

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ESTATE OF DANE WOURMS and  
LAWRENCE WOURMS as personal  
representative of the ESTATE OF  
DANE WOURMS,

Plaintiffs,

v.

SCOTT FIELDS and THE CITY OF  
EVANSVILLE,

Defendants.

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OPINION AND ORDER

11-cv-740-bbc

Plaintiffs Estate of Dane Wourms and Lawrence Wourms represent the interests of Dane Wourms, a young man who was killed in a car accident that occurred during a police chase in Evansville, Wisconsin. In this civil action brought under 42 U.S.C. § 1983, plaintiffs contend that defendant Scott Fields, a police officer for the City of Evansville, used excessive force against Dane Wourms by intentionally ramming his squad car into Dane's car during a high-speed pursuit. Plaintiffs contend that the use of excessive force resulted in an unreasonable seizure under the Fourth Amendment.

Now before the court is defendants' motion for summary judgment, dkt. #9, in which defendants contend that there is no evidence to support plaintiffs' claim that defendant Fields caused plaintiff to crash by striking his vehicle. I agree with defendants. The record

contains no evidence from which a reasonable jury could conclude that defendant Fields's squad car ever made contact with Dane Wourms's car. Rather, all of the evidence in the record supports defendants' position that Dane Wourms crashed when he lost control of his vehicle. Plaintiffs' arguments to the contrary depend solely upon speculation and conjecture. Therefore, I am granting defendants' motion. With respect to the City of Evansville, plaintiffs are suing the city only as an indemnitor. Its liability rises and falls with Fields's, making it unnecessary to say anything further about this defendant. All further references to "defendant" will be to Scott Fields.

From the parties' proposed findings of fact and the record, I find the following facts to be material and undisputed.

#### UNDISPUTED FACTS

##### A. The Pursuit and Crash

In the early morning hours of Sunday, April 22, 2007, defendant Fields was on patrol in the City of Evansville, working the 7:00 p.m. to 3:00 a.m. shift as a uniformed police officer. Defendant was driving an unmarked Ford Crown Victoria. At approximately 12:59 a.m., Dane Wourms's mother, Tamera Wourms, placed a 911 call to the Rock County 911 call center from her home in Evansville. She reported that her son Dane was drunk, was "going crazy" and was throwing furniture. The Rock County 911 dispatcher heard screaming, crashing, glass breaking and other noises through the phone. At approximately 1:01 a.m., defendant overheard the 911 dispatcher report the domestic dispute via radio to

the Rock County Sheriff's Department deputies. Anticipating that his assistance would be required, defendant headed towards the Wourms's residence and waited nearby for further instructions from dispatch.

At approximately 1:06 a.m., Dane Wourms "took off" towards the City of Evansville in a greenish-blue 1999 Mazda. Wourms was intoxicated. (It was later determined that Wourms had a blood alcohol level of .175 and a urine alcohol level of .221.) Defendant was asked by dispatch to locate and stop Wourms's vehicle. Defendant responded: "10-4. I am familiar with him. I'll check his local hangouts." Defendant then drove to several residences in the area that Wourms had frequented in the past, without locating Wourms or his vehicle.

Between approximately 1:14 a.m. and 1:17 a.m., defendant and the Rock County 911 call center both received reports of squealing tires and drag racing in downtown Evansville. At approximately 1:17 a.m., defendant requested permission to investigate these traffic complaints and then proceeded to the downtown area. Approximately two minutes later, defendant saw a light green Mazda in an alley in downtown Evansville. (The vehicle was later identified as Dane Wourms's 1999 Mazda.) The Mazda pulled out from the alley and turned right onto North Madison Street, squealing its tires. The Mazda was driving fast and nearly sideswiped a parked vehicle. At this point, defendant activated his emergency red and blue lights to initiate a traffic stop. Instead of pulling over, the Mazda accelerated and pulled into an oncoming traffic lane at a high rate of speed and passed through a stop sign without stopping. At approximately 1:19 a.m., defendant radioed an update to dispatch: "I got the car here failing to stop for me. He is eastbound on Main now from Railroad."

Defendant activated his siren.

Defendant continued to follow the Mazda onto East Main Street with his emergency lights and siren activated. The Mazda failed to stop or even slow down at the stop sign posted at the intersection of East Main Street and North Union Road. As defendant approached this same intersection he still had visual contact with the Mazda, but it was pulling away from him. Defendant was traveling at approximately 70 miles per hour. The posted speed limit on East Main Street was 25 miles per hour. Before entering the intersection of East Main Street and North Union Road, defendant applied his brakes and slowed down. Defendant advised dispatch of his location and speed by radioing the following updates: “still eastbound on Main . . . and at Union doing about 70”; “he is all over the road”; “still eastbound on Main from Water.”

At approximately 1:20 a.m., defendant saw the Mazda crest the hill on East Main Street, east of Water Street. Near the top of the hill, the Mazda crashed and rolled off the road. (According to defendant, he did not see the crash. He says that he lost sight of the Mazda when it crested the hill. Defendant says that when he crested the hill, he saw only one pair of taillights ahead of him, near County Highway M. Believing the taillights belonged to the Mazda, defendant began to pursue the vehicle, but soon realized that it was the wrong car.) Defendant radioed to dispatch: “I lost him; once he got over the hill he blocked out and I don’t know where he went from here.” Defendant abandoned the high speed pursuit and slowed his squad car to a normal highway speed. He radioed a vehicle description to area deputies.

Defendant continued on East Main to the shopping center at John Lindemann Drive, where he deactivated his emergency equipment and checked the parking lots and side streets for the Mazda. Defendant then turned around and headed westbound on East Main Street, retracing his route back towards downtown Evansville. Just west of County Highway M, defendant saw some dirt and debris on the road. Defendant parked his squad car and got out to investigate on foot. He saw more vehicle debris and discovered the Mazda flipped over on its roof approximately 40 yards from the edge of East Main Street. Defendant ran over to inspect the vehicle and check the driver for injuries. Defendant found Dane Wourms's body on the ground outside the vehicle.

At approximately 1:22 a.m., defendant radioed dispatch: "I got some damage here on East Main. He went off the road on the shoulder, we got a rollover, we got a rollover next to Stoughton Trailers and need EMS." Defendant then ran back to his squad car to retrieve his automated external defibrillator. When defendant returned to Wourms's body and prepared to resuscitate him, it became obvious to defendant that Wourms was already dead.

#### B. Eyewitness Statements

No bystanders saw the crash. Two eyewitnesses, Myriah Hrdlicka and Nicholas Chenoweth, saw Wourms's Mazda and defendant's squad car pass by at a high rate of speed while Hrdlicka and Chenoweth were stopped at an intersection of Highway 14 and Water Street. In statements to investigators, Hrdlicka estimated that the Mazda was traveling at 70 miles per hour and that defendant's squad car passed by approximately five, seven or ten

seconds later. She also told Dane Wourms's sister that defendant's car was half a basketball court to a full basketball court, a few car lengths, behind Wourms's Mazda. Myriah offered the following statement during her interview: "If this is an investigation to see if the cop had anything to do with it, I don't think he did. Dane just crashed." Dkt. #23-1 at 40-41. She also stated that defendant was not "close enough that he could have bumped [Wourms]."

Id.

Nicholas Chenoweth, a passenger in the vehicle driven by Hrdlicka, told investigators that Dane Wourms was driving between 80 and 90 miles per hour and that defendant was following at a distance of about four seconds behind Wourms. Later, he testified that Wourms was driving between 70 and 80 miles per hour and that defendant was "about 3 seconds" behind Dane. Chenoweth gave the opinion that it was not possible for defendant not to see the crash occur.

Another witness, Gene Heiman, reported seeing a marked black and white police car with an emergency lights bar driving eastbound on Highway 14 on the night of the accident. Heiman reported that he was driving westbound on Highway 14 when the squad car made a U-turn in front of him at the intersection of Highway 14 and County Highway M. The squad car then turned on its emergency lights and proceeded westbound about 100 yards and pulled over to the side of the road. Heiman stopped near the officer and asked whether he had done something wrong. Heiman says that the officer told him to "get out of there." Heiman said the officer was looking around with a flashlight off the roadway. A Rock County Sheriff squad arrived at the location and Heiman left. Dkt. #16-2 at 45-46.

C. Evidence of Contact between Defendant's Squad Car and Wourms's Mazda

Plaintiffs submitted the report of an engineering expert, Donald Marty, from Safety Engineering Associates. Marty examined defendant's squad car and Wourms's Mazda to determine whether there was any evidence of contact between the two vehicles. He noted that the front left bumper of the squad car and the back right bumper of the Mazda had several abrasions and gouges. He concluded that "[a]lthough abrasions were present on both the Evansville Police Department squad car front bumper and the rear bumper cover of the Wourms Mazda automobile, [he] found no matches between the abrasions and no evidence of paint transfer on either bumper cover." Dkt. #22-1 at 3.

Marty also noted that there were two imprints in the plastic rear bumper cover of Wourms's Mazda that were consistent with the retaining bolts of a Ford Motor Company vehicle license plate cover. The imprints were clear enough to ascertain the orientation of the flathead screwdriver slots on the retaining bolts of the license plate cover that created the imprints. The imprint of the driver-side bolt on Wourms's Mazda showed that it was rotated 22 degrees counterclockwise and the passenger-side bolt was rotated 15 degrees clockwise. The orientation of the driver-side bolt on defendant's squad car was 5.5 degrees counterclockwise and the orientation of the passenger-side bolt was 53 degrees counterclockwise. Additionally, the license plate bolt imprints on Wourms's Mazda were at a height of 16.1 inches from the ground, while the license plate bolts on the squad car were at a height of 18.8 inches from the ground. Marty concluded that the marks could have

been made by defendant's Ford squad car only if both the vehicles were "under heavy braking" at the time the contact occurred. Id. He explained that "the front of the Ford automobile would had to have lowered by 1.35 inches under heavy braking and the rear of the Mazda automobile would had to have raised by 1.35 inches under heavy braking for the contact to have occurred. Id.

Defendants submitted the reports of two experts. Ryan Zukowski, an accredited crash reconstruction specialist with the Wisconsin State Patrol Technical Reconstruction Unit, completed a detailed survey of the scene using surveying equipment and later used the data to produce a forensic map of the crash scene. Zukowski Rep., dkt. #14-1. He also examined Wourms's Mazda and defendant's squad car. Zukowski concluded that the crash occurred shortly after Wourms had negotiated a gradual right curve in the roadway at a speed of between 73 and 80 miles per hour. His theory was that Wourms began to lose control of the Mazda and started driving left of the centerline in the lane for oncoming traffic. The Mazda rotated clockwise, jumped the south curb, struck a small tree sapling and became nearly perpendicular to its trajectory. The Mazda began to "furrow" into the grass and then began to roll. The Mazda struck a tree and spun off the tree to its position of final rest. During the rollover sequence, Wourms was ejected from the vehicle. He was not wearing a seatbelt. There was no evidence that Wourms had applied his brakes.

Zukowski concluded that there was no evidence that defendant hit Wourms's Mazda. He noted that although there were scratches to the left front area of the squad car and the right rear area of the Mazda and there was no evidence to support a connection between the



scratches. Specifically, he concluded that the height, width and directionality of the damage to the Mazda was inconsistent with the height, width and directionality of the damage on defendant's squad car.

Zukowski also conducted a time-distance analysis to determine the likelihood that defendant could have closed the distance gap observed by witnesses and struck Wourms's Mazda. He concluded that defendant would have had to be traveling at speeds exceeding the performance capabilities of the 2001 Crown Victoria that defendant was driving to catch up to the Mazda and hit it.

Defendants' second expert, Jeffery Peterson, an engineer with Skogen Engineering Group, inspected and photographed the area of the accident and reviewed documents and physical evidence of the crash. He concluded that he was "unable to find any physical evidence of a contact between Fields's squad car and the Wourms Mazda." Peterson Rep., dkt. #13-1, at 5. In particular, he noted that

there is no evidence of debris from either vehicle in the roadway near the start of the tire marks left by the Wourms vehicle. There are no tire marks on the roadway that could be attributed to anything but the Wourms Mazda. Additionally, there was no paint transfer found on either the Wourms Mazda or the Fields squad car. Lastly, although both vehicles exhibit superficial scratches and abrasions, I cannot attribute any of these scratches or abrasions to any kind of contact between the two.

Id. Peterson also noted that there was no evidence that the bolt imprints on the Mazda were caused by defendant's squad car. He noted that the type of bolts that caused the imprints are used on Dodges and Pontiacs, as well as Fords, and that the orientation of the bolt imprints did not match the orientation of the bolts on the squad car, as seen in pictures

taken the day after the accident. Finally, he concluded that, on the basis of the testimony from Hrdlicka and Chenoweth, defendant would not have been able to catch up to Wourms's Mazda by the point at which it began to leave tire marks.

## OPINION

Plaintiffs' sole claim is that defendant used excessive force against Dane Wourms by intentionally hitting Wourms's car during the high speed chase and causing Wourms's crash and death. Plaintiffs contend that defendant's action constituted an unreasonable seizure under the Fourth Amendment. The Fourth Amendment provides that "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. Const. amend. IV. "In the context of a police pursuit, a Fourth Amendment seizure does not occur unless an officer intentionally and forcibly halts the fleeing suspect." Steen v. Myers, 486 F.3d 1017, 1021 (7th Cir. 2007) (citing County of Sacramento v. Lewis, 523 U.S. 833, 844 (1998) (concluding that no seizure occurred where the police accidentally struck and killed a motorcyclist during a high-speed pursuit)). See also Scott v. Harris, 550 U.S. 372, 381 (2007) ("[A] Fourth Amendment seizure [occurs] . . . when there is a governmental termination of freedom of movement through means intentionally applied.") (quoting Brower v. County of Inyo, 489 U.S. 593, 596 (1989) (emphasis deleted)). Thus, a plaintiff bringing a Fourth Amendment claim in a § 1983 case grounded on a police chase "has the burden of proving two things: that the officer forcibly stopped the vehicle and that the contact was intentional." Steen,

486 F.3d at 1022 (citing Lewis, 523 U.S. at 844). See also Marion v. City of Corydon, Ind., 559 F.3d 700, 705 (7th Cir. 2009) (analyzing Fourth Amendment seizure claim arising out of police pursuit).

In this case, plaintiffs' Fourth Amendment claim fails because there is no evidence that defendant's squad car ever made contact with Wourms's Mazda. Although plaintiffs have a number of several speculative arguments about what might have happened on the night of the crash, they offer no evidence to support their speculation. First, plaintiffs argue that there is "circumstantial evidence" of physical contact between the two vehicles. Plts.' Br., dkt. #19, at 4. In particular, plaintiffs contend that it is "intuitively impossible to imagine that, without the application of the brakes or some outside force," Wourms's Mazda could have crashed in the manner it did. Id. This is not "circumstantial evidence"; it is speculation. Plaintiffs offer no scientific theory, expert testimony or physical evidence to support their statement that it is "intuitively impossible" that Wourms crashed without braking or being hit by an outside force. Springer v. Durflinger, 518 F.3d 479, 484 (7th Cir. 2008) ("[I]t is well-settled that speculation may not be used to manufacture a genuine issue of fact.") (quotation marks and citation omitted).

Next, plaintiffs suggest that defendant used a pursuit tactic called precision immobilization technique (PIT) to stop Wourms's Mazda, citing a Wikipedia online encyclopedia entry for "PIT maneuver." Plts.' Br., dkt. #19, at 5. Plaintiffs point to the damage to the right rear of Wourms's Mazda and the front left of the police squad car as evidence that defendant used this technique. However, plaintiffs submit no expert

testimony regarding the precision immobilization technique or whether the technique may have been applied in this case. Further, plaintiffs do not address the testimony of defendants' experts, Jeffery Peterson and Ryan Zukowski, who stated that none of the scratches or abrasions on Wourms's Mazda or defendant's squad car can be attributed to any contact between the two vehicles because the marks vary in height, width and directionality. Even plaintiffs' own expert, Donald Marty, stated that "[a]lthough abrasions were present" on both cars, he "found no matches between the abrasions and no evidence of paint transfer on either bumper cover." Marty Rep., dkt. #23-2 at 4. Thus, plaintiffs' speculation that defendant used a precision immobilization technique is contradicted by the actual facts in the record. Scott, 550 U.S. at 380 ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.").

Plaintiffs also argue that the license plate retaining bolt imprints on Wourms's Mazda are evidence of physical contact from defendant's squad car. Plaintiffs contend that the bolts were of a "unique design" commonly found on Ford Motor Company products, including on the squad car driven by defendant on the night of the crash. Plaintiffs concede that the height and angular orientation of the bolts on defendant's squad were different from the height and angular orientation of the imprints on Wourms's Mazda, but they contend that these differences can be accounted for. They contend that the angular orientation could have been changed by an officer after the crash to cover up the evidence. As for the height

difference, plaintiffs rely on their expert, who concluded that the height difference could be accounted for if both the Ford and Mazda were under “heavy braking” at the time of contact.

Again, these arguments are purely speculative and disregard the actual evidence in the record. Plaintiffs do not acknowledge Jeffery Peterson’s report, which shows that such bolts are also used on other vehicles, including Dodges and Pontiacs. Additionally, plaintiffs ignore the fact that photos taken of defendant’s squad car just a day after the crash show that its license plate retaining bolts were in the same position as they were months later when plaintiff’s expert inspected them. This means that defendant or another officer would have had to alter the bolts immediately after the crash. Plaintiffs have offered no basis for their speculation that this occurred. McDonald v. Village of Winnetka, 371 F.3d 992, 1001 (7th Cir. 2004) (“Inferences that are supported only by conjecture or speculation will not defeat a summary judgment motion.”). Further, plaintiffs fail to acknowledge that there is no evidence in the record that either defendant or Wourms was applying “heavy braking,” or any braking at all, at the scene of the crash. Thus, plaintiffs’ theory about the license plate retaining bolts has no basis in the record and is not sufficient to create a genuine dispute of material fact. Steen, 486 F.3d at 1022 (“We do not allow parties to send every speculation that they have to the jury despite an absence of evidence.”).

Finally, plaintiffs contend that eyewitness reports suggest that defendant crashed into Wourms’s Mazda, or at least, that defendant lied about what happened on the night of the crash. However, no person witnessed the crash. There were only two people who saw any

portion of the chase and neither has provided evidence from which a reasonable jury could conclude that defendant made contact with Wourms's Mazda. To the contrary, defendants' experts concluded that, if the witnesses were correct in their estimations, it would have been impossible for defendant to close the gap between his squad car and Wourms's Mazda in time to cause Wourms's crash. Plaintiffs have offered no basis on which to dispute these conclusions.

Plaintiffs also cite the statement of Gene Heiman, the witness who stated that he saw a black and white marked police car make a U-turn on Highway 14 and stop at the crash site, in support of their argument that defendant's version of events is an unreliable "web of lies." Plts.' Br., dkt. #19, at 12. Plaintiffs contend that a jury could rely on Heiman's testimony to conclude that defendant did not drive as far east on Highway 14 as he purported to drive, thus undermining the remainder of defendant's testimony about the pursuit and crash. Plaintiffs are incorrect. No reasonable jury could rely on Heiman's testimony to conclude that defendant's testimony was unreliable. Heiman never identified defendant or defendant's squad car. In fact, Heiman reported seeing a marked black and white Evansville squad car with an emergency light bar on top, whereas defendant was driving an unmarked black squad car without emergency lights on its roof. Such evidence is insufficient to support a finding that Heiman saw or talked to defendant, let alone sufficient to support a finding that defendant lied about the events surrounding the crash.

In sum, plaintiffs have pointed to no evidence in the record to support a finding that defendant's squad car made any physical contact with Dane Wourms's car. Dane Wourms's

death was unfortunate and regrettable, but no reasonable juror could find from the evidence that the death was the result of any intentional action that defendant took. Therefore, defendants are entitled to summary judgment on plaintiffs' Fourth Amendment claim. Steen, 486 F.3d at 1022 (affirming dismissal of Fourth Amendment claim where plaintiff had adduced no evidence that any collision occurred between police officer and motorcycle).

#### ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants Scott Fields and the City of Evansville, dkt. #9, is GRANTED. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 21st day of December, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge