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FILED
SID J. WHITE
MAY 26 1998
CLERK, SUPREME COURT
By Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CAL HENDERSON, as Sheriff of Hillsborough County, Florida,

Petitioner/Defendant,

vs.

ISAC B. BOWDEN and LUNA DELL ARCHIE HAYWOOD, et al,

Respondents/Plaintiffs.

CASE NO. 91,965

DISTRICT COURT OF APPEAL
SECOND DISTRICT, No. 96-02301

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## RESPONDENTS' ANSWER BRIEF

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References to the Record will be by R, followed by the page number. References to the Transcripts from the Summary Judgment hearings (held 11/1/94 and 3/26/96) will be referenced as T, followed by the page number.

## STATEMENT OF THE FACTS

The Respondents disagree with the Petitioner's account of the facts as stated in the Initial Brief, to the extent Petitioner omitted facts/details which are relevant Respondents' arguments. The additional facts are as follows:

— Upon leaving the party, Brandon Lyons, realizing that he had consumed too much alcohol and was too drunk to drive, asked Jimmy Bowden to drive (R 219).

- Jimmy Bowden was stopped on Turkey Creek Road, east of Tampa, Hillsborough County, Florida, by Deputy Gary Herman for speeding (R 268-269, 379-380).

— During the stop, several other deputies (including Deputy Given Garcia) arrived to assist Deputy Herman (R 385).

— After several field sobriety tests, Deputy Herman made the decision to arrest Jimmy Bowden for driving under the influence of alcohol (R 388-389).

— During the stop, Brandon Lyons told Deputy Herman that Jimmy Bowden was driving because he (Brandon Lyons) was "trashed", which Deputy Herman acknowledged (R 227).

— Deputy Herman and Deputy Garcia also knew that Damon and Robert Bowden were extremely intoxicated, to the point of not being able to talk (R 321, 387).

— After Deputy Herman and Deputy Garcia each administered the HGN test to Brandon Lyons, they allowed Brandon Lyons (and passengers Damon Bowden and Robert Bowden) to get back into their automobile and drive away (R 327-328).

— Shortly after Brandon Lyons, Damon Bowden and Robert Bowden pulled away, Deputy Garcia went to the convenience store. As Deputy Garcia was pulling into the convenience store lot, he saw Brandon Lyons pulling out of the parking lot onto Trapnell Road (R 329-331), and Deputy Garcia decided to pursue them.

— Deputy Garcia claims that he was trying to catch Brandon Lyons but that he never could. Although he admits that he had "the pedal to the metal," Deputy Garcia states, "they kept pulling away from me" (R 333).

— Deputy Garcia was driving his Sheriff's vehicle (a 1990 Chevrolet Caprice) and Brandon Lyons was driving a 1988 Honda Civic (R 205).

— Within minutes after leaving the stop scene, Brandon Lyons, Damon Bowden and Robert Bowden were involved in a collision in which Damon Bowden and Robert Bowden were instantly killed (R 333-336). Although Deputy Garcia claims he could not get close enough to activate his siren, he was able to see Brandon Lyons' car leave the road, strike the trees, watch Damon Bowden get ejected out of the car and ripped in half and watch Brandon Lyons get ejected out of the driver's seat (R 333-335).

— Deputy Joseph M. Grasso of the Hillsborough County Sheriff's Department, stated in the Homicide Report, "Witness advised driver had been drinking" (R 195). The only witness to the accident (as stated by Petitioner in its Motion for Summary Judgment) was Deputy Garcia (R 156), i.e., Deputy Garcia knew Brandon Lyons had been drinking.

— Petitioner's tape of "Voice Traffic" between Deputy Given Garcia (identified as Bravo 9) and Deputy Gary Herman (identified as Bravo A-I) "from 8/7 at approximately 2330 hours and 8/8 approximately 0030 hours on Channel 6" of Petitioner's radio system contains the following statement of Deputy Given Garcia:

> I need EMS ... I'm on Jerry Smith at the curves just north of Sydney Road ... I got Bravo A-I's vehicle ... they tried to run from me and they just took the curve and they just wiped out - I need EMS 10-18 ... (R 997-998).

[i.e., Deputy Garcia knew that Brandon Lyons knew that he (Brandon Lyons) was being pursued by Deputy Garcia.]

— Deputy Garcia never activated his lights or siren (R 334) during the pursuit.

— A breath test performed on Jimmy Bowden after his arrest showed a blood alcohol content level of .107 gm% (R 478).

— Dr. John R. Feegel, an expert on the calculation and interpolation of blood alcohol concentrations, calculated Brandon Lyons' blood alcohol concentration at the time he was in the custody of Deputy Herman and Deputy Garcia to be approximately .165 gm% (R 524-525).

— Dr. Charles G. Maitland, a specialist in neuro-ophthalmology, reviewed the depositions taken in this case, the applicable law enforcement reports and Dr. Feegel's affidavit and determined that Deputy Herman and Deputy Garcia were inadequately trained in administering the Horizontal Gaze Nystagmus test. Dr. Maitland states that, at the blood alcohol concentration range calculated by Dr. Feegel, a properly trained officer, properly

administering the Horizontal Gaze Nystagmus test, would have clearly concluded that Brandon Lyons was under the influence of alcohol (R 483-485).

— James D. White, J.D., a police procedure expert, reviewed the depositions taken in this case, the affidavits of Dr. Feegel and Dr. Maitland, law enforcement reports, and applicable law, and concluded that Deputy Herman and Deputy Garcia breached their common law duty of care by creating a foreseeable zone of risk which in fact produced injury (R 496-500). Dr. White also testified (R 978) that Deputy Garcia's conduct violated the Petitioner's Standard Operating Procedures in a number of respects, including, but not limited to:

1. That pursuit never should have been initiated in the first place (page 5 of 10 of number 511.00, revised 05/27/92); and

2. That once initiated, the pursuit vehicle should have utilized sirens and emergency lights through-out the pursuit (page 3 of 10 and page 8 of 10 of number 511.00, revised 05/27/92).

## STATEMENT OF THE CASE

The Respondents do not necessarily disagree with the Petitioner's version of the statement of the case. However, the following additional information may be beneficial in assisting the Court in understanding the history of the case:

— This appeal involves negligence actions brought by the Personal Representatives (the decedents' parents) of the Estates of Damon Bowden and Robert Bowden. An Order consolidating these cases for discovery was signed on 10/28/94 (R 186). Consolidation Orders as to liability issues were signed on 04/03/95 and 04/05/95 (R 516-519).

— On 11/01/94, the trial court granted Petitioner's Motion for Summary Judgment as to the Deputies' conduct at the stop scene (T 32). The court allowed Respondents to amend their Complaints to allege negligent pursuit (T 32). An Order reflecting the Court's rulings was signed on 01/12/95 (R 511). On 04/21/95, the trial court entered a Partial Final Judgment in favor of Petitioner for the Deputies' conduct at the stop scene (R 520). As a result of the lower court's ruling, an appeal was filed but subsequently dismissed sua sponte by this Court (as a non-final, nonappealable partial disposition) by Order dated 10/20/95 (R 548).

— Respondents thereafter amended their Complaints regarding the negligent pursuit - the Third Amended Complaint was filed 01/26/95. That cause of action was set for trial on 04/22/96, but Petitioner's Motions for Summary Judgment (separate motions as to the two decedents) as to the pursuit were argued and granted on

04/26/96. As stated by the trial court at the time said Final Summary Judgments were entered (T 70):

> However, there are times when I grant motions for summary judgments where I welcome an appeal.

— Respondents filed a consolidated appeal as to all three Final Summary Judgments described above. The Appellate Court reversed the trial court's orders of summary judgment, and remanded the cases to the trial court. Petitioners seek the Supreme Court's review of the Appellate Court's decision.

## SUMMARY OF ARGUMENTS

For purposes of this appeal, it must be assumed that the Deputies had actual knowledge of Brandon Lyons's intoxication, both at the stop scene and during the subsequent pursuit. As stated in its Order on Defendant's Motion for Summary Judgment, dated 01/12/95, "it is assumed for purposes of this Order that the deputies knew or should have known that Brandon Lyons was impaired by alcohol. However, such conduct is protected by sovereign immunity ..." (R 513).

With regard to the Petitioner's deputies' stop scene conduct, Petitioner's claim of immunity is based upon a Deputy's decision whether or not to enforce a law. Such reliance is misplaced. In this case, the intoxicated driver (the violator of the law) was arrested, following which a drunk passenger (who was **much more** drunk than the arrested driver, but not in violation of a law) was allowed to drive the vehicle away, resulting in several deaths. The issue is whether the Deputies' conduct (relating to the drunk **passenger**) is immune. The record (including opinions of Respondents' experts) presents substantial competent evidence that the Deputies were negligent, and applicable case law establishes the Deputies' responsibility in light of their "special relationship" with the passengers and for creating a foreseeable zone of risk and for "failing to either lessen the risk or to see that sufficient precautions were taken to protect others from the risk." Accordingly, Petitioner is not immune for the Deputies' conduct at the stop scene.

With regard to the subsequent pursuit, a jury question as to Petitioner's negligence has likewise been created by substantial competent evidence in the record, including Deputy Garcia's negligent violation of Petitioner's own Standard Operating Procedures, in that he:

A. had no reason to be in pursuit in the first place, and

B. having initiated the pursuit, he failed to activate his lights or siren.

Such conduct is "operational" in nature. Thus, Petitioner is not immune from suit.

## ARGUMENT

**I. THE EXISTENCE OF A SPECIAL RELATIONSHIP CREATED A DUTY WHICH REQUIRED THE DEPUTIES TO EXERCISE REASONABLE CARE IN THE PROTECTION OF THE DECEDENTS**

A government entity is not liable in tort for breaching a duty which the government owes to the public generally. Trainon Park Condominium Ass'n v City of Hialeah, 468 So.2d 912 (Fla. 1985). In this respect, Respondents agree with Petitioner that an officer's responsibility to enforce the law is duty which the government owes to the public generally, and is thus, protected.

Therefore, a plaintiff suing a governmental entity in tort must allege and prove that the defendant breached a common law or statutory tort duty owed to the plaintiff individually and not a tort duty owed to the public generally.

In Everton v. Willard, 468 So.2d 936, 938 (Fla. 1985), the Florida Supreme Court recognized that where a special relationship exists between an individual and a governmental entity, a duty to use reasonable care in the protection of the individual may arise. The Court explained that this duty arises in situations where the police accept responsibility to protect a particular person who has assisted them in the arrest or prosecution of criminal defendants and the individual is in danger due to that assistance. Everton, at 938. Hence, it is clear that the duty extends beyond those whom the officers have arrested.

In Kaisner v. Kolb, 543 So.2d 732 (Fla. 1989), the Court described the general manner in which a duty of care arises under Florida law:

> Where a defendant's conduct creates a foreseeable zone of risk, the law generally will recognize a duty placed upon defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses [citations omitted].

The Court in Kaisner held that there is no reason such an analysis should not apply in a case in which the zone of risk is created by the police. Id. at 735, 736.

The Court stated:

> In this case, we find that petitioner was owed a duty of care by the police officers when he was directed to stop and thus was deprived of his normal opportunity for protection. Under our case law, our courts have found liability or entertained suits after law enforcement officers took persons into custody, otherwise detained them, deprived them of liberty or placed them in danger . . .

Kaisner, at 734.

The Court went on to explain that "custody" need not consist of the formal act of an arrest, but can include any detention, or mere power, legal or physical, of imprisoning or of taking manual possession. Id.

In the instant case, the discretionary decision to make an arrest (of Jimmy Bowden) had been exercised. The exercise of that discretion in arresting the driver of the vehicle then created a "special relationship" in the deputies' operational activities with the other three occupants of the vehicle, who for the purposes of

this appeal are assumed to have been intoxicated, of which the Deputies' had knowledge.

In re-affirming Kaisner on the issue of duty, the Court in McCain v. Florida Power Corp., 593 So.2d 500 (Fla. 1992), held that:

> As the risk grows greater, so does the duty, because the risk to be perceived defines the duty that must be undertaken [citations omitted].
> The statute books and case law, in other words, are not required to catalog and expressly proscribe every conceivable risk in order for it to give rise to a duty of care. Rather, each defendant who creates a risk is required to exercise prudent foresight whenever others may be injured as a result. This requirement of reasonable, general foresight is the core of the duty element [citations omitted]. Id. at 503.

This concept was re-affirmed by the Supreme Court in City of Pinellas Park v. Brown, 604 So.2d 1222 ( Fla. 1992), where the Court stated that what the police may **not** do is **themselves** needlessly exacerbate the danger to the public. In that case, a substantial part of the risk was created by the police, so the Court held that their conduct was **not immune**.

Clearly, a substantial part of the risk in the instant case was likewise **created by** the police, whose conduct at the stop scene did nothing to "lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses." Instead, Petitioner's Deputies substantially **increased** the risk and exposed the decedents to much **greater** harm, putting Damon and Robert Bowden's lives in the hands of a driver nearly twice as drunk as the driver they arrested.

This negligence, and the non-application of sovereign immunity, is clearly established by the testimony of those at the stop scene, as well as the affidavit testimony of no less than three experts in the fields of interpolation of blood alcohol concentrations (R 524-25), neuro-ophthalmology (R 483-485) and police procedures (R 496-500), respectively.

Interestingly, Petitioner argues that no duty existed at the time of the fatal crash because the deputies had "no control over the actions or conduct" of the Brandon Lyons and Robert and Damon Bowden. Specifically, the Petitioner argues that Brandon Lyons' disregard of the deputies' instructions proves an independent relationship.

It is undisputed that the deputies instructed Brandon Lyons to drive across the street to the Circle K, call his parents and wait for a deputy (R 232-233; 433-435). It is further undisputed that there was more than one deputy, more than one sheriff's vehicle and that the deputies were armed. While it is true that Brandon Lyons had not violated any laws, it is evident that the **intention** of the deputies was to "detain" the group, albeit not in handcuffs, until someone came to pick them up.

Brandon Lyons' disregard of the deputies' instruction should not have come as a surprise to the deputies. They knew Brandon Lyons was "trashed". His attempted "escape" was foreseeable and predictable, and occurred in the presence of the deputies.

The evidence clearly supports that the "special relationship" contemplated by this Court in Everton and Kaisner existed at the

time of the fatal crash. What was absent was the exercise by the deputies of reasonable care in carrying out their operational duties.

Section 324, Restatement (Second) of Torts (1965), is instructive on the deputies' duty of care with regard to the treatment of Robert and Damon Bowden.

> §324. Duty of One Who Takes Charge of Another Who is Helpless
>
> One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by
>
> (a) the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge, or
> (b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him.

Section 324 is instructive because it applies whenever one takes charge of another who is incapable of taking adequate care of himself, i.e. one who is "ill, drunk or . . . who by reason of his youth is incapable of caring for himself." §324 Restatement (Second) Torts (1965), Comment b. Inasmuch as this duty extends to children and drunks alike, the issue presented in the instant case is much clearer when viewed in the context of the treatment the deputies would have afforded three children passengers, under like circumstances, i.e. where their adult driver was arrested for DUI.

Accordingly, the issue in this case is the treatment of a drunk passenger (not subject to arrest), whereby the drunk passenger was instructed/allowed to drive away (with two other

drunk passengers) from the stop scene, substantially increasing the risk to themselves and others, in violation of Kaisner, McCain and City of Pinellas Park.

As stated by Professor William C. Prosser's *Handbook of The Law of Torts*, §54 at 339 (3rd Ed. 1964):

> If there is no duty to come to the assistance of a person in difficulty or peril, there is at least a duty to avoid any affirmative acts which make his situation worse. When we cross the line into the field of "misfeasance," liability is far easier to find .... There may be no duty to take care of a man who is ill or intoxicated, and unable to look out for himself; but it is another thing entirely to eject him into the danger of a railroad yard; and if he is injured there will be liability.

In this instant case, the deputies' conduct clearly made the situation worse for Robert and Damon Bowden, and in fact resulted in their deaths within minutes of the subject negligence. Clearly, the deputies' conduct at the stop scene is actionable.

## II. THE DEPUTIES' NEGLIGENT ACTS ARE NOT IMMUNE FROM SUIT AS THEY CONSTITUTED OPERATIONAL LEVEL ACTS

In Kaisner, the Court addressed the distinction between discretionary and operational acts in the context of sovereign immunity:

> The term "discretionary" as used in this context, means that the governmental act in question involved an exercise of executive or legislative power such that, for the court to intervene by way of tort law, it inappropriately would entangle itself in fundamental questions of policy and planning [citations omitted]. . . An "operational" function, on the other hand, is one not necessary to or inherent in policy or planning, that merely reflects a secondary decision as to how those policies or plans will be implemented.

Kaisner at 737.

In Kaisner, the Court determined that the precise manner in which a motorist is ordered to the side of the road is neither quasi-legislative nor sensitive. Id. Further, it stated that while such an act involved a degree of discretion, it was not the type of discretion that needs to be insulated from suit. Id. The Court emphasized:

> Intervention of the courts in this case will not entangle them in fundamental questions of public policy or planning. It merely will require the courts to determine if the officers should have acted in a manner **more consistent with the safety of the individuals involved.** (emphasis added).

Id. at 738.

The circumstances of the instant case are similar to those in Kaisner and Sams v. Oerlich, 23 Fla. L. Weekly D1042 (Fla. 1st DCA,

April 22, 1998). In Sams, the deputy brought an injured escapee to a hospital emergency room for treatment. The escapee's hands were handcuffed in front of him. The deputy was within an arm's length of the escapee. The deputy, however, was writing on something and had apparently let his guard down as to his escapee. The escapee made a run for an exit door, injuring others on the way. The deputy gave chase and eventually apprehended the escapee before he reached the outer exit doors. After placing the young man "under control", the deputy inquired as to the injured. Id.

The court determined that a deputy's action in taking an escapee to the hospital emergency room created a foreseeable zone of risk to those persons forced to occupy the emergency room with a prisoner in law enforcement custody. Id. at 1043.

Significantly, the court did **not** find that the escapee's attempted escape/disregard for the deputy's authority severed the custodial relationship. In fact, the court held that having created this zone of risk, the deputy owed a duty to use reasonable care to protect those persons from potential injury occasioned by their close proximity to an escapee who possibly possessed dangerous propensities. Id. In support of its position, the court cited to §319 Restatement (Second) of Torts, 1965:

> §319. Duty of Those in Charge of Person Having Dangerous Propensities
>
> One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.

Sams, at 1043.

Additionally, the court (citing to Kaisner) held that while the act of taking the escapee to the hospital emergency room involved a certain degree of discretion, it was not the type of discretion that should be shielded from suit. Id. at 1043.

Instead, the court found that "the deputy's post-arrest handling of the escapee as involving operational activities which created a substantial zone of risk." Id. In support of its finding, the court cited to Bowden v. Henderson, 700 So. 2d 714 (Fla. 2d DCA 1997), in which the Second District Court of Appeals sought to find the "level ground between the sovereign immunity principle of Everton, and the principle stated in Kaisner and Pinellas Park. Bowden, at 716.

In Bowden, the court found that the acts of the deputies in the instant case "fell more within the teachings of Kaisner, and similar cases, and are distinguishable from those of the deputy sheriff in Everton". Bowden, at 717. It appears as though the First District Court of Appeals concurred with the "level ground" the Second District Court of Appeals established in Bowden.

**III. RESPONDENTS ALLEGED AND ESTABLISHED SUFFICIENT FACTS TO SUPPORT ITS CLAIM OF NEGLIGENT PURSUIT**

Shortly after Brandon Lyons, Damon Bowden and Robert Bowden pulled away, Deputy Garcia drove to the convenience store. As Deputy Garcia was pulling into the convenience store lot, he saw Brandon Lyons (with passengers Damon Bowden and Robert Bowden) pulling out of the parking lot onto Trapnell Road (R 329-331), and Deputy Garcia decided to pursue them.

Deputy Garcia claims that he was trying to catch up to Brandon Lyons but that he never could. Although he admits that he had "the pedal to the metal," Deputy Garcia states, "they kept pulling away from me" (R 333). Such is difficult to comprehend, given the fact that Deputy Garcia was driving his Sheriff's vehicle (a 1990 Chevrolet Caprice), while Brandon Lyons was driving a little 1988 Honda Civic (R 205).

Within minutes after leaving the stop scene, Brandon Lyons, Damon Bowden and Robert Bowden were involved in a collision in which Damon Bowden and Robert Bowden were instantly killed (R 333-336). Although Deputy Garcia admits that he was in pursuit at that time (R 334), he claims that he could not get close enough to justify turning on his lights or activating his siren. In fact, Deputy Garcia never turned on his lights or activated his siren (R 334). However, Deputy Garcia admits that he was so close to the pursued vehicle that he was able to see Brandon Lyons' car leave the road, strike the trees, see Damon Bowden get ejected out of the

car and ripped in half and watch Brandon Lyons get ejected out of the driver's seat (R 333-335).

James D. White, J.D., a police procedure expert, reviewed the depositions taken in this case, the affidavits of Dr. Feegel and Dr. Maitland, law enforcement reports, and applicable law, and concluded that Deputy Herman and Deputy Garcia breached their common law duty of care by creating a foreseeable zone of risk which in fact produced injury (R 496-500). Dr. White also testified (R 978) that Deputy Garcia's conduct violated the Petitioner's Standard Operating Procedures in a number of respects, including, but not limited to:

1. That pursuit never should have been initiated in the first place (page 5 of 10 of number 511.00, revised 05/27/92); and

2. That once initiated, the pursuit vehicle should have utilized sirens and emergency lights through-out the pursuit (page 3 of 10 and page 8 of 10 of number 511.00, revised 05/27/92).

Obviously, a jury could conclude that Brandon Lyons would have simply stopped his vehicle in response to a Deputy's lights and siren and/or that Brandon Lyons lost control on the curve due to the tremendous distraction of being followed so closely by Deputy Garcia at a high rate of speed.

The applicable law relating to high-speed pursuits is one case - City of Pinellas Park, supra, which discusses the duty, sovereign immunity and proximate causation issues in detail. In doing so, the Supreme Court re-affirms its important holdings in Kaisner, supra, and McCain, supra, and applies such concepts directly to a

high-speed pursuit situation. Every word of the Supreme Court's analysis of these three issues is applicable to, instructive on and dispositive of the issues presented herein. As is evident from the transcript herein (T 59-63), Petitioner successfully avoided the import of Pinellas Park by simply arguing that the instant scenario doesn't rise to the level of the Pinellas Park chase (not as great a distance, not as many police cars, not an urban area, etc.) or "even that" of City of Miami v. Horne, 198 So.2d 10 (Fla. 1967). In the process, the trial court simply failed to understand the law on this subject, starting with City of Miami v. Horne, supra, in which the court stated that:

> ... the rule governing the conduct of police in pursuit of an escaping offender is that he must operate his car with due care ...

As clearly pointed out by the Court in City of Pinellas Park, supra:

> The issue addressed in *Horne*, in other words, was whether a valid complaint is stated if the plaintiff alleges *only* that hot pursuit is per se negligence. Rejecting this claim, we simply held that a plaintiff must allege that the police engaged in hot pursuit in a negligent or wanton manner.

Clearly, Respondents have both alleged and established much more than that a pursuit took place. Respondents have alleged and established that a pursuit took place negligently and in violation of Petitioner's own Standard Operating Procedures relating to pursuits - as to when pursuit should be initiated in the first place and, once initiated, how pursuits should be carried out. For all of the reasons enunciated by the Supreme Court in Pinellas

Park, supra, at pages 1225-1228, Petitioner clearly owed Respondents a duty, and the manner in which the pursuit was carried out was clearly "operational". As was the situation in Pinellas Park, supra:

> In fact, the plaintiffs have alleged that each of the police agencies had adopted a policy to the contrary. Accordingly, the actions of the police in this instance are not entitled to sovereign immunity.
>
> ... the method chosen for engaging in hot pursuit will remain an operational function that is not immune from liability *if* accomplished in a manner contrary to reason and public safety. As we stated in *Kaisner*, when government agents create a zone of risk through operational functions, then the governmental unit will not be shielded by sovereign immunity.

The issue is not how far, how many cars, etc. The issue is whether Respondents alleged and presented competent evidence regarding negligent performance of the pursuit by the Deputy. Such would have been true even absent proof of the violations of Petitioner's own Standard Operating Procedures. Given such proof, Respondents respectfully submit that the question is not even close.

## CONCLUSION

Based on the foregoing, Respondents request that this Court reverse the trial court's Summary Judgments as to the Deputies' conduct (both at the stop scene and during the pursuit), affirm the Second District Court of Appeal's decision, and remand the entire case to the trial court for jury trial.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Respondents Answer Brief has been furnished by U.S. Mail to Darrell D. Dirks, Esquire, Post Office Box 3283, Tampa, FL 33601, this 22nd day of May, 1998.

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