

## Phila. Officers and City Cannot Escape Lawsuit Over Police Chase Death, Federal Judge Rules

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Litigation



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### What You Need to Know

- A federal judge denied in part the city of Philadelphia's motion for summary judgment in a lawsuit over the death of a woman struck in a police chase.
- The judge applied a 'conscious disregard' standard to the plaintiffs claims that the officers had violated the decedent's due process rights.
- The standard is lower than what has historically been applied in police chase cases in the Third Circuit.

A recent federal court ruling could make it harder for law enforcement officers to fend off lawsuits from individuals injured in police pursuits.

U.S. District Magistrate Judge Scott Reid of the Eastern District of Pennsylvania on Sept. 13 declined to throw out a lawsuit against the city of Philadelphia and two police officers over the death of a woman who was struck by a fleeing suspect in a police car chase.

And in allowing the claim to forward, Reid broke from the standard usually applied in such cases.

"It is simply unrealistic to treat every police pursuit of a fleeing suspect in the same way," he ruled.

Reid allowed the plaintiffs to proceed with their argument that the officers violated decedent Virgen Martinez's constitutional rights to substantive due process by consciously disregarding a substantial risk of harm posed by their actions.

That "conscious disregard" standard is lower than what courts have applied in other police pursuit cases. In fact, Reid acknowledged in his [opinion](#) that "I am well aware that no §1983 police pursuit case in this circuit has been decided under a standard less than intent to harm."

But Reid held that a conscious disregard standard may apply "provided that (1) there is no compelling justification to engage in a high-speed pursuit, and (2) the officer has time to consider whether to engage in such inherently risky behavior."

Kline & Specter partner James Waldenberger, who represents the plaintiffs alongside co-counsel Helen Lawless, said the conscious disregard standard is still challenging to overcome, but it is easier to meet than the intent to harm standard, which he called "a nearly insurmountable obstacle to overcome."

Waldenberger said Reid's ruling stands apart from a trend of courts applying the intent to harm standard "almost across the board" in police chase cases.

Lawless said the ruling is specific to police chase cases but brings the standard for those cases more in line with rulings within the Third Circuit dealing with state-created danger claims in other contexts.

A spokesperson for Philadelphia's Law Department said in an email, "The city is still analyzing the court's ruling and evaluating next steps."

According to the opinion, Martinez was killed when two Philadelphia police officers' pursuit of a suspect they had seen distributing drugs escalated into a high-speed chase. The suspect eventually ran a red light and struck Martinez's car, the opinion said.

The defendants had asserted that plaintiffs could not prove the officers acted with an intent to harm, and so could not support their due process claim. The judge agreed on the first point, but not so much on the second.

Reid held that the plaintiffs failed to demonstrate an intent to harm, but that failure did not discount their due process claim entirely.

The judge ruled that the circumstances of the chase, as alleged by the plaintiffs, could support an argument that the officers had time to consider their pursuit and did not have compelling justification to initiate the chase. And if the plaintiffs could successfully prove those factors, Reid held, they could demonstrate that the defendants violated the conscious disregard standard.

Reid denied the defendants' motion for summary judgment on the plaintiffs' due process claim and on another claim for failure to train. However, he granted the defendants summary judgment on claims the plaintiffs had brought for failure to supervise and state law negligence.

# Read the Opinion:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSHUA OTERO, as Administrator  
of the Estate of Virgen Martinez,  
Deceased

NO. 22-4141

v.

OFFICER CHRISTIAN KANE, et al.

OPINION

SCOTT W. REID  
UNITED STATES MAGISTRATE JUDGE

DATE: September 12, 2024

In this action, Joshua Otero, as Administrator for the estate of his mother, Virgen Martinez, has sued Police Officers Christian Kane and Alexander Hernandez in their individual and official capacities ("the Police Defendants"), Tahir Ellison, the City of Philadelphia ("the City"), and John Doe defendants, for the death of Ms. Martinez in a car collision with Tahir Ellison, who was fleeing