sometimes bystanders may be injured. Yet, officers are not constitutionally liable for those injuries unless their judgments are not only mistaken but also egregious, shocking the conscience. The Court's decision clarified how District Courts should evaluate the multiple factors that affect a police officer's decision-making in high-risk situations.

Two Philadelphia police officers observed several suspected hand-to-hand drug transactions from an SUV in Philadelphia's Kensington neighborhood.<sup>2</sup> When the SUV's driver, Tahir Ellison, saw the marked police vehicle, he drove off.<sup>3</sup> The officers followed the SUV at normal speed for seven blocks, with their emergency lights activated, and sounded the siren several times, directing the vehicle to pull over, but Ellison did not pull over.<sup>4</sup> Ellison then ran a red light, turned the wrong way onto a one-way street, and the officers followed.<sup>5</sup> Next, Ellison turned onto a major avenue and sped up, going roughly twice the 30-mph speed limit.<sup>6</sup> The officers pursued the SUV, reaching a speed of 55 mph.<sup>7</sup> When Ellison ran another red light, he crashed into another car, killing the driver. Ellison later pleaded guilty to homicide by vehicle and related charges.<sup>8</sup>

<sup>1</sup> *Otero v. Kane* 161 F.4th 189 (3<sup>rd</sup> Cir. 2025)

<sup>2-5</sup> *Otero* 161 F.4th at 191

<sup>6-8</sup> *Otero* 161 F.4th at 192

<sup>9</sup> *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708 (1998).

The Philadelphia police officer defendants moved in the District Court for summary judgment, seeking dismissal of the substantive due process claim and arguing that the appropriate standard of culpability is the "intent to harm" standard. The District Court disagreed, holding that, under these circumstances, the "intent to harm" standard was inapplicable and that the "conscious disregard" standard applied. The Court further concluded that whether a police pursuit began is a factual question for a jury to determine, based on the specific facts and circumstances of each case. Otherwise, the Court noted, every police chase would be hyper-pressurized and would require applying the intent-to-harm standard.

On appeal, the Third Circuit overturned the District Court's decision. It determined that the intent-to-harm standard was appropriate in this case, further noted that most police chases fall under that standard, and provided guidance on when to "start the clock" for purposes of a police pursuit.

To understand the significance of the Third Circuit's decision in *Otero*, it is necessary to review the relevant history of the law governing police pursuits. Before 2018, the widely recognized standard for liability in police pursuits resulting in injuries was the "intent to harm" standard established by the Supreme Court of the United States.<sup>9</sup>

Simply put, the U.S. Supreme Court held that the "intent to harm standard" means that, when officers pursue suspects in "high-speed chases," an officer's culpability does not shock the conscience unless the officer intended to cause physical harm to the suspects or to worsen their legal plight.<sup>10</sup>

However, in 2018, the Third Circuit adopted three levels of culpability to evaluate police pursuit cases in response to an egregious police pursuit that resulted in the death and serious injury of unintended motorists who just happened to be in the wrong place at the wrong time.

In *Sauers v. Borough of Nesquehoning*<sup>11</sup>, Officer Stephen Homanko was traveling southbound when he observed a northbound Dodge Neon commit a minor summary traffic offense on May 12, 2014.<sup>12</sup> Based on that observation alone, Homanko turned around and pursued the Dodge, radioing ahead to the police in the neighboring borough to request that officers there pull the Dodge over upon its entry into their jurisdiction.<sup>13</sup> Officer Homanko then decided that apprehending the Dodge himself was important enough to warrant a chase at speeds exceeding 100 miles per hour down a wet mountain highway.<sup>14</sup> Several members of the public observed him driving recklessly. During the pursuit, Homanko lost control of his police vehicle while negotiating a sharp curve on a wet roadway.<sup>15</sup> The police car began to spin, crossed the center line into southbound traffic, and crashed into the Sauers's car.<sup>16</sup> The accident seriously injured Mr. Sauers and killed his wife.<sup>17</sup> Homanko

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<sup>10</sup> *Lewis*, 523 U.S. at 854, 118 S.Ct. at 1711

<sup>11</sup> *Sauers v. Borough of Nesquehoning*, 905 F.3d 711, 715 (3d Cir. 2018)

<sup>12-18</sup> *Sauers*, 905 F.3d at 715

<sup>19</sup> *Sauers*, 905 F.3d at 716

<sup>20-22</sup> *Sauers*, 905 F.3d at 717

was subsequently criminally charged and entered a guilty plea to vehicular homicide.<sup>18</sup> In the subsequent civil suit, the Plaintiff set forth a state-created danger theory of liability based upon Homanko's reckless actions during the police pursuit.<sup>19</sup> The Third Circuit, in *Sauers*, held that, to be liable for creating a danger that violated someone's constitutional rights, the police must act so culpably that their conduct "shocks the conscience." This culpability standard turns on timing—the less time an officer has to act, the less blameworthy a flawed decision is measured.

The Court recognized three categories of culpability:

Category 1- if the situation was "hyper-pressurized," requiring "split-second decisions," the officer is not liable unless they actually intended to harm another.<sup>20</sup>

Category 2 - if the situation gave the officer hours or minutes to engage in "hurried deliberation," the officer is not liable unless he "consciously disregarded... a great risk of serious harm"<sup>21</sup> akin to the familiar gross negligence standard.

Category 3 - if the situation was "unhurried" and allowed time for "careful deliberation," the officer could be liable if he was "deliberately indifferent" to the risk of harm.<sup>22</sup>

The application of the "shocks the conscience" standard has produced conflicting District Court decisions on the appropriate level of culpability in police pursuits. For example, one District Court held that the "hyper pressurized intent to harm" standard applied in all police pursuit cases where the suspect was actively fleeing from the police and endangering public welfare.<sup>23</sup> Another held that a police officer's pursuit of the suspect vehicle at a high rate of speed due to an alleged traffic offense was "conscience-shocking" given the residential neighborhood, speed limit, and narrow streets, etc.<sup>24</sup> When considered alongside the District Court's *Otero* decision, these rulings have left patrol officers struggling to obtain concrete guidance on potential liability when faced with a police pursuit. As such, an officer faced a litany of questions to consider in the midst of an active pursuit, including:

- When does a pursuit actually begin, and what is the proper time frame to start the time clock to determine the appropriate level of culpability for judging the officer's actions? For example, does a pursuit begin when the officer starts to follow a vehicle, when the officer activates the emergency lights and siren, when the vehicle doesn't immediately pull over, when the suspect speeds up to flee, when the suspect outwardly indicates that they are not going to stop, or when the officer speeds up to chase the vehicle?
- Do the speed of the vehicles and other factors (time of day, traffic conditions, weather, type of criminal infraction justifying the stop, etc.) play a role in determining the analysis?

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<sup>23</sup> *Donahue v. Borough of Collingdale*, 714 F.Supp.3d 504, 514 (E.D. Pa. 2024)

<sup>24</sup> *Velasquez v. City of Wilkes-Barre*, 2024 WL 1333378, \*1 (M.D. Pa. 2024)

In addressing these questions, the Third Circuit first held that police officers cannot be liable for lawfully and safely following a suspect at an ordinary speed. Nothing about following a suspect or turning on police lights and a siren is inherently dangerous to the public. Rather, an appropriate time to start "running the clock" to evaluate culpability in a police pursuit is when, in the totality of the circumstances, an event occurs that requires officers to decide whether to pursue a suspect dangerously.

Here, the Court reasoned that the suspect's active flight and reckless, dangerous attempt to elude police left the officers only a split-second to act and pursue. The Court also recognized that, after the triggering event (Ellison running the first red light), the pursuit covered less than a half mile and lasted less than one minute. The short duration in both time and distance also clearly supported the finding of a Category 1 "hyper pressurized" situation and the application of the intent-to-harm standard. The Third Circuit also reaffirmed that whether the officer's decision to pursue violates Department policy or regulations is irrelevant to the applicable level of culpability in police pursuits.

The Court emphasized that *Sauers* does not alter the U.S. Supreme Court's holding on high-speed pursuits involving dangerous, actively fleeing suspects. In *Sauers*, the driver had committed only a summary traffic offense; there was no pending emergency, no indication that the suspect posed a danger to the public, and no sign of active flight. Importantly, Homanko radioed ahead to other officers, suggesting that Officer Homanko had at least "some time to deliberate" whether and how to engage in the pursuit. Moreover, there was no triggering event that would have required the officer to decide whether to pursue the suspect "dangerously." All of this supported the application of the Category 2 conscious-disregard standard.

In the wake of *Sauers*, many departments severely limited when officers were permitted to engage in high-speed pursuits, and perhaps rightly so. The Third Circuit's decision in *Otero* should not be read as a "green light" to engage in high-speed pursuits. High-speed pursuits remain inherently dangerous, posing a high risk of death or serious injury to suspects, officers, and innocent members of the public. We often see news stories that illustrate the dire, life-changing impact of high-speed police pursuits. Rather, the Court's opinion acknowledges that police officers frequently make high-stakes, split-second decisions under extreme stress. This decision clarifies the application of a substantive due process claim involving police pursuits, confirming that tragic outcomes from police chases do not automatically impose constitutional liability on officers.



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